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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSE ANTONIO FRANCO-
GONZALEZ, et al.,

Plaintiffs & Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney
General, et al.,

Defendants & Respondents.

Case No.: CV 10-02211-DMG (DTBx)

**ORDER APPOINTING MONITOR
[723, 791]**

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1 On April 23, 2013, the Court entered a Partial Judgment and Permanent
2 Injunction (the “Injunction”) in favor of Plaintiffs [Doc. # 593]. On October 16,
3 2013, the Court appointed a Special Master to monitor the implementation of the
4 Injunction and assist the Court in bringing the litigation to a proper resolution.
5 [Doc. # 662.] On March 12, 2014, the Special Master issued a Report to the Court,
6 describing the Parties’ agreements on certain issues and making recommendations
7 as to the resolution of outstanding issues. [Doc. # 709.] The Parties filed
8 responses and objections to the Report on April 3, 2014 [Doc. ## 718, 719], and
9 replies to the objections on April 17, 2014 [Doc. ## 727, 728]. The Court held a
10 hearing on the Special Master’s Report on May 15, 2014. On October 29, 2014,
11 the Court issued a final order in this case detailing an implementation plan for the
12 Injunction (the “Implementation Plan Order”). [Doc. # 786.] Having filed their
13 Joint Position Statement regarding remaining issues pertaining to the appointment
14 of a Monitor [Doc. ## 723, 791], the Parties appeared for a status conference on
15 January 9, 2015 to discuss the appointment of Katherine B. Mahoney as the
16 Monitor, among other issues. Thereafter, the Court gave the Parties a final
17 opportunity to identify their concerns regarding the appointment of Ms. Mahoney
18 as the Monitor. [Doc. ## 801-804.] Ms. Mahoney has filed her declaration
19 relating to potential conflict issues raised by Defendants. Having addressed
20 Defendants’ concerns as to any possible conflict issues, the Court finds that no
21 conflict exists and that there is no basis to decline to appoint Ms. Mahoney.

22 Because of the complexities of the Injunction and the Implementation Plan
23 Order and because of the importance of Defendants’ compliance with them, the
24 Court finds that the appointment of a Monitor to ensure compliance with the
25 Permanent Injunction and the Implementation Plan Order for at least 25 months
26 (the “Monitor”) is necessary pursuant to Fed. R. Civ. P. 53 and this Court’s
27 inherent powers to enforce its Orders.

28

1 **A. THE MONITOR**

2 1. Appointment of Monitor. The Court hereby appoints Katherine
3 Mahoney as the monitor (“the Monitor”).

4 2. Authority of the Monitor. The Monitor shall have the authority to
5 monitor compliance with the Permanent Injunction [Doc. # 593] (“Permanent
6 Injunction”) and the Order Further Implementing this Court’s Permanent
7 Injunction [Doc. # 786] (“Implementation Plan Order”) (collectively, “the
8 Implementation Documents”). While the Monitor shall have broad discretion
9 regarding how to exercise her authority, her responsibilities shall be limited to
10 monitoring compliance with the Implementation Documents and shall be subject to
11 oversight by the Special Master and the Court. The Monitor shall have the
12 authority to gather information and documentation in furtherance of the monitoring
13 function, as identified herein. The Monitor shall have the duties, powers and
14 responsibilities detailed in this Order; *provided* that if to accomplish her
15 monitoring duties the Monitor must undertake necessary measures not specifically
16 referred to herein or seek modifications to this Order due to unforeseen
17 circumstances, the Monitor is authorized to do so, as long as she has informed the
18 Special Master and the Court of the nature of, and need for, such measures or
19 modifications, and received the Court’s written approval. Should the Monitor
20 determine that such measures or modifications are necessary, the Parties shall
21 receive notice and an opportunity to comment (or to submit a stipulation and
22 proposed order) before the Court approves such measures.

23 3. Term and Extensions. The Court appoints the Monitor for a term of
24 25 months (“Initial Term”) commencing 30 days from the date of this Order (“the
25 Effective Date”). The Initial Term may be extended (“Extended Term”)¹ if, at

26 _____
27 ¹ The Initial Term, together with any Extended Terms, shall collectively
28 be referred to as “the Term.”

1 least three weeks before the expiration of the Initial Term, Plaintiffs file with the
2 Court a Notice requesting an extension of the Monitor's term for an additional term
3 based on serious, specific and ongoing concerns regarding Defendants' compliance
4 with the Implementation Documents. The Notice shall identify an appropriate
5 extension of time in order to ensure that the goals of the monitoring are met.²
6 Defendants shall have the right to respond to any such Notice within 10 days after
7 the Notice's filing before the Court rules on the request for an extension. Plaintiffs
8 may apply for additional extensions under the same standard by filing a Notice
9 requesting an extension no later than three weeks before the end of any Extended
10 Term. Absent a showing of serious, specific, and ongoing concerns by Plaintiffs,
11 the presumptive end of the Term shall be no later than 36 months after the
12 Effective Date.

13 4. Limitation on the Monitor's Powers. The Monitor may not issue any
14 orders or impose any sanctions, but may recommend to the Special Master and this
15 Court various orders, including any contempt sanction. The Monitor shall have no
16 authority to intervene in or direct Defendants' activities.

17 5. Diligence of Monitor. The Monitor is directed to proceed with all
18 reasonable diligence to carry out the duties assigned by the Court or the Special
19 Master.

20 6. Ex Parte Communications. The Monitor shall be permitted to engage
21 in *ex parte* communications under the following circumstances:

- 22 a. ***The Court and the Special Master.*** The Monitor shall be
23 permitted to confer *ex parte* with the Court or the Special
24 Master regarding any issue arising under or relating to this
25

26 _____
27 ² The goals of the monitoring include ensuring Defendants' ongoing
28 compliance with the Implementation Documents, and that such compliance will
continue without the presence of a Monitor.

1 Order. All such communications shall be privileged and shall
2 not be subject to discovery.

3 b. ***The Parties.*** The Monitor shall be allowed to engage in *ex*
4 *parte* communications with the Parties' counsel who has been
5 designated as the "primary contact," relating to Defendants'
6 compliance with the Implementation Documents. Prior to the
7 Effective Date, each side shall designate its primary contact and
8 notify the Monitor of that person's contact information.

9 c. ***Class Members or their Qualified Representatives.*** The
10 Parties shall meet and confer with the Monitor regarding a
11 revised Detention Facility Notice which shall be disseminated
12 to all detention centers where class members may reside and
13 which will include contact information not only for Plaintiffs'
14 counsel, but also for the Monitor in the event a Class Member
15 or his or her Qualified Representative wishes to report a
16 problem with compliance with the Implementation Documents.

17 d. ***Notice of Ex Parte Communications.*** For all *ex parte*
18 communications of a substantive nature during the applicable
19 Reporting Period (as defined *infra* in note 4), except those with
20 the Court or the Special Master, the Monitor shall provide a list
21 of the parties involved and the date of the *ex parte*
22 communication in the Monitor's reports to the Court.

23 **B. THE MONITOR'S ACCESS TO INFORMATION**

24 1. ***Main Class Member³ Information.*** The Monitor's authority to gather
25 information and documentation in furtherance of the monitoring function includes

26 ³ References to "Main Class Members" in this Order are intended to
27 refer inclusively to those Main Class members who are members of either or both
28 Sub-Classes, as well as those Main Class Members who are not members of any
Sub-Class.

1 the following non-exhaustive methods of obtaining information regarding Main
2 Class Members:

- 3 a. **Interviews.** The Monitor may from time to time interview: (i)
4 any individuals responsible for implementing the
5 Implementation Documents, including individuals performing
6 screenings, mental health assessments, and Forensic
7 Competency Evaluations (other than an Immigration Judge,
8 except as specified below); (ii) any individuals acting in any
9 supervisory capacity over individuals implementing the
10 Implementation Documents, including individuals responsible
11 for training or supervising Immigration Judges⁴, ICE officers,
12 or detention facility officials; (iii) any Qualified Representative;
13 (iv) or any Main Class Member (provided that the Main Class
14 Member, or his or her Qualified Representative, does not object
15 to such an interview). Absent an order from this Court or the
16 Special Master, the Monitor shall not be permitted to initiate *ex*
17 *parte* communications with Immigration Judges; *however*,
18 nothing in this Order shall preclude an Immigration Judge from
19 exercising his or her right to contact the Monitor regarding
20 Defendants' compliance with the Implementation Documents.
21 Defendants shall provide the Monitor a point of contact or
22 points of contact from the Executive Office of Immigration
23 Review and Immigration and Customs Enforcement who are
24 involved in implementing the Permanent Injunction or
25

26 ⁴ Because the Assistant Chief Immigration Judges (ACIJs) who conduct
27 training of other Immigration Judges also hear individual cases, such interviews
28 shall be limited to the ACIJ's role in training Immigration Judges regarding the
Implementation Documents.

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Implementation Plan Order. The Monitor may from time to time confer with those points of contact. If requested, Defendants shall provide suitable facilities and arrangements for the conduct of such interviews under conditions satisfactory to the Monitor. The Monitor may, at her discretion, invite the Parties' primary contact to attend such interviews.

b. ***Requests for Documents.*** From time to time, the Monitor may serve requests for any non-privileged information or document, or class of documents, created, received or maintained by Defendants that is directly relevant to a determination of compliance with the Implementation Documents. The Monitor must provide Defendants with a Notice reasonably describing the documents sought and the reason for such request, and shall make reasonable efforts to ensure that the requests are in accordance with Fed. R. Civ. P. 26(b). Any such Notice shall be filed on the docket. The Monitor shall consider the burden such requests for information or documentation will cause Defendants. Defendants shall provide the documents sought unless the documents are not relevant to any issue arising from their implementation of the Implementation Documents. Any dispute regarding such a request shall be heard in the first instance by the Special Master. As directed by the Special Master, Plaintiffs shall have a right to participate in any proceedings regarding disputed requests for documents. Any dispute between the Parties shall be presented to the Special Master in a joint stipulation in conformity with Local Rule 37 and this Court's prior orders.

1 c. **Main Class Member Hearings.** Upon her request, the Monitor
2 shall receive from Defendants advance notice of hearings for
3 any Main Class Members (whether or not such individuals are
4 specifically identified), including, but not limited to, Judicial
5 Competency Inquiries, Competency Reviews, and bond
6 proceedings. The Monitor may attend any such hearings with
7 or without advance notice to Defendants, except that the
8 Monitor may not attend if an affected Main Class Member or
9 his or her Qualified Representative objects to the Monitor’s
10 attendance.

11 d. **Training by Defendants.** Defendants shall provide the Monitor
12 with the categories of individuals trained to implement the
13 Implementation Documents, including the individuals’ titles
14 and duty locations, the dates of trainings, and all final training
15 materials bearing upon implementation of the Implementation
16 Documents.

17 e. **Main Class Members Statistics.** For the three (3) month period
18 after the Effective Date, and for every six (6) month period
19 thereafter⁵ until the expiration of the Term,⁶ Defendants shall

20 _____
21 ⁵ The period of time for which data are collected shall be referred to as a
22 “Reporting Period.” The First Reporting Period shall begin on the Effective Date
23 and last for three (3) months. Each successive Reporting Period shall begin on the
24 first day following the end of the previous Reporting Period, and shall last for six
25 (6) months. The Fourth Reporting Period shall end four (4) months before the end
26 of the Initial Term. Class Member Statistics (and any required sample files under
27 Section B.2) must be produced to the Monitor by no later than two weeks after the
28 end of the Reporting Period, and the Monitor’s Report to the Court concerning
compliance with the Implementation Documents during that Reporting Period shall
be due three (3) months later, pursuant to the schedule set forth in Section D.1 of
this Order.

⁶ The Initial Term will end four (4) months after the end of the Fourth
Reporting Period. The Monitor’s Fourth Report will be due two (2) weeks before
the end of the Initial Term. To ensure that the Monitor is able to assess
Defendants’ compliance with the Implementation Documents during the final four

1 provide to the Monitor, in the form of a searchable electronic
2 file (such as an Excel or pdf file), the following database
3 information for no fewer than 50% of all Main Class Members⁷
4 (the method of selection of those Main Class Members to be
5 specified by the Monitor):

- 6 i. **Identifying information and detention history:** (i) Full
7 name, (ii) Alien #, (iii) the name of detention facility,
8 (iv) the date of book-in into detention, (v) the date of
9 book-out from detention (if any), and (vi) the date and
10 location of any transfers to other detention facilities;

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13 months of the Initial Term, by no later than eight (8) weeks before the end of the
14 Initial Term, Defendants shall provide the Monitor with supplemental data for the
15 period of time between the end of the Fourth Reporting Period and the deadline for
the Fourth Report (“Data Supplement”), including but not limited to Class Member
Statistics for the first month between the end of the Fourth Reporting Period and
the end of the Initial Term.

16 ⁷ The 50% sample shall be selected by the Monitor from all current Main
17 Class Members within ten days of the beginning of every six-month period the
18 Monitor is required to report to the Court (“each Reporting Period”). Defendants
shall cooperate with the Monitor and Plaintiffs in arriving at an accurate list of
Main Class Members.

19 Within 30 days of the Effective Date, Defendants shall create a database
20 (“Class Database”) tracking all of the current Main Class, Sub-Class One, and Sub-
21 Class Two Members. At the beginning of the first Reporting Period, Defendants
shall meet and confer with Plaintiffs regarding the composition of the Class
22 Database. Defendants shall continue to regularly update the Class Database
throughout the Term. Every thirty days during the Term, unless otherwise
23 instructed by the Monitor, Defendants shall provide the Monitor and Plaintiffs with
a report from the Class Database indicating the Main Class and Sub-Class
24 Members currently identified by Defendants. In each of the Monitor’s periodic
reports to the Court (“Report”), the Monitor shall report the number of Main Class,
Sub-Class One, and Sub-Class Two Members.

25 For the Second and all subsequent Reporting Periods, the Monitor shall have
26 discretion to reduce the percentage of Class Members for whom Class Database
information must be provided or to modify the type of information provided. The
27 Monitor shall inform the Parties of any reduction in the required percentage or
modification to the type of information to be provided no later than 30 days prior
28 to the start of the new Reporting Period.

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- ii. **Mental health information:** (i) Mental health conditions or diagnosis(es), as referenced in any mental health assessments or Forensic Competency Evaluations, (ii) the date of any mental health assessments or Forensic Competency Evaluations, and (iii) the qualifications of the individual(s) performing the mental health assessment and Forensic Competency Evaluation;
- iii. **Class Membership Information:** Whether the ICE Office of the Chief Counsel filed a notice regarding Class membership pursuant to Section II of the Implementation Plan Order [Doc. # 786], and if so, the date of any such filing;
- iv. **Provision of Qualified Representatives:** If a Qualified Representative was appointed pursuant to the Court’s Permanent Injunction [Doc. # 593], (i) the date of the appointment, (ii) the date of the Qualified Representative’s entry of appearance before the Immigration Court or, as applicable, the Board of Immigration Appeals, and (iii) the date of any withdrawal;
- v. **Judicial Competency Inquiries:** If a Judicial Competency Inquiry was conducted, (i) the date and location of the Inquiry, and (ii) the results of that hearing (*e.g.*, Main Class Member found incompetent, Main Class Member found competent, Forensic Competency

- 1 Evaluations was ordered), including the written order and
2 audio⁸ recording or transcript of hearing, if available;
- 3 vi. **Forensic Competency Evaluations:** If a Forensic
4 Competency Evaluation was ordered, (i) the date of the
5 order, (ii) the date the written report is provided to the
6 Immigration Court, and (iii) the medium of the
7 Evaluation (in person, videoconference, teleconference);
- 8 vii. **Competency Reviews:** If a Competency Review was
9 conducted, (i) the date of the hearing, and (ii) the results
10 of that hearing (*e.g.*, Main Class Member found
11 competent or incompetent to represent him- or herself),
12 including the written order and audio recording or
13 transcript of hearing, if available;
- 14 viii. **Bond hearings:** If any bond hearings were conducted,
15 the date(s) of the hearing(s);
- 16 ix. **Restoration to competency:** If the Immigration Judge
17 determines that a Sub-Class One Member has been
18 restored to competency pursuant to Section III.D.6 of the
19 Implementation Plan Order [Doc. # 786], the (i) date and
20 location of finding that Sub-Class One Member was
21 restored to competency; (ii) whether the Immigration
22 Judge solicited the input of the Qualified Representative
23 prior to making his or her finding; (iii) whether the
24 Immigration Judge ordered a Forensic Competency
25 Evaluation prior to finding that Main Class member was
26 restored to competency; (iv) date of Forensic

27 ⁸ All audio files may be provided to the Monitor in CD format.
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Competency Evaluation; (v) mental health diagnosis(es) from Forensic Competency Evaluation; and (vi) the written order and audio recording or transcript of hearing, if available;

x. **Continuances or extensions:** If the Immigration Judge granted a continuance or extension in a Main Class Member’s case based on “exceptional circumstances” [Doc. # 765-1 at 18], (i) the date and location of the continuance or extension, (ii) the number of days the Main Class Member has been in detention (if applicable), (iii) the length of the continuance or extension, (iv) whether any previous continuance or extension has been granted, and (v) if there have been previous continuances or extensions, the number of such previous continuances or extensions.

f. **Released Main Class Members Statistics.** For each Main Class Member who has been released from detention, in addition to all the information required by Section B(1)(e) above, Defendants shall provide the following categories of information in the form of a searchable electronic file (such as an Excel file):

i. **Release information:** (i) Date of release, (ii) number of days in detention prior to release, (iii) whether the Main Class Member was re-detained, (iv) the date of re-detention, and (v) location of re-detention;

ii. **Failures to Appear and In Absentia Orders:** (i) Whether the Main Class Member failed to appear for a Forensic Competency Evaluation after being released, (ii)

1 whether the Immigration Judge entered an *in absentia*
2 removal order, (iii) the date and location of such order,
3 (iv) whether the Main Class Member filed a motion to
4 reopen, and (v) whether the Main Class Member was
5 ordered removed (and if so, when).

6 g. ***Current Screening Forms.*** By the Effective Date, Defendants
7 shall provide the Monitor with the screening forms currently
8 used at the immigration detention facilities referenced in
9 Appendix A of the Implementation Plan Order to screen Main
10 Class Members for evidence of a “serious mental disorder or
11 condition.” Defendants shall promptly provide the Monitor
12 with updated forms throughout the Term if they are changed in
13 any way. (Implementation Plan Order, Section I.A.2 & n.6.)⁹

14 h. ***Standard Contracts with Service Providers.*** Defendants shall
15 provide the Monitor with a final copy of their standard
16 contract(s) with individuals performing evaluations.
17 Defendants shall provide updates if those contracts change
18 during the Term.

19 i. ***Qualified Legal Representative Organizations.*** By the
20 Effective Date, and once every six (6) months thereafter until
21

22 ⁹ To assess Defendants’ compliance with the process for the screening of
23 detainees as referenced in Section I.A.2. (pp. 4-5) of the Implementation Order, the
24 Monitor, at her discretion, shall herself, or through an expert she retains, have
25 access to this screening process at the detention facilities covered under the
26 Injunction. Access shall include the ability to review all relevant final policies,
27 procedures, and screening instruments (e.g., questionnaires) created, received, or
28 maintained by Defendants for the screening of detainees as referenced in Section
I.A.2 of the Implementation Order. Access also shall include the ability to
reasonably observe the administration of the screening questionnaire(s), interview
personnel involved in the screening process in accordance with the terms of this
Order, and review completed screens to the extent necessary to assess Defendants’
compliance.

1 the expiration of the Term, Defendants shall provide the
2 Monitor with a list of all organizations providing Qualified
3 Legal Representative services pursuant to the Permanent
4 Injunction and the Implementation Plan Order, and provide
5 updates to that list as needed throughout the Term. Defendants
6 shall provide the Monitor with a final copy of their standard
7 contract(s) used for Qualified Legal Representative
8 Organizations and/or attorneys. Defendants shall provide
9 updates if those contracts change during the Term.

10 j. ***Qualified Representatives for Released Sub-Class One***
11 ***Members.*** By the Effective Date, and every six (6) months
12 thereafter until expiration of the Term, if necessary, (i) a list of
13 all Sub-Class One Members released from detention after entry
14 of the Court's Permanent Injunction [Doc. # 593] for whom no
15 Qualified Representative was appointed or whose Qualified
16 Representative withdrew, and (ii) the date of entry of
17 appearance of a Qualified Representative, if any, pursuant to
18 the Parties' agreement [Doc. # 775 at 4 n.4].

19 2. ***Main Class Member File Sampling Protocol.*** The Monitor may rely
20 on the following file sampling protocol to obtain information relevant to the
21 monitoring function: For the three (3) month period after the Effective Date, and
22 for every six (6) month period thereafter until expiration of the Term, unless
23 instructed otherwise by the Monitor, Defendants shall provide to the Monitor, for
24 at least 25% but no greater than 50% of the Main Class Members, up to twenty
25 percent (20%) of whom may be Main Class Members who have been released
26 from detention (the method of selection of those Main Class Members to be
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1 specified by the Monitor), copies of the following documents reasonably
2 organized, whenever possible, in a searchable pdf format¹⁰:

- 3 a. Any screening form used to screen the Main Class Member for
4 evidence of a “serious mental order or condition” pursuant to
5 Section I.A.2 & n.6 of the Implementation Plan Order;
- 6 b. Any mental health assessments or examinations conducted or
7 received by Defendants pursuant to Section I.A.3 of the
8 Implementation Plan Order;
- 9 c. Any Forensic Competency Evaluation completed pursuant to
10 Section III of the Implementation Plan Order and the order for a
11 Forensic Competency Evaluation submitted by the Immigration
12 Judge;
- 13 d. Any notice submitted to the Immigration Court by ICE Office
14 of Chief Counsel, pursuant to Section II.B of the
15 Implementation Plan Order [Doc. # 693];

16
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18 _____
19 ¹⁰ The sample will be calculated, and sample files will be provided,
20 based on the number of current Main Class members at the beginning of each
21 Reporting Period and using the procedure and timelines described *supra* in notes 4-
22 7. During the Term, and after Defendants have provided the first sample, the
23 Monitor shall have the discretion to reduce or increase the 25% minimum
24 benchmark for the sample (so long as the sample is no greater than 50%) and
25 modify the categories of documents to be produced. The Monitor shall inform the
26 Parties of any change in the required minimum percentage or modification to the
27 type of information to be provided no later than 30 days after the start of the new
28 Reporting Period.

- 1 e. Any hearing transcripts or recordings from any Judicial
- 2 Competency Inquiry and any Competency Review, and any
- 3 written decision of the Immigration Judge related thereto;
- 4 f. Any final decision of the Immigration Judge and/or Board of
- 5 Immigration Appeals; and
- 6 g. Transcripts or recordings of immigration proceedings for up to
- 7 ten (10) of these individuals, within 60 days of a written request
- 8 by the Monitor.

9 3. Notice of Implementation Materials. Defendants shall provide the
10 Monitor with any non-privileged final copies of any regulations, policy directives,
11 or training materials used to implement or enforce any portion of the
12 Implementation Documents, and any other non-privileged guidance concerning
13 rules or procedures applicable to Main Class Members that relate in any way to the
14 Implementation Documents. Defendants shall also provide any such documents
15 already in use at the time of the Monitor's appointment.

16 4. Inspection of Facilities. The Monitor shall have the following rights
17 to conduct reasonable inspections of detention facilities used by, contracted with,
18 or acting on behalf of ICE to hold detainees for more than 72 hours.

- 19 a. **Inspection Generally.** Upon reasonable notice to Defendants,
20 the Monitor shall have the right to tour and inspect detention
21 facilities to assess compliance with the Implementation
22 Documents.
- 23 b. **Inspection of Class Notices Pursuant to Notice Order.** Once
24 every six (6) months after the Effective Date until expiration of
25 the Term, the Monitor has the right, but not the obligation, to
26 visit detention facilities to ensure that Class notices ("Notices")
27 are posted in English, Spanish and Chinese, as required by the
28 Court's Notice Order [Doc. # 360]. Upon notice by the

1 Monitor, Defendants shall permit the Monitor access to the
2 areas of the facilities in which the Notices are posted for the
3 purpose of such an inspection. However, the Monitor may
4 choose not to conduct a site visit for this purpose if Defendants
5 provide the Monitor with a certification that the Notices are
6 posted, in the form of (i) affidavits from a supervisory official
7 at each detention center, or (2) videographic evidence that the
8 Notices are posted (collectively, "Notice Certification").

9 **C. SUPPORT AND COMPENSATION FOR THE MONITOR**

10 1. *Support.* The Monitor may, as she deems necessary to carry out her
11 monitoring functions, seek assistance from others, including but not limited to
12 independent experts or specialists whose advice or assistance the Monitor deems
13 important to resolving questions concerning compliance with the Implementation
14 Documents.

15 2. *Compensation.* All of the Monitor's fees, costs and expenses,
16 including with respect to the assistance of other experts or specialists, are to
17 be paid by Defendants. The Monitor shall be compensated at the hourly rate
18 of \$225 during the first year of the Term, \$235 during the second year, and,
19 if necessary, \$250 during the third year. On a monthly basis, the Monitor
20 shall provide Defendants with a detailed record of hours billed in the
21 preceding month. If Defendants dispute a bill from the Monitor, they shall
22 have 15 days to review and submit objections to, and/or request additional
23 clarifying information or documentation from the Monitor, with a copy
24 served on Plaintiffs and filed with the Court. If within 30 days of
25 presentation of the Monitor's bill, there is still a dispute, Defendants shall
26 submit the dispute to the Special Master for resolution. Defendants and the
27 Monitor shall prepare a joint statement regarding the disputed payment for
28 filing within 30 days after Defendants' receipt of the Monitor's bill. If the

1 Monitor anticipates that her annual salary, costs, and expenses shall exceed
2 \$200,000 per year, she shall notify the Parties, the Special Master and the
3 Court, preferably within six months after the Effective Date, and make a
4 showing of good cause and provide an estimate of the amount she
5 anticipates will be required for her to properly perform the duties and
6 obligations set forth in this Order. Upon such notification, the Court shall
7 set a schedule which will permit the Parties to submit written comment.

8 **D. REPORTING TO THE COURT AND PLAINTIFFS' COUNSEL;**
9 **JUDICIAL REVIEW; DISPUTE RESOLUTION**

10 1. *Reporting to the Court.* The Monitor shall provide regular reports to
11 the Court in the following manner.

12 a. Starting no later than three (3) months from Defendants'
13 provision of Class Member statistics and sample files for the
14 First Reporting Period, and every six (6) months thereafter until
15 the expiration of the Monitor's Term or as otherwise required
16 by this Order, the Monitor shall file on the case docket a Report
17 regarding Defendants' compliance with and any suspected
18 violations of the Implementation Documents, as well as any
19 recommendations for steps necessary to improve Defendants'
20 compliance. The Monitor shall append to the Report any
21 documents that the Monitor deems important for the
22 conclusions in the Report ("Appendix"). The Monitor may
23 seek a reasonable extension of time, if necessary.

24 b. At least twenty-eight (28) days before filing the Report and
25 Appendix on the case docket, the Monitor shall serve the
26 Parties with copies of each, and the Parties shall have 14 days
27 from the date of service to submit to the Monitor written
28 comments to the Report. In her discretion, the Monitor may

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modify the Report in any manner suggested by a Party before filing it with the Court, although the Monitor has no obligation to explain the response (or lack thereof) to any suggestions. The Monitor shall file the Parties' written comments together with the Report.

c. If the Monitor has a good faith basis to believe that there is a significant violation of the Implementation Documents that cannot reasonably be addressed through a Report due to its exigency, the Monitor shall file on the case docket an interim report ("Interim Report"), including any recommendations for steps necessary to improve Defendants' compliance and the reason for urgency. Prior to filing the Interim Report, the Monitor shall afford the Parties a reasonable opportunity to be heard and to expeditiously cure any violation.

d. Nothing in this Order limits the Monitor's ability to notify the Parties jointly of issues relating to Defendants' compliance with the Implementation Documents through reasonable means, including in-person or telephonic meetings, status conferences, or correspondence. Nor shall anything in this Order limit the Monitor's ability to promptly notify the Parties of violations of the Implementation Documents that, due to their exigency, should not be addressed on the normal timeline for Reports.

2. Judicial Review. The Court adopts the review procedures and time lines set forth in Fed. R. Civ. P. 53(f) and incorporates them herein by this reference. Any Party seeking review of any ruling, finding, or recommendation of the Monitor or Special Master shall comply with Rule 53(f).

1 3. Dispute Resolution. In the event Plaintiffs’ counsel allege that
2 Defendants have failed to comply with the Implementation Documents or the terms
3 of this Order, the following procedure shall apply:

4 a. Plaintiffs’ counsel shall provide Defendants and the Monitor
5 with a written statement describing the alleged non-compliance
6 and specifying the provision of the Implementation Documents
7 allegedly violated (“Notice of Non-Compliance”). Defendants
8 shall provide a written statement responding to the alleged
9 violation within 14 calendar days from receipt of the Notice of
10 Non-Compliance and, within 21 calendar days from the Notice
11 of Non-Compliance, counsel for the Parties shall meet and
12 confer in a good faith effort to resolve their dispute informally.

13 b. In the event that the Notice of Non-Compliance cannot be
14 resolved informally within the time period set forth herein,
15 counsel for the Parties shall request that the Special Master
16 mediate the dispute. If the dispute has not been resolved within
17 21 days of referral to the Special Master, Plaintiffs may request
18 that the Court issue an order requiring compliance. Thereafter,
19 the Special Master may file his recommendations concerning
20 the dispute within a time frame to be established after
21 conferring with the Court. The Special Master may confer with
22 and seek the assistance of the Monitor during this dispute
23 resolution process.

24 **E. MISCELLANEOUS PROVISIONS; RETENTION OF**
25 **JURISDICTION**

26 1. Confidentiality of Information. The protective order governing this
27 litigation [Doc. # 507], shall continue to apply to all information produced by
28 Defendants pursuant to this Order. Any individual who assists the Monitor must

1 agree to be bound by the terms of the protective order governing this litigation
2 [Doc. # 507], and execute the Acknowledgement of Protective Order for
3 Discovery.

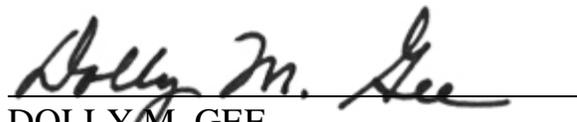
4 2. Cooperation of Parties. The Parties shall cooperate in good faith with
5 the Monitor and the Special Master.

6 3. Preservation of Materials. The Monitor shall preserve and, where
7 appropriate, file those materials reflecting the essential activities she and any of her
8 aides perform in carrying out the monitoring duties. The Monitor shall file on the
9 case docket all requests for modification of this Order and all status reports.

10 4. Retention of Jurisdiction; Amendments. The Court retains jurisdiction
11 to enforce this Order and to amend it for good cause.

12 **IT IS SO ORDERED.**

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14 DATED: March 3, 2015

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16 DOLLY M. GEE
17 UNITED STATES DISTRICT JUDGE
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