

# Exhibit C

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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 LUCAS R., et al.,

13 Plaintiffs,

14 v.

15 XAVIER BECERRA, Secretary of  
16 U.S. Department of Health and Human  
17 Services, et al.,

18 Defendants.

No. 2:18-CV-05741 DMG PLA

[PROPOSED] STIPULATED  
SETTLEMENT OF PLAINTIFFS' FIFTH  
CLAIM FOR RELIEF [DISABILITY]

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**PREAMBLE**

1  
2 This Settlement Agreement (“Agreement”) is entered into by all Plaintiffs and  
3 Defendants in this class action lawsuit (collectively “the Parties”). Plaintiffs and class  
4 representatives Lucas R., Daniela Marisol T., Gabriela N., Jaime D., Sirena P., and  
5 Benjamin F. are or were children formerly in the custody of the Office of Refugee  
6 Resettlement (“ORR”) of the U.S. Department of Health and Human Services  
7 (“HHS”). Defendants are the Secretary of HHS and the Director of ORR, both of  
8 whom are sued in their respective official capacities.

9 WHEREAS Plaintiffs filed this lawsuit challenging, *inter alia*, Defendants’  
10 policies and practices with respect to the rights of children in ORR custody who have  
11 or are perceived to have a behavioral, mental health, intellectual, and/or  
12 developmental disability;

13 WHEREAS the District Court certified this case as a class action on behalf of,  
14 *inter alia*, “all minors in ORR custody pursuant to 6 U.S.C. section 279 and/or 8  
15 U.S.C. section 1232 . . . who have or will have a behavioral, mental health,  
16 intellectual, and/or developmental disability as defined in 29 U.S.C. section 705, and  
17 who are or will be placed in a secure facility, medium-secure facility, or RTC solely  
18 by reason of such disabilities (*i.e.*, the ‘disability class’);”

19 WHEREAS, under Section 504 of the Rehabilitation Act, “[n]o otherwise  
20 qualified individual with a disability in the United States . . . shall, solely by reason of  
21 her or his disability, be excluded from the participation in, be denied the benefits of, or  
22 be subjected to discrimination under any program or activity receiving Federal  
23 financial assistance or under any program or activity conducted by any Executive  
24 agency,” 29 U.S.C. § 794;

25 WHEREAS children with disabilities in ORR’s custody must receive services  
26 in the least restrictive setting that is in the best interest of the child and also the most  
27 integrated setting appropriate to their needs unless ORR can demonstrate that this  
28 would fundamentally alter the nature of its Unaccompanied Children Program, and

1 shall be released from ORR’s custody without unnecessary delay due to their  
2 disability; and

3 WHEREAS the Trafficking Victims Protection Reauthorization Act of 2008  
4 (“TVPRA”), codified at 8 U.S.C. § 1232, *et. seq.*, provides that, “an unaccompanied  
5 alien child may not be placed with a person or entity unless the Secretary of Health  
6 and Human Services makes a determination that the proposed custodian is capable of  
7 providing for the child’s physical and mental well-being. Such determination shall, at  
8 a minimum, include verification of the custodian’s identity and relationship to the  
9 child, if any, as well as an independent finding that the individual has not engaged in  
10 any activity that would indicate a potential risk to the child.” *Id.* at § 1232(c)(3)(A).  
11 A determination whether a proposed custodian is capable of providing for the physical  
12 and mental well-being of a child with a disability involves consideration of that  
13 disability; and

14 WHEREAS the TVPRA, 8 U.S.C. § 1232(c)(3)(B), requires that a home study  
15 be completed for a special needs child with a disability in ORR custody, and that the  
16 Secretary of HHS conduct follow-up services for such children; and

17 WHEREAS the Parties have conducted discussions and negotiations in good  
18 faith with respect to a compromise and resolution of Plaintiffs’ Fifth Claim for Relief  
19 in the operative First Amended Complaint [ECF No. 81], with a view to settling the  
20 issues in dispute and achieving the most effective class-wide relief possible consistent  
21 with the interests of the Parties; and

22 WHEREAS had the case gone to trial, a decision of the District Court may have  
23 been subject to appeal by the losing Party with the final outcome uncertain; and

24 WHEREAS the Parties have concluded that the terms and conditions of this  
25 Agreement are fair, reasonable, and in the best interests of the named Plaintiffs and all  
26 Class Members, after considering the substantial benefits that the Parties will receive  
27 from settlement of Plaintiffs’ Fifth Claim for Relief;

28

1 NOW, THEREFORE, in settlement of Plaintiffs’ Fifth Claim for Relief and in  
2 consideration of the promises and undertakings set forth herein and other  
3 consideration, the sufficiency of which is hereby acknowledged, it is hereby  
4 AGREED, by and among the Parties to this Agreement, through their respective  
5 attorneys, subject to the approval of the Court pursuant to Rule 23(e) of the Federal  
6 Rules of Civil Procedure, in consideration of the benefits flowing to the Parties hereto  
7 from the Agreement, that Plaintiffs’ Fifth Claim for Relief shall be settled upon and  
8 subject to the following terms and conditions:

9 **I. DEFINITIONS**

10 Wherever used in this Agreement, the following terms have the meanings set  
11 forth below:

12 A. “Care Provider” means any care provider for children in ORR legal custody.

13 This includes ORR funded programs that are licensed, certified, or  
14 accredited by an appropriate State agency to provide residential care for  
15 children, including shelter, group, foster care, staff-secure, secure,  
16 therapeutic, or residential treatment care for children. It also includes influx  
17 care facilities that care for children in ORR’s custody, out-of-network  
18 facilities, and formerly licensed programs that lost their licenses due to a  
19 state’s action to exclude all ORR programs from state licensing.

20 B. “Case Manager” means the care provider staff member who coordinates  
21 assessments of unaccompanied children, individual service plans, and efforts  
22 to release unaccompanied children from ORR custody. Case Managers  
23 facilitate documentation of services for children and youth and maintain case  
24 files for unaccompanied children.

25 C. “Class” or “Class Members” includes “all minors in ORR custody pursuant  
26 to 6 U.S.C. section 279 and/or 8 U.S.C. section 1232 . . . who have or will  
27 have a behavioral, mental health, intellectual, and/or developmental  
28 disability as [“disability” is] defined in 29 U.S.C. section 705, and who are

1 or will be placed in a secure facility, medium secure facility, or RTC solely  
2 by reason of such disabilities” [ECF No. 141 at 27-28] (i.e., the “disability  
3 class”).

4 D. “Disability” means, with respect to an individual, a physical or mental  
5 impairment that substantially limits one or more major life activities of such  
6 individual; a record of such an impairment; or being regarded as having such  
7 an impairment. 29 U.S.C. § 705(9)(B) (citing 42 U.S.C. § 12102).

8 E. “Effective Date” is the date of final approval of the Agreement by the Court,  
9 in accordance with Section VII.A.1.

10 F. “Implementation Date” is the date 12 months after the Effective Date. By  
11 this date, ORR will meet the commitments in Sections II-V, except that  
12 ORR shall update the Policy Guide and Manual of Procedures 75 days after  
13 the Effective Date of this Agreement and provide a copy of each to the  
14 Monitor and Class Counsel at that time. The Monitor may approve an  
15 extension of no more than six additional months for the implementation of  
16 any specific provision(s) based on a written good cause statement from ORR  
17 explaining why the 12-month deadline could not be met for the specific  
18 provision(s). The Monitor shall share any such written statement with Class  
19 Counsel.

20 G. “Integrated Setting” or “Integrated Placement” refers to a setting that  
21 enables individuals with disabilities to interact with non-disabled persons to  
22 the fullest extent possible.

23 H. “Monitor” means Kathleen Noonan, whose appointment and role is  
24 governed by Section VI.C.

25 I. “Non-restrictive Placement” refers to any placement that is not a “restrictive  
26 placement.”



- 1 J. “Office of Refugee Resettlement” or “ORR” means the U.S. Department of  
2 Health and Human Services, Administration for Children and Families,  
3 Office of Refugee Resettlement.
- 4 K. “Parent” means a child’s biological mother or father, as well as an individual  
5 recognized by a governmental entity as the child’s parent.
- 6 L. “Party” or “Parties” applies to Defendants and Plaintiffs.
- 7 M. “Plaintiff” or “Plaintiffs” applies to the named Plaintiffs and all Class  
8 Members as defined herein.
- 9 N. “Residential Treatment Center” (“RTC”) is a sub-acute, time limited,  
10 interdisciplinary, psycho-educational, and therapeutic 24-hour-a-day  
11 structured program with community linkages, provided through non-  
12 coercive, coordinated, individualized care, specialized services, and  
13 interventions. Residential treatment centers provide highly customized care  
14 and services to individuals following either a community-based placement or  
15 more intensive intervention, with the aim of moving individuals toward a  
16 stable, less intensive level of care or independence. A child may only be  
17 placed in an RTC at the recommendation of a licensed psychiatrist or  
18 psychologist for an unaccompanied child who poses a danger to self or  
19 others and does not require inpatient hospitalization. All references to RTC  
20 in the Agreement include out-of-network RTCs.
- 21 O. “Restrictive Placement” refers to placement in a secure juvenile detention  
22 facility, a residential treatment center (“RTC”), a staff-secure facility, or a  
23 therapeutic staff-secure facility. Any reference to a secure juvenile detention  
24 facility, RTC, staff-secure facility, or therapeutic staff-secure facility will  
25 include out-of-network (“OON”) facilities that are the same level of  
26 restrictiveness.
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- P. “Section 504 Service Plan” refers exclusively to the service plans ORR has agreed to develop and implement pursuant to Section II.B of this Agreement for children with identified disabilities within ORR’s custody.
- Q. “Step-down” refers to transfer from (1) a restrictive placement to a non-restrictive placement; (2) a secure juvenile detention facility to an RTC, staff-secure, or therapeutic staff-secure facility; or (3) an RTC to a staff-secure or therapeutic staff-secure facility.
- R. “Step-up” refers to transfer from (1) a non-restrictive placement to a restrictive placement; (2) an RTC, staff-secure, or therapeutic staff-secure facility to a secure juvenile detention facility; or (3) a staff-secure or therapeutic staff-secure facility to an RTC. “Step-up” also refers to initial placement by ORR in a secure juvenile detention facility, RTC, staff-secure, or therapeutic staff-secure facility.
- S. “Substantial Compliance” is when ORR has satisfied the intended purpose of the Agreement through the process outlined in Sections VI.D.3.b. and VII.D.2. The Parties recognize that strict and literal compliance with every term of the Agreement is not required for a finding of Substantial Compliance as long as any deviations are unintentional and do not substantially defeat the purpose of the Agreement. Substantial Compliance is not vitiated by a few technical violations where every reasonable effort has been made to comply.
- T. “Termination Date” is five years after the Implementation Date or an earlier date if the Court approves early termination based on Defendants demonstrating Substantial Compliance with the Agreement. The Termination Date is the date on which all terms of the Agreement and ongoing Court jurisdiction terminate.

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**II. IDENTIFICATION, ASSESSMENT, AND TRACKING OF CHILDREN WITH DISABILITIES IN ORR’S CARE**

**A. Identification of Children with Disabilities**

1. ORR will identify a child as having a disability:

- a. If the individual performing the initial medical examination for ORR, *see* ORR Policy Guide—as of this writing codified at § 3.4.2,—determines that the child has a physical or mental impairment that substantially limits one or more of the child’s major life activities; or
- b. If, while the child is in ORR custody, a licensed medical provider or licensed mental health professional determines that the child has a physical or mental impairment that substantially limits one or more of the child’s major life activities; or
- c. Based on the results of an evaluation conducted pursuant to Section II.A.2.

2. Evaluation for disability

- a. Any one or more of the following events will trigger an evaluation for disability to determine whether a child has a physical or mental impairment that substantially limits one or more of the child’s major life activities:
  - i. If a child is psychiatrically hospitalized or evaluated for psychiatric hospitalization (upon discharge, unless an evaluation for disability has already been completed in connection with the hospitalization or evaluation for hospitalization, in which case, if a disability is identified, the child will be considered for an individualized service plan pursuant to Section II.B); or

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- ii. If a child is considered for step-up to an RTC or secure facility based on danger to self or danger to others (unless an evaluation for disability has already been completed in connection with the consideration for step-up, in which case, if a disability is identified, the child will be considered for an individualized service plan pursuant to Section II.B); or
  - iii. At the request of the child after being informed of the purpose, scope, and nature of the evaluation, including a request made through counsel of record (for whom ORR has documentation of the attorney’s individual representation of the child), a child advocate, or a parent or guardian.
- b. When a child has been identified as having a disability and/or evaluated for a potential disability pursuant to this Section, the child will not be re-evaluated for the same presenting symptoms except upon the recommendation of a medical or mental health professional.
- c. Evaluations will be conducted as promptly as is practicable unless the child is released to a sponsor or placed in an Unaccompanied Refugee Minors (“URM”) program before the evaluation is started or completed, or the evaluating professional recommends waiting to evaluate the child. ORR will make and document best efforts to ensure that:
- i. An evaluation for disability is initiated within 30 days of the triggering event; and
  - ii. An evaluation is completed within 60 days of ORR identifying the need for an evaluation.

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d. The purpose of the evaluation is to identify qualified children with disabilities for the purpose of developing a Section 504 Service Plan (*see* Section II.B) if one is needed to meet their disability-related needs, to ensure that they receive services in the most integrated setting appropriate to their needs (unless ORR can demonstrate that this would fundamentally alter the nature of its UC Program), and to ensure to the best extent practicable that they are released to a suitable sponsor from ORR’s custody without unnecessary delay due to their disability.

e. The evaluation will be conducted by one or more individuals qualified to assess children in the area(s) of suspected disability or presenting symptoms. Nothing in this Agreement shall be construed as providing the right to a particular evaluator(s). The evaluator(s) will select the appropriate tools and/or assessments using their professional judgment and provide ORR documentation of the evaluation findings and any recommendations. ORR’s Division of Health for Unaccompanied Children (“DHUC”) will:

- i. issue written guidance on the selection of qualified evaluators, the inclusion of necessary assessments, the process for advising a child about the purpose and scope of the evaluation, and the sharing of relevant records in ORR’s possession with the evaluator(s) (including any relevant records and assessments from the child’s home country and/or current or prior ORR placements); and
- ii. provide consultation to care providers, on an as-needed basis, on the evaluation process.

- 1 f. A copy of the evaluation report(s) shall be provided to the
- 2 child’s parent or guardian, if reasonably available (and no
- 3 child welfare concerns exist). Evaluation reports shall also be
- 4 provided on demand to any attorney of record (who provides
- 5 ORR documentation of individual representation of the child)
- 6 and the child advocate, if applicable.
- 7 g. ORR shall not share any evaluation report or related clinical
- 8 or mental health documents or Significant Incident Reports
- 9 (“SIRs”) with any component of the Department of Homeland
- 10 Security (“DHS”) for purposes of any deportation, removal,
- 11 application for relief from removal, custody hearing, or
- 12 United States Citizenship and Immigration Services
- 13 (“USCIS”) adjudication.
- 14 h. A pending, scheduled, or partially completed evaluation will
- 15 not be a justification to delay an otherwise appropriate release
- 16 to a suitable sponsor, step-down to a less restrictive
- 17 placement, or placement in a URM program, although such an
- 18 evaluation may inform the appropriateness of a step-down
- 19 and/or suitability determination where appropriate. *See*
- 20 Section V.C.

21 B. Individualized Section 504 Service Plans

- 22 1. The purpose of a Section 504 Service Plan is to meet the child’s
- 23 disability-related needs, to ensure that they can participate in the UC
- 24 Program in the most integrated setting appropriate to their needs
- 25 (unless ORR can demonstrate that this would fundamentally alter the
- 26 nature of its UC Program), and to ensure to the best extent practicable
- 27 that they are released from ORR’s custody without any unnecessary
- 28 delay due to their disability.

- 1                   2. When a child in ORR’s legal custody is identified as having a  
2                   disability pursuant to Section II.A.1, ORR will, in consultation with  
3                   individuals with relevant expertise, *see* Section II.B.3:
  - 4                   a. Assess the child’s potential need for reasonable  
5                   accommodations, modifications, services, and/or supports to  
6                   meet the child’s disability-related needs, to ensure that they  
7                   can participate in the UC Program in the most integrated  
8                   setting appropriate to their needs (unless ORR can  
9                   demonstrate and document that this would fundamentally alter  
10                  the nature of its UC Program), and to ensure to the best extent  
11                  practicable that they are released from ORR’s custody without  
12                  any unnecessary delay due to their disability; and
  - 13                  b. If needed, develop and implement an individualized Section  
14                  504 Service Plan for the child.
- 15                  3. For purposes of Sections II.B.2 and II.B.11, the individuals with  
16                  relevant expertise consulted must include the child (if the child is  
17                  willing and able to communicate about their service plan, preferences,  
18                  and needs) and the child advocate (if any). ORR will use best efforts  
19                  to include the parent/legal guardian (if reasonably available and with  
20                  the child’s consent) and the child’s individual attorney of record (who  
21                  provides ORR documentation of individual representation of the child  
22                  and if the child consents). The individuals consulted may also  
23                  include, as appropriate, individuals such as care provider staff  
24                  working directly with the child, the child’s clinician(s), and/or other  
25                  medical or mental health provider(s).
- 26                  4. Any decision pursuant to Section II.B.2.a that an individualized  
27                  Section 504 Service Plan is not required for a child with an identified  
28                  disability and the reasons why must be documented in the child’s file.

- 1           5. The Section 504 Service Plan, if one is needed, will be developed and  
2           implemented as soon as possible, and within 60 days of identification  
3           of the child as having a disability (see Section II.A.1), unless the child  
4           is released to a sponsor or placed in a URM program before the  
5           Section 504 Service Plan is started or completed. The Section 504  
6           Service Plan may be implemented in a piecemeal fashion as  
7           appropriate and feasible within the 60-day window.
- 8           6. ORR will make best efforts to develop and implement a Section 504  
9           Service Plan, if one is needed, before any step-up of a child with an  
10          identified disability unless the child is released to a sponsor or placed  
11          in a URM program earlier. If a Section 504 Service Plan is not  
12          developed and implemented before step-up, ORR will document in  
13          the child’s case file the specific reasons why it was not feasible to do  
14          so before step-up, and will complete development and begin  
15          implementation of a Section 504 Service Plan, if one is needed, within  
16          30 days of the step-up.
- 17          7. The Section 504 Service Plan, if one is deemed necessary, will be  
18          targeted to the individual child, and must:
  - 19               a. Identify the child’s disability-related needs and, if applicable,  
20               specific triggers of the child’s disability-based behaviors; and
  - 21               b. Include an individualized plan that (i) proactively identifies  
22               and provides for services, supports, and reasonable  
23               accommodations and modifications to meet the child’s  
24               identified disability-based needs; (ii) documents any  
25               reasonable accommodations or modifications to the UC  
26               Program needed to maintain the child’s participation in the  
27               most integrated setting appropriate to the child’s needs while  
28               in ORR custody (unless ORR can demonstrate and document



1 that this would fundamentally alter the nature of its UC  
2 Program), taking into account the specific triggers of the  
3 child's behavior; and (iii) includes a transition plan and  
4 consideration of available post-release services to enable safe  
5 release to a suitable sponsor without unnecessary delay due to  
6 the child's disability.

7 8. In consultation with internal or external subject matter expert(s), ORR  
8 will issue written guidance governing the development of Section 504  
9 Service Plans, including regarding:

- 10 a. Services, supports, reasonable modifications, and  
11 accommodations that may be included in a Service Plan;
- 12 b. Procedures for consulting with the individuals with relevant  
13 expertise described in Section II.B.3;
- 14 c. Consideration of any relevant medical, mental health, and/or  
15 educational records that are in ORR's possession (including  
16 from the child's home country); and
- 17 d. Guidelines for specifying when, how often, and by whom  
18 services will be provided.

19 9. In developing a Section 504 Service Plan, ORR shall consider all  
20 recommendations provided by individual(s) who conduct  
21 evaluation(s) for disability. ORR will include a written explanation of  
22 any significant departures from an evaluator's major  
23 recommendation(s) in the Service Plan.

24 10. ORR is not obligated under this Agreement to pay for or provide  
25 post-release services, except that post-release services can provide  
26 case management to identify services, including no- or low-cost  
27 services, available in the community.  
28

1 11. An existing Section 504 Service Plan or a decision that no Section  
2 504 Service Plan is necessary will be reviewed and revised as  
3 necessary by ORR in consultation with the individuals with relevant  
4 expertise described in Section II.B.3:

- 5 a. Every six months;
- 6 b. Within 30 days after step-up;
- 7 c. If a child is psychiatrically hospitalized, within 30 days  
8 thereafter (if a child is hospitalized multiple times in a three-  
9 month period, the Plan need only be reviewed once in that  
10 three-month period); and
- 11 d. Upon the recommendation of a licensed medical or mental  
12 health provider, including the child's clinician, within 30 days  
13 thereafter.

14 12. ORR's review of an existing Section 504 Service Plan will:

- 15 a. Determine whether the services, supports, reasonable  
16 modifications, and accommodations set out in the Plan have  
17 been and are currently being provided to the child. If any  
18 services, supports, reasonable modifications, or  
19 accommodations have not been provided, ORR will include in  
20 the revised Plan a brief written explanation of why the Plan  
21 has not been fully implemented and what steps will be taken  
22 to ensure full implementation of the Plan with any needed  
23 revisions thereto, as provided in Section II.B.12(c);
- 24 b. Revisit the identification of the child's needs and triggers and  
25 individualized plan specified in Section II.B.7; and
- 26 c. Assess whether the Plan appropriately meets the child's  
27 identified needs, maintains the child in the least restrictive and  
28 most integrated setting appropriate to those needs (unless

1 ORR can demonstrate and document that this would  
2 fundamentally alter the nature of its UC Program), and  
3 includes a transition plan to enable safe release to a suitable  
4 sponsor without unnecessary delay due to the child's  
5 disability. If not, ORR shall consider whether additional or  
6 alternative services, supports, reasonable modifications, or  
7 accommodations (that would not fundamentally alter the  
8 nature of the UC Program) should be provided.

9 13. A pending, scheduled, or partially completed Section 504 Service  
10 Plan will not be a justification to delay an otherwise appropriate  
11 release to a suitable sponsor, step-down, or placement in a URM  
12 program. *See* Section V.B, C.

13 C. Children's Case Files

- 14 1. ORR will direct care providers to include, as applicable, in children's  
15 case files:
- 16 a. Any Section 504 Service Plan;
  - 17 b. Documentation of the implementation of any Section 504  
18 Service Plan, including, but not limited to, progress notes; and
  - 19 c. Any evaluation or assessment pursuant to Section II.A.2.
- 20 2. With the child's consent, ORR will make such records available to  
21 their attorney of record upon request following ordinary case file  
22 request procedures. With the child's consent, such records will be  
23 shared with the child's child advocate, if applicable.
- 24 3. In no case will ORR share clinical or mental health records or SIRs,  
25 including, but not limited to, any Section 504 Service Plan and related  
26 documentation, with any component of DHS for purposes of any  
27 deportation, removal, application for relief from removal, custody  
28 hearing, or USCIS adjudication.

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D. Tracking Children with Disabilities

1. ORR will track data across the ORR system concerning, at least:
  - a. The number of children in ORR custody identified as having one or more disabilities;
  - b. Identified disabilities, placements, step-ups, step-downs, and length of stay for children identified as having one or more disabilities;
  - c. The development and implementation of Section 504 Service Plans for children with disabilities who need them, and any determinations that children with identified disabilities do not need Section 504 Service Plans;
  - d. Referrals made for post-release services; and
  - e. Transition planning for the safe release of children identified as having one or more disabilities without unnecessary delay due to the child’s disability.
2. This information must be stored in a format that can be aggregated and is easily searchable.

**III. ACCOMMODATIONS AND SERVICES AVAILABLE TO CHILDREN WITH DISABILITIES IN ORR’S CARE**

A. Needs Assessment and Disability Plan

1. Working with internal or external expert(s), ORR will undertake a comprehensive needs assessment to evaluate:
  - a. The adequacy of services, supports, and resources currently in place for children with disabilities in ORR’s custody across its network, including ORR’s capacity to serve children with disabilities in the most integrated setting appropriate for their needs without fundamentally altering the UC Program; and

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- b. Gaps in the current system, including, but not limited to, gaps related to identification, services and supports (including both facility-based and community-based services), placement array (including, but not limited to, the availability of therapeutic foster care and shelter placements for children with higher-level needs and children ready to step down), and connections to available post-release services.
- 2. Working with internal or external expert(s), ORR will develop and implement a disability plan with steps to address identified gaps, if any, including a concrete timeline.
- 3. The needs assessment will be completed and the disability plan developed within one year of the Effective Date of this Agreement.

B. Access to Services

- 1. ORR, in conjunction with grantee care providers, will make and document best efforts to develop and provide a range of services and supports network-wide, including available community-based services and supports, designed to enable children with disabilities to be placed in the least restrictive setting that is in their best interest, and the most integrated setting appropriate to their needs, and further their release to suitable sponsors without unnecessary delay due to their disability (unless ORR can demonstrate and document that providing such a service or support would fundamentally alter the nature of its UC Program).
- 2. ORR will within 12 months of the Effective Date of this Agreement develop a policy which includes the provision of trauma-informed mental health screening for all unaccompanied children in ORR's care and provides for enhanced mental health services for those children with a positive screening. Such a positive screening would not

1 automatically identify a child as having a disability or lead to an  
2 evaluation for a disability, or the development of a Section 504  
3 Service Plan.

4 C. Range of Placements

- 5 1. ORR will make and document best efforts to enter into cooperative  
6 agreements or contracts with a range of placements appropriate for  
7 children in ORR’s legal custody, including those with disabilities. To  
8 the extent feasible, ORR will prioritize placements that provide access  
9 to trauma-informed, therapeutic, and other disability-related services  
10 in integrated settings as defined herein at Section I.G (e.g., shelter and  
11 foster care settings).

12 D. Placement Denials

- 13 1. ORR will include in every new and renewed care provider cooperative  
14 agreement and Notice of Funding Opportunity (NOFO) a requirement  
15 that ORR care providers, including foster care providers, may not  
16 refuse placement of a child based solely on the child’s disability,  
17 absent individualized documentation that:
- 18 a. State licensing requirements bar acceptance of the specific  
19 child, based on the child’s individual needs; or
  - 20 b. The care provider concludes it is unable to meet the child’s  
21 disability-related needs, even with additional support from  
22 ORR.

23 E. ORR Support

- 24 1. ORR will engage in best efforts to support the inclusion of children  
25 with disabilities in integrated settings by providing resources to  
26 support placement, including, as relevant, by:

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- a. Offering direct assistance to care providers as needed and subject to congressional appropriations (e.g., support for staff working with children exhibiting challenging behaviors);
  - b. Connecting providers with and coordinating delivery of available community-based services;
  - c. Connecting providers with available telehealth resources; and
  - d. Providing training and technical assistance as needed.
2. ORR will develop and deliver mandatory trauma-informed disability-related training as a component of pre-service training and at least annually thereafter to all appropriate Federal and care provider staff (e.g., training through the National Child Traumatic Stress Network or another suitable trainer).

**IV. PLACEMENT OF CHILDREN WITH DISABILITIES IN ORR’S CARE**

**A. Plaintiffs’ Second Claim for Relief**

- 1. The terms in this Agreement resolving Plaintiffs’ Fifth Claim for Relief supplement, and do not supplant or waive for members of any certified class, the protections, procedures, and other relief provided in resolving Plaintiffs’ Second Claim for Relief (the “step-up claim”).

**B. Placement of a Child Identified as Having a Disability in a Restrictive Placement**

- 1. For a child identified as having a disability who is placed in a restrictive placement, *see* Section II.A.1, ORR will document why the child’s needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or accommodations. The documentation will be included with the child’s first Notice of Placement.

- 1 2. ORR will describe and document the services or care that will be  
2 provided at the restrictive placement, why they are necessary for the  
3 child, and why they cannot be provided in a less restrictive placement.

4 C. Step-down of Children with Identified Disabilities in Restrictive Settings

- 5 1. ORR will assess children with identified disabilities who are placed in  
6 restrictive placements for step-down at least every 30 days, as part of  
7 ORR's 30-day placement review.
- 8 2. The 30-day placement review will include and document  
9 consideration of the child's disability, the services and supports  
10 needed to address it, and whether services and supports could be  
11 provided safely in a less restrictive placement.
- 12 3. If the 30-day placement review does not recommend step-down, ORR  
13 will document why the child's needs cannot be met in a more  
14 integrated and less restrictive setting with additional services,  
15 supports, and/or accommodations. For a child placed in an RTC,  
16 ORR's documentation will include the written assessment of the  
17 treating mental health professional(s) as to why the child cannot be  
18 safely stepped down to a less restrictive setting.
- 19 4. If the 30-day placement review recommends step-down, the child will  
20 be placed in the least restrictive setting in the best interest of the child  
21 as expeditiously as possible. Efforts to locate a less restrictive  
22 placement following a recommendation for step-down will be  
23 documented in the child's case file.

24 D. Access to Documentation

- 25 1. The child, their attorney of record, if any, and their child advocate, if  
26 applicable, will have access to the documentation required under  
27 Sections IV.B and IV.C (which is part of Notice of Placement  
28 documentation) upon request.



1 E. Access to Services

- 2 1. ORR will make and document efforts to place each child with an  
3 identified disability in a placement that can provide access to the  
4 services and supports identified in the child’s Section 504 Service  
5 Plan (unless ORR can demonstrate and document that this would  
6 fundamentally alter the nature of its UC Program), except that ORR  
7 may maintain a child in their current shelter or foster care placement  
8 upon a determination that maintaining their current placement would  
9 be in the best interest of the child.
- 10 2. To facilitate continuity in care, when ORR transfers a child with an  
11 identified disability, it will ensure that all records related to Section  
12 504 Service Plans are included in the health records accompanying the  
13 child upon transfer. ORR will direct the care provider to provide  
14 these records to the child’s new medical and mental health providers  
15 as needed.

16 **V. RELEASE OF CHILDREN WITH DISABILITIES IN ORR’S CARE**  
17 **TO SPONSORS**

18 A. Home Studies

- 19 1. When ORR identifies a child as having a disability under Section  
20 II.A.1, the TVPRA requires a home study of the child’s potential  
21 sponsor(s). When ORR determines that the TVPRA mandates a home  
22 study and a potential sponsor has become potentially viable, meaning  
23 that the potential sponsor has submitted a complete Family  
24 Reunification Application and supporting documentation, and that  
25 ORR has not denied that application, ORR will obtain such a home  
26 study as expeditiously as possible, with the goal of avoiding any  
27 unnecessary delay in release.

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1                   2. Background checks for any case referred for a home study because of  
2                   a child’s disability may be conducted concurrently to the referral and  
3                   home study process itself. Unless results of the background check are  
4                   required prior to the initiation of the home study for a specified safety  
5                   reason, the home study should be conducted pending receipt of  
6                   background check results.

7                   B. Support for Sponsors

- 8                   1. When ORR identifies a viable potential sponsor for a child with an  
9                   identified disability, ORR will affirmatively support and assist that  
10                  sponsor in accessing and coordinating post-release community-based  
11                  services and supports, to the extent they are available (and subject to  
12                  appropriations), in an effort to work toward release without  
13                  unnecessary delay. This support and assistance must be documented  
14                  in the child’s case file. However, ORR will not delay the release of  
15                  the child if post-release services are not in place before the child’s  
16                  release, unless the needs of the child require it.
- 17                  2. ORR’s evaluation of a potential sponsor of a child with an identified  
18                  disability must explicitly include consideration of the potential  
19                  benefits to the child of release to a community-based setting.  
20                  Correspondingly, ORR’s evaluation of a potential sponsor’s ability to  
21                  meet the physical and emotional needs of the child must necessarily  
22                  include explicit consideration of the impact of the child’s disability, as  
23                  well as the availability of post-release services to meet the child’s  
24                  needs.
- 25                  3. The child, and their child advocate, if applicable, will have access to  
26                  the documentation required under Section V.B.1 and V.B.2 upon  
27                  request. The child’s attorney(s) of record who provide(s) ORR with  
28                  documentation of individual representation of the child may request

1 the records in accordance with ORR’s policy on requesting  
2 information from the child’s case file.

3 C. Delays in Release

- 4 1. A pending or final Section 504 Service Plan or evaluation for  
5 disability will not be justification to delay release to a sponsor, absent  
6 a determination that the child is a danger to themselves or others or  
7 that the sponsor is not capable of providing for the child’s physical  
8 and mental well-being. Note that in some instances the evaluation  
9 may be needed in order to determine the potential sponsor’s  
10 suitability.

11 D. Continuity of Care

- 12 1. Upon release, with the consent of either the sponsor or the child (if the  
13 child is 14 or older), and upon request, ORR will within a reasonable  
14 timeframe share treatment records of a child with an identified  
15 disability with the child’s new community-based provider(s), if any.

16 **VI. IMPLEMENTATION AND OVERSIGHT**

17 A. ORR Policy Documents

- 18 1. ORR shall incorporate the commitments in this Agreement into its  
19 Policy Guide and Manual of Procedures (MAP) within 75 days after  
20 the Effective Date and shall provide a copy of the updated Policy  
21 Guide and MAP to the Monitor and to Class Counsel at that time.  
22 2. The Parties anticipate that the Disability Plan developed pursuant to  
23 Section III.A.2 may also result in additions and/or revisions to the  
24 Policy Guide and MAP. ORR shall provide a copy of any such  
25 additions and/or revisions to the Monitor and to Class Counsel within  
26 30 calendar days of making any such additions and/or revisions.

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B. Internal Oversight

1. ORR will designate an ORR staff member or group of staff members to oversee compliance with the commitments in Sections II-V of this Agreement throughout its network. *See* Section II.D.1.
2. ORR will provide notice of the protections against discrimination assured to children with disabilities by Section 504 while in the custody of ORR and the available procedures for raising concerns about children with suspected and identified disabilities in ORR’s custody by:
  - a. Publishing a nondiscrimination notice on its website, in the Policy Guide, and in the written materials provided to children describing their rights while in the custody of ORR.
  - b. Creating a mailbox for concerns raised by or on behalf of children with suspected or identified disabilities in ORR’s custody that will be monitored by a designated ORR staff member or group of staff members, who will respond in writing within a reasonable timeframe, not to exceed 30 days, explaining what, if any, steps were taken, or are planned, to address the concerns raised and providing information on the right to file a complaint with the U.S. Department of Health and Human Services, Office for Civil Rights (HHS-OCR) and the procedures for doing so.
  - c. Notifying grantee care providers that they must have policies consistent with 45 C.F.R. § 84.7 requirements.

C. Monitor

1. The Monitor of Defendants’ compliance with this Agreement will be Kathleen Noonan.

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- a. If the Monitor becomes unable or unwilling to serve, the Parties shall agree on a replacement Monitor, taking into account the input and recommendations of the outgoing Monitor, if available.
  - b. If the Parties are unable to reach agreement on a replacement Monitor, they will seek the assistance of a neutral mediator to resolve the dispute.
2. Defendants will engage the Monitor at Defendants’ expense no later than 60 days after the Court’s approval of the Monitor and shall be responsible for the Monitor’s fees and costs to satisfy the Monitor’s duties under this Agreement. The Monitor will serve through the Termination Date of the Agreement. Neither Party shall have supervisory authority over the Monitor.
3. The Monitor’s duties will include overseeing, evaluating, reporting on, and certifying implementation progress and compliance with this Agreement.
- a. The Monitor will have the authority reasonably necessary to evaluate progress toward compliance with the Agreement. This authority includes the ability to hire staff and engage consultants, including for data analysis and/or validation, so long as a cost limit to be negotiated between the Defendants and the Monitor is not exceeded; request and receive records within ORR’s access and control, including underlying data, files, and records; and conduct verification activities, including, but not limited to, case file reviews (not to exceed 100 per year), site visits, and independent communications with and/or interviews of federal and care provider staff,

1 service providers, and youth and their families and sponsors  
2 (with their consent to be interviewed).

3 b. The Monitor’s authority further includes the receipt of  
4 quarterly reports from ORR that include: (1) the name of each  
5 child in ORR custody who has been identified as having a  
6 disability and/or has been prescribed or administered one or  
7 more psychotropic medication(s); (2) each such child’s alien  
8 registration number; and (3) each such child’s placement  
9 location, (“Quarterly Report”). The first Quarterly Report  
10 under this Agreement will be issued three months after the  
11 Implementation Date.

12 c. Both Parties will receive notice of Monitoring site visits and  
13 will have the option to attend no more than two per year.

14 d. Defendants will ensure that the Monitor has access to  
15 resources, data, information, and individuals the Monitor  
16 deems necessary to perform the Monitor’s assigned  
17 responsibilities under this Agreement, as is consistent with  
18 any applicable state licensing requirements, is reasonably  
19 obtainable, and within ORR’s control.

20 4. The Monitor and any staff or consultants hired by the Monitor will  
21 sign and be bound by the Protective Order governing this action.

22 5. The Monitor, at their discretion, may have ex parte communication  
23 with the Parties.

24 D. Reporting

25 1. Within ten calendar days after the Implementation Date, Defendants  
26 will provide a written report to the Monitor and Class Counsel  
27 confirming that they have implemented the terms of this Agreement  
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1 and detailing the steps they have taken to do so (the “Implementation  
2 Report”).

3 2. Defendants will provide Periodic Reports to the Monitor, detailing  
4 ORR’s implementation of and compliance with the terms of the  
5 Agreement.

6 a. Defendants’ Periodic Reports will be issued every six months.  
7 The relevant period of review will be the six months ending  
8 on the reporting date. The first such report will be provided to  
9 the Monitor at the same time as the Implementation Report.

10 b. The format and contents of Defendants’ Periodic Reports will  
11 be determined by Defendants with input from the Monitor.  
12 For example, Defendants and the Monitor may agree to a  
13 schedule that contemplates alternating formal and less formal  
14 Periodic Reports. The Periodic Reports will only include the  
15 qualitative, quantitative, and other information the Monitor  
16 identifies as necessary for the Monitor to evaluate, report on,  
17 and certify compliance with the Agreement that is within  
18 ORR’s control, reasonably obtainable, and is consistent with  
19 any applicable state licensing requirements.

20 c. Plaintiffs will have access to the information provided to the  
21 Monitor, subject to the Protective Order in effect in this case,  
22 at the discretion of the Monitor. Defendants will provide a  
23 copy of the Quarterly Report to Plaintiffs at the time it is  
24 delivered to the Monitor.

25 d. At the same time that Defendants provide their Periodic  
26 Reports to the Monitor, Defendants will publish streamlined  
27 public reports online, including aggregated information  
28 concerning: the number of children in ORR custody identified

1 as having a disability; the categories of disabilities identified;  
2 services and supports provided to children with disabilities;  
3 type of placement(s); lengths of stay of children with  
4 disabilities system-wide; and any other information ORR  
5 chooses to include.

6 3. The Monitor will file an Annual Report on the docket every 12  
7 months until the Termination Date (*see* Section I.T.), evaluating  
8 Defendants' implementation progress and whether Defendants have  
9 demonstrated that they are in Substantial Compliance (*see* Section  
10 I.S.) with the terms of this Agreement.

11 a. The first Annual Report will be filed four months after the  
12 Implementation Report, and then Annual Reports will be filed  
13 every twelve months thereafter for as long as the Agreement  
14 is in effect (no later than the Termination Date).

15 b. If the Monitor concludes that Defendants have not  
16 demonstrated Substantial Compliance with the Agreement,  
17 the Annual Report will include recommendations as to actions  
18 Defendants should take to achieve and/or demonstrate  
19 Substantial Compliance such that the Monitor will provide  
20 certification of Substantial Compliance. *See* VII.D.2.

21 c. Two months before the filing date, the Monitor will provide a  
22 draft report to the Parties. The Parties will have one month to  
23 review the draft report and provide any input to the Monitor.  
24 The Monitor will then have one month to finalize and file the  
25 Annual Report.

26 d. The Monitor's reports will be public, except that any  
27 individually identifiable information concerning children or  
28 information otherwise protected from disclosure by law will



1 be redacted or otherwise removed from the publicly filed  
2 reports.

3 E. Periodic Meetings

- 4 1. The Monitor will convene confidential meetings between the Monitor  
5 and the Parties (jointly) at least every six months, beginning nine  
6 months from the Effective Date and lasting through the Termination  
7 Date, to discuss implementation progress.  
8 2. The Monitor and the Parties will make every effort to schedule one of  
9 these meetings during the month when the Parties are reviewing and  
10 providing input on the Monitor's draft Annual Report each year.

11 F. Attorney-Client Visits

- 12 1. Class counsel, including legal professionals within class counsel's  
13 organizations, and interpreters, may conduct confidential attorney-  
14 client visits.  
15 2. Prior to or upon Plaintiffs' counsel's arrival at a facility for attorney-  
16 client visits:  
17 a. Plaintiffs' counsel shall notify ORR seven days in advance of  
18 a planned attorney-client visit.  
19 b. No later than 24 hours prior to the attorney-client visit, ORR  
20 shall provide Plaintiffs' counsel with a list of children at the  
21 facility, including: names, dates of birth, alien registration  
22 numbers, countries of origin, and admission dates.  
23 c. 48 hours in advance of class counsel visits, ORR shall provide  
24 a sign-up sheet for Class Members who wish to meet with  
25 class counsel.

26 **VII. SETTLEMENT APPROVAL, DISMISSAL OF PLAINTIFFS' FIFTH**  
27 **CLAIM FOR RELIEF, RETENTION OF JURISDICTION, AND EXIT**

28 A. Settlement Approval

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1. This Agreement is effective only with Court approval. The Effective Date is the date of final approval of the Agreement by the Court.
2. Within 30 days after signing this Agreement, the Parties will file a joint or unopposed motion with the Court seeking preliminary approval of this Agreement, approval of a notice plan and proposed notice to the Class, a briefing schedule for final approval, and a final fairness hearing.
3. In seeking final approval of this Agreement, the Parties will file a joint or unopposed motion requesting entry of a proposed judgment and order that:
  - a. Grants final approval of the Agreement, without modification of any of its terms (unless the Parties have agreed to such modification), as a fair, reasonable, and adequate resolution of Plaintiffs' Fifth Claim for Relief under Federal Rule of Civil Procedure 23;
  - b. Finds that the Agreement resulted from extensive arms-length, good faith negotiations between the Parties through experienced counsel;
  - c. Dismisses Plaintiffs' Fifth Claim for Relief of the operative First Amended Complaint with prejudice;
  - d. Finds that each Class Member shall be deemed to have fully, finally, and forever released, relinquished, and discharged, all claims for systemic declarative and injunctive relief presented in the Fifth Claim for Relief of the First Amended Complaint arising or accruing against the Defendants on or before the Termination Date, as well as all claims for systemic declarative and injunctive relief under Section 504 of the Rehabilitation Act based on an identical factual predicate as

1 the Fifth Claim for Relief of the operative First Amended  
2 Complaint arising or accruing against the Defendants on or  
3 before the Termination Date, even if such claims were not  
4 presented or might not have been presentable in this class  
5 action. Notwithstanding the foregoing, this provision does not  
6 release, relinquish, or discharge the First, Second, Third,  
7 and/or Fourth claims for Relief in the operative First  
8 Amended Complaint. In addition, all disputes regarding this  
9 Agreement arising before the Termination Date will be  
10 resolved in accordance with the dispute resolution processes  
11 in Section VIII.B-D; and

12 e. Incorporates the terms of this Agreement, makes the Parties'  
13 compliance with the terms of the Agreement part of the  
14 dismissal order, and provides that the Court has and shall  
15 retain jurisdiction over its judgment and order for the  
16 purposes of interpreting and enforcing this Agreement until  
17 the Termination Date.

18 B. Individual Claims

19 1. This Agreement is intended to provide a class-wide solution to  
20 matters covered by the Agreement. Nothing in this Agreement is  
21 intended to limit the ability of any individual Class Member to  
22 obtain individual relief to which they would otherwise be entitled  
23 under state or federal law. Likewise, nothing in this Agreement is  
24 intended to create an individual right of action to enforce this  
25 Agreement.

26 C. Jurisdiction

27 1. The Court shall have and retain jurisdiction to interpret and enforce  
28 this Agreement.

1                   2. The Parties agree that notwithstanding any other term or provision  
2                   of this Agreement, the Court shall not have jurisdiction to enforce  
3                   this Agreement after the Termination Date.

4           D. Exit

- 5                   1. The Agreement will terminate on the Termination Date as defined in  
6                   Section I.T.
- 7                   2. Beginning two years after the Implementation Date, Defendants may  
8                   move for an order permitting early termination if they can  
9                   demonstrate Substantial Compliance to the Court, supported by  
10                  certification from the Monitor.
- 11                  3. Plaintiffs will not oppose early termination of the Agreement absent a  
12                  good faith showing that Defendants have not demonstrated Substantial  
13                  Compliance with the Agreement.

14   **VIII. NOTICE AND DISPUTE RESOLUTION**

15           A. Communications

- 16                  1. All written communications required by this Agreement shall be  
17                  transmitted by email to counsel using the following contact  
18                  information:

19                               Plaintiffs' counsel:

20                               Holly Cooper – hscooper@ucdavis.edu

21                               Carlos Holguín – crholguin@centerforhumanrights.email

22                               Mishan Wroe – mwroe@youthlaw.org

23                               Michael McMahon – mmcmahon@cooley.com

24                               Defendants' counsel:

25                               Benjamin Mark Moss – benjamin.m.moss2@usdoj.gov

26                               Nancy K. Canter – nancy.k.canter@usdoj.gov

27                               Jonathan K. Ross – jonathan.k.ross@usdoj.gov

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- 1                   2. Counsel shall promptly notify the Monitor and the other Party of any  
2                   updates to the designated representatives or contact information for  
3                   communications under this Agreement.

4                   B. Informal Dispute Resolution

- 5                   1. If any Party has a concern regarding this Agreement, that Party should  
6                   email Opposing Counsel and the Monitor and attach any relevant  
7                   documentation.  
8                   2. The receiving Party will respond within 10 days of receipt of the  
9                   initial email stating the concern(s), explaining what initial measures  
10                  are being taken and a likely timeframe for resolution. Either Party  
11                  may request a conference with the Monitor to further discuss the issue  
12                  with both Parties present.  
13                  3. If the Parties are unable to resolve the concern(s) or develop a plan to  
14                  resolve the concern(s) within 21 days of receipt of the initial email  
15                  stating the concern(s), either of the Parties may proceed to the formal  
16                  dispute resolution process described in Section VIII.C for any alleged  
17                  breach of the Agreement.  
18                  4. The Parties can mutually agree to extend the time period in the  
19                  informal dispute resolution process to attempt to resolve the  
20                  concern(s) before proceeding to formal dispute resolution for any  
21                  alleged breach of the Agreement.

22                  C. Formal Dispute Resolution

- 23                  1. If either Party believes that the other is in breach of the Agreement,  
24                  and the informal dispute resolution described above has not  
25                  adequately resolved the issue, they will notify both the Monitor and  
26                  the other Party.  
27                      a. The notification shall be in writing and shall include a detailed  
28                      description of the alleged breach of the Agreement.

- 1                   2. Within 10 days of service of the notice described in Section VIII.C.1
- 2                   alleging breach of the Agreement, the Parties will meet and confer in
- 3                   a good faith effort to resolve the dispute.
- 4                   3. If the Parties are unable to resolve the dispute through the process
- 5                   described in Section VIII.C.2, then the Parties will contact the
- 6                   Monitor to schedule a meeting. The meeting will be held within 30
- 7                   days of the notification described in Section VIII.C.1 alleging breach
- 8                   of the Agreement (with extensions permitted by agreement of the
- 9                   Parties and the Monitor). Within 14 days of the meeting (with
- 10                  extensions permitted by agreement of the Parties and the Monitor), the
- 11                  Monitor will either:
- 12                   a. Make recommendations as to how the alleged breach should
- 13                   be cured, including a timeline for compliance; or
- 14                   b. Inform the Parties of their finding that a breach has not
- 15                   occurred.

16                  D. Court Enforcement

- 17                  1. In the event that (a) the Party that allegedly breached the Agreement is
- 18                  unwilling or unable to comply with the Monitor's proposed cure or (b)
- 19                  the Party alleging a breach disagrees with the Monitor's
- 20                  recommendations and/or findings, the Party alleging a breach may
- 21                  seek resolution from the Court by filing a motion to enforce the
- 22                  Agreement.
- 23                  2. The Parties agree:
- 24                   a. Not to file a motion for enforcement of this Agreement
- 25                   without first following the Informal Dispute Resolution
- 26                   procedure in Section VIII.B and the Dispute Resolution
- 27                   procedure in Section VIII.C.
- 28

- b. Not to file a motion for enforcement of this Agreement before the Monitor submits their first Annual Report.
- c. Nothing in the Agreement waives the Parties' right to pursue class wide relief addressing systemic issues under Federal Rule of Civil Procedure 65(b).

E. Waiver

- 1. A waiver of any breach of this Agreement by any Party shall not be deemed a waiver of any other prior or subsequent breach.

**IX. NOTICE TO CLASS MEMBERS**

- A. The Parties acknowledge that Rule 23(e) of the Federal Rules of Civil Procedure requires that the Court direct notice to the Class and that it approve this Agreement before the claims of the Class may be dismissed pursuant to this Agreement.
- B. Within 30 days after signing this Agreement, the Parties will file a joint or unopposed motion with the Court for preliminary approval of this Agreement as specified in Section VII.A.2.
- C. Within 45 days of Court approval and direction of Notice, Defendants shall inform the public about the existence of this Agreement via the Defendants' websites. Subject to Section XI below, the Parties shall pursue such other public dissemination of information regarding this Agreement as they may independently deem appropriate.
- D. Within 30 days of the Effective Date of this Agreement, Defendants shall distribute to ORR facilities receiving federal funds to provide shelter services to Class Members copies of this Agreement. If Defendants forward to their offices, employees, or agents any memorandum or instructions to implement this Agreement, they will within five business days forward copies of such memoranda or instructions to Plaintiffs' counsel.

1 E. Within 30 days of the Effective Date of this Agreement, Defendants shall  
2 post in a prominent location at each facility in which ORR houses children a  
3 notice including the information set forth in Exhibit A attached.

4 **X. ATTORNEYS' FEES AND COSTS**

5 A. Plaintiffs reserve their right to seek attorneys' fees and costs associated with  
6 this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.  
7 The Parties agree to meet and confer in a good faith effort to settle such fees  
8 and costs.

9 B. This Agreement is without prejudice to Plaintiffs' right to seek future  
10 attorneys' fees and/or litigation costs in this action pursuant to the Equal  
11 Access to Justice Act, 28 U.S.C. § 2412.

12 **XI. ADMISSION OF LIABILITY**

13 A. This Agreement does not constitute and shall not be construed or viewed as  
14 an admission of any wrongdoing or liability by any Party.

15 B. The Parties assert that they have meritorious claims and defenses in this  
16 matter. The Parties have entered into this Agreement solely for the purpose  
17 of settling and compromising Plaintiffs' claims and to avoid the expense and  
18 diversion of resources caused by protracted litigation.

19 C. This Agreement shall not be offered or received against any Party as  
20 evidence of, or construed as or deemed to be evidence of, any presumption,  
21 concession, or admission by any of the Parties of the truth of any fact or the  
22 validity of any claim that had been or could have been asserted in the action  
23 or in any litigation, or the deficiency of any defense that has been or could  
24 have been asserted in the action, or any liability, negligence, fault, or  
25 wrongdoing of the Defendants; or any admission by the Defendants of any  
26 violations of, or failure to comply with, the Constitution, laws, or regulations  
27 of the United States.  
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**XII. MODIFICATION OF AGREEMENT**

A. This Agreement constitutes the entire agreement among the Parties as to Plaintiffs’ Fifth Claim for Relief, and supersedes all prior agreements, representations, warranties, statements, promises, covenants, and understandings, whether oral or written, express or implied, with respect to the subject matter thereof.

B. This Agreement is an integrated agreement at the time of authorization and may not be altered, amended, or modified except in writing executed by Plaintiffs and Defendants.

**XIII. MUTUAL EXCLUSIVITY OF PROVISIONS**

A. If any provision of this Agreement is declared invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in full force and effect, unaffected and unimpaired.

**XIV. MULTIPLE COUNTERPARTS**

A. This Agreement may be executed in a number of identical counterparts, all of which shall constitute one agreement, and such execution may be evidenced by signatures delivered electronically.

**XV. TITLES AND HEADINGS**

A. Titles and headings to Articles and Sections herein are inserted for convenience and reference and are not generally intended to be part of, or to affect the meaning or interpretation of, this Agreement.

**XVI. REPRESENTATIONS AND WARRANTY**

A. Counsel for the Parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the Parties or is in violation of any law. Defendants’ counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Secretary of HHS and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation.

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Plaintiffs’ counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, assignees, employees, successors, and those working for or on behalf of Defendants and Plaintiffs shall be fully and unequivocally bound hereunder to the full extent authorized by law.

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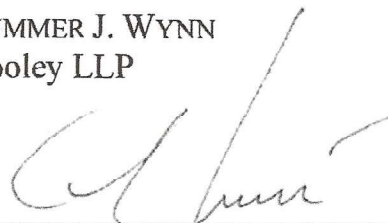
Dated: November 2, 2023

CARLOS R. HOLGUÍN  
Center for Human Rights & Constitutional  
Law

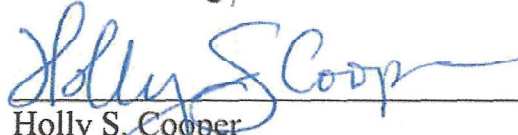
HOLLY S. COOPER  
CARTER C. WHITE  
JONATHAN P. MULLIGAN  
U.C. Davis Immigration Law Clinic  
and Civil Rights Clinic

BRENDA SHUM  
POONAM JUNEJA  
FREYA PITTS  
MISHAN WROE  
MELISSA ADAMSON  
DIANE DE GRAMONT  
National Center for Youth Law

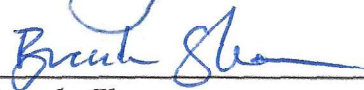
SUMMER J. WYNN  
Cooley LLP



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Carlos R. Holguín



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Holly S. Cooper



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Brenda Shum



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Summer Wynn

*Attorneys for Plaintiffs*

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Dated:

BENJAMIN MARK MOSS  
Senior Litigation Counsel  
Office of Immigration Litigation  
U.S. Department of Justice  
P.O. Box 878  
Ben Franklin Station  
Washington, D.C. 20044  
benjamin.m.moss2@usdoj.gov

**BENJAMIN MOSS** Digitally signed by BENJAMIN MOSS  
Date: 2023.11.02 14:09:06 -04'00'

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Benjamin Mark Moss

*Attorney for Defendants*

# Exhibit A

# Lucas R. Disability Settlement - YOUR RIGHTS

## What does it mean to have a disability?

- In the United States, a disability is a physical or mental condition that substantially limits one or more of your major life activities. For example, if you have a condition that makes it harder for you to learn in school or harder for you to sleep at night, you might have a disability. The definition of disability in the United States might be different from the definition of disability in your home country.
- If you have a disability, you have protections under the law. The government and this program cannot discriminate against you because of your disability.

## How will I know if I have a disability?

- A doctor or other medical professional might decide you have a disability.
- You will be evaluated for a disability if: (1) you go to a hospital because of your mental health; (2) you are considered for placement in a more secure facility because you are a danger to yourself or others; or (3) you ask for an evaluation.
- An evaluation will help: (1) find out if you have a disability and (2) decide if you need a Section 504 Service Plan (explained in the next box).
- If you have already had an evaluation, you won't have another evaluation for the same symptoms (unless a medical or mental health professional recommends it).
- Usually, evaluations must happen as soon as possible and within 60 days.
- Evaluations are private and will not be used against you in your immigration case.

## Service Plans



### What is a service plan?

If you need a service plan, it will include services and supports to help you. The plan should make it so you can fully participate in the program with other youth and help make sure that your disability does not create any unnecessary delay in release to your sponsor.



### Your right to be consulted

You and your child advocate (if you have one) must be asked about what you want and need in your plan. If you wish, your parent(s) or legal guardian(s) and your attorney (if you have one) should be consulted as well.



### Timelines

- If you need a service plan, you must receive one as soon as possible - at the latest, 60 days after your disability is identified.
- Every six months, staff must review your plan with you, your advocate (if you have one), and, if you wish, with your attorney and with your parent(s) or legal guardian(s).
- Your plan must also be reviewed within 30 days if you are: (1) placed in a more secure facility, (2) hospitalized for your mental health, or (3) if a medical or mental health provider recommends it.

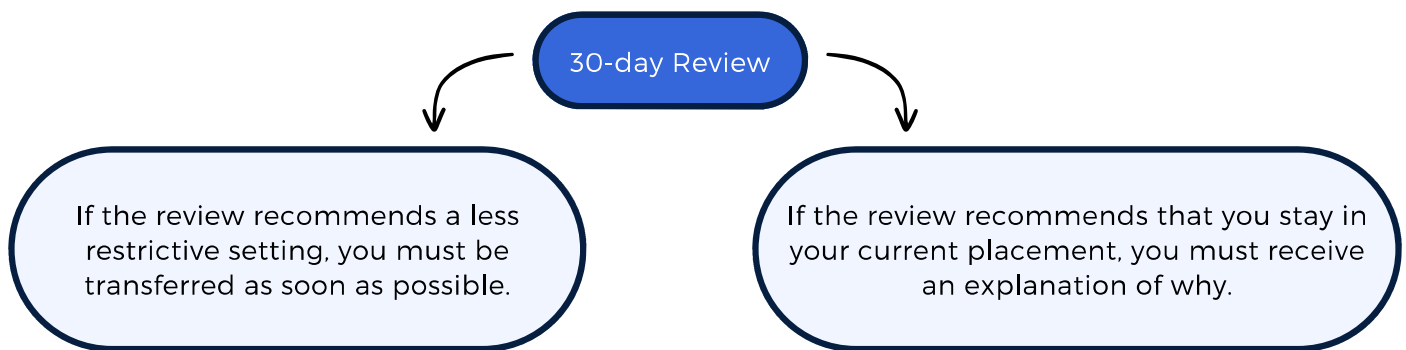


**Your placement cannot be more restrictive or more separated from other youth than necessary for your needs.**

# Lucas R. Disability Settlement - YOUR RIGHTS

## Placement Transfers

- If you are stepped up to a restrictive facility, the government must explain why you couldn't be in a less restrictive setting with additional supports and services. This explanation must be included in the Notice of Placement that you receive when you arrive at the facility.
- If you are in a restrictive setting, your placement must be reviewed at least every 30 days. If you have an identified disability, this review must consider your disability, the services and supports you need, and whether you could receive those services in a less restrictive setting.



### Release to sponsor

- A home study must happen as soon as possible. Usually, it can happen at the same time as a background check.
- If you have a disability, the government must help your sponsor find services if you need them after release.



### Access to information

You, your child advocate, and your attorney (with your permission) can see:

- Copies of any disability evaluation.
- Your Section 504 Service Plan and information about how it is being followed.
- If you are in a restrictive facility, information about why you couldn't be in a less restrictive place with more services instead.
- Information about the government's decision-making about releasing you to your sponsor and how the government is helping your sponsor find any services you'll need.

## Questions?

**If you have any questions or concerns about these rights, you can contact an attorney at (510) 920-3531.**

