



February 14, 2025

Marc Calixte, Port Director
Port of Detroit
U.S. Customs and Border Protection
2810B West Fort Street, Suite 123
Detroit, MI 48216

Re: Indefinite/prolonged detention of families with children at CBP Detroit

Dear Port Director Calixte:

It has come to our attention that since late January 2025, families with young children (including infants who may also be U.S. citizens) are being detained for extended periods of time (often exceeding 24 hours and in some cases, 60 hours or longer) in your facilities at or near the Ambassador Bridge, Detroit-Windsor Tunnel, and the Fort Street Cargo Facility. We are very concerned about this development as no U.S. Customs and Border Protection, nor U.S. Immigration and Customs Enforcement, site in Michigan is equipped to provide family detention for any duration, short- or long-term.

We suspect that these extended detentions of families with children at the Michigan border are related to recent changes in Department of Homeland Security ("DHS") enforcement priorities and Executive Orders limiting parole/release on recognizance focused primarily on the Southern Border. Notwithstanding those announcements and changes, statutes, case law (including the Flores Settlement Agreement, *infra*), and the Constitution demand that family units remain together, that these families have immediate access to counsel, and that the families are released immediately.

Ensuring Families Remain Together

It almost goes without saying, but it must be said: family separation would clearly violate the Ms. L. Settlement Agreement, *Ms. L v. ICE*, 18-cv-00428, (S.D. Cal. Dec. 1, 2023) ("DHS is committed to protecting family unity by ensuring that noncitizen children in DHS custody are not separated from their accompanying noncitizen parent ... [and] CBP will not transfer a family to ICE [custody]").

Children should not be separated from their parents. Doing so would violate the Ms. L Settlement and severely harm the families. Rather, keeping families together is critical and in that spirit, we are aware of at least one local secure, safe, and family-centered housing option in Detroit with capacity to accept entire families for a continuum of services. This provider has beds for at least sixteen people, including young children and is quite familiar with the array of alternatives to detention programs/technologies available through your partner agency, Immigration and Customs Enforcement (“ICE”). We suspect you are already familiar with this provider, but if not, we are happy to liaise. Moreover, if the children were separated from their parents to the least restrictive setting while remaining in federal custody, MIRC would likely become aware of this through its provision of know your rights and legal screenings for children in short-term federal foster care in Michigan.

Safe and Appropriate Conditions for Families and Children

Given that CBP appears to be holding families and children for multiple days in a facility designed for short interrogation rather than multi-day detention, the actual detention conditions themselves likely raise further constitutional issues. *See, e.g., Harris v. Angelina Cty, Tex.*, 31 F.3d 331, 334 (5th Cir. 1994) (recognizing unconstitutional detention conditions, even for convicted criminal defendants, where they were forced to “sleep in ‘day rooms’ which are not designed as sleeping quarters”).

Specifically, the Flores Settlement Agreement (FSA), “sets out a nationwide policy for the detention, release, and treatment of minors” in DHS custody regardless of whether they are accompanied or unaccompanied. *See generally*, Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997, as amended Dec. 7, 2001); *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016) (holding that the agreement also applies to accompanied children); *Flores v. McHenry*, No. CV85-4544-DMG (C.D. Cal. Jan. 30, 2025)(extending the 2022 CBP Settlement until July 29, 2026 based on continued and substantial noncompliance). For example, the 2022 CBP Settlement requires, among other things that the following items be provided and/or available: personal hygiene kits, showers, laundry services, age appropriate meals, warm cloth, swaddling blankets for infants, medical care, dimmed lights and adequate space for sleeping, baby care items, additional clothing for warmth, snacks/juice, child-friendly activities/toys/furniture. *Flores v. Garland*, 2:85-cv-4544 (C.D. Cal. May 21, 2022). Moreover, the FSA presumes that minors will be released to the “least restrictive setting” as soon as possible, certainly within three to five days, unless an emergency, as defined in the FSA exists. None do here.

Access to Counsel

It is our understanding that these families with young children are being held incommunicado and without access to counsel. The Immigration and Nationality Act (“INA”) and its implementing regulations enshrine the right to counsel of choice. *See* 8 U.S.C. §§ 1229a(b)(4)(A), 1362; 8 C.F.R. §§ 1003.16(b), *see also Las Americas Immigrant Advoc. Ctr. v. Wolf*, 507 F. Supp. 3d 1, 11 (D.D.C. 2020) (recognizing “a number of procedural guarantees [including] . . . representation by counsel”). This statutory right is not confined to a noncitizen’s formal “removal proceedings;” instead, “[t]he INA gives non-citizens the right to

be represented by an attorney in most [aspects of] immigration proceedings as long as the government does not have to bear the expense.” *Zuniga v. Barr*, 946 F.3d 464, 469 (9th Cir. 2019) (holding that individuals have a statutory right to counsel in reasonable fear proceedings). That right is being violated by holding the families incommunicado without access to counsel.

The Michigan Immigrant Rights Center (MIRC) is a legal services provider offering free representation and assistance to low-income Michiganders. MIRC is the sole Michigan-based legal service provider on the Executive Office for Immigration Review’s List of Pro Bono Legal Service Providers handout which is offered to every detained non-citizen in DHS custody in Michigan. Individuals in DHS custody in Michigan are permitted to contact MIRC, along with their embassies/consulates, without charge. MIRC has received no calls from non-citizens detained in CBP custody at or near the Port of Detroit in January 2025 or February 2025.

Beyond statutory concerns, the continued detention without access to counsel violates the families’ constitutional rights under the First and Fifth Amendment. As to the First Amendment, “The right to hire and consult an attorney is protected by the First Amendment’s guarantee of freedom of speech, association, and petition.” *Denius v. Dunlap*, 209 F.3d 944, 953 (7th Cir. 2000). Barriers to legal communication between a prisoner and counsel merit “heightened concern” given the “import for the prisoner’s legal rights.” *Sallier v. Brooks*, 343 F.3d 868, 874 (6th Cir. 2002). This includes counsel who have not yet been retained. *ACLU Fund of Mich. v. Livingston Cty*, 796 F.3d 636, 644 (6th Cir. 2015). Thus, the government cannot impose conditions of confinement that unnecessarily burden that right. *Torres v. U.S. Dep’t of Homeland Sec.*, 411 F. Supp. 3d 1036, 1067 (C.D. Cal. 2019) (holding that allegations of “overly-restrictive” policies hindering immigrant detainees’ ability to “hire and consult with an attorney” sufficiently stated a First Amendment claim to “communicate with the outside world”).

Incommunicado confinement without access to counsel also violates the families’ Fifth Amendment due process right to be free from punishment in civil detention. As civil detainees, the families have a due process right not to be subjected to any “condition, practice, or policy [that] constitutes punishment.” *Block v. Rutherford*, 468 U.S. 576, 583 (1984); see also *S. Poverty L. Ctr. v. Dep’t of Homeland Sec.* (SPLC), No. CV 18-760, 2020 WL 3265533, at *18 (D.D.C. June 17, 2020). Immigrants in civil detention have at least the same rights against punitive conditions of confinement as those detained pending a criminal trial, and that includes the right not to have their access to counsel eliminated. *SPLC*, 2020 WL 3265533, at *18–19 & n.6; *Youngberg v. Romero*, 457 U.S. 307, 315-16 (1982); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

Request for Immediate Action

To rectify the legal and constitutional violations set forth above, we ask that you take the following steps;

1. Immediately release all families currently detained at the Michigan border. We are aware of a local, secure, and safe service provider that has capacity to house families.
2. Immediately inform the families and children who have been detained by CBP/DHS at the Michigan border during the past week that there are attorneys at the ACLU and MIRC who are seeking to speak with them, and, if the families so request, allow us immediate access to communicate with them in a private, confidential manner. If they are no longer being detained at or near the Ambassador Bridge, please inform us where they have been taken.
3. Ensure that going forward, families with children are not detained in short-term holding cells overnight.
4. Ensure that going forward any families stopped at the border are kept together and are released (subject to supervision, if appropriate) together.
5. Ensure that going forward all people detained at the border, including families with children, are informed at the time they are taken into custody that they have the right to contact counsel, and are given the Executive Office for Immigration Review's List of Pro Bono Legal Service Providers handout listing MIRC as the Michigan provider.
6. Develop policies and procedures to implement the above steps, and make those policies and procedures publicly available.

Given the urgent nature of the current situation, we would appreciate your immediate response apprising us of what is happening with the families who are currently detained. We further ask that your office provide us with a written response within a week about the steps your office is taking to comply with the abovementioned, clear requirements imposed by law regarding the detention of families and children, detention conditions, and access to counsel. Thank you in advance for your consideration and assistance.

Sincerely,

/s/ Daniel S. Korobkin
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cc: Marty C. Raybon, Director of Field Operations
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February 14, 2025

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985 Michigan Ave, Suite 510
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Re: Litigation Document Hold Request

Dear Port Director Calixte and Director of Field Operations Raybon:

This letter requests your immediate action to preserve any documents, including electronically stored information ("ESI") that may contain evidence that is relevant, or potentially relevant, to potential litigation regarding the treatment of the families detained by U.S. Customs and Border Protection for more than 24 hours at the Ambassador Bridge Passenger Facility, Detroit-Windsor Tunnel, and/or Fort Street Cargo Facility since January 20, 2025 through the present.

We request preservation of all information specified below, including but not limited to any and all documents, electronically stored information (ESI), audio/video recordings, and communications created during or referring to the dates specified above. As used in this document, "you" and "your" refers to the Department of Homeland Security, U.S. Customs and Border Protection, Border Patrol, Office of Field Operations, any of their divisions, affiliates, officers, directors, agents, attorneys, accountants, employees, partners, contractors, subcontractors, or other persons occupying similar positions or performing similar functions.

You have been identified as potential parties to a potential lawsuit who are in possession of documents that may be relevant to this matter, including but not limited to communications, emails, internal incident reports, disciplinary documents, grievances or other administrative complaints, medical records, and audio and video recordings. We write to alert you to your document preservation obligations with respect to documents that are relevant or potentially relevant to potential litigation.

Accordingly, we write to request that you preserve all accessible or inaccessible electronically stored information (ESI) and documents, as defined in Fed. R. Civ. P. 34(a), and other tangible objects in your custody or control which are potentially relevant to this matter (together, "records"). For purposes of this notice, ESI shall include, but not be limited to, all text files (including word processing documents), audio and video recordings, financial data, spread sheets, e-mail files and information concerning e-mail files (including logs of e-mail history and usage, header information, and deleted files), Internet history files and preferences, graphical files in any format, databases, calendar and scheduling information, task lists, voice mail, instant messaging and other electronic communications, telephone logs, contact managers, computer system activity logs, and all file fragments, internet usage files, offline storage or information stored on removable media or storage media, information contained on laptops, or other portable devices, network access information and backup files containing electronic data or electronic evidence.

As to audio and video recordings, we request that you preserve recordings of any interaction between you and the families, as well as any recordings of any family members, that was taken or stored on any device (e.g., security cameras, holding cell surveillance cameras, body-worn cameras, cell phones).

Until otherwise instructed, all persons and entities in the possession of such data should maintain all documents in its original tangible or electronic format, including metadata and native file formats, and should refrain from altering, transferring, reusing, destroying, or permitting the alteration, transfer, or destruction of such records. If your practices include the routine destruction, recycling, relocation, or mutilation of such materials, including but not limited to periodic purges of email or email accounts and destruction or overwriting of backup data, you and all other responsible officers and employees must take immediate steps to either: 1) halt such business practices, 2) sequester and remove such records from the business practice, or 3) arrange for the preservation of complete and accurate duplicates or copies of all such records, suitable for later discovery if requested. You are also not to pack, compress, purge, or otherwise dispose of electronic files or parts of files unless a true and correct copy of such files is made. With respect to ongoing documents pertaining to this matter, you must take any and all appropriate steps to avoid their destruction or alteration as defined above.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, all documents in their electronic form along with information about those documents (e.g., metadata) contained on the media relating to this

matter must be preserved. This includes any email or electronic data that may be on an individual's personal computer or personal hand-held electronic device.

Your preservation obligation extends beyond ESI in your care, possession or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you must notify any current or former agent, attorney, employee, custodian or contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you must take reasonable steps to secure their compliance.

We ask that you provide written confirmation by February 21, 2025, that the above-described records and tangible objects have been and will continue to be preserved. Please be advised that a forensic firm may be retained to forensically acquire the hard drives and other media that may contain electronic data related to the action.

Sincerely,

/s/ Daniel S. Korobkin
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