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13	IN THE UNITED STAT	TES DISTRICT COURT
14	FOR THE CENTRAL DIS	TRICT OF CALIFORNIA
15		DIVISION
16	WESTERN	
17		
17 18	STATE OF CALIFORNIA , et al.	Case No. 2:19-cv-7390 DMG (AGRx)
	STATE OF CALIFORNIA , <i>et al.</i> Plaintiffs,	Case No. 2:19-cv-7390 DMG (AGRx) STIPULATION RE DISMISSAL
18 19		
18 19 20	Plaintiffs,	STIPULATION RE DISMISSAL
18 19 20 21	Plaintiffs, v. XAVIER BECERRA, Secretary of the	STIPULATION RE DISMISSAL WITHOUT PREJUDICE Hearing Date: Not Set Hon. Dolly M. Gee
18 19 20 21 22	Plaintiffs, v.	STIPULATION RE DISMISSAL WITHOUT PREJUDICE Hearing Date: Not Set
 18 19 20 21 22 23 	Plaintiffs, v. XAVIER BECERRA, Secretary of the U.S. Department of Health and Human	STIPULATION RE DISMISSAL WITHOUT PREJUDICE Hearing Date: Not Set Hon. Dolly M. Gee
 18 19 20 21 22 23 24 	Plaintiffs, v. XAVIER BECERRA, Secretary of the U.S. Department of Health and Human Services, <i>et al.</i> ,	STIPULATION RE DISMISSAL WITHOUT PREJUDICE Hearing Date: Not Set Hon. Dolly M. Gee
 18 19 20 21 22 23 	Plaintiffs, v. XAVIER BECERRA, Secretary of the U.S. Department of Health and Human Services, <i>et al.</i> ,	STIPULATION RE DISMISSAL WITHOUT PREJUDICE Hearing Date: Not Set Hon. Dolly M. Gee
 18 19 20 21 22 23 24 	Plaintiffs, v. XAVIER BECERRA, Secretary of the U.S. Department of Health and Human Services, <i>et al.</i> , Defendants.	STIPULATION RE DISMISSAL WITHOUT PREJUDICE Hearing Date: Not Set Hon. Dolly M. Gee [Proposed] Order Filed Concurrently
 18 19 20 21 22 23 24 25 	Plaintiffs, v. XAVIER BECERRA, Secretary of the U.S. Department of Health and Human Services, <i>et al.</i> ,	STIPULATION RE DISMISSAL WITHOUT PREJUDICE Hearing Date: Not Set Hon. Dolly M. Gee [Proposed] Order Filed Concurrently

1 Maine, State of Maryland, State of Michigan, State of Minnesota, State of Nevada, 2 State of New Jersey, State of New Mexico, State of New York, State of Oregon, 3 Commonwealth of Pennsylvania, State of Rhode Island, State of Vermont, and 4 State of Washington (collectively States) and Defendants U.S. Department of 5 Health and Human Services, Office of Refugee Resettlement (ORR), Xavier 6 Becerra in his official capacity as Secretary of the U.S. Department of Health and 7 Human Services, and Robin Dunn Marcos in her official capacity as Director of the 8 Office of Refugee Resettlement (collectively HHS) respectfully submit this 9 Stipulation Re Dismissal without Prejudice and Proposed Order. WHEREAS, the States¹ filed a Complaint, ECF No. 1, in this action on August 10 11 26, 2019, challenging a final rule issued by the U.S. Department of Homeland 12 Security and the U.S. Department of Health and Human Services pursuant to the 13 terms of the Flores Settlement Agreement, Apprehension, Processing, Care, and 14 Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44,392 15 (Aug. 23, 2019) (2019 Rule); 16 WHEREAS, on August 30, 2019, the States moved for a preliminary 17 injunction under the Administrative Procedure Act (APA) and the motion was fully 18 briefed and set for hearing on October 4, 2019; 19 WHEREAS, on September 27, 2019, this Court issued orders in *Flores v*. 20 Barr, concluding that the 2019 Rule did not terminate the Flores Settlement 21 Agreement and enjoining enforcement of the 2019 Rule, Case No. 2:85-cv-4544 22 DMG (AGRx), Order re Plaintiffs' Motion to Enforce Settlement [516] and 23 Defendants' Notice of Termination and Motion in the Alternative to Terminate the 24 Flores Settlement Agreement [639], ECF No. 688 (Order), and a Permanent Injunction, ECF No. 690; 25 26

¹ The parties filed a stipulation of voluntary dismissal with respect to the
 Commonwealth of Virginia on April 10, 2023. ECF No. 183. The Commonwealth
 of Virginia is no longer a party to this case.

WHEREAS, the parties to the instant matter agreed to stay the action pending
 further proceedings that could affect the force and the scope of the Order and
 Permanent Injunction, ECF No. 89;

WHEREAS, on December 29, 2020, in *Flores v. Rosen*, No. 19-56325, the
Ninth Circuit Court of Appeals affirmed in part and reversed in part the district
court's judgment in *Flores v. Barr*, Case No. 2:85-cv-04544-DMG (AGRx);

WHEREAS, the Ninth Circuit decision held that the HHS regulations in the
2019 Rule that implemented obligations under the *Flores* Settlement Agreement
would be construed as mandatory;

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WHEREAS, on January 15, 2021, the parties informed the Court that the
States wished to lift the stay on proceedings as to HHS and to file supplemental
briefing on the States' preliminary injunction motion, ECF No. 103, and on January
20, 2021, the court lifted the stay and ordered supplemental briefing on the States'
preliminary injunction motion as to issues not resolved by the Ninth Circuit's
decision in *Flores v. Rosen*;

WHEREAS, on February 5, 2021, the States filed a supplemental brief and
declarations in support of a narrowed preliminary injunction motion that
challenged, *inter alia*, a provision of the 2019 Rule's HHS regulations allowing for
redetermination of unaccompanied status and the 2019 Rule's alleged general
failure to use sufficiently mandatory language to describe the obligations of the *Flores* Settlement Agreement. The States filed further supplemental declarations on
June 11, 2021, ECF Nos. 112; 124, 125;

WHEREAS, the parties have requested to stay and the Court has stayed
briefing on the States' preliminary injunction motion pending attempts by the
parties to resolve issues raised by the States' narrowed preliminary injunction
motion;

WHEREAS, on August 6, 2021, the parties filed a stipulation in which HHS
agreed to engage in rulemaking to potentially withdraw subsection two (2) from the

definition of "unaccompanied alien child," from 45 C.F.R. § 410.101—addressing
 concerns raised by the States in their supplemental brief—and to stay that provision
 for one year, ECF. No. 134;

WHEREAS, on August 10, 2021, the Court granted the parties' stipulation and
stayed the second part of the definition of "unaccompanied alien child" in 45 C.F.R.
§ 410.101 of the HHS regulation in the 2019 Rule for one year and stayed
resolution of the States' legal arguments regarding that provision until the
completion of HHS's rulemaking process as to that provision, ECF. No. 135;

9 WHEREAS, on October 8, 2021, the parties filed a Stipulation Re Dismissal 10 Without Prejudice (Stipulation) in which Plaintiffs agreed to dismiss their claims 11 against HHS without prejudice within 30 days of HHS taking the following action: 12 Issuance of a Final Rule pursuant to 5 U.S.C. § 553(b)(B), revising the HHS 13 regulations in the 2019 Rule to implement the Ninth Circuit's Order in *Flores v*. 14 *Rosen*, including amending the language to describe agency and contractor 15 obligations under those regulations and make explicit HHS's position-accepted by the Ninth Circuit—that the HHS regulations are mandatory. ECF No. 143. HHS 16 17 also agreed to submit any Final Rule for clearance to the U.S. Office of 18 Management and Budget by December 7, 2021, and not to seek termination of the 19 Flores Settlement Agreement as to HHS until 180 days after the issuance of a Final Rule. Id.; 20

WHEREAS, on October 13, 2021, the Court granted the parties' Stipulation,
ECF No. 143, and ordered that the parties shall file a stipulation for the dismissal of
Plaintiffs' claims against HHS without prejudice in accordance with the parties'
Stipulation. *See* ECF No. 144;

WHEREAS, on December 10, 2021, Defendants filed a Status Report as to
ECF No. 143, notifying the Court that "HHS does not plan to seek termination of
the *Flores* Settlement Agreement under the terms of the Stipulation or to ask the
Court to lift its injunction of the HHS regulations in *Flores v. Garland, et al.*, No.

85-4544-DMG, at this time. HHS therefore does not intend to submit a Final Rule
 to OMB that would make the minor conforming changes to the enjoined regulations
 as detailed in the parties' Stipulation. Instead, HHS is considering a future
 rulemaking that would more broadly address issues related to the custody of
 unaccompanied minors by HHS and that would replace the rule being challenged in
 this litigation." ECF No. 150;

7 WHEREAS, on April 12, 2022, the parties filed a stipulation in which the 8 parties agreed to place into abeyance the States' claims against HHS while HHS 9 engaged in new rulemaking. HHS agreed to issue a Notice of Proposed Rulemaking 10 (NPRM) pursuant to 5 U.S.C. § 553(b) to replace and supersede the HHS 11 regulations included at 45 C.F.R. Part 410 and finalized in the 2019 Rule. HHS also 12 agreed to not seek to lift the injunction of the 2019 HHS regulations in *Flores v*. 13 Garland, nor seek to terminate the Flores Settlement Agreement as to HHS under 14 the 2019 Rule while HHS undergoes new rulemaking. The parties also agreed that, 15 once the Final Rule issued, Defendants would promptly notify the States and the 16 Court by way of a Status Report, and once the Status Report was filed with the 17 Court, the States would have 30 days to review and evaluate the Final Rule. The 18 parties agreed to meet and confer shortly thereafter and file a Joint Status Report 19 with a proposed course of proceedings for this instant action;

WHEREAS, on October 4, 2023, HHS issued a NPRM to replace and
supersede regulations at 45 C.F.R. Part 410 and to codify policies and requirements
concerning the placement, care, and services provided to unaccompanied children
in Federal custody by reason of their immigration status and referred to ORR;

WHEREAS, after a public comment period, on April 30, 2024, HHS
published a Final Rule, *Unaccompanied Children Program Foundational Rule*(Foundational Rule), 89 Fed. Reg. 34384 (Apr. 30, 2024) (to be codified at 45
C.F.R. pt. 410), that replaces and supersedes HHS's regulations in the 2019 Rule,

challenged in the instant action and permanently enjoined in the parallel litigation
 Flores v. Garland, et al., No. 85-4544-DMG;

WHEREAS, on May 1, 2024, Defendants filed a Status Report with the Court,
notifying the States and the Court of the publication of the Foundational Rule;

5 WHEREAS, the States have reviewed the Foundational Rule, the parties have
6 met and conferred regarding a proposed course of proceedings and filed a Joint
7 Status Report with the Court on July 22, 2024, and the States have agreed to
8 dismiss their claims against HHS, without prejudice;

9 THEREFORE, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), 10 the parties, by and through their undersigned counsel, hereby jointly stipulate and agree that the above-captioned case shall be, and is hereby, dismissed without 11 prejudice, against Defendants U.S. Department of Health and Human Services, 12 Office of Refugee Resettlement (ORR), Xavier Becerra in his official capacity as 13 14 Secretary of the U.S. Department of Health and Human Services, and Robin Dunn 15 Marcos in her official capacity as Director of the Office of Refugee Resettlement. 16 The parties agree that each side will bear its own fees and costs.

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1	*Appearing Pro Hac Vice
2	**Pro Hac Vice applications forthcoming
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Case	2:19-cv-07390-DMG-AGR Document 202 Filed 07/22/24 Page 12 of 12 Page ID #:5356
1	CERTIFICATE OF SERVICE
2	
3	IT IS HEREBY CERTIFIED THAT:
4	
5	I, Rebekah Fretz, am a citizen of the United States and am at least eighteen years of
6	age. My business address is 300 S. Spring Street, Suite 1702, Los Angeles,
7	California 90013. I am not a party to the above-titled action. I have caused services
8	of the accompanying STIPULATION RE DISMISSAL WITHOUT PREJUDICE
9	on all counsel of record, by electronically filing the foregoing with the Clerk of the
10	District Court using the ECF System, which electronically provides notice.
11	
12	I declare under penalty of perjury that the foregoing is true and correct.
13	
14	Dated: July 22, 2024 Respectfully submitted,
15	/s/ Rebekah Fretz
16	Rebekah A. Fretz
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