

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DILLEY PRO BONO PROJECT, 111 Pipes Drive,
Dilley, TX 78017; CAROLINE PERRIS, 111 Pipes
Drive, Dilley, TX 78017; and SHALYN
FLUHARTY, 111 Pipes Drive, Dilley, TX 78017,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, 500 12th Street, S.W.,
Washington, DC 20536; U.S. DEPARTMENT
OF HOMELAND SECURITY, 3801 Nebraska
Avenue, N.W., Washington, DC 20016; ELAINE
DUKES, Acting Secretary of Homeland Security, in
her official capacity, 3801 Nebraska Avenue, N.W.,
Washington, DC 20016; THOMAS D. HOMAN,
Acting Director, U.S. Immigration and Customs
Enforcement, in his official capacity, 500 12th
Street, S.W., Washington, DC 20536; and DANIEL
A. BIBLE, Field Office Director, U.S. Immigration
and Customs Enforcement, in his official capacity,
1777 NE Loop 410, Suite 1500, San Antonio, TX
78217,

Defendants.

Civil Action No.
1:17-cv-01055 (CRC)

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs filed this Action against Defendants challenging

(i) Defendants' revocation of legal assistant Caroline Perris's access to the South Texas Family Residential Center (STFRC) in Dilley, Texas, and (ii) requirements imposed by U.S. Immigration and Customs Enforcement (ICE) that Plaintiffs obtain advance approval before facilitating telephonic mental health evaluations for detainees at STFRC;

WHEREAS, Defendants have denied and continue to deny that their actions were improper; and

WHEREAS, Plaintiffs and Defendants (the “Parties”) believe that settlement of this Action is in their best interests and best serves the interests of justice;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the “Agreement”), stipulate that it constitutes a full and complete resolution of the issues raised in this Action, and agree to the following:

It is agreed, by and between the Parties, as follows:

1. Defendants agree that, within five (5) business days of the return of the executed settlement documents to their attorneys, they will adopt and implement a policy (“Policy”) to accommodate legal services providers’ requests for telephonic medical evaluations (including, but not limited to, mental health assessments or evaluations). The Policy, which is attached hereto as Exhibit A and incorporated herein, shall be applicable to STFRC and Karnes County Residential Center (KCRC); and shall control over any conflicting policy regarding telephonic medical evaluations, including policies in the Family Residential Standards. Defendants will distribute the Policy to all ICE personnel and personnel of contractors responsible for implementing or overseeing the Policy at STFRC and KCRC. Plaintiffs agree that all pro bono legal services providers who are employees of, associated with, or working on behalf of, the Dilley Pro Bono Project or the Karnes Pro Bono Project, will follow the Policy in all cases where telephonic medical evaluations are sought by those pro bono legal services providers on behalf of their clients. Defendants agree that all ICE personnel and personnel of contractors working at STFRC and KCRC will likewise follow the Policy in all cases where telephonic medical evaluations are sought by legal services providers on behalf of their clients. A request for a proposed evaluation will not stay removal or otherwise interfere with government actions related to the resident that conflict with the scheduled evaluation; however, ICE will not take actions for

the purpose of interfering with a resident's availability to participate in a telephonic medical evaluation. Nothing in an approved request under this Policy guarantees a resident's availability.

2. The Policy refers to a Telephonic Medical Evaluation Request Form (a "Request"), which is attached as Exhibit B.

3. If ICE denies an Initial Request, such denial must be based on: (1) confirmation that the health provider's relevant professional license/credential is currently revoked or suspended; (2) identification of relevant criminal history of a health provider that indicates a risk of harm or abuse to the resident; or (3) confirmation that the provider's access to the family residential center is currently revoked for misconduct that indicates a risk of harm or abuse to the resident. ICE will provide a detailed written explanation for the denial in an email response to the requester at the same time that the denial is issued sufficient to permit the requester to independently verify the basis for the denial based on ICE's explanation. If Plaintiffs dispute the propriety of a denial, the Dilley Pro Bono Project's Managing Attorney or the Karnes Pro Bono Project's Managing Attorney (the "Managing Attorneys") will contact the appropriate Assistant Field Office Director (AFOD) at STFRC or KCRC and both parties will confer in good faith to address jointly and informally any such dispute. If a dispute cannot be resolved by the AFOD within 6 business hours after the appeal notification, the Managing Attorney will contact the Defendants' designated representative copying the designated facility mailbox (STFRC-CARA-Requests@ice.dhs.gov or KCRC-Requests@ice.dhs.gov) as identified in paragraph 5 below, and the parties will confer in good faith to address jointly and informally any such dispute within 8 additional business hours.

4. Within fifteen (15) days of the return of the executed settlement documents to their attorneys, the Parties agree to execute all papers necessary to achieve the dismissal of the

action filed in the U.S. District Court for the District of Columbia, entitled *Dilley Pro Bono Project, et al. v. U.S. Immigration and Customs Enforcement, et al.*, No. 17-cv-01055 (“the Action”), with prejudice, subject to the Court’s retention of jurisdiction, as described in paragraph 6 of this Agreement.

5. Defendants designate the Deputy Field Office Director overseeing STFRC and KCRC to be their designated representative, and Plaintiffs designate the Dilley Pro Bono Project Managing Attorney and the Karnes Pro Bono Project Managing Attorney to be their designated representatives for their respective facilities. Defendants’ designated representative may be contacted at 1777 NE 410 Loop, Suite 1400, San Antonio, TX 78217. At the time of the execution of the Agreement, the Deputy Field Office Director is Deborah Achim, who can be reached at 210-483-4723 or Deborah.Achim@ice.dhs.gov. At the time of the execution of the Agreement, the Dilley Pro Bono Project’s Managing Attorney is Shalyn Fluharty, who can be reached at 956-982-5570 and shay@caraprobono.org, with a copy to davidoffa@sullcrom.com. At the time of the execution of the Agreement, the Karnes Pro Bono Project’s Managing Attorney is Manoj Govindaiah, who can be reached at 210-787-3745 and manoj.govindaiah@raicetexas.org.

6. It is a condition of this settlement agreement, which will become null and void if the condition is not satisfied, that the United States District Court for the District of Columbia, Judge Christopher Cooper, or a magistrate judge designated by Judge Cooper, will retain jurisdiction over this case for a term of 2.5 years to enforce this Settlement Agreement, including, but not limited to, jurisdiction over disputes concerning interpretation and enforcement of the terms of the Agreement and disputes over the propriety of ICE’s denial of a Request. However, no party may seek to enforce the Agreement without first (i) providing the

other side's designated representative notice of any alleged violation and a reasonable opportunity to cure the alleged violation, and (ii) conferring in good faith. This Agreement shall terminate 2.5 years from the date of the return of the executed settlement documents to Defendants' attorneys.

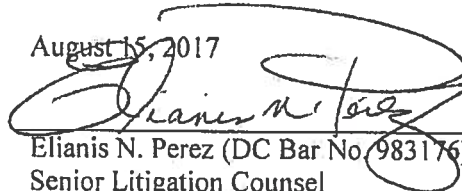
7. Defendants agree that legal assistant Caroline Perris's access to the STFRC is reinstated. Defendants further agree to refrain from taking any action to initiate, recommend, or urge the imposition of restrictions on Plaintiffs' access to STFRC based on the events of March 3, 2017, as described in paragraphs 57-63 of the Complaint filed in this Action on June 1, 2017.

8. The Parties agree to assume their own costs and attorneys' fees related to this litigation.

For Defendants: Dated:

August 15, 2017

By:



Elianis N. Perez (DC Bar No. 983176)
Senior Litigation Counsel
U.S. Department of Justice
Civil Division
Office of Immigration Litigation, District Court Section
PO Box 868, Ben Franklin Station
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For Plaintiffs: Dated:

August 15, 2017

By their attorneys:



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Rebecca Scholtz

Rebecca Scholtz (*pro hac vice* motion pending)
Catholic Legal Immigration Network, Inc.
c/o University of St. Thomas Interprofessional Center
30 South 10th Street
Minneapolis, MN 55403

Exhibit A

TO: San Antonio ERO Field Personnel

FROM: Daniel A. Bible, Field Office Director, Enforcement and Removal Operations, Field Office,
San Antonio, Texas

RE: Telephonic medical evaluations at South Texas Family Residential Center (STFRC) and Karnes
County Residential Center (KCRC)

DATE: August 15, 2017

The following procedures will be used to evaluate requests for telephonic medical evaluations (including, but not limited to, mental health assessments or evaluations) submitted on behalf of residents at STFRC and KCRC. The procedure is two-part. During the initial approval process, ERO will conduct a check as specified in Section I.6 below. During the second part of the procedure, ERO will receive notice of the evaluation. The two processes set forth in this memorandum may take place simultaneously. For example, a requester may request initial approval for a provider and propose a date, time, and place for an evaluation by that provider in one request. The procedures are as follows:

I. Initial Telephonic Provider Approval Process

1. Requests for approval for a provider to conduct telephonic medical evaluations will be submitted via email by the requester to STFRC-CARA-Requests@ice.dhs.gov or KCRC-Requests@ice.dhs.gov.
2. Requests will be received between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, excluding federal holidays. Requests submitted outside of those hours will be considered "received" when business hours resume. For example, a request submitted at 5:00 p.m. on Sunday evening will be considered received at 7:00 a.m. on Monday morning.
3. The requester is required to submit a copy of the attached form, the provider's government-issued ID, and a copy of the provider's license/credential.
4. The requester will also be required to submit a signed copy of the Form G-28, if the Form G-28 is not already on file with ICE. If the request is submitted by someone other than the resident's attorney of record (i.e. a legal assistant), the request must be accompanied by a statement of assurance from the requester that the attorney of record is aware of the request and supports the request.
5. ERO will provide the requester with a response on whether the proposed provider has been approved to conduct telephonic medical evaluations within four (4) business hours of the submission. ERO may approve the request sooner than four (4) business hours, i.e., any time after it is submitted. Business hours are from 7:00 a.m. to 6:00 p.m., Monday through Friday, excluding federal holidays. For example, if a request is submitted at 5:59 p.m. on Friday evening, ERO has until 10:59 a.m. on Monday to adjudicate the request. If ERO does not respond within the four (4) business hours, the request is automatically deemed approved.

6. The request shall be approved unless the individual evaluating the request either: (1) confirms that the health provider's relevant professional license/credential is currently revoked or suspended; (2) identifies relevant criminal history of a health provider that indicates a risk of harm or abuse to the resident; or (3) confirms that the provider's access to the family residential center is currently revoked for misconduct that indicates a risk of harm or abuse to the resident. If the individual evaluating the request believes that grounds for denial exist (which grounds may only be one of those specified in the preceding sentence), the AFOD at STFRC or KCRC must concur prior to the issuance of a denial. If the AFOD is unavailable, the DFOD with supervisory authority over STFRC or KCRC must concur, prior to issuing a denial.
7. If the request is denied, ERO will provide a detailed written explanation for the denial in an email response to the requester at the same time that the denial is issued (*i.e.*, no later than 4 business hours after the submission) sufficient to permit the requester to independently verify the basis for the denial based on ERO's explanation. A detailed explanation includes, for a denial under 6(1), the license/credential that was revoked or suspended; for a denial under 6(2), identification of the arrest or conviction at issue and the date and location of the offense; and for a denial under 6(3), a statement of when and why the health provider's access was revoked.
8. If the requester disputes the propriety of a denial, the Dilley Pro Bono Project's Managing Attorney or the Karnes Pro Bono Project's Managing Attorney (the "Managing Attorneys") will contact the appropriate Assistant Field Office Director (AFOD) at STFRC or KCRC by email, copying the designated facility mailbox, and both will confer in good faith to jointly and informally resolve any such dispute. If a dispute cannot be resolved by the AFOD within 6 business hours after the appeal notification, the Managing Attorney will contact ERO's designated representative, copying the designated facility mailbox (STFRC-CARA-Requests@ice.dhs.gov and KCRC-Requests@ice.dhs.gov), and the parties will confer in good faith to jointly and informally resolve any such dispute within 8 additional business hours after ERO's designated representative is contacted. At this time ERO's designated representative is DFOD Debbie Achim. At this time the Dilley Pro Bono Project's Managing Attorney is Shalyn Fluharty and the Karnes Pro Bono Project's Managing Attorney is Manoj Govindaiah.
9. Once a provider has been approved, he or she will be placed on an internal ICE approved provider list that will be kept on the ERO Share Drive. The list will be maintained by the Deportation Officers responsible for conducting checks on visitors to STFRC and KCRC. In preparing in good faith to submit a Notice pursuant to Section II of this Policy, DPBP and Karnes Pro Bono Project members may contact ICE to confirm whether a provider is on ERO's list of cleared providers.
10. ERO may periodically re-evaluate the list of approved providers; ERO may only revoke approval for a provider on the grounds specified in paragraph 6 above. Revocation of approval at one family residential center constitutes revocation at both family residential centers. If clearance of a cleared provider is revoked, ERO will provide a detailed written explanation for the denial in an email to the Managing Attorneys no later than 4 business hours after the clearance is revoked so that the Managing Attorneys can independently verify the basis for the revocation based on ERO's explanation. The Managing Attorneys may dispute the propriety of the revocation in accordance with the procedures detailed in paragraph 8.

11. If the initial requester becomes aware that any approved provider's relevant professional license/credential has been revoked or suspended, or verifies that any approved provider has relevant criminal history that indicates a risk of harm or abuse to the resident, it is incumbent upon the requester to notify ERO immediately of any such issues.

II. Notice of Date, Time, and Place of the Telephonic Medical Evaluation for Approved Providers

1. Notices of intention to schedule a telephonic medical evaluation with an approved provider will be submitted via email, with the attached form, to STFRC-CARA-Requests@ice.dhs.gov or KCRC-Requests@ice.dhs.gov.
2. Each notice will list a date, time, and place for the evaluation. Interviews may be scheduled at any time during legal visitation hours.
3. Notices will be received between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, excluding federal holidays. Notices submitted outside of those hours will be considered "received" when business hours resume. For example, a notice submitted at 5:00 p.m. on Sunday evening will be considered received at 7:00 a.m. on Monday morning.
4. The individual providing the notice will also be required to submit a signed copy of the Form G-28, if the Form G-28 is not already on file with ICE. If the request is submitted by someone other than the resident's attorney of record (i.e. a legal assistant), the request must be accompanied by a statement of assurance from the requester that the attorney of record is aware of the request and supports the request.
5. The proposed telephonic medical evaluation may then proceed as scheduled provided ERO is given two hours' notice. ERO may, in its discretion, approve the notice in a shorter period, i.e., any time after it is submitted.
6. A request for a proposed evaluation will not stay removal or otherwise interfere with government actions related to the resident that conflict with the scheduled evaluation; however, ICE will not take actions for the purpose of interfering with a resident's availability to participate in a telephonic medical evaluation. However, nothing in an approved request under this Policy guarantees the resident's availability.

This procedure applies solely to telephonic medical evaluations. In-person medical examinations will be conducted in accordance with the ICE Family Residential Standards and the Standard Operating Procedures (SOP) for Legal Access and Legal Visitation dated October 30, 2015.

This document provides only internal ICE policy guidance and is in conformance with the settlement agreement in *Dilley Pro Bono Project v. ICE*, No. 17-1055 (D.D.C. filed June 1, 2017).

Exhibit B



U.S. Immigration and Customs Enforcement

Letter of Intent for _____ A _____
For Independent Medical Service Provider and Expert Telephonic Evaluation

Date: _____

Designate which Family Residential Center:

Karnes County Residential Center
(Karnes City, Texas)
KCRC-Requests@ice.dhs.gov
(830) 399-5308

South Texas Family Residential Center
(Dilley, Texas)
STFRC-CARA-Requests@ice.dhs.gov
(210) 213-8310

(Requests will be processed between the hours of 7:00 am and 6:00 pm, Monday – Friday, excluding holidays.)

Pre-approved Provider Notice

G-28 signed (if not on file)

Name of Provider: _____ Proposed date/time of evaluation: _____

Initial Request

Request packet for each provider must be submitted via email to the mailboxes designated above for each facility, and include the following:

Name: _____ Position: _____

DOB: _____ Proposed date/time of evaluation, if any: _____

Government-issued identification Professional license/credential G-28 signed (if not on file)

Additional information: _____

Pre-Screening Requirements for Designation of Independent Medical Service Providers and Experts

For safety and security of Family Residential Center (FRC) residents and staff, FRCs will require any prospective Independent Medical Service Provider or Expert to pass the checks as described in the August 15, 2017 memorandum describing procedures for telephonic medical evaluations at South Texas Family Residential Center (STFRC) and Karnes County Residential Center (KCRC).

Approved

Denied

Deciding Official: _____ Date: _____