



MEMORANDUM

Date: July 19, 2019

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator *CH*

Re: **Additional Material related to the Special Meeting of July 22, 2019 to Consider a Cooperative Agreement for the Provision of Humanitarian Services by Catholic Community Services**

History of the Pima County Juvenile Court Center

The first Juvenile Detention Facility was operated by Patrick and Clara Higgins from 1920 through 1932. In 1947, the Juvenile Court was moved to the County Court House downtown. A new Juvenile facility called Mother Higgins was inaugurated in September 1956 at 332 South Freeway. The facility housed 26 boys, 12 girls and a courtroom, as well as a probation department. In December 1967, the Juvenile Court Center was moved to its present location 2225 East Ajo Way. It was expanded in 1986 and in 1990 the number of beds were increased to 86. In 1997, due to overcrowding, the gymnasium was converted to a sleeping area and May 1997 the voters of Pima County authorized a significant expansion of the facility, with a \$42 million bond issued. The present facility was constructed to house as many as 350 juveniles, however, due to aggressive alternative to detention programs the number of juveniles held at the facility now ranges from 30 and 50.

It is important to note that the present discussion regarding repurposing the Juvenile Detention Facility is not new. Mother Higgins, the original facility on South Freeway was repurposed in 1967, to the Theresa Lee Health Clinic and successfully operated as a health clinic at this location for decades.

Repurposing of Youth Detention Facilities in California

Pima County is not the only county moving toward alternatives to detention or less punitive approaches in criminal justice policy. The momentum is moving away from incarcerating youth. An Impact/Justice report dated July 2019, ["Nothing Good Happens in There" Closing and repurposing youth detention facilities in California](#) describes repurposing California youth detention facilities to better meet local needs. One selected facility for the study is eerily parallel to our present situation at the Pima County Justice Complex. The Carl F. Bryan II Juvenile Hall in Nevada County is a recently constructed facility with very low average daily population. The facility is a state of the art facility in terms of design and programming. Nevada authorities recommended the closing of the facility due to excessive cost and low youth populations. Nevada County concluded it is best to house the few juveniles that required housing, in a smaller less costly facility and to repurpose the larger facility to address

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local needs and concerns through new services, housing or coordination of existing services, targeted to take the form of housing assistance to provide help directly to individuals through, but not limited to:

- Referrals to drug, alcohol and other treatment services
- Provision of food, clothing and referrals to counseling and/or shelters
- Referrals to medical treatment facilities and mental health services

In conclusion, the repurposing of youth or juvenile detention facilities is currently occurring throughout the country. The County Juvenile Court Administration is frankly ahead of this curve through their first conversion of the oldest part of the 1967 detention facility, into a program known as Alternative Community Engagement Services (ACES) where youth receive services in a home setting ([ACES Brochure](#)). Attachment 1 shows photos of this repurposed facility.

Cooperative Agreement with Catholic Community Services

From our initial discussions with Catholic Community Services, it was felt a lease of our facilities to CCS would be the best approach. However, this concept was essentially abandoned since the facilities are integrated with the larger complex they are not on separate utility metering systems, separate utility services, maintenance is provided to the entire complex, the complex has contracted janitorial services and all heating and ventilation systems are integrated as well as control food service and laundry facilities. Therefore, it was determined that it was not really a lease but a service agreement with CCS, hence the title Cooperative Agreement for the Provision of Humanitarian Services. The annual payment of \$100 for use of a building is not applicable and probably should be struck from the Cooperative Agreement. In essence, CCS is providing a service in a Pima County facility. There are certain elements of the services provided by CCS where they should be reimbursed, i.e., direct medical screening, the provision of medical products to asylum seekers, as well as transportation services from a shelter environment to their place of transport to sponsors or relatives. All other costs related to the shelter, utilities, janitorial, food and laundry, are being provided by the County and should be directly reimbursable to the County by the Federal government. Hence, our three humanitarian aid grant requests (Attachment 2), identify these costs to be recovered through our grants. Since these grants are new to both the federal government and local agencies, it is likely that final resolution of full cost reimbursement may take some time. Therefore, we need to actively pursue federal government and its agencies, for full and total cost reimbursement, so that our taxpayers are not burdened in any manor financially with the obligations of the Federal government.

The Federal Emergency Management Agency (FEMA) routinely reimburses nongovernmental organizations, as well as local governments when providing emergency shelter services similar if not almost identical to the shelter services that will be provided by Pima County to asylum seekers. This temporary housing or shelter services have been directly reimbursed

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by FEMA. This is the same federal agency that wrote Bulletin 436 allowing for the use of Operation Stonegarden (OPSG) funding for humanitarian aid services. Our proposal to the Arizona Department of Homeland Security (HDOHS) for humanitarian aid, (letter dated July 11, 2019) is very specific in reimbursement amounts associated with the provision of shelter, medical, food and laundry services. In those cases where FEMA provides emergency shelter in natural disasters such as wildfires, floods, or hurricanes, these shelter services are reimbursed at the discretion of the State. Arizona Administrative Code, Title 8, Chapter 2, Section R8-2-306, provides for the reimbursement of up to 75 percent of the cost of goods and services as well as employee overtime costs for impacted agencies. According to the Code of Federal Regulations, 2 CFR § 200.404(c), the eligible costs would be based on prevailing *"Market prices for comparable goods and services for the geographic area."* The release of federal funds is authorized pursuant to an official County and State emergency or disaster declaration. Generally, funds are then distributed through the County's Office of Emergency Management.

Catholic Community Services is uniquely positioned to provide services for asylum seekers
CCS has been providing humanitarian aid services to asylum seekers for at least five years and have successfully relocated thousands of asylum seekers to their sponsors or relatives throughout the country during the period. They have provided medical screening, medical services, shelter, food and other humanitarian support. They uniquely know how best to provide these humanitarian services in a welcoming manner. They have designed the most effective flow process for accommodating large and varying numbers of asylum seekers. Attachment 3 shows their successfully processing of asylum seekers from intake to discharge. They have specifically planned and adapted the former Juvenile Detention Facility for their humanitarian aid process. Attachment 4 shows the physical relationships with the flow-processing requirement adapted specifically to units 700, 800 and 900 of the Juvenile Justice Complex. The County is making appropriate and slight building modifications and adjustments to meet their flow and space design requirements, ensuring these facilities are both welcoming and can efficiently provide humanitarian aid and shelter services needed for asylum seekers during their brief stay at the facility.

Future use of Juvenile Facility

While asylum-seeking processing has occurred since 2015 and greatly accelerated in the latter half of 2018 and 2019 the flow of asylum seekers is difficult to predict. It is unlikely that the flow will diminish to the point where the facility is not needed in the future, however if there is time when the facility is no longer needed as a humanitarian shelter for asylum seekers it can be decommissioned and used for other community purposes. Given its sheltering capacity a likely future use would be as an emergency shelter for natural disasters or any other major utility system failures or actions that require mass sheltering capacity. In the past, these events have been flooding events, major wildfires such as the Aspen Fire, utility system failures such as the inadequate flow of natural gas for heating purposes that occurred several years ago. In addition, electrical power outages that have occurred during

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summer months and then sustained for longer periods such as in Ajo, Arizona, enhance the need for immediate community sheltering. Hence, there is a need for a predictable emergency shelter that can be activated almost instantaneously. A decommissioned asylum seeker humanitarian aid facility could provide this function or any number of other community services.

One County's response to the release of asylum seekers to the streets of their jurisdiction. The San Diego County Board of Supervisors consisting of four republicans and one democrat filed suit against the Department of Homeland Security Immigrations and Custom Enforcement, the Commissioner of Customs and Border Protection and the Chief of the Border Patrol seeking full reimbursement for County expenses that it has incurred and will incur, to set up a migrant shelter to provide shelter and food as well as travel arrangements for asylum seekers. They have also provided surveillance monitoring training and other support services including conducting health screening assessments, medical care, and onsite assessments of temporary shelter to ensure food safety. As of March 22, 2019 San Diego County has spent in excess of \$1.1 million for these purposes. The San Diego County Board of Supervisors on January 29, 2019 approved the use of a County building for the use of a nonprofit to provide shelter services. The San Diego Rapid Response Network (SDRRN) and Jewish Family Services (JFS) operate the shelter in a San Diego County building. The lawsuit is included as Attachment 5.

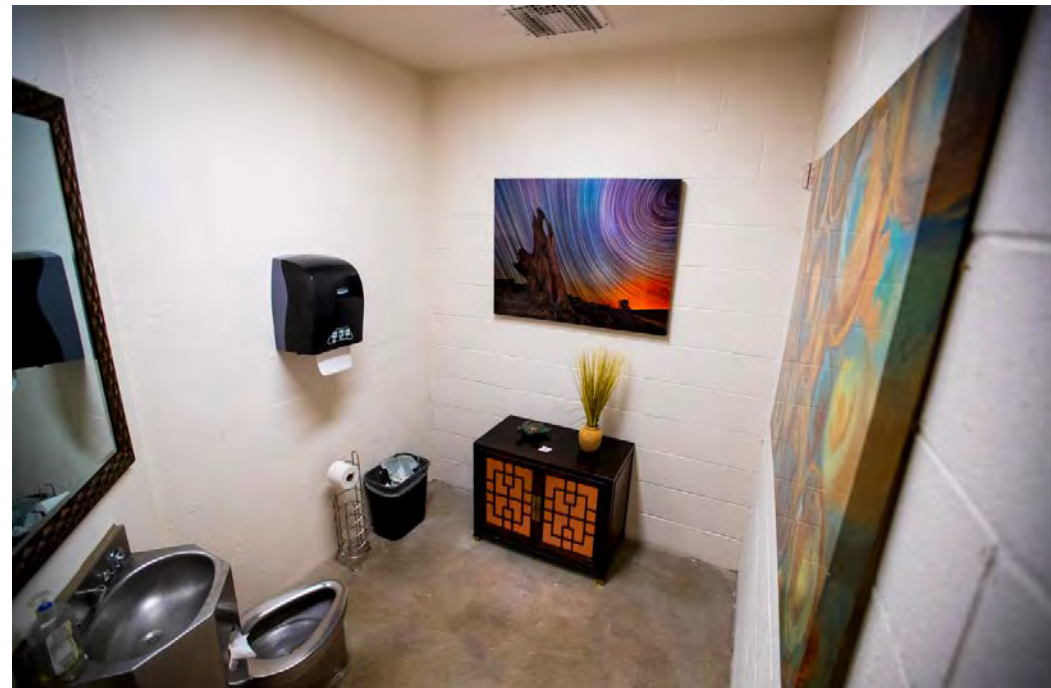
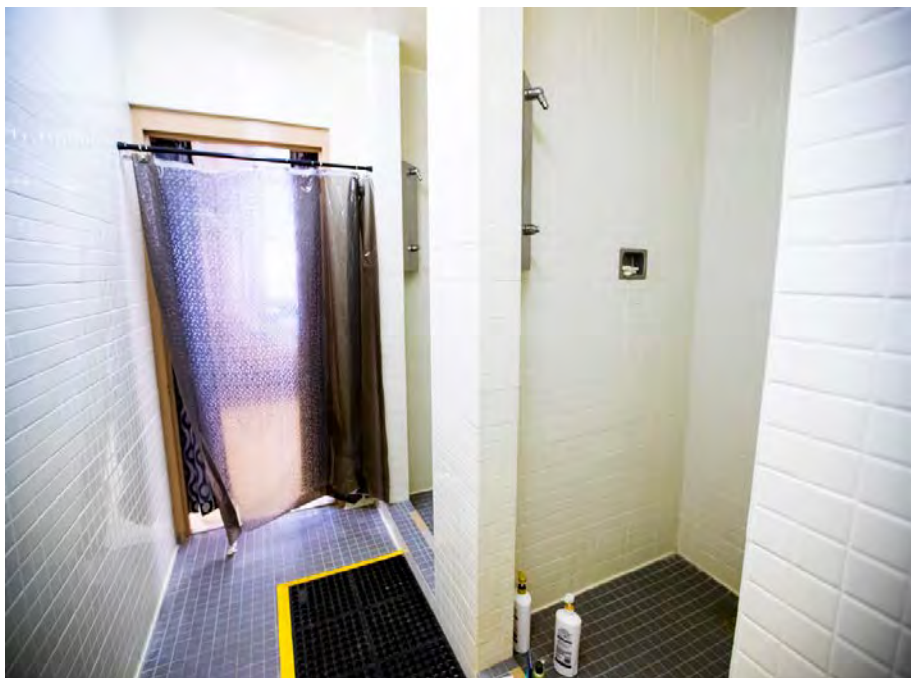
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Attachments

- c: Most Reverend Edward Weisenburger, Bishop of Tucson
- The Honorable Kyle Bryson, Presiding Judge, Superior Court
- The Honorable Kathleen Quigley, Presiding Judge, Juvenile Court
- The Honorable Mark Napier, Pima County Sheriff
- Marguerite "Peg" Harmon, Chief Executive Officer, Catholic Community Services
- Jan Leshner, Chief Deputy County Administrator
- Francisco Garcia, Assistant County Administrator for Community and Health Services

ATTACHMENT 1








ATTACHMENT 2



MEMORANDUM

Date: July 16, 2019

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Humanitarian Aid Grant Requests for Legal Asylum Seekers**

We presently have made three grant requests to reimburse Pima County for any costs incurred by providing sheltering services for legal asylum seekers at the Juvenile Justice Complex. (Units 700, 800 and 900 of the Complex)

Our first submittal was on July 11, 2019 to the Arizona Department of Homeland Security (AZDHS) for a total of \$530,347. This request was in response to a reprogramming request from AZDHS related to Operation Stonegarden (OPSG) Federal Fiscal Year (FFY) 2018 grant funding and Federal Emergency Management Agency (FEMA) Grants Program Directorate Information Bulletin No. 436. Please note, the requested amount exceeds the \$200,000 originally earmarked for humanitarian services related to OPSG. The increase is caused by the fact that a County facility will now be used to provide sheltering, food and laundry services in cooperation with Catholic Community Services (CCS).

A second grant request was made on July 12, 2019 for an identical amount based on a July 11, 2019 letter from Chief Patrol Agent Roy D. Villareal of US Customs and Border Protection (Tucson Sector) who suggested that we concurrently apply for grant funding from the State Homeland Security Program (SHSP). I subsequently applied to AZDHS for SHSP funding related to sheltering services for legal asylum seekers.

Any combination of OPSG and/or AZDHS grant funds could be used to offset our anticipated costs of operating the shelter at the Juvenile Justice Complex through December 31, 2019.

Finally, on July 15, 2019, we applied for a humanitarian aid grant associated with HR 3401, passed for humanitarian assistance by Congress and signed into law by the President of the United States on July 1, 2019. HR 3401 provided \$30 million in supplemental funding to the Emergency Food and Shelter Program (EFSP) administered by the US Department of Homeland Security's Federal Emergency Management Agency (DHS/FEMA). We have applied for approximately \$1.5 million in funding to offset the operating and modification costs associated with the shelter at the Juvenile Justice Complex. The grant application was submitted to WHEAT (World Hunger Education, Advocacy and Training), the Administrative Agency for the EFSP Arizona State Set-Aside (SSA) Committee. WHEAT is

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compiling grant applications from all State of Arizona counties and submitting them to the EFSP National Board for consideration.

Therefore, there are three active grant proposals in process to fund the County's operating and modification costs associated with providing humanitarian aid and shelter in conjunction with CCS to legal asylum seekers.

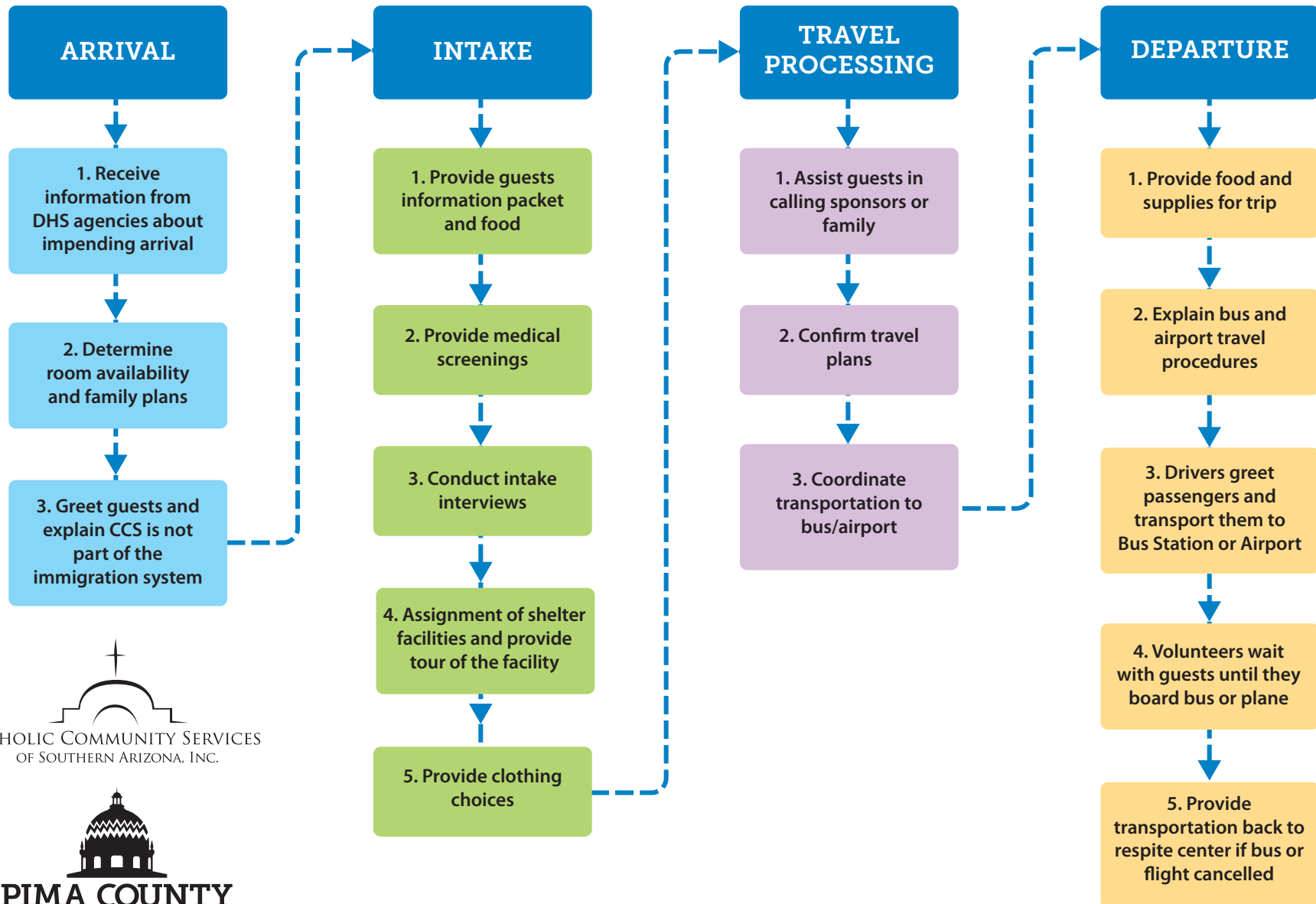
CHH/anc

c: The Honorable Mark Napier, Pima County Sheriff
 Jan Leshner, Chief Deputy County Administrator
 Tom Burke, Deputy County Administrator for Administration
 Regina Kelly, Director, Grants Management and Innovation Office

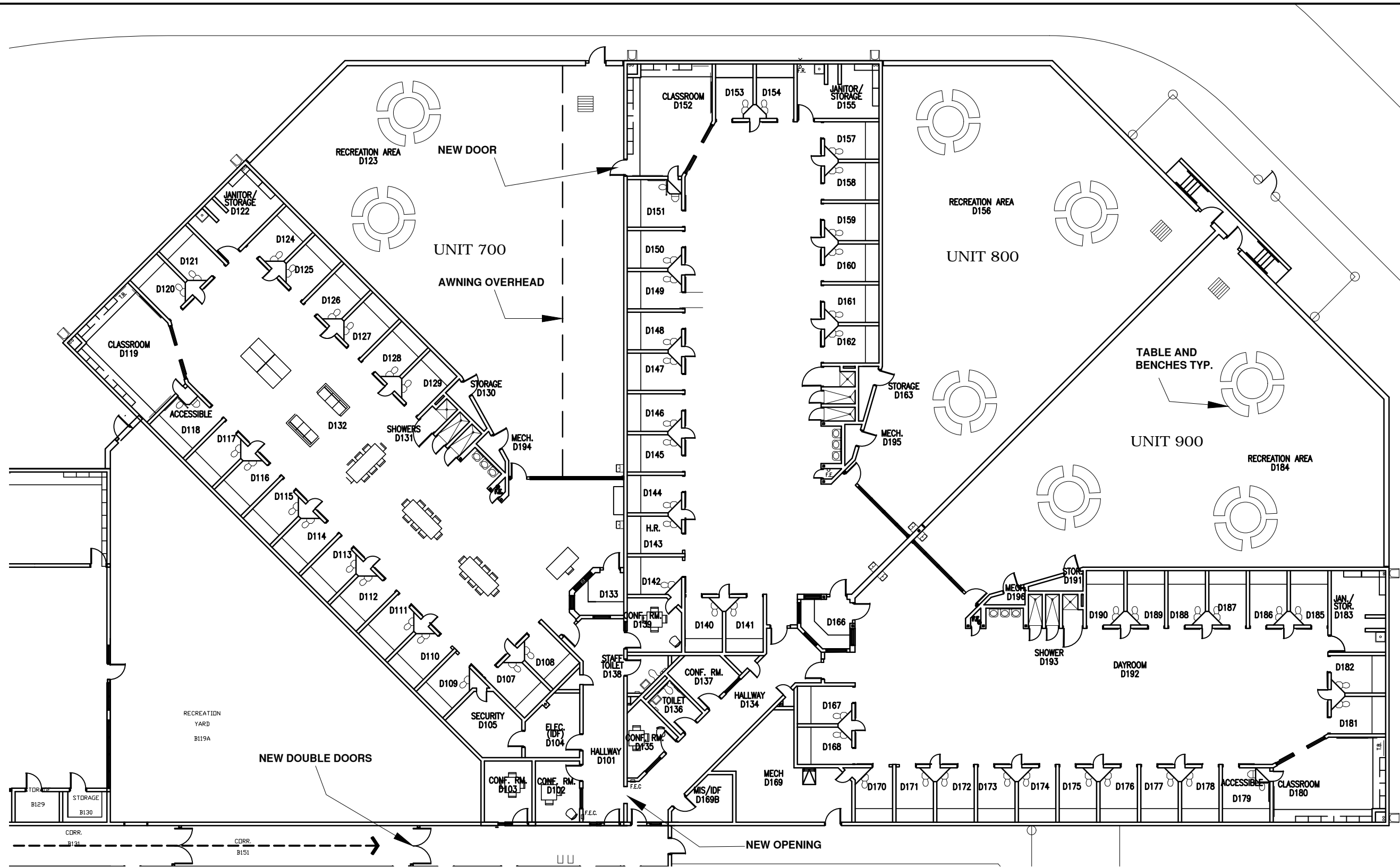
ATTACHMENT 3

Arrival, Intake, Travel Processing & Departure Process

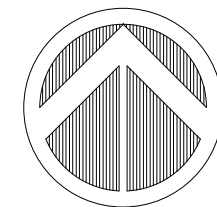
Catholic Community Services Respite and Travel Processing Center



ATTACHMENT 4



ENLARGED FLOOR PLAN



PIMA COUNTY FACILITIES MANAGEMENT, 150 WEST CONGRESS, TUCSON ARIZONA 85701 (520)740-3085

PROCESSING & SHELTER FACILITY
2225 E AJO WAY
TUCSON, AZ

FLOOR PLAN



REV: DATE:
Rev Date

DRWN BY: YU
CKD BY:
DATE: 7-9-2019
SCALE: NTS
SHEET NO:

1

1 OF 2
W.O. NUMBER
Proj #

ATTACHMENT 5

1 THOMAS E. MONTGOMERY, County Counsel (SBN 109654)
County of San Diego
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GEORGE J. KUNTHARA, Deputy (SBN 324500)
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San Diego, California 92101-2469
4 Telephone: (619) 531-4865
E-mail: timothy.white@sdcounty.ca.gov
5 E-mail: george.kunthara@sdcounty.ca.gov

6 Attorneys for Plaintiff, County of San Diego

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10

11 COUNTY OF SAN DIEGO,

12 Plaintiff,

13 v.

14 KIRSTJEN M. NIELSEN, Secretary of
15 the Department of Homeland Security, in
her official capacity; RONALD D.
16 VITIELLO, Deputy Director and Senior
Official Performing Duties as
17 Immigration and Customs Enforcement
Director, in his official capacity;
18 MATTHEW T. ALBENCE, U.S.
Immigration and Customs Enforcement
19 Executive Associate Director, in his
official capacity; KEVIN K.
20 MCALEENAN, Commissioner of
Customs and Border Protection, in his
21 official capacity; and CARLA L.
22 PROVOST, Chief of Border Patrol, in her
official capacity.

23 Defendants.
24
25
26
27
28

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[PLAINTIFF DEMANDS A JURY
TRIAL ON ANY JURY
ISSUES/CLAIMS]

1 1. The County of San Diego (“County” or “Plaintiff”) brings this action
2 because it has been harmed, and continues to be harmed, as a result of Defendants’
3 sudden and unlawful change in policy. This policy change involves the release of asylum
4 seekers from federal detention into the County while denying the asylum seekers – who
5 are present in this country legally by virtue of their asylum claims and related federal law
6 – the previously-provided assistance in reaching their final destination(s) outside the
7 County.

8 2. Before Defendants’ unlawful policy change – which violated the procedural
9 and substantive provisions and protections of the Administrative Procedure Act, 5 U.S.C.
10 § 551, et seq. – the vast majority of asylum seekers briefly passed through the County on
11 the way to their final destinations outside of the County. They lived outside the County
12 while their asylum claims were adjudicated. Now, large numbers of asylum seekers and
13 accompanying family members are forced to remain in the County, without sufficient
14 means to support themselves, because Defendants abruptly stopped providing asylum
15 seekers with assistance in reaching their final destination(s).

16 3. In response to Defendants’ sudden and unlawful change in policy, and in
17 order to mitigate against a public health crisis and harm to the health, safety, and welfare
18 of County residents and the asylum seekers and their accompanying family members, the
19 County has been forced to expend substantial funds and other resources to provide
20 medical screening and care to the asylum seekers. Additionally, the County has
21 contributed support for a shelter run by local non-governmental organizations (“NGOs”)
22 to provide lodging for the released asylum seekers, and to otherwise assist the asylum
23 seekers and their accompanying family members until they are able to contact relatives in
24 the United States to make arrangements for support while their asylum claims are being
25 processed and decided.

26 ////

27 ////

28 ////

1 4. The County seeks a judicial declaration that Defendants' sudden change in
2 policy to no longer providing asylum seekers assistance in reaching their final destination
3 outside the County, violated the APA both procedurally and substantively, and was thus
4 unlawful.

5 5. The County further seeks a preliminary and permanent injunction requiring
6 Defendants to resume providing asylum seekers and their accompanying family members
7 assistance in reaching their final destinations outside the County.

8 **PARTIES**

9 6. Plaintiff County of San Diego is, and at all relevant times has been, a local
10 government and a political subdivision of the State of California.

11 7. At all times relevant to this action, defendant Kirstjen M. Nielsen was and is
12 the Secretary of the United States Department of Homeland Security ("DHS"), and is
13 sued in her official capacity. In this capacity, Defendant Nielsen directs each of the
14 component agencies within DHS, including the United States Immigration and Customs
15 Enforcement ("ICE"). Defendant Nielsen is responsible for the administration of
16 immigration laws and policies pursuant to 8 U.S.C. § 1103, including those laws and
17 policies regarding the detention and release of asylum seekers.

18 8. At all times herein mentioned, defendant Ronald D. Vitiello was and now is
19 the Deputy Director and Senior Official Performing the Duties of Director of ICE, and is
20 sued in his official capacity. ICE is the sub-agency that operates the Federal
21 government's immigration detention system. In this official capacity, Defendant Vitiello
22 directs the administration of ICE's detention policies and operations, including those
23 policies and operations regarding the detention and release of asylum seekers.

24 9. At all times herein mentioned, Defendant Matthew T. Albence was and now
25 is ICE's Enforcement and Removal Operations ("ERO") Executive Associate Director
26 and Senior Official Performing the Duties of the Deputy Director, and is sued in his
27 official capacity. In this capacity, Defendant Albence oversees, directs, and coordinates
28 policies and operations throughout the nation's ERO field offices and sub-offices,

1 including those policies and operations regarding the detention and release of asylum
2 seekers.

3 10. At all times herein mentioned, Defendant Kevin K. McAleenan was and now
4 is the Commissioner of United States Customs and Border Protection (“CBP”), and is
5 sued in his official capacity. In this capacity, Defendant McAleenan directs all of the
6 departments within CBP, which is the nation’s primary border control organization.
7 Defendant McAleenan oversees, directs, and coordinates policies and operations along
8 the nation’s southwest border, including those policies and operations regarding the
9 detention and release of asylum seekers.

10 11. At all times herein mentioned, Defendant Carla L. Provost was and now is
11 the Chief of United States Border Patrol (“USBP”), and is sued in her official capacity.
12 USBP is the mobile, uniformed law enforcement arm of CBP. In this capacity,
13 Defendant Provost directs and supervises the implementation of DHS, ICE, and CBP
14 policies. Defendant Provost is responsible for the enforcement of immigration laws and
15 policies, including those laws and policies regarding the detention and release of asylum
16 seekers.

17 **JURISDICTION AND VENUE**

18 12. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises
19 under the laws of the United States, including the Administrative Procedure Act, 5 U.S.C.
20 § 551, et seq. This Court has additional remedial authority under the Declaratory
21 Judgment Act, 28 U.S.C. § 2201, et seq., and the judicial review sections of the
22 Administrative Procedure Act, 5 U.S.C. §§ 701-706.

23 13. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
24 § 1391(b)(2) and (e), as each defendant is an officer or employee of the United States or
25 an agency thereof acting in his or her official capacity, and a substantial part of the events
26 or omissions giving rise to the claims in this action occurred within this District.

27 14. There exists an actual and justiciable controversy between Plaintiff and
28 Defendants requiring resolution by this Court. Plaintiff has no adequate remedy at law.

FACTUAL BACKGROUND

The County is informed and believes, and on the basis of such information and belief alleges, that:

Asylum Seeker Detention and Safe Release Program Generally

15. In recent years, children and adults have fled significant, claimed persecution in their home countries and arrived at Ports of Entry (“POE” or “POEs”), and other points, along the U.S.-Mexico border to seek protection in the United States through the asylum process. A substantial number of the asylum seekers present themselves at POEs or other points along the portion of the U.S.-Mexico border that abuts San Diego County.

16. When an individual or family unit arrives at the U.S.-Mexico border via the San Ysidro or Otay Mesa POEs, which are located in the Southern District of California, or encounters immigration enforcement officers at a point other than a POE, they will have an initial interview. During the initial interview with USBP, CBP, or ICE, if an individual or family unit claims asylum based on a well-founded fear of persecution, those people are either (1) released from initial detention and given a Notice to Appear (“NTA”) in immigration court; or (2) detained pending a credible fear interview.

17. Many asylum seekers arriving in San Diego County have family members or points of contact (“POCs”) within the United States, but have not communicated with those people before their arrival in the United States.

18. From 2009 and continuing to October 2018, ICE began and implemented a policy known as “Safe Release” or “Coordinated Release” (hereafter, “Safe Release policy”).

19. As part of this policy, during initial detention ICE (or other federal agencies) provided asylum seekers assistance in reaching their final destinations outside the County of San Diego, where they would reside pending adjudication of their asylum claim.

20. Examples of the assistance Defendants provided under the Safe Release policy include: helping asylum seekers locate the contact information for relatives

1 residing in the United States and outside the County of San Diego; facilitating phone calls
2 between asylum seekers and those relatives; and transporting the asylum seekers and
3 their accompanying family members to their chosen mode of transportation to reach their
4 final destination outside the County (depending on the travel arrangements made by the
5 asylum seekers and their relatives or other points of support outside the County).

6 21. Under the Safe Release policy, asylum seekers would typically travel to their
7 final destinations within twenty-four to seventy-two hours from initial detention.

8 22. On the coordinated travel dates, ICE would transport the traveling asylum
9 seekers directly to the departure points for their pre-arranged mode of transportation,
10 such bus stations, train stations, and airports, facilitating an orderly release process. ICE
11 would also provide a minimal amount of food to asylum seekers for their journeys to
12 their final destinations.

13 23. The vast majority of asylum seekers entering through the U.S.-Mexico
14 border within San Diego County travel to locations outside San Diego County.

15 24. Relatives or other points of support outside the County would take asylum
16 seekers into their care and provide the asylum seekers (including accompanying family
17 members) with lodging and support until the asylum seekers' scheduled immigration
18 court appearances on the NTA.

19 **Abrupt End of Safe Release Program and Its Effects**

20 25. On or about October 24, 2018, San Diego NGOs Jewish Family Services
21 ("JFS") and San Diego Rapid Response network ("SDRRN") attended a meeting with
22 ICE, CBP, and USBP officials in San Diego.

23 26. At the meeting, officials from ICE, CBP, and USBP, with the oversight of or
24 as authorized by Defendants, abruptly announced that the Safe Release policy would be
25 ending. The federal agencies did not provide any information as to when exactly or why
26 the policy was changing or being terminated.

27 27. Within 24 hours of the meeting, and without any prior notice to or
28 coordination with relatives, POCs, local NGOs, or the County, ICE dropped off

1 approximately 40 asylum seekers and accompanying family members at a San Diego bus
2 station. These individuals, many of whom did not speak English, lacked sufficient funds
3 to travel or support themselves, and had not been afforded the opportunity or means to
4 reach out to relatives or others outside the County. They were simply left to fend for
5 themselves in a land that was foreign to them.

6 28. In October 2018, multiple news outlets reported on the sudden end of the
7 Safe Release policy, with ICE commenting after the fact that the end of the policy was
8 due to limited resources to support the program. In commenting on Safe Release's end,
9 ICE acknowledged the existence of the policy.

10 29. According to JFS and SDRRN, an average of 20 to 30 family units (60 to 80
11 parents and young children) have been released into San Diego County *each day* since
12 October 2018, with ICE – under the direction and with the authority of Defendants –
13 failing to abide by its longstanding Safe Release policy of providing asylum seekers
14 assistance in reaching their final destinations.

15 30. Some asylum seekers and accompanying families arrive in poor health with
16 children and parents suffering from the flu, upper respiratory infections, injuries
17 sustained while traveling from Central America, scabies, and/or lice, as well as emotional
18 or psychiatric injuries and conditions resulting from the persecution they are fleeing, as
19 well as adverse incidents or crimes committed against them during their travel to the
20 United States.

21 31. These poor health conditions were commented on during Defendant
22 Nielsen's testimony before the U.S. House of Representatives Homeland Security
23 Committee on March 6, 2019. From 2018 to this year, USBP projected a 158% increase
24 in migrants needing medical treatment because of the long and often arduous journey
25 from the Central or South America to the southwest border. Defendant Nielsen's own
26 testimony noted that "vulnerable populations, especially children, are coming into DHS
27 sicker than ever before."

28 ///

1 32. After ICE abruptly, arbitrarily, and capriciously ended its Safe Release
2 policy in October 2018, SDRRN, with the help of JFS, set up a migrant shelter to provide
3 shelter and food, and to help arrange travel for asylum seekers to relatives or other POCs
4 within the United States.

5 33. In November 2018, the County began providing the shelter with
6 surveillance, monitoring, training, and other support to help shelter staff address public
7 health concerns.

8 34. Beginning in December 2018, the County Health and Human Services
9 Agency (“HHSA”), in an effort to protect the health of the public, including asylum
10 seekers, began conducting health screening assessments at the shelter. On average, 76
11 screenings per day are conducted by fourteen or so County employees assigned to the
12 shelter. County employees also refer asylum seekers for outside medical care as
13 appropriate and identify and prevent the spread of communicable diseases.

14 35. The County has also expanded an existing contract with University of
15 California San Diego (“UCSD”) to screen and evaluate asylum seekers for diseases of
16 public health significance; treat or refer for any condition encountered; and transfer
17 arrivals to the general shelter population, isolation, or a higher level of care if
18 appropriate.

19 36. Additionally, the County Department of Environmental Health has provided
20 on-site assessments at the temporary shelter to ensure food safety; the County’s Public
21 Safety Group Office of Emergency Services has assisted with planning and coordination;
22 the County Sheriff’s Department provides daily report coordination; and the County
23 Department of General Services provides maintenance and support for equipment that
24 enables HHSA staff to work on site.

25 37. Projected costs for the above-described County services and assistance, that
26 the County has been forced to incur and/or expend as a direct result of Defendants’
27 unlawful policy change (i.e., suddenly, arbitrarily, and capriciously ending the Safe
28 Release policy), exceed \$1.1 million as of March 22, 2019, and will continue to increase

1 until Defendants agree to, or are required by this Court to, once again follow the
2 longstanding Safe Release policy.

3 38. With the abrupt end of Safe Release policy, federal agencies have left
4 asylum seekers and their accompanying family members to fend for themselves, and have
5 forced the County to incur and expend resources it would not have normally had to incur
6 or expend, in order to help fill the unexpected vacuum left by Defendants' sudden and
7 unlawful change in policy.

8 39. As noted above, SDRRN is the NGO running the migrant shelter. Its lease
9 on the original building used for the shelter expired on February 15, 2019. On January
10 29, 2019, the County Board of Supervisors approved the use of a county building for
11 SDRRN to run the shelter until December 2019.

12 40. As a direct result of the subject, unlawful change in policy, under the
13 direction and authority of Defendants, the County has suffered, and will continue to
14 suffer, immediate and apparent harms in combating the humanitarian and public health
15 issues caused by the sudden, arbitrary, and capricious change or termination of the Safe
16 Release policy.

17 41. The County and its residents have relied on the Safe Release policy, and the
18 adherence to that policy by Defendants and the federal agencies they oversee, specifically
19 to manage the safe and orderly release of asylum seekers and their accompanying family
20 members by assisting them in reaching their final destinations outside the County of San
21 Diego. The prior policy treated asylum seekers with care and dignity, and helped to
22 prevent a dramatic increase in the County's homeless population and accompanying
23 public health concerns and related costs and expenditures. With the sudden and unlawful
24 change or end to the policy, the County – with the help of local NGOs – was left to
25 respond to the immediate and continuing fallout of Defendants' arbitrary and capricious
26 actions. The County thus requests this Court to declare the subject policy change
27 unlawful under the Administrative Procedure Act, and order the federal government to
28 once again abide by the Safe Release policy.

LEGAL BACKGROUND

42. The power to set rules surrounding immigration rests with the United States Federal Government rather than with the individual states. *See Chy Lung v. Freeman*, 92 U.S. 275, 276 (1875).

43 Federal law requires immigration agencies to give individuals who present themselves at POEs and express a desire to apply for asylum or a fear of persecution in their home countries the opportunity to seek protection in the United States without unreasonable delay.

44. Specifically, the INA and its implementing regulations set forth a variety of ways in which such individuals may seek protection in the United States. *See, e.g.*, 8 U.S.C. § 1157 (admission of refugees processed overseas); 8 U.S.C. § 1158 (asylum); 8 U.S.C. §1231(b)(3) (restriction of removal to a country where individual's life or freedom would be threatened); 8 C.F.R. §§ 208.16-18 (protection under the Convention Against Torture).

45. The INA provides that any noncitizen “who is physically present in the United States or who arrives in the United States” has a statutory right to apply for asylum, irrespective of such individual's status. 8 U.S.C. § 1158(a)(1). The INA also specifies processes that must be followed when an individual states a desire to seek asylum or expresses a fear of returning to his or her home country. *See* 8 U.S.C. § 1158(d)(1) (“The Attorney General shall establish a procedure for the consideration of asylum applications filed [by individuals physically present in the United States or who arrive in the United States].”).

46. The APA authorizes suits by “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.” 5 U.S.C. § 702. The APA requires that federal agencies conduct notice and comment rulemaking before engaging in action that impacts substantive rights. 5 U.S.C. §§ 553, 706(2)(D). The APA also provides relief for agency actions found to be

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1 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
2 law” 5 U.S.C. § 706(2)(A).

3 **FIRST CAUSE OF ACTION**

4 **Administrative Procedure Act – Notice and Comment Rulemaking**

5 **[5 U.S.C. §§ 553, 706(2)(D)]**

6 47. The above paragraphs are incorporated herein by reference.

7 48. DHS, ICE, CBP, and USBP are “agencies” under the APA, and the
8 termination of – or change to – the Safe Release policy, and actions in furtherance of the
9 termination or change constitute “rules” under the APA.

10 49. In terminating or changing the subject policy, the above-described federal
11 agencies, and Defendants who in their official capacity are in charge of the agencies,
12 have levied clear and distinct burdens on the County in the form of the substantial and
13 increased costs and expenditures resulting from the policy change or termination, as more
14 fully described above.

15 50. The APA requires administrative agencies to follow notice-and-comment
16 rulemaking procedures to promulgate substantive rules. *See* 5 U.S.C. § 553. The APA
17 defines “rule” broadly to include:

18 [T]he whole or part of an agency statement of general or particular
19 applicability and future effect designed to implement, interpret, or prescribe
20 law or policy or describing the organization, procedure, or practice
21 requirements of an agency

21 5 U.S.C. § 551(4).

22 51. The termination or change in the Safe Release policy constitutes a
23 substantive rule subject to the APA’s notice-and-comment requirements.

24 52. As the policy change or termination was undertaken without first submitting
25 the action for notice and public comment, Defendants and the federal agencies they
26 oversee have violated section 553 of the APA, and their actions constitute unlawful
27 rulemaking.

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53. Defendants' APA violation has caused, and will continue to cause, harm to the County and its residents.

SECOND CAUSE OF ACTION

Administrative Procedure Act – Agency Action That Is Arbitrary and Capricious, an Abuse of Discretion, and Otherwise Not in Accordance with Law

[5 U.S.C. § 706(2)(A)]

54. The above paragraphs are incorporated herein by reference.

55. Under 5 U.S.C. § 706(2), courts shall hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations; or without observance of procedure required by law.

56. The termination or change in the Safe Release policy constitutes final agency action that is reviewable by the Court.

57. The termination or change in the Safe Release policy was arbitrary and capricious, an abuse of discretion, and not in accordance with law because, among other things, the termination or change in policy deviated from federal regulations, and Defendants failed to articulate a reasonable explanation for their actions. In assessing Defendants' actions under the arbitrary-and-capricious standard, a court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014) (citation omitted). Here, Defendants have not considered the relevant factors in deciding to terminate or change the Safe Release policy. Defendants also have failed to consider important aspects of the issue, including the reasons and arguments in support of the Safe Release policy that were previously considered and made by the federal agencies Defendants oversee.

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58. Defendants also disregarded the serious reliance interests engendered by the Safe Release policy. Where, as here, significant reliance interests are at stake, Defendants must, in addition to demonstrating that “there are good reasons” for the new policy, offer “a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009). Defendants here have utterly failed in these obligations.

59. The unlawful termination of, or change to, the Safe Release policy has unfairly shifted the resulting burdens to the County and its residents (among others). Defendants' APA violation has caused, and will continue to cause, harm to the County and its residents.

THIRD CAUSE OF ACTION

Violation of Procedural Due Process

[U.S. Const., amend. V]

60. The above paragraphs are incorporated herein by reference.

61. Under the Fifth Amendment to the United States Constitution, no person may be deprived of life, liberty, or property without due process of law.

62. The County has constitutionally-protected interests in the expenses it has incurred and will incur, and funds that it has been forced to expend and will expend, as a result of Defendants' unlawful termination of, or change to, the Safe Release policy.

63. Defendants' actions unlawfully deprive the County of these and other constitutionally-protected interests without due process of law. Such deprivation occurred with no notice or opportunity to be heard.

64. Defendants therefore have violated the Fifth Amendment to the United States Constitution.

65. The County was harmed and continues to be harmed by these constitutional violations.

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1. Vacate and set aside the termination of, or change in, the Safe Release policy and any other related action taken by Defendants and the agencies they oversee;
2. Declare that the actions taken by Defendants and the agencies they oversee to terminate or change the Safe Release policy are void and without legal force or effect;
3. Declare that the actions taken by Defendants and the agencies they oversee to terminate or change the Safe Release policy are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and without observance of the procedure required by law, in violation of 5 U.S.C. §§ 702-706;
4. Issue a preliminary and permanent injunctions requiring Defendants, the agencies they oversee, as well as their agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, to provide asylum seekers and their accompanying family members the assistance in reaching their final destinations that was provided under the Safe Release policy;
5. Require Defendants' agencies to reimburse the County the expenses that it has incurred, and will incur, as a result of Defendants' unlawful actions;
6. Award Plaintiff reasonable attorneys' fees if permitted by any applicable law; and
7. Grant such further relief as this Court deems just and proper.

THOMAS E. MONTGOMERY, County Counsel

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