

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY DM  
DEPUTY

SUSANA RODRIGUEZ BLANCO,  
by and through her next friend and mother,  
Belkys Susana Blanco Perez,  
Plaintiff

-vs-

Case No. A-07-CA-309-SS

MICHAEL CHERTOFF, Secretary of U.S.  
Dept. Homeland Security, et al.,  
Defendants

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YARELY MARIBEL VASQUEZ SANCHEZ,  
by and through her next friend and mother,  
Sandra Maribel Sanchez Matamoros,  
Plaintiff

-vs-

Case No. A-07-CA-310-SS

MICHAEL CHERTOFF, Secretary of U.S.  
Dept. Homeland Security, et al.,  
Defendants

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**ORDER**

BE IT REMEMBERED on the 9<sup>th</sup> day of May 2007 the Court reviewed the file in the above-styled causes, specifically Defendants' Motions to Dismiss each Plaintiff's claims for failure to exhaust administrative remedies and Plaintiffs' responses thereto, and Plaintiffs' motions to consolidate the above-styled cases with the related case, *In re Hutto Detention Center*, A-07-cv-164. Having reviewed these documents, the case files, and the applicable law, the Court DENIES the motions to dismiss and GRANTS the motion to consolidate for the reasons that follow.

**Background**

Susana Blanco and Yarley Vasquez Sanchez are minor aliens whom ICE and DHS have

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detained, together with their mothers, in the T. Don Hutto Family Detention Center. Like the minor plaintiffs in the related case, *In re Hutto Detention Center*, A-07-cv-164, Susana and Yarely each contend the conditions of their detention violate certain requirements of the *Flores* settlement, a consent decree binding on Defendants that sets forth standards for the detention of minor aliens by U.S. immigration authorities. Plaintiffs seek to consolidate their cases with the *In re Hutto* matter. Defendants oppose consolidation and contend both Susana and Yarely's cases should be dismissed because Plaintiffs have failed to adequately "confer" with Defendants prior to filing suit, as required by Paragraph 24(E) of the *Flores* Settlement.

### Analysis

#### I. Motions to Dismiss

Defendants contend Plaintiffs have "failed to exhaust [the] administrative remedies" provided by Paragraph 24(E) of the *Flores* Settlement. Mot. Dism. 1. Paragraph 24(E), in its entirety, reads:

Exhausting the procedures established in Paragraph 37 of this agreement shall not be a precondition to the bringing of an action under this paragraph in any United States District Court.<sup>1</sup> Prior to initiating any such action, however, the minor and/or the minor's attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

Defendants have strenuously insisted that Paragraph 24 provides "administrative remedies" from the beginning of the related *In re Hutto* litigation, and this Court must express confusion and frustration with this characterization. Paragraph 24 requires conference. It does not give Plaintiffs any specific rights or impose any specific obligation on Defendants. In short, Paragraph 24 provides

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<sup>1</sup>The "procedures established in Paragraph 37" include procedures for notice and conference prior to bringing an individual or class action for enforcement in the *Flores* court itself.

no "administrative remedy" to exhaust.

Insofar as Paragraph 24 requires Plaintiffs to confer with Defendants before filing suit, Plaintiffs have obliged. The record attached by the parties is clear: Counsel for Plaintiffs in the related case, *In re Hutto Family Detention Center*, notified Defendants during a teleconference on April 12, 2007 that they intended to join additional plaintiffs asserting the same complaints. Mot. Dism., Decl. V. Lawrence. Counsel for Defendants responded that ICE was willing to discuss conditions of confinement to informally resolve the disputes. *Id.* Later that day, counsel for Defendants requested, via email, the names of any potential plaintiffs to be joined, in order to evaluate and informally resolve their claims if possible. Mot. Dism. Ex. C. Counsel for Plaintiffs responded on April 13, 2007 with a list of six detainees for whom they intended to file suit. The letter asserts that the six potential plaintiffs assert the same *Flores* violations raised in the *In re Hutto* complaint, and further specifically requests the parole of each client with his or her parents. Mot. Dism. Ex. D. Plaintiffs sent a similar letter identifying four additional detainees on April 16. Pl.'s Resp. Ex. 3. Plaintiffs and Defendants conferred several more times regarding the Plaintiffs' specific request that these ten children and their families be released on parole. Pl.'s Resp., Affid. Vanita Gupta. Plaintiffs made clear that release on parole was the only informal resolution of the claims they would accept. Defendants released most of the potential new plaintiffs, but on April 20, 2007, Defendants informed Plaintiffs via email that neither Yarely nor Susana would be released on parole. Accordingly, Plaintiffs filed suit on Yarely and Susana's behalf. The above-described correspondence, which took place via telephone, email, and faxed letters over a period of several days, satisfies the conference requirement of Paragraph 24(E). Defendants' motions to dismiss are therefore DENIED.

## II. Motions to Consolidate

Plaintiffs in the above-styled cases assert claims for relief substantively identical to the claims at issue in *In re Hutto Family Detention Center*, A-07-CA-164-SS. Defendants assert their opposition to Plaintiffs' motions to consolidate these related cases in a footnote to the Motion to Dismiss: "To the extent the Court does not dismiss this action, the government opposes [Plaintiff's] motion to consolidate this action with the *In re Hutto* litigation . . . ." Mot. Dism. n.1. Defendants, however, provide no reason why consolidation would be inadvisable in these clearly related cases. The Court can discern no prejudice to Defendants from consolidation; the claims of these Plaintiffs rely on the same facts as the claims of the existing *Hutto* Plaintiffs, and consolidation would not require Defendants to address new theories of the case or engage in significantly more burdensome discovery. Therefore, Plaintiffs' motions to consolidate related cases are GRANTED.


### Conclusion

In accordance with the foregoing,

IT IS ORDERED that the Motions to Dismiss for Failure to Exhaust Administrative Remedies filed in the above-styled cases are DENIED.

IT IS FURTHER ORDERED that the above-styled cases shall be consolidated for all purposes under the case style *In re Hutto Family Detention Center*, Case No. A-07-CA-164-SS.

SIGNED this the 9<sup>th</sup> day of May 2007.

  
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SAM SPARKS  
UNITED STATES DISTRICT JUDGE