Defendants.

Plaintiffs State of California, Commonwealth of Massachusetts, State of Connecticut, State of Delaware, District of Columbia, State of Illinois, State of

24

25

26

27

28

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 States<sup>1</sup> 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 <sup>1</sup> The parties filed a stipulation of voluntary dismissal with respect to the 27 Commonwealth of Virginia on April 10, 2023. ECF No. 183. The Commonwealth 28 of Virginia is no longer a party to this case.

11

21

28

WHEREAS, the parties to the instant matter agreed to stay the action pending 2 further proceedings that could affect the force and the scope of the Order and 3 Permanent Injunction, ECF No. 89; 4 WHEREAS, on December 29, 2020, in Flores v. Rosen, No. 19-56325, the 5 Ninth Circuit Court of Appeals affirmed in part and reversed in part the district 6 court's judgment in *Flores v. Barr*, Case No. 2:85-cv-04544-DMG (AGRx); 7 WHEREAS, the Ninth Circuit decision held that the HHS regulations in the 8 2019 Rule that implemented obligations under the *Flores* Settlement Agreement 9 would be construed as mandatory; 10 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 12 13 20, 2021, the court lifted the stay and ordered supplemental briefing on the States' 14 preliminary injunction motion as to issues not resolved by the Ninth Circuit's 15 decision in Flores v. Rosen; 16 WHEREAS, on February 5, 2021, the States filed a supplemental brief and declarations in support of a narrowed preliminary injunction motion that 17 18 challenged, inter alia, a provision of the 2019 Rule's HHS regulations allowing for 19 redetermination of unaccompanied status and the 2019 Rule's alleged general 20 failure to use sufficiently mandatory language to describe the obligations of the Flores Settlement Agreement. The States filed further supplemental declarations on 22 June 11, 2021, ECF Nos. 112; 124, 125; 23 WHEREAS, the parties have requested to stay and the Court has stayed 24 briefing on the States' preliminary injunction motion pending attempts by the parties to resolve issues raised by the States' narrowed preliminary injunction 25 26 motion; 27 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

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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; WHEREAS, on October 8, 2021, the parties filed a Stipulation Re Dismissal Without Prejudice (Stipulation) in which Plaintiffs agreed to dismiss their claims against HHS without prejudice within 30 days of HHS taking the following action: Issuance of a Final Rule pursuant to 5 U.S.C. § 553(b)(B), revising the HHS regulations in the 2019 Rule to implement the Ninth Circuit's Order in *Flores v*. *Rosen*, including amending the language to describe agency and contractor 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 also agreed to submit any Final Rule for clearance to the U.S. Office of Management and Budget by December 7, 2021, and not to seek termination of the Flores Settlement Agreement as to HHS until 180 days after the issuance of a Final Rule. Id.; 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;

WHEREAS, on April 12, 2022, the parties filed a stipulation in which the

WHEREAS, on April 12, 2022, the parties filed a stipulation in which the parties agreed to place into abeyance the States' claims against HHS while HHS engaged in new rulemaking. HHS agreed to issue a Notice of Proposed Rulemaking (NPRM) pursuant to 5 U.S.C. § 553(b) to replace and supersede the HHS regulations included at 45 C.F.R. Part 410 and finalized in the 2019 Rule. HHS also agreed to not seek to lift the injunction of the 2019 HHS regulations in *Flores v*. *Garland*, nor seek to terminate the *Flores* Settlement Agreement as to HHS under the 2019 Rule while HHS undergoes new rulemaking. The parties also agreed that, once the Final Rule issued, Defendants would promptly notify the States and the Court by way of a Status Report, and once the Status Report was filed with the Court, the States would have 30 days to review and evaluate the Final Rule. The parties agreed to meet and confer shortly thereafter and file a Joint Status Report 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; WHEREAS, the States have reviewed the Foundational Rule, the parties have met and conferred regarding a proposed course of proceedings and filed a Joint Status Report with the Court on July 22, 2024, and the States have agreed to dismiss their claims against HHS, without prejudice; THEREFORE, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), 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 prejudice, against Defendants U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), Xavier Becerra in his official capacity as Secretary of the U.S. Department of Health and Human Services, and Robin Dunn Marcos in her official capacity as Director of the Office of Refugee Resettlement. The parties agree that each side will bear its own fees and costs. 

28

| 1  | Andrea Joy Campbell   | WILLIAM TONG  |
|----|---|---|
| 2  | Attorney General for the  | Attorney General of Connecticut   |
| 3  | Commonwealth of Massachusetts   | JOSHUA PERRY*   |
|    | ABIGAIL TAYLOR*   | Solicitor General   |
| 4  | Deputy Attorney General One Ashburton Place                                     | 165 Capitol Avenue<br>Hartford, CT 06106                                    |
| 5  | Boston, MA 02108  | Telephone: (860) 808-5372   |
| 6  | Telephone: (617) 963-2232   | Email: Joshua.Perry@ct.gov  |
| 7  | Email: Abigail.Taylor@mass.gov  | Attorneys for Plaintiff State of  |
|    | Attorneys for Plaintiff the   | Connecticut   |
| 8  | Commonwealth of Massachusetts   |   |
| 9  | Kathleen Jennings   | Brian L. Schwalb  |
| 10 | Attorney General of Delaware  | Attorney General for the District of  |
| 11 | CHRISTIAN DOUGLAS WRIGHT*   | Columbia  |
|    | Director of Impact Litigation VANESSA L. KASSAB                                 | JENNIFER C. JONES Deputy Attorney General                                   |
| 12 | Deputy Attorney General   | Public Advocacy Division  |
| 13 | 820 North French Street   | ADAM TEITELBAUM (SBN 310565)  |
| 14 | Wilmington, DE 19801  | Director, Office of Consumer Protection                                     |
| 15 | Telephone: (302) 683-8899   | 400 6th Street N.W.   |
| 16 | Email: christian.wright@delaware.gov  Attorneys for Plaintiff State of Delaware | Washington, DC 20001<br>Telephone: (202) 256-3713                           |
| _  | Thiorneys for I tuning State of Betaware  | Email: adam.teitelbaum@dc.gov   |
| 17 |   | Attorneys for Plaintiff District  |
| 18 |   | of Columbia   |
| 19 |   |   |
| 20 | KWAME RAOUL   | AARON M. FREY   |
| 21 | Attorney General of Illinois  | Attorney General of Maine   |
|    | JOHN HAZINSKI* Assistant Attorney General                                       | KIMBERLY L. PATWARDHAN* Assistant Attorney General                          |
| 22 | 115 S. LaSalle St.  | 6 State House Station   |
| 23 | Chicago, IL 60603   | Augusta, Maine 04333-0006   |
| 24 | Telephone: (312) 814-3000   | Telephone: (207) 626-8570   |
| 25 | Email: john.hazinski@ilag.gov  Attorneys for Plaintiff State of Illinois        | Email:Kimberly.Patwardhan@maine.gov  Attorneys for Plaintiff State of Maine |
| 26 | Theorne ys for I tanning state of Itimots                                       | The they by for I winning some of manie                                     |
| 27 |   |   |
| 28 |   |   |
| •  |   |   |

| 1  | ANTHONY G. BROWN  | Dana Nessel  |
|----|---|--|
| 2  | Attorney General of Maryland  | Attorney General of Michigan                                     |
|    | JEFFREY S. LUOMA**  | B. ERIC RESTUCCIA*   |
| 3  | Assistant Attorney General  | Assistant Attorney General                                       |
| 4  | 200 Saint Paul Place  | P.O. Box 30212   |
| 5  | Baltimore, MD 21202<br>Telephone: (410) 576-6441                      | Lansing, MI 48909<br>Telephone: (517) 335-7628                   |
| 6  | Email: jluoma@oag.state.md.us   | Email: restucciae@michigan.gov                                   |
|    | Attorneys for Plaintiff State of                                      | Attorneys for Plaintiff State of Michigan                        |
| 7  | Maryland  |  |
| 8  |   |  |
| 9  | KEITH ELLISON   | AARON D. FORD  |
| _  | Attorney General of Minnesota  JANINE KIMBLE*                         | Attorney General of Nevada HEIDI PARRY STERN*                    |
| 10 | Assistant Attorney General  | Solicitor General  |
| 11 | 102 State Capitol   | Office of the Nevada Attorney General                            |
| 12 | 75 Rev. Dr. Martin Luther King Jr. Blvd.                              | 555 E. Washington Ave., Ste. 3900                                |
| 13 | St. Paul, MN 55155  | Las Vegas, NV 89101  |
|    | Telephone: (651) 757-1415   | Telephone: (702) 486-3420  |
| 14 | Email: janine.kimble@ag.state.mn.us  Attorneys for Plaintiff State of | Email: HStern@ag.nv.gov  Attorneys for Plaintiff State of Nevada |
| 15 | Minnesota   | Thorneys for I tuning State of Nevada                            |
| 16 |   |  |
| 17 | MATTHEW J. PLATKIN  | RAUL TORREZ  |
|    | Attorney General of New Jersey  | Attorney General of New Mexico                                   |
| 18 | ASHLEIGH B. SHELTON** Deputy Attorney General                         | JULIE MEADE**  Assistant Attamos Conord                          |
| 19 | 25 Market Street  | Assistant Attorney General 408 Galisteo Street                   |
| 20 | P.O. Box 117  | Santa Fe, NM 87501   |
|    | Trenton, NJ 08625   | Telephone: (505) 717-3570  |
| 21 | Telephone: (609) 376-2965   | Email: jmeade@nmag.gov   |
| 22 | Email: Ashleigh.Shelton@law.njoag.gov                                 | Attorneys for Plaintiff State                                    |
| 23 | Attorneys for Plaintiff State of<br>New Jersey                        | of New Mexico  |
| 24 | Ivew Jersey   |  |
|    |   |  |
| 25 |   |  |
| 26 |   |  |
| 27 |   |  |
| 28 |   |  |
| 20 |   |  |

| Case                                 | 2:19-cv-07390-DMG-AGR Document 202<br>#:5354   | Filed 07/22/24 Page 10 of 12 Page ID   |
|--------------------------------------|--|--|
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8 | LETITIA JAMES Attorney General of New York ZOE P. LEVINE* Special Counsel for Immigrant Justice 28 Liberty Street, 18th Floor New York, NY 10005 Telephone: (212) 416-8329 Email: Zoe.Levine@ag.ny.gov Attorneys for Plaintiff State of New York | ELLEN F. ROSENBLUM Attorney General of Oregon J. NICOLE DEFEVER (SBN 191525) Senior Assistant Attorney General Oregon Department of Justice 1162 Court Street N.E. Salem, OR 97301 Telephone: (971) 673-1880 Fax: (971) 673-5000 Email: Nicole.DeFever@doj.state.or.us Attorneys for Plaintiff State of Oregon |
| 9                                    | MICHELLE A. HENRY  | PETER F. NERONHA   |
| 10<br>11                             | Attorney General for the   | Attorney General of Rhode Island   |
| 12                                   | Commonwealth of Pennsylvania LISA E. EISENBERG*  | ADAM D. ROACH* Special Assistant Attorney General  |
| 13                                   | Deputy Attorney General  | 150 South Main Street  |
| 14                                   | 1600 Arch St., Suite 300<br>Philadelphia, PA 19103   | Providence, RI 02903<br>Telephone: (401) 274-4400  |
| 15                                   | Telephone: (215) 316-9807<br>Email: leisenberg@attorneygeneral.gov   | Email: aroach@riag.ri.gov  Attorneys for Plaintiff State of  |
| 16                                   | Attorneys for Plaintiff Commonwealth   | Rhode Island   |
| 17                                   | of Pennsylvania  |  |
| 18                                   | Contractor D. Contractor   | D W. E   |
| 19                                   | CHARITY R. CLARK Attorney General of Vermont   | ROBERT W. FERGUSON Attorney General of Washington  |
| 20                                   | JULIO A. THOMPSON*   | COLLEEN M. MELODY*   |
| 21                                   | Director, Civil Rights Unit<br>109 State Street  | Division Chief, Civil Rights Unit LAURA K. CLINTON*  |
| 22                                   | Montpelier, VT 05609   | Assistant Attorneys General 800 Fifth Avenue, Suite 2000   |
| 23                                   | Telephone: (802) 828-5500 Email: Julio.Thompson@vermont.gov Attorneys for Plaintiff State of Vermont   | Seattle, WA 98104 Telephone: (206) 464-5342 Email: Colleen.Melody@atg.wa.gov Email: Laura.Clinton@atg.wa.gov   |
| 24                                   |  |  |
| 25                                   |  |  |
| 26                                   |  | Attorneys for Plaintiff State of Washington  |
| 27                                   |  | O .  |
| 28                                   |  |  |