

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

K.O. and E.O., Jr., by and through their parents and next
friends, E.O. and L.J.; and C.J, by and through his father
and next friend F.C.; each individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

JEFFERSON BEAUREGARD SESSIONS III,
Attorney General of the United States; KIRSTJEN
NIELSEN, Secretary of the United States Department
of Homeland Security (DHS); JOHN F. KELLY, White
House Chief of Staff; STEPHEN MILLER, Senior
Advisor to the President; GENE HAMILTON,
Counselor to the Attorney General Sessions; THOMAS
HOMAN, former Director of United States
Immigration and Customers Enforcement (ICE);
RONALD D. VITIELLO, Acting Director of ICE; L.
FRANCIS CISSNA, Director of United States
Citizenship and Immigration Services (USCIS);
KEVIN K. MCALEENAN, Commissioner of United
States Customs and Border Protection (CBP); ALEX
AZAR, Secretary of the United States Department of
Health and Human Services (HHS); SCOTT LLOYD,
Director of the United States Office of Refugee
Resettlement (ORR); JOHN DOE ICE AGENTS;
JOHN DOE CBP AGENTS; and JOHN DOE ORR
PERSONNEL,

Defendants.

CIVIL ACTION NO. _____

CLASS ACTION COMPLAINT AND JURY DEMAND

Introduction

1. The United States of America was founded on the bedrock principle that our nation is a beacon of hope to people everywhere seeking refuge from poverty, persecution, and violence. Emma Lazarus's sonnet on the Statue of Liberty famously rings out: "Give me your

tired, your poor, your huddled masses yearning to be free." Defendants have betrayed this fundamental principle. In doing so, they have betrayed the United States Constitution and harmed those most vulnerable: children. Through this lawsuit, Plaintiffs, on behalf of a class of similarly situated children, seek to hold Defendants accountable for their actions in accordance with the rule of law.

2. Plaintiffs seek damages and the establishment of a fund for the mental health treatment of all class members to remedy the harm caused by the Defendants' forcible separation of well over 2,500 children from their parents with no legal justification and for the express purpose of inflicting emotional and psychological harm to deter immigration, particularly from Central and South American countries. Many of these children and their parents, including the Plaintiffs in this case, fled their native countries to lawfully seek asylum upon arriving in the United States.

3. Defendants forcibly separated these young children from their parents without any allegations of abuse, neglect, or parental unfitness, and without legal proceedings or hearings of any kind. Defendants then detained these young, terrified children in facilities often thousands of miles from their parents.

4. Defendants forcibly separated these families even though there were ways for Defendants to keep immigrant children together with their parents, including shelters that house families together and immigration family detention centers where families can be detained together while they await the adjudication of their immigration cases, as well as electronic ankle monitoring programs assuring appearances of adults at immigration hearings.

5. Forced separation of children from their parents causes severe and often permanent emotional and psychological harm to young children, particularly when those children are already traumatized from fleeing violence and persecution in their home countries.

6. The Defendants have violated the fundamental right to family integrity protected by the Due Process Clause of the Fifth Amendment of the United States Constitution by forcibly taking young children from their parents with no legal justification and without a hearing and later coercing parents into waiving their children's rights to pursue asylum, withholding of removal, and other statutory claims available to migrant children and their families. Defendants have also violated the Due Process Clause by subjecting children to punitive conditions while they were being held in civil immigration detention and failing to provide them adequate and necessary mental health treatment. In addition, Defendants have violated the Equal Protection guarantee of the Fifth Amendment by discriminating against immigrant children, particularly those from Central and South American countries, on the basis of race, ethnicity, or national origin.

7. Moreover, based on Defendants' conduct, the United States government is liable for the torts of intentional and negligent infliction of emotional distress, false imprisonment, false arrest, assault and battery, and for the loss of consortium that the minor Plaintiffs have suffered as a result of the harm caused to their parents by Defendants' conduct. Plaintiffs intend to present tort claims to the appropriate federal agencies under the Federal Tort Claims Act based on the allegations in this Complaint. Plaintiffs reserve the right to seek leave to amend this Complaint in due course should Plaintiffs' claims be finally denied by any of those agencies. *See* 28 U.S.C. § 2675.

Parties

8. Plaintiff K.O. brings this lawsuit through her parents and next friends, E.O. and L.J., as a result of her incapacity due to her minor status.

9. Plaintiff E.O., Jr. is K.O.'s brother and he brings this lawsuit through his parents and next friends, E.O. and L.J., as a result of his incapacity due to his minor status.

10. K.O., E.O., Jr., and their parents all reside in Westborough, Worcester County, Massachusetts. They are all seeking asylum in the United States and fleeing violence and persecution in Guatemala.

11. Plaintiff C.J. brings this lawsuit through his father and next friend, F.C., as a result of his incapacity due to his minor status.

12. C.J. and F.C. reside in Westborough, Worcester County, Massachusetts. They are seeking asylum in the United States and fleeing violence and persecution in Guatemala.

13. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated nationwide.

14. Defendant Jefferson Beauregard Sessions III is the Attorney General of the United States and is sued in his individual capacity. General Sessions has responsibility for the administration of the immigration laws under 8 U.S.C. § 1103, oversees the Executive Office of Immigration Review, is empowered to grant asylum or other relief, and was a legal custodian of Plaintiffs when they were held in detention. Defendant Sessions has responsibility for implementing United States immigration laws, policies, and practices, including practices related to family separation and family detention at the United States Southwestern border.

15. Defendant Kirstjen Nielsen is the Secretary of DHS and is sued in her individual capacity. Secretary Nielsen directs each of the component agencies within DHS, including ICE,

CBP, and USCIS. Defendant Nielsen has responsibility for the administration of the immigration laws under 8U.S.C. § 1103, is empowered to grant asylum or other relief, and was a legal custodian of Plaintiffs when they were held in detention. Defendant Nielsen is responsible for implementing United States immigration laws, policies, and practices, including practices related to family separation and family detention at the United States Southwestern border.

16. Defendant John F. Kelly is currently the White House Chief of Staff and he is sued in his individual capacity. Kelly served as the Secretary of DHS from January 20, 2017 through July 31, 2017. In that role, Secretary Kelly directed each of the component agencies of DHS, including ICE, CBP, and USCIS, had responsibility for the administration of the immigration laws under 8 U.S.C. § 1103, and was empowered to grant asylum or other relief. Defendant Kelly was responsible for implementing United States immigration laws, policies, and practices, including practices related to family separation and family detention at the United States Southwestern border. Kelly continued to have an important role in the development, adoption, and implementation of the family separation practice in his role as White House Chief of Staff.

17. Defendant Stephen Miller is a Senior Advisor to the President of the United States and is sued in his individual capacity. Mr. Miller is widely reported to have been the architect of the Defendants' practice of forcibly separating migrant families at the Southwestern border.

18. Defendant Gene Hamilton is a Counselor to the Attorney General and is sued in his individual capacity. Mr. Hamilton is widely reported to have been closely involved in the development of the Defendants' practice of forcibly separating migrant families at the Southwestern border.

19. Defendant Thomas Homan served as the Director of ICE from January 30, 2017 through his retirement on June 29, 2018 and he is sued in his individual capacity. In his role as Director of ICE, Mr. Homan had responsibility for enforcing federal immigration law including along the Southwestern border.

20. Defendant Ronald D. Vitiello is currently the Acting Director of ICE, which office he assumed on June 30, 2018, and is sued in his individual capacity. Before serving as Acting Director of ICE, Vitiello was the Acting Deputy Commissioner of CBP from April 25, 2017 through June 29, 2018. In his role as Acting Director of ICE, Mr. Homan has responsibility for enforcing federal immigration law including along the Southwestern border. In his role as Acting Deputy Commissioner of CBP, Mr. Vitiello had responsibility for processing and detaining noncitizens apprehended near the United States border.

21. Defendant L. Francis Cissna is the Director of USCIS and is sued in his individual capacity. In his role as Director of USCIS, Cissna is responsible for processing immigration and naturalization applications and, through its Asylum Officers, conducts interviews of certain individuals apprehended at the border to determine whether they have a credible fear of persecution and should be permitted to apply for asylum.

22. Defendant Kevin K. McAleenan is the Commissioner of CBP and is sued in his individual capacity. Commissioner McAleenan is responsible for the initial processing and detention of noncitizens who are apprehended near the United States border.

23. Defendant Alex Azar is the Secretary of HHS and is sued in his individual capacity. Secretary Azar is responsible for "unaccompanied" noncitizen children in his role as Secretary of HHS.

24. Defendant Scott Lloyd is the Director of ORR and is sued in his individual capacity. Director Lloyd is responsible for providing care and placement for "unaccompanied" noncitizen children in his role as Director of ORR, which is a component of HHS.

25. Defendants John Doe ICE Agents are sued in their individual capacities. Defendants were federal law enforcement agents employed by ICE and DHS whose identities are at this time unknown to Plaintiffs. The ICE Agents were empowered by law and practice to execute searches, make arrests for violations of federal law, and make or enforce custodial determinations with regard to the Plaintiffs which resulted in a prolonged separation from their parents. When and if the identities of Defendants John Doe ICE Agents become known to Plaintiff, Plaintiff may amend this Complaint to add said ICE Agents as named Defendants.

26. Defendants John Doe CBP Agents are sued in their individual capacities. Defendants were federal law enforcement agents employed by CBP and DHS whose identities are at this time unknown to Plaintiffs. The CBP Agents were empowered by law and practice to execute searches, make arrests for violations of federal law, and make or enforce custodial determinations with regard to the Plaintiffs which resulted in a prolonged separation from their parents. When and if the identities of Defendants John Doe CBP Agents become known to Plaintiffs, Plaintiffs may amend this Complaint to add said CBP Agents as named Defendants.

27. Defendants John Doe ORR Personnel are sued in their individual capacities. Defendants were either federal employees employed by ORR and HHS or employees of entities with which ORR and HHS contracted to provide services and whose identities are at this time unknown to Plaintiffs. The ORR Personnel were empowered by law and practice to make or enforce custodial determinations with regard to Plaintiffs which resulted in a prolonged separation from their parents. When and if the identities of Defendants John Doe ORR

Personnel become known to Plaintiffs, Plaintiffs may amend this Complaint to add said ORR Personnel as named Defendants.

28. At all relevant times, the Defendants have acted under color of federal law in the course and scope of their duties and functions as agents, employees, and officers of the United States in engaging in the conduct described in this Complaint.

29. At all relevant times, the Defendants each violated clearly established law of which a reasonable person would have known, including the class members' statutory rights, procedural and substantive due process rights, and their right to equal protection of the laws.

Jurisdiction and Venue

30. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question).

31. This Court has personal jurisdiction over all Defendants under M.G.L. c. 223A, § 3(d), because Plaintiffs' claims arise from Defendants' having caused tortious injury in Massachusetts by an act or omission outside Massachusetts and each Defendant regularly does or solicits business or engages in a persistent course of conduct in Massachusetts.

32. Venue is proper in this District under 28 U.S.C. § 1391(b)(3), because the Defendants are subject to personal jurisdiction in this District, and under 28 U.S.C. § 1391(e)(1) because the Plaintiffs reside in this district and no real property is involved in the action.

Facts

Legal Framework Under Federal Immigration Law

33. Pursuant to Section 208(a)(1) of the Immigration and Nationality Act ("INA"), "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)," may generally

apply for asylum "irrespective of such alien's status." *See* 8 U.S.C. § 1158(a)(1).¹ The INA and its accompanying regulations establish procedures for the adjudication of asylum claims. *Id*; *see also* INA § 235(b), 8 U.S.C. § 1225(b); 8 C.F.R. §§ 208.1-208.31.

34. Even individuals who initially fall within the INA's "expedited removal" procedures, meaning they would bypass formal removal proceedings, are entitled to pursue asylum once the person indicates an intention to apply for asylum and demonstrates a credible fear of persecution at an interview before an asylum officer. 8 U.S.C. §§ 1225(b)(1)(A)(i), 1225(b)(1)(B); 8 C.F.R. §§ 235.1-235.13.

35. The January 1997 settlement agreement in *Flores v. Reno*, 85-cv-4544 (C.D. Cal.) governs the detention and release of "alien" children. The *Flores* settlement remains binding on federal agencies, including DHS, HHS, and all respective agency components such as ICE, CBP, USCIS, and ORR.² In 2008, Congress enacted the Trafficking Victims Protection Reauthorization Act (the "TVPRA"), Pub. L. 110-457, 110 Stat. 5044 (2008), which paralleled certain aspects of the *Flores* settlement and affirmed ORR's responsibility for the care and custody of unaccompanied minors.

36. The *Flores* settlement and its progeny, including the statutory rights and obligation within the TVPRA, provide a "nationwide policy for the detention, release, and treatment of minors in the custody of INS [which is the predecessor to ICE, CBP, and USCIS]," which requires the government to treat "all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors." Exhibit 1, *Flores* Settlement ¶¶ 9-11; *see* 8

¹ The INA defines the term "alien" as "any person not a citizen or national of the United States." INA § 101(a)(3), 8 U.S.C. § 1101(a)(3).

² In 2002, Congress enacted the Homeland Security Act, Pub. L. 107-296, 116 Stat. 2135 (2002), and transferred authority over the care and placement of unaccompanied minors to ORR.

U.S.C. § 1232. A "minor" is "any person under the age of eighteen (18) years who is detained in the legal custody of the INS." *See id.* ¶ 4; 8 U.S.C. § 1232(g)(2); *Flores v. Lynch*, 828 F.3d 898, 905-06 (9th Cir. 2016).

37. Paragraph 14 of the *Flores* settlement requires that "[w]here the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay." Exhibit 1, *Flores* Settlement ¶ 14. Paragraph 14 also sets forth the "order of preference" for the release of a child and release to a parent is preferred. *Id.*

38. Critically, the *Flores* settlement requires the federal government to "place each detained minor in the **least restrictive setting** appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others." Exhibit 1, *Flores* Settlement ¶ 11 (emphasis added); 8 U.S.C. § 1232(c)(2)(A).

39. Under the *Flores* Settlement, children must be released from detention within five days, or within twenty days in certain emergency circumstances, to a parent, legal guardian, adult relative, adult designated by a legal guardian, or (if none of these are available) a licensed program willing to accept legal custody. *Id.* ¶¶ 12, 14.

40. Ordinarily when DHS, usually through ICE or CBP, detains an undocumented child who is traveling alone and unaccompanied by a parent, the relevant federal agencies follow an established process. ICE or CBP may detain an unaccompanied child for up to 72 hours as other federal agencies locate an appropriate facility for that child. ICE or CBP then must turn the child over to HHS. 8 U.S.C. § 1232(b)(3).

41. Once the unaccompanied children are in ORR custody, they are typically supervised and placed in ORR-funded and supervised facilities, where staff must attempt to locate a parent and determine if family reunification is possible. *See generally* 8 U.S.C. §§ 1232(c)(2)-(c)(3). If not, ORR staff will try to locate another family member, relative, family friend, or caretaker in the United States to serve as a sponsor who can care for the child during the pendency of the child's immigration proceedings. *Id.*

42. When ORR cannot find a sponsor, the unaccompanied children are moved to secondary ORR-contracted and state-licensed facilities throughout the country. *Id.* If DHS places the child in removal proceedings or the child has an affirmative pathway to legal immigration status, ORR will place the child in an ORR-contracted and state-licensed long-term foster care program while the immigration process continues. *See* 8 U.S.C. § 1232(a)(5)(D).

Defendants' Practice of Forcibly Separating Children from their Parents

43. For over a year, the United States government has forcibly separated thousands of migrant children from their families for no legitimate purpose. These children have been held as civil immigration detainees, and not for any criminal charge or conviction. Yet these children were separated from their parents indefinitely and without providing information to family members about one another. Defendants have adopted and implemented this practice for the express purposes of demonstrating to immigrants the agony that parents should expect if they dare to enter the United States with their children.

44. Families presenting at Southwestern ports of entry to seek asylum were refused entry into the United States. Border officials turned these families away unlawfully on the false claim that the United States is "full" or no longer accepting asylum seekers. This unlawful

practice artificially created illegal entry violations along the Southwestern border at places other than official ports of entry that would not have occurred otherwise.

45. Children forcibly separated from their parents were transferred to the custody of ORR and sent to makeshift detention facilities and temporary housing. ORR deemed these children "unaccompanied minors." Under ORR policies, an unaccompanied minor can be released from ORR custody only after ORR completes an onerous and lengthy procedure to determine that a potential custodian, or "sponsor," is suitable for providing for the child's physical and mental well-being. As a result of ORR's deeming the children "unaccompanied minors," their parents were wrongfully treated as "sponsors" (instead of parents) of their own children.

46. As early as March 2017, a senior DHS official acknowledged that Defendants were considering a proposal to separate children from their parents at the Southwestern border. M. Mallonee, *DHS Considering Proposal to Separate Children from Adults at Border*, March 4, 2017, available at <https://www.cnn.com/2017/03/03/politics/dhs-children-adults-border/index.html>.

47. On March 7, 2017, then-Secretary of DHS John Kelly confirmed that DHS was considering a practice of separating children from their parents "to deter more movement." D. Diaz, *Kelly: DHS Considering Separating Undocumented Children from their Parents at the Border*, March 7, 2017, available at <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>. While Kelly later backtracked after harsh criticism, an inside source reported to the press that the family separation proposal was still under consideration at DHS as of August 2017. J. Blitzer, *How the Trump Administration Got Comfortable Separating Immigrant Kids from their Parents*, *The New*

Yorker, May 30, 2018, available at <https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents>.

48. In fact, Defendants at DHS began implementing the practice in secret in the El Paso section of the border in western Texas from July to November 2017. D. Lind, *Trump's DHS is Using an Extremely Dubious Statistic to Justify Splitting Up Families at the Border*, Vox, May 8, 2018, available at <https://www.vox.com/policy-and-politics/2018/5/8/17327512/sessions-illegal-immigration-border-asylum-families>.

49. The forced separation of families continued well into 2018 and took place without a hearing or any process whatsoever regardless of the family's circumstances or the needs of the children. It also occurred regardless of where or how the family entered, whether they sought asylum, whether they were charged with unlawful entry or whether a family member had passed a credible fear interview under federal asylum law.

50. Defendants have taken children as young as infants from their parents, often with no warning or opportunity to say goodbye, and with little to no information provided about where the Defendants were taking the children or when they would next see their parents.

51. Most of these migrant families fled their home countries to lawfully seek asylum once physically present in the United States. *See* 8 U.S.C. § 1158(a)(1).

52. Nevertheless, without any allegations that the parents are unfit or abusive, the Defendants forcibly separated these asylee-seeking parents from their young children, who are automatically considered derivative asylee applicants on their parents' claim, and detained the children in facilities for "unaccompanied" minors, often thousands of miles away from their parents who accompanied them in the United States before the government forcibly separated

them. The government separated families without providing notice to the parents or children of each other's whereabouts or well-being.

53. Government officials have torn some children from the arms of their parents while crying and pleading not to be taken away.

54. In other cases, government officials have told children they were going to play with other children, but after separating the children from their parents they were not returned.

55. In some cases, the parents were falsely told that they would be going to court only to be taken to a different detention cell, separated from their children. They were then transported to a different detention center without the opportunity to say goodbye to their children or to explain that they would not see each other for some time.

56. Many parents were told the children would be "adopted" and they would not see their children again.

57. Many parents were deported without their children.

58. During the separation, parents and children were often prevented from communicating for weeks or longer, and even when allowed to communicate typically children could only communicate with a parent by telephone for a few short minutes and not permitted to talk about where they were being held. These phone calls were closely monitored. In the detention facilities where they were kept, children were not allowed to touch each other. While staff at many detention facilities were permitted to hold the youngest children, they were instructed not to hold or touch older children.

59. Additionally, in some of the makeshift detention centers children were held in areas with no beds or mattresses. Some of the children were subjected to abuse by those working at the detention centers.

60. And the medical care at the detention centers was often grossly inadequate, even leading to the death of a one-year old child who developed a respiratory infection at an immigration jail in Texas. The child was turned away twice by the facility's health clinic, the treatment she received may have exacerbated the condition given her age, and she was cleared for release without a medical examination. The child then spent six weeks in two hospitals before dying from bronchiectasis, pulmonitis, pneumothorax, or collapsed lung. M. Sacchetti, *Mother blames toddler's death on poor medical care in U.S. immigration jail*, Washington Post, August 28, 2018, available at https://wapo.st/2PJRMv5?tid=ss_mail&utm_term=.3d44d9b5a241.

61. These conditions of confinement further traumatized the children separated from their parents and traumatized the parents who were separated from their children.

62. Under HHS Secretary Azar's direction, HHS would not allow media cameras into facilities housing immigrant children separated from their parents. Yet Azar claimed, incredibly, that "[w]e have nothing to hide about how we operate these facilities" and that "[i]t is one of the great acts of American generosity and charity, what we are doing for these unaccompanied kids who are smuggled into our country or come across illegally." M. Rod, *HHS Secretary: We're Performing Great Act of "Generosity and Charity" for Immigrant Children*, July 10, 2018, available at <https://www.cnn.com/2018/07/10/politics/azar-hhs-child-separation-immigration-charity-cnntv/index.html>.

63. Ripping children away from their parents when they attempt to cross the Southwestern border, many of them seeking asylum, is the polar opposite of generosity. It is conduct that shocks the conscience, bespeaks a callous disregard for the human beings in HHS's care, and demonstrates the discriminatory animus behind these practices. M. Rod, *HHS Secretary: We're Performing Great Act of "Generosity and Charity" for Immigrant Children*,

July 10, 2018, available at <https://www.cnn.com/2018/07/10/politics/azar-hhs-child-separation-immigration-charity-cnntv/index.html>.

64. Attempts by parents to be reunited with their children were unlawfully delayed and made unnecessarily cumbersome as a result of the Defendants' deliberate decision to classify the children as "unaccompanied minors" even though they entered the United States with their parents. This classification meant that parents had to go through a lengthy and complex process to apply to be a "sponsor" of their own children in order to be reunited. This exacerbated the harm done by the separation by prolonging it and transforming reunification into an unnecessarily arduous journey through a labyrinth of government bureaucracy.

65. At least one HHS official has stated that "[w]hat went wrong is the children separated from their parents were referred as unaccompanied alien children when in fact they were accompanied." N. Miroff & K. Memirjian, *Senate Panel Skewers Trump Officials Over Migrant Family Separations*, Wash. Post, July 31, 2018, available at https://www.washingtonpost.com/world/national-security/lawmakers-to-question-trump-officials-on-migrant-family-separations-struggle-to-reunite-them/2018/07/31/ddb61390-9467-11e8-8ffb-5de6d5e49ada_story.html?utm_term=.27575f06d9ea.

66. During his tenure, Director Lloyd has effectively transformed ORR from an agency designed to care for the health and well-being of migrant children into what former ORR Director Robert Carey has called "a juvenile detention agency." R. Planas, *A Single Trump Appointee Was Responsible for Keeping Hundreds of Kids Locked Up Longer*, HuffPost, July 26, 2018, available at https://www.huffingtonpost.com/entry/scott-lloyd-refugee-resettlement_us_5b58cd0fe4b0fd5c73cb3c1a. This was due in part to Director Lloyd's insistence in June 2017, at a time when the forced separation of families was under consideration, that he

personally review and approve release decisions involving unaccompanied minors housed in staff-secure facilities. This led to extensive delays in the release of certain minors in ORR custody. *Id.* A federal judge enjoined that practice in June, ruling that the plaintiffs demonstrated a likelihood of success on the merits of their claims that the practice violated the Administrative Procedure Act and TVPRA. *L.V.M. v. Lloyd*, 2018 WL 3133965 (S.D.N.Y. June 27, 2018).

67. Director Lloyd's intentional delays exacerbated ORR's ability to process the thousands of children separated from their parents under Defendants' family separation practice. Under Director Lloyd's leadership, ORR was unequipped to handle the influx of "unaccompanied" minors, and Director Lloyd deliberately failed to improve the situation until ordered to do so by a federal judge in California earlier this summer.

Defendants' "Zero Tolerance Policy" Served as a Pretext to Continue Separating Families

68. On April 6, 2018, General Sessions announced the Trump Administration's so-called "zero-tolerance policy" for illegal entry into the United States in violation of 8 U.S.C. § 1325(a) as a pretext for these family separations. In reality, Defendants had been forcibly separating children from their parents long before the "zero-tolerance policy" was announced. The express purpose of the family separation was to deter immigration to the United States by instilling fear in migrants, particularly those from South and Central American countries. That practice violates the United States Constitution and state tort law.

69. After General Sessions' announcement, ICE Director Homan, USCIS Director Cissna, and CBP Commissioner McAleenan signed onto a letter to DHS Secretary Nielsen urging her to detain and refer for prosecution all parents caught crossing the Mexican border illegally with their children. In other words, Homan, Cissna, and McAleenan pushed for the

across-the-board implementation of the Justice Department's "zero-tolerance policy" at DHS to serve as a pretext for continuing the Defendants' existing practice of forcibly separating immigrant children from their parents at the Southwestern border. M. Sacchetti, *Top Homeland Security Officials Urge Criminal Prosecution of Parents Crossing Border with Children*, Washington Post, April 26, 2018, available at

https://www.washingtonpost.com/local/immigration/top-homeland-security-officials-urge-criminal-prosecution-of-parents-who-cross-border-with-children/2018/04/26/a0bdcee0-4964-11e8-8b5a-3b1697adcc2a_story.html?utm_term=.655fc386e41a.

70. According to a letter authored by 17 United States Senators in April 2018, under Director Homan's leadership, ICE "sharply increased arrests and detentions of immigrants with no criminal background" and "[r]eportedly separated hundreds of children of asylum-seekers from their parents," among other things. April 27, 2018 Letter from Sens. to Sec. K. Nielsen, available at <https://www.murray.senate.gov/public/index.cfm/2018/4/immigration-senator-murray-raises-questions-about-nomination-of-tom-homan-to-head-immigration-and-customs-enforcement>

71. On June 20, 2018, President Trump issued an Executive Order purporting to end family separation, but the Executive Order said nothing about reuniting the families who had already been separated or compensating them for the trauma that the Defendants put these families through. Moreover, it took weeks to reunite most of the parents and children and even today not all of these families have been reunited, in some cases because the parents were deported while their children remained detained in the United States.

72. After issuing the Executive Order, President Trump repeatedly emphasized the lawless nature of the government's approach. President Trump proposed that DHS simply deport

immigrants without a hearing or any legal process whatsoever. On June 21, 2018, President Trump stated: "We shouldn't be hiring judges by the thousands, as our ridiculous immigration laws demand, we should be changing our laws, building the Wall, hire Border Agents and Ice and not let people come into our country based on the legal phrase they are told to say as their password." See <https://twitter.com/realdonaldtrump/status/1009770941604298753?lang=en>.

73. President Trump again proposed a lawless approach on June 24, 2018: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came. Our system is a mockery to good immigration policy and Law and Order. Most children come without parents..." K. Rogers & S. Gay Stolberg, *Trump Calls for Depriving Immigrants Who Illegally Cross Border of Due Process Rights*, N.Y. Times, June 24, 2018, available at <https://www.nytimes.com/2018/06/24/us/politics/trump-immigration-judges-due-process.html>.

74. These are but a few examples of the torrent of such statements that came from the President and other officials in the Trump Administration.

Defendants' Practice of Forcibly Separating Children from their Parents was Motivated by Discriminatory Animus and an Express Intent to Deter Immigration to the United States by Instilling Fear in Would-be Migrants

75. Defendants and others in the Trump Administration have openly admitted that the practice of forcibly separating families at the Southwestern border, among other enforcement practices, was intended to target immigrants by their race, ethnicity, or national origin. The forcible separation of these families is also consistent with the racist and xenophobic hostility shown toward Latino immigrants, repeatedly voiced and demonstrated by President Trump and carried out by his Administration, including the Defendants in this case.

76. For example, in June 2015, when then-candidate Trump announced his campaign at Trump Tower, he declared: "When Mexico sends its people, they're not sending their best. . . .

They're bringing drugs. They're bringing crime. They're rapists." Z. Byron Wolf, *Trump Basically Called Mexicans Rapists Again*, available at <https://www.cnn.com/2018/04/06/politics/trump-mexico-rapists/index.html>. In that speech, Mr. Trump proposed building a wall along the Southwestern border and making Mexico pay for it. President Trump has repeatedly referred to Mexicans as "criminals" and "thugs."

77. In January of this year, President Trump referred to El Salvador, Haiti, and African countries generally as "shithole countries" and said that the United States should be allowing immigration from countries like Norway instead. E. O'Keefe & A. Gearan, *Trump, Condemned for "Shithole" Countries Remark, Denies Comment But Acknowledges "Tough" Language*, Washington Post, Jan. 13, 2018, available at https://www.washingtonpost.com/politics/trump-acknowledges-tough-language-but-appears-to-deny-shithole-remark/2018/01/12/c7131dae-f796-11e7-beb6-c8d48830c54d_story.html?utm_term=.4e58b8638236. The racism behind that statement is self-evident.

78. President Trump has impugned the integrity and independence of federal District Judge Gonzalo Curiel because, Trump said, Judge Curiel was of Mexican descent and "very hostile" to Trump because Trump was "very, very strong on the border."

79. United States House Speaker Paul Ryan appropriately rebuked these outrageous statements, describing them as "the textbook definition of a racist comment." D. Walsh & M. Raju, CNN, June 7, 2016, available at <https://www.cnn.com/2016/06/07/politics/paul-ryan-donald-trump-racist-comment/index.html>.

80. President Trump's clear animus based on race, ethnicity, and national origin provides the context for understanding the unlawful and irrational actions of the Defendants in

this case. The driving force behind the practice of forcibly separating immigrant families along the Southwestern border was this very animus based on race, ethnicity, and national origin, which led to a failure to adhere to the well-established constitutional and statutory rights of Plaintiffs and the class. Each of the Defendants adopted, implemented, enforced, condoned, sanctioned, acquiesced to, and encouraged that practice of forced family separations with the purpose of discriminating against immigrants based on their race, ethnicity, or national origin. Such intentional discrimination on these bases is unconstitutional.

81. What is more, Defendants and others in the Trump Administration have made clear that the express purpose of the forced separation of children from their parents was to deter immigrants, particularly from Central and South American countries, from coming to the United States. The vast majority of immigrants at the Southwestern border are from Central and South American countries and are Latino.

82. During a press interview in May of 2018, Secretary Kelly said that "a big name of the game is deterrence" when asked whether he was in favor of forced family separation. He said family separation "would be a tough deterrent. A much faster turnaround on asylum seekers." Kelly dismissively stated that the traumatized children "will be taken care of—put into foster care or whatever." *Transcript: White House Chief of Staff John Kelly's Interview with NPR*, National Public Radio, May 11, 2018, available at <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>.

83. On June 6, 2018, former ICE Director Homan made the deterrence goal plain when he stated: "One thing you got to remember, for that parent who was arrested and his child crying and feeling bad about it, I get it, but what responsibility does he have in this? He chose to

enter the country illegally in violation of federal law. He chose to do that intentionally. . . . He put himself in the position." C. Da Silva, *ICE Chief Defends Separating Families at Border After U.N. Condemns Practice as Rights Violation*, Newsweek, June 6, 2018, available at <https://www.newsweek.com/ice-chief-defends-separating-families-border-after-un-condemns-practice-rights-960825>.

84. Defendant Stephen Miller was a driving force in the adoption and implementation of the forcible family separation practice. Mr. Miller has embraced family separation and described it as "a simple decision by the administration The message is that no one is exempt from immigration law." C. Danner, *Separating Families at the Border Was Always Part of the Plan*, June 17, 2018, N.Y. Magazine, available at <http://nymag.com/daily/intelligencer/2018/06/separating-families-at-border-was-always-part-of-the-plan.html>.

85. Mr. Miller's anti-Latino animus is well-known and long-standing. Even in high school he wrote an opinion piece for the Santa Monica Lookout which argued that "very few, if any, Hispanic students" make it to honors classes because the school gives them a "crutch" by ensuring that "all announcements are written in both Spanish and English." S. Tatum, *How Stephen Miller, the Architect Behind Trump's Immigration Policies, Rose to Power*, June 23, 2018, available at <https://www.cnn.com/2018/06/23/politics/stephen-miller-immigration-family-separation/index.html>.

86. Mr. Miller's anti-immigrant and anti-Latino animus has only hardened over the years. In fact an outside White House adviser recently stated that "Stephen actually enjoys seeing those pictures at the border" of Central and South American children being separated from their parents. G. Sherman, *"Stephen Actually Enjoys Seeing Those Pictures at the Border"*:

The West Wing is Fracturing Over Trump's Callous Migrant-Family Policy, Vanity Fair, June 20, 2018, available at <https://www.vanityfair.com/news/2018/06/stephen-miller-family-separation-white-house>.

87. Defendant Gene Hamilton, who has been described as "a close ally of Stephen Miller," was reported to be "[a]mong those leading the discussion" about implementing the practice of forcible family separation at the Southwestern border. J. Blitzer, *How the Trump Administration Got Comfortable Separating Immigrant Kids from their Parents*, The New Yorker, May 30, 2018, available at <https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents>.

88. A former government official has reported to the press that Miller and Hamilton, among others, "want to have a different American, and they're succeeding." Moreover, "Miller has only seemed to gain allies in the government" as a result of his role in pushing for the forcible separation of immigrant children from their parents. J. Blitzer, *Will Anyone in the Trump Administration Ever Be Held Accountable for the Zero-Tolerance Policy?*, The New Yorker, August 22, 2018, available at <https://www.newyorker.com/news/daily-comment/will-anyone-in-the-trump-administration-ever-be-held-accountable-for-the-zero-tolerance-policy>.

89. In public remarks on the "zero tolerance policy" on May 7, 2018, General Sessions emphasized that "[i]f you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law." Exhibit 2, DOJ Press Release (May 7, 2018).

90. Later, General Sessions stated: "We cannot and will not encourage people to bring their children or other children to the country unlawfully by giving them immunity in the process." L. Sanchez, *Sessions On Separating Families: If We Build A Wall and Pass*

Legislation, We Won't Have These "Terrible Choices", The Hill, June 18, 2018, available at <http://thehill.com/homenews/administration/392785-sessions-on-separating-families-if-we-build-a-wall-and-pass>.

91. When asked if forced family separation was "absolutely necessary," General Sessions responded: "Yes. . . . We believe every person that enters the country illegally like that should be prosecuted. And you can't be giving immunity to people who bring children with them recklessly and improperly and illegally." H. Hewitt, *US Attorney General Jeff Sessions on Children Separated from Parents at Broder, F-1 Visas for PRC Students, and Masterpiece Cakeshop Decision*, June 5, 2018, available at <http://www.hughhewitt.com/attorney-general-jeff-sessions-on-the-immigration-policies-concerning-children-apprehended-at-the-border-and-f-1-visas/>.

92. Likewise, Secretary Nielsen has said that "[i]llegal actions have and must have consequences. No more free passes, no more get out of jail free cards." T. Kopan, *"We Will Not Apologize": Trump DHS Chief Defends Immigration Policy*, June 18, 2018, available at <https://www.cnn.com/2018/06/18/politics/kirstjen-nielsen-immigration-policy/index.html>.

93. At an August 2017 DHS meeting, Mr. Hamilton explained to participants that they would "need to generate paperwork laying out everything we could do to deter immigrants from coming to the U.S. illegally, which included "separating parents from their kids at the border." J. Blitzer, *How the Trump Administration Got Comfortable Separating Immigrant Kids from their Parents*, The New Yorker, May 30, 2018, available at <https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents>.

94. Counselor to the President Kellyanne Conway also made clear the purpose of Defendants' practice of forcibly separating families: "Nobody likes seeing babies ripped from their mothers' arms . . . but we have to make sure that DHS' laws are understood through the soundbite culture that we live in." *Kellyanne Conway: 'Nobody Likes' Policy Separating Migrant Kids at the Border* (June 17, 2018), available at <https://www.nbcnews.com/politics/first-read/conway-nobody-likes-policy-separating-migrant-kids-border-n884016>.

95. General Sessions, Secretary Nielsen, Secretary Kelly, Mr. Miller, Mr. Hamilton, Director Homan and others in the Trump Administration, including the President himself, have also made clear that the forced separation and traumatization of families is being used as a negotiating ploy for political gain.

96. Mr. Miller has stated: "If we were to have those [Republican sponsored] fixes in federal law, the migrant crisis emanating from Central America would largely be solved in a very short period of time," and "[f]amilies would then therefore be able to be kept together and could be sent home expeditiously and safely." T. Hesson, *White House's Miller Blames Democrats for Border Crisis*, Politico, May 29, 2018, available at <https://www.politico.com/story/2018/05/29/stephen-miller-democrats-border-574537> ; see also P. Kasperowicz, *ICE Director: Democrats Should "Get Their Facts Straight" Before Protesting Family Separation*, Washington Examiner, June 29, 2018, available at <https://www.washingtonexaminer.com/news/ice-tom-homan-democrats-get-facts-straight-protesting-family-separation>.

Defendants Were Aware of the Traumatic Harm that Children Would Suffer from Being Forcibly Separated from their Parents, but Defendants Did It Anyway, and Failed to Provide the Children with Adequate Mental Health Care

97. Separation of a young child from his or her parent is a traumatic event that has a devastating impact on the child's psychological well-being. Children are likely to experience

post-traumatic symptoms such as nightmares and other manifestations of anxiety and depression. This damage can be permanent, especially where, as here, the child has already experienced other trauma in their home country, on their journey to the United States, or both.

98. On January 23, 2018, a group of experts in child welfare, juvenile justice, and child development, including the American Association of Pediatrics, criticized the government's practice of separating migrant children from their parents, pointing out that: "[T]he psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation—even after the eventual reunification with a parent or other family." Exhibit 3, Jan. 23, 2018 Letter to K. Nielsen.

99. The American Academy of Pediatrics put out another statement opposing the cruel family separation practice on May 8, 2018, in which its President, Colleen Kraft, M.D., wrote: "Separating children from their parents contradicts everything we stand for as pediatricians – protecting and promoting children's health. In fact, highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress - known as toxic stress - can carry lifelong consequences for children." C. Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border*, available at <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>.

100. Media reports have explained that "many of the children released to their parents are exhibiting signs of anxiety, introversion, regression and other mental health issues." M. Jordan, *A Migrant Boy Rejoins His Mother, But He's Not the Same*, N.Y. Times, July 31, 2018, available at <https://www.nytimes.com/2018/07/31/us/migrant-children-separation-anxiety.html>.

This includes "acute anxiety around routines that separate [the children] from their parents, such as when the adult bathes or goes into another room." *Id.*

101. One of the reasons for this is that the children may understand the separation as a punishment. *Id.* "Decades of research have concluded that children traumatically separated from their parents have a high likelihood of developing emotional problems, cognitive delays and long-term trauma." *Id.* "More recent studies have found that separation can impair memory and normal production of cortisol, a hormone produced in response to stress." *Id.*

102. This psychological harm continues after reunification.

103. One 5-year old migrant boy loved playing with the yellow Minion characters from the "Despicable Me" movies before being forcibly separated from his mother. "Now his favorite game is patting down and shackling 'migrants' with plastic cuffs." *Id.* The boy, who had not nursed in years, pleaded with his mother to be breast-fed after he was finally reunited with his mother. He hid behind a sofa when guests, including undersigned counsel Jesse M. Bless, Esq., visited the family's new home in Philadelphia. *Id.*

104. "A 3-year old boy who was separated from his mother has been pretending to handcuff and vaccinate people around him, behavior he almost certainly witnessed in [ICE] custody." *Id.*

105. "A pair of young siblings burst into tears when they spotted police officers on the street." *Id.*

106. One three-year-old boy refused to look at his mother and pulled away from her embrace when they were initially reunified. *See* A. Valdes & I. Mejia, 'My Son Is Traumatized': One Separated Family's Reunion, ACLU Press Release, August 24, 2018, available at

<https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/my-son-traumatized-one-separated-familys>.

107. Similarly, parents who arrived with their children at the United States border and were forcibly separated from their children by the Defendants are likely to experience immediate and acute psychological injury as well as lasting and permanent emotional and psychological harm. This includes anxiety, depression, post-traumatic stress disorder, and other trauma-related disorders. The trauma that the children face is compounded by watching their parents suffer and the emotional toll that the parents' own trauma takes on the parent-child relationship. Making matters worse, the Defendants then failed to adequately provide the children with necessary mental health care while the children were in Defendants' custody.

108. Indeed, one parent is reported to have committed suicide after his 3-year-old son was taken from his arms. N. Miroff, *A Family Separated at the Border, and this Distraught Father Took His Own Life*, Washington Post, June 9, 2018, available at https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?utm_term=.dca844c151d9. This harm to the parents, of course, will impact the quality of their relationship with their children for years to come.

109. There is no doubt that Defendants were aware of the severe psychological and emotional trauma that forcibly separating children from their parents would cause. Not only is the likelihood of severe harm self-evident, but Defendants were informed of and warned about the likelihood of such harm directly and through many authoritative public statements by other government officials and experts in the field.

110. For example, on February 12, 2018, 33 United States Senators signed a letter to Secretary Nielsen to express their "deep concern" about "systematically separat[ing] immigrant children from their parents upon arrival in the United States." Exhibit 4, Feb. 12, 2018 Letter from U.S. Sens. to Sec. Nielsen. The Senators wrote to "condemn" this practice and to urge Secretary Nielsen to reject this "cruel" and "grotesquely inhumane" practice that they recognized would "inflict significant trauma on small children." *Id.*

111. Moreover, Commander Jonathan White of the United States Public Health Service Commissioned Corps (who organized the government's reunification effort at DHS after a federal court in California ordered reunification earlier this year) testified before the Senate Judiciary Committee on July 31, 2018. Commander White told the Judiciary Committee "that he had warned his superiors that separating children from their parents carries a 'significant risk of harm' and could inflict 'psychological injury.'" N. Miroff & K. Memirjian, *Senate Panel Skewers Trump Officials Over Migrant Family Separations*, Wash. Post, July 31, 2018, available at https://www.washingtonpost.com/world/national-security/lawmakers-to-question-trump-officials-on-migrant-family-separations-struggle-to-reunite-them/2018/07/31/ddb61390-9467-11e8-8ffb-5de6d5e49ada_story.html?utm_term=.27575f06d9ea. Commander White told the Senate panel that his superiors assured him that the government was not planning to separate families. *Id.*

112. Even in the face of these clear and direct warnings the Defendants proceeded to traumatized the class members and then exacerbated the trauma by failing to provide the children with adequate and necessary mental health services, even though the Defendants knew that the class members needed mental health care to address the trauma that Defendants themselves inflicted on the class members.

113. In the words of a current Trump Administration official: "The expectation was that the kids would go to the Office of Refugee Resettlement, that the parents would get deported, and that **no one would care.**" J. Blitzer, *Will Anyone in the Trump Administration Ever Be Held Accountable for the Zero-Tolerance Policy?*, *The New Yorker*, August 22, 2018 (emphasis added), available at <https://www.newyorker.com/news/daily-comment/will-anyone-in-the-trump-administration-ever-be-held-accountable-for-the-zero-tolerance-policy>.

After Traumatizing Children and Parents, Defendants Coerced Parents into Waiving Their Children's and Their Own Rights to Asylum and Other Relief

114. After subjecting parents and children to some of the most severe trauma of their lives, Defendants proceeded to coerce many parents into signing forms that waived their own and their children's rights to pursue asylum claims in the hope of being reunited with their children more quickly.

115. A senior official speaking on condition of anonymity confirmed early this summer that Defendants did not plan to reunite families until after a parent had lost his or her deportation case, effectively punishing parents who may otherwise pursue an asylum claim or other relief and creating tremendous pressure to abandon such claims so that parents may be reunited with their children. M. Saccheri, M. Miller & R. Moore, *Sen. Warren Visits Detention Center, Says No Children Being Returned to Parents There*, *Washington Post*, June 24, 2018, available at https://www.washingtonpost.com/local/immigration/desperate-to-get-children-back-migrants-are-willing-to-give-up-asylum-claims-lawyers-say/2018/06/24/c7fab87c-77e2-11e8-80be-6d32e182a3bc_story.html?utm_term=.3118c8f35345.

116. Parents have been presented with the option to be deported with their children and waive the children's right to asylum or to be deported alone and leave the child in the United States to pursue an asylum claim. Some who have chosen to be deported alone to let their

children pursue asylum were not even allowed by ICE to say goodbye to their children but had to wave to their children who sat on a bus. M. Jordan, *Migrant Families Have Been Reunited. Now a Scramble to Prevent Deportations*, N.Y. Times, July 30, 2018, available at <https://www.nytimes.com/2018/07/30/us/migrant-families-deportations.html?action=click&module=MoreInSection&pgtype=Article®ion=Footer&contentCollection=U.S.>

117. In the past, the government often placed families apprehended at the border in regular removal proceedings without detaining them at all. For other families, the government used expedited removal procedures and detained members of the families together during these expedited proceedings. If the government found these family members to have a credible fear of persecution, they would release the family from detention because it often takes years before immigration courts can offer asylee applicants a full and fair hearing on the merits of their claims.

118. Defendants in the Trump Administration are the first to have a uniform practice of forcibly separating all fit parents from their young children, refusing to reunify them thereafter until ordered by a federal court to do so, and then doubling down by coercing parents to waive their own and their children's rights to asylum and other relief.

DHS Advisory Council Members Resign in Protest of the Practice of Forced Separation

119. As a result of Defendants' unconstitutional actions, four members of the Department of Homeland Security Advisory Council resigned on July 16, 2018 in protest of the forced separation of children from their parents, writing that "routinely taking children from migrant parents [i]s morally repugnant, counter-productive and ill-considered," and therefore

"[w]e cannot tolerate association with the immigration policies of this administration, nor the illusion that we are consulted on these matters." Exhibit 5, July 16, 2018 Letter from R. Danzig, E. Holtzman, D. Martin, and M. Olsen to Sec. K. Nielsen.

120. Former Congresswoman Elizabeth Holtzman wrote to Secretary Nielsen in her separate individual resignation letter:

Under your administration and that of Donald Trump's, DHS has been transformed into an agency that is making war on immigrants and refugees. . . . The final straw has been the separation of children from their parents at the Southwest border. This is child kidnapping, plain and simple. Seizing children from their parents in violation of the constitutional rights of both is bad enough (mentally harmful to the children and infinitely painful to both the parents and children), but doing so without creating proper records to enable family reunification shows utter depravity on the part of the government officials involved.

Exhibit 6, July 16, 2018 Letter from Hon. E. Holtzman to Sec. K. Nielsen.

121. Professor David A. Martin wrote to Secretary Nielsen in his own resignation letter about the "unjust policy of separating families at the border":

Now it has become clear that the policy was also executed with astounding casualness about precise tracking of family relationships – as though eventual reunification was deemed unlikely or at least unimportant, even for toddlers and preschoolers. . . . From the beginning, however, the administration has opted instead for gratuitously severe actions in the immigration arena Further, the family separation policy crystallized for many HSAC members profound doubts about the administration's commitment to the rule of law.

122. Exhibit 7, July 16, 2018 Letter from Prof. D. Martin to Sec. K. Nielsen.

Individual Plaintiffs' Allegations – K.O. and E.O., Jr.

123. On May 19, 2018, K.O., E.O., Jr., and their mother L.J. arrived in Texas on foot after fleeing from their home country of Guatemala. The family fled the violence they had experienced in Guatemala and were seeking asylum in the United States.

124. At the time of their crossing, K.O. was nine years old and E.O., Jr. was seventeen years old.

125. The family walked alone for about five hours along the Rio Grande, without food or water and in fear of being robbed or attacked by a poisonous snake or other animal. They hoped that a CBP Agent would find them to allow them to apply for asylum.

126. Eventually a single CBP Agent stopped the family and told them to remove their jewelry, belts, and shoes. The CBP Agent made K.O. remove a small ring that she had received upon her Kindergarten graduation. The CBP Agent asked them if they had any money, telephones, or identification. L.J. explained that they only had identification.

127. The CBP Agent then drove the family in a truck for about thirty minutes. Immediately, K.O. and E.O., Jr. felt relieved, believing that help had arrived and they could finally rest. K.O. fell asleep.

128. The family was taken to a detention facility in McAllen, Texas. They were seated on a cement bench.

129. After a few minutes, CBP Agents called E.O., Jr. into an extremely small room with about fifty other children ranging in age from about fourteen to seventeen. When E.O., Jr. was taken from L.J., she had no idea that the Defendants intended to keep them separated.

130. There was not enough space in the room for E.O., Jr. to sit so he had to stand for almost seven hours. The air became so thick and heavy that some of the children kept calling for the CBP Agents to help by banging on the door. Every once in a while, the CBP Agents opened the door, which let some air in, and everyone felt momentary relief. More than once, the CBP Agents opened the door and screamed at the group of children in Spanish: "Shut up, you donkeys!"

131. L.J. saw her son E.O., Jr. come out of the room once to be fingerprinted. The CBP Agents would not let E.O., Jr. talk to L.J. They were terrified. They did not know why the CBP Agents had separated them. They feared they would never see each other again.

132. About two minutes after taking E.O., Jr., CBP Agents took nine-year-old K.O. and her mother to another holding cell. About thirty other mothers were in that cell with their children. One mother had an infant that looked to be only two months old. The room was freezing cold, the only food was sandwiches for the children, and many of the children were crying the entire time. Mothers walked with their children on their shoulders and sang songs to them, hoping to help the children fall asleep.

133. K.O. felt hungry, cold, and afraid in that cell. L.J. could not do anything to help her.

134. About twelve to fourteen hours later, CBP Agents brought L.J. into a room with about ten other mothers. Their children were left alone in a cell. K.O. grabbed L.J. from behind and said, "Mommy, don't go!"

135. The CBP Agent had to pry K.O.'s hands off of L.J. and when he did that he yelled at K.O. in Spanish: "Dejala!" That means : "Let her go!" L.J. asked the agent why he was attacking K.O.

136. As the CBP Agent pulled K.O.'s hands off of L.J., he said to her in Spanish: "You're going to be deported to Guatemala and we're going to adopt your daughter."

137. K.O. was screaming. L.J. desperately called out to K.O., telling her: "I love you with all my heart! We are going to see each other again soon. Remember your father's phone number."

138. E.O., Jr. could see this happening through the window of the room where he was being held. E.O., Jr. banged on the window to try to stop them from taking his sister, to no avail.

139. K.O.'s father, E.O., was living in Westborough, Massachusetts and L.J. thought he would be able to help K.O. even if L.J. could not. When he found out where they were, E.O. began trying to get his children released to him in Massachusetts.

140. On the day the children were taken from L.J. a CBP Agent or ICE Agent told E.O. that they intended to separate the children from L.J. Defendants had no legitimate interest in separating K.O. and E.O., Jr. from L.J. There was no evidence or even allegation of abuse, neglect, or unfitness or that L.J. was not acting in the best interests of her children. Defendants did not provide K.O., E.O., Jr., or L.J. with any notice or opportunity to be heard before forcibly separating them.

141. K.O. and E.O., Jr. were placed on a bus with no shoes. E.O., Jr. tried to hug his sister, but the CBP Agents or ICE Agents separated them immediately. The bus ride was about ten minutes long. The CBP Agents or ICE Agents then placed the children in a new detention facility with cells facing across from each other.

142. E.O., Jr. tried to talk to K.O. to tell her not worry and that she would be out of the cells soon. K.O. asked her brother: "What happened to Mommy?"

143. When E.O., Jr. tried to answer, a CBP Agent or ICE Agent yelled at him and instructed him not to talk to his own sister. Her question went unanswered.

144. K.O. and E.O., Jr. stayed at that facility for two days and two nights. The rooms were freezing. The only blankets they had were silver thermal blankets.

145. Small children who appeared to be as young as one or two years old cried on the floor. The older children tried to take care of the young, crying children. Boys and girls were separated by something like a metal fence.

146. At one point, E.O., Jr. looked over at his sister K.O. and she was crying. E.O., Jr. put his hands together and put his head on his hands, pretending to sleep, to try to help soothe K.O. and stop her from crying. But E.O., Jr. felt so helpless that he too started crying.

147. When the children cried, some CBP Agents or ICE Agents insulted them in Spanish, including by shouting at them: "Shut up, you trash!"

148. Once, a CBP Agent or ICE Agent came up to E.O., Jr. and asked how old he was. When he replied that he was seventeen years old, the CBP Agent or ICE Agent said "you are lying" and kicked E.O., Jr. about ten times in the back.

149. The CBP Agents or ICE Agents woke K.O. up to take a shower by pulling her ponytail.

150. E.O., Jr. was removed from this detention facility first. He told the CBP Agents or ICE Agents that he had to wait for his sister. The CBP Agents or ICE Agents said that if he stayed he would "lose his opportunity." E.O., Jr. thought they meant that he would lose his opportunity to be reunited with his father, E.O. E.O., Jr. still refused to leave, unwilling to leave his sister alone. The next night, the CBP Agents or ICE Agents made E.O., Jr. bathe in cold water, change his clothes, and prepare to leave.

151. The CBP Agents or ICE Agents took both E.O., Jr. and K.O. to another facility. When E.O., Jr. asked where his mother was, the CBP Agents or ICE Agents told him they had deported his mother.

152. E.O., Jr. and K.O. were placed on an airplane to Michigan, seated separately. They arrived at about 1:00 a.m. and they were told they were going to separate locations. E.O., Jr. asked them to allow him to stay with his sister, but CBP Agents, ICE Agents, or ORR Personnel told E.O., Jr. not to worry and assured him that they would bring K.O. back in the morning.

153. As soon as the siblings were separated, K.O. started to cry. She was taken to a foster family with three other children who had been forcibly separated from their parents at the border. There were two six-year-olds and an eight-year-old.

154. E.O., Jr. stayed in a facility with about eighteen other boys. He attended school in the morning and K.O. was able to see her brother at school. E.O., Jr. was told by ORR Personnel that getting out of the facility would be a terrible, long process.

155. K.O. and E.O., Jr. did not know where their mother was. It bothered E.O., Jr. so terribly that he could not sleep or eat.

156. About five days later, E.O., Jr. was able to call his father, E.O., and tell him where he was being held.

157. E.O., Jr. was told that he had to be vaccinated again, even though he had already been vaccinated, and he was given ten shots by a medical professional and ORR Personnel. K.O. was also vaccinated and was given nine shots. L.J. was not there to comfort her daughter during this process.

158. K.O. and E.O., Jr. were finally released and reunited with their father in Massachusetts on June 19, 2018.

159. L.J. spent about eight days in the facility where her children were taken from her. She was not allowed to call her husband, E.O., for about nine days. Then she was taken to the T. Don Hutto Residential Center in Taylor, Texas, where she was detained for several weeks.

160. L.J. finally met with an asylum officer in mid-June 2018 who found that L.J. had a credible fear of persecution if she were forced to return to Guatemala.

161. L.J. was finally released on June 26, 2018 and reunited with her family in Massachusetts after that. They had been separated for about five weeks at that point. Needless to say, the family was relieved and joyful.

162. But the trauma caused by this forcible separation endures. The horrible, painful memories still torment K.O., E.O., Jr., L.J. and E.O. K.O. wakes up in the middle of the night, crying, wondering if that mean person would pull her hair again. Whenever L.J. leaves a room, K.O. follows her mother and fears that she will abandon her again.

163. The guilt that L.J. feels as a mother is overwhelming. She feels as if she was unable to protect her children. The trauma that K.O., E.O., Jr., L.J., and E.O. experienced was life altering and it will continue to affect their mental and emotional well-being for years to come.

164. The ordeal that K.O. and E.O., Jr. endured is typical of the experiences suffered by the putative class members.

Individual Plaintiff's Allegations – C.J.

165. F.C. and his eleven-year-old son, C.J. entered the United States in El Paso, Texas on June 17, 2018 seeking asylum in this country. They came to the United States for asylum because organized crime members, who worked in concert with the police in Guatemala,

extorted F.C. for money, threatened to kill F.C. and his family, and left them fearing for their lives.

166. When they crossed the United States border, F.C. saw a CBP vehicle and walked towards it. F.C. was holding C.J.'s hand. The CBP Agents handcuffed F.C. and both he and C.J. were driven to a detention center.

167. When F.C. and C.J. arrived at the detention center, CBP Agents told F.C. that he would be separated from C.J. F.C. felt "devastated" and "destroyed" upon hearing that CBP Agents planned to separate his son from him. F.C. spent two days with C.J. trying to be brave for his son. Internally, F.C. kept thinking that despite his efforts, his son was going to be kidnapped. C.J. cried a lot. F.C. tried to calm him down and told him that F.C. would ask the CBP Agents to let them stay together.

168. The detention facility was very cold. The air conditioner was on the highest setting at all times. F.C. and his son slept on the floor and were given one aluminum blanket to share. F.C. stayed up trying to cover C.J. with his arms. C.J. shivered and constantly complained about the cold.

169. C.J. also complained of hunger. Both days F.C. and C.J. were given one burrito to share, twice a day. F.C. asked for more food to share with C.J. The CBP Agents denied them additional food, saying: "You're not here to get fat." When F.C. asked for water they told him to use the sink. This was difficult because there were approximately fifteen people, including six children, and one bathroom.

170. On June 20, 2018, the CBP Agents woke up F.C. and C.J. in the middle of the night and took them to a processing area. They told F.C. that C.J. would stay there while F.C. went to court. The CBP Agents told F.C. that he would be back after court. They told C.J. they

would be putting him in another room until F.C. returned. F.C. assumed this would take a very short period of time, and F.C. would soon see C.J.

171. Instead, F.C. did not see his son again until July 26, 2018—36 days later.

172. The CBP Agents handcuffed F.C., took him away, and never returned him to the detention facility where he was held with C.J. F.C. was very worried about C.J.

173. F.C. asked anyone who would listen: "Where is C.J.?" "Where has he been taken?" "How do I get in touch with him?"

174. F.C. knew how scared C.J. must be and F.C. felt heartbroken that he had not protected his son, especially because that was all F.C. had wanted to do by coming to the United States.

175. When F.C. went to court he was told that he was there because he had committed the federal crime of coming into the country illegally. The judge asked F.C. if he wanted to leave C.J. in the United States or take C.J. with him if deported. F.C. felt sheer terror at being deported without C.J. F.C. told the judge that no matter what they decided to do, F.C. wanted C.J. to be with him.

176. F.C. was moved to multiple detention facilities. At every detention center F.C. asked about C.J. F.C. persisted until an employee from one of the detention centers finally arranged for him to speak to C.J.

177. When F.C. finally spoke to C.J. it was only for five minutes and C.J. cried very hard the entire time. F.C. told C.J. not to think about the situation and to play and make new friends. The phone call was heartbreaking because C.J. wanted to know when he would see his father again, but F.C. did not have an answer.

178. On that same day, an employee at the facility asked again if F.C. would authorize C.J. to stay behind if F.C. were to be deported. F.C. said no.

179. At some point the CBP Agents turned F.C. over to ICE Agents. F.C. was very afraid that the ICE Agents would deport C.J. without F.C. F.C. was worried that C.J. would grow up alone with no family. F.C. constantly worried about how C.J. was being treated and whether he was safe.

180. C.J. was held at a facility with many other children similarly separated from their parents. This separation deeply affected C.J.

181. While at the facility, another child hit C.J. in the eye. After C.J. told staff about the assault, he noticed that the child who assaulted him went to see a psychologist or mental health doctor and then C.J. never saw the child again. That incident made C.J. feel deep fear, because he thought that if he made a mistake, he might disappear too.

182. At the facility, C.J. was sad and cried a lot because he missed his father. C.J. kept asking the staff when he would see his father again. Although C.J. was told that it would be "soon," the days went by without any change. Eventually, C.J. came to believe he would never see his father again and would be at the facility for many years.

183. C.J. and F.C. were finally reunited on July 26, 2018. While the relief and joy they both felt at seeing each other again was overwhelming, the harm that Defendants caused to C.J. during the time that he was separated from his father and in Defendants' custody can never truly be remedied.

184. F.C. tries to assure C.J. that he will be OK, that he is safe, and that F.C. will never leave him again.

185. But C.J. now wakes up with nightmares, something that never happened before Defendants forcibly separated him from his father. Sometimes, C.J.'s nightmares are so bad that he falls out of bed.

186. Defendants' forcible separation of C.J. from his father has caused extreme emotional and psychological harm. The trauma that both C.J. and F.C. experienced was life altering and it will continue to affect their mental and emotional well-being for years to come.

187. The ordeal that C.J. endured is typical of the experiences suffered by the putative class members.

Class Allegations

188. This action is properly maintained as a class action under Fed. R. Civ. P. 23(a) and 23(b)(1) and 23(b)(3).

189. Plaintiffs seek to represent a nationwide class consisting of all minor children nationwide who enter or have entered the United States at or between designated ports of entry and who have been or will be separated from a parent or parents by DHS or its sub-agencies (CBP, ICE, or USCIS) and detained in ORR custody, ORR foster care, or CBP or ICE custody without a demonstration in a hearing that the parent is unfit or presents a danger to the child.

190. The class is so numerous that joinder of all members is impracticable. While the exact number of class members is unknown at this time and can only be ascertained through appropriate discovery, based on information disclosed in another pending case, the class consists of well over 2,500 children. *See Ms. L. v. ICE*, No. 18-CV -0428-DMS-MDD, Joint Status Report (July 26, 2018) (Doc. No. 159).

191. The members of the class are readily ascertainable through Defendants' and government records.

192. There are questions of law or fact common to the class. The class members have all been subjected to the Defendants' practice of forcibly separating migrant children from their parents for no legitimate reason. All class members have been subjected to that practice without an adequate hearing regarding separation. The common questions of law include whether Defendants' forcible family separation violates the class members' procedural and substantive due process rights and the equal protection guarantee under the Due Process Clause.

193. Plaintiffs' claims or defenses are typical of the claims or defenses of the Class.

194. Plaintiffs have no interests that are adverse to or which irreconcilably conflict with the other members of the class.

195. Plaintiffs are represented by counsel experienced in class action litigation and, in particular, in litigating civil rights claims involving constitutional and statutory violations, tort claims, and immigration matters. Plaintiffs' counsel has adequate resources to commit to representing the class.

196. Plaintiffs will therefore fairly and adequately protect the interests of the class.

197. This action is properly maintained as a class action under Fed. R. Civ. P. 23(b)(1) because prosecuting separate actions by or against individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standard of conduct for the party opposing the class; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

198. This action is also properly maintained as a class action under Fed. R. Civ. P. 23(b)(3) because the questions of law or fact common to the members of the class predominate

over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

Violation of Substantive Due Process – Right to Family Integrity

199. Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

200. At all relevant times, all Defendants were acting under color of federal law.

201. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and therefore applies to Plaintiffs and to all proposed class members.

202. Plaintiffs and all class members have a liberty interest under the Due Process Clause in remaining together as a family and in their parents' care and comfort.

203. The forcible separation of the class members from their parents violates substantive due process because it furthers no legitimate purpose, much less a compelling governmental interest.

204. The Defendants in this action have adopted, implemented, enforced, condoned, sanctioned, acquiesced to, and encouraged a pattern, practice, or custom of violating the clearly established due process rights of the class members by forcibly separating young children from their parents without justification.

205. Defendants' conduct shocks the conscience and demonstrates their deliberate indifference to the violation of the class members' constitutional right to due process.

206. As a direct and proximate result of the Defendants' Due Process violations, the class members have suffered harm.

207. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the class members to punitive damages.

COUNT II
Violation of Procedural Due Process

208. Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

209. At all relevant times, all Defendants were acting under color of federal law.

210. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and therefore applies to Plaintiffs and to all proposed class members.

211. The Due Process Clause of the Fifth Amendment prohibits deprivations of life, liberty, or property without constitutionally adequate procedural safeguards and protects the right to a fair hearing.

212. The forcible separation of the class members from their parents violates a fundamental liberty interest with no notice or opportunity to be heard.

213. The Defendants in this action have adopted, implemented, enforced, condoned, sanctioned, acquiesced to, and encouraged a pattern, practice, or custom of violating the clearly established due process rights of the class members by forcibly separating young children from their parents without due process of law.

214. Defendants' conduct shocks the conscience and demonstrates their deliberate indifference to the violation of the class members' constitutional right to due process.

215. As a direct and proximate result of the Defendants' Due Process violations, the class members have suffered harm.

216. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the class members to punitive damages.

COUNT III

Violation of the Fifth Amendment's Equal Protection Guarantee

217. Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

218. At all relevant times, all Defendants were acting under color of federal law.

219. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and therefore applies to Plaintiffs and to all proposed class members.

220. The Fifth Amendment contains an implicit guarantee of equal protection that forbids any official action that intentionally discriminates on the basis of race, ethnicity, or national origin.

221. Defendants' forcible separation of immigrant children and parents, particularly from Central and South America, arriving at the Southwestern border is unconstitutional because it burdens a fundamental right and was motivated, at least in part, by the Defendants' intentional discrimination based on race, ethnicity, or national origin. This intentional discrimination includes bias against immigrants perceived to come from Central or South America.

222. Defendants' forcible separation of children and parents, particularly from Central and South America, arriving at the Southwestern border is unconstitutional because it disparately impacts immigrants from Latin America arriving at the border and is motivated by animus and a desire to harm this particular group.

223. The forcible separation of children from their parents is not narrowly tailored to achieve a compelling governmental interest.

224. Alternatively, the discriminatory terms and application of the family separation practice are arbitrary and bear no rational relationship to a legitimate federal interest.

225. Defendants' conduct shocks the conscience and demonstrates their deliberate indifference to the violation of the class members' constitutional right to equal protection of the laws.

226. As a direct and proximate result of the Defendants' Equal Protection violations, the class members have suffered harm.

227. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the class members to punitive damages.

COUNT IV
Violation of Substantive Due Process – Punishment of Civil Detainees

228. Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

229. At all relevant times, all Defendants were acting under color of federal law.

230. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and therefore applies to Plaintiffs and to all proposed class members.

231. Plaintiffs and all class members have a liberty interest under the Due Process Clause in remaining free from punitive conditions during their civil immigration detention.

232. The Defendants intended to punish the class members during their detention by forcibly separating the children from their parents, purporting to maintain the separation indefinitely, failing to provide meaningful information to parents or children about one another's location and well-being, subjecting the children to appalling and abusive conditions, and preventing them from reliable and ready access to means of communicating with one another.

233. Regardless of Defendants' intent, the conduct described above is patently excessive in relation to any legitimate objective.

234. Defendants' conduct violates substantive due process because it furthers no legitimate purpose, much less a compelling governmental interest.

235. The Defendants in this action have adopted, implemented, enforced, condoned, sanctioned, acquiesced to, and encouraged a pattern, practice, or custom of violating the clearly established due process rights of the class members through the unlawful conduct described above.

236. Defendants' conduct shocks the conscience and demonstrates their deliberate indifference to the violation of the class members' constitutional right to due process.

237. As a direct and proximate result of the Defendants' Due Process violations, the class members have suffered harm.

238. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the class members to punitive damages.

COUNT V

Violation Due Process – Coerced Waiver of Asylum and Other Immigration Claims

239. Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

240. At all relevant times, all Defendants were acting under color of federal law.

241. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and therefore applies to Plaintiffs and to all proposed class members.

242. Plaintiffs and all class members have an interest under the Due Process Clause in pursuing asylum and other potential immigration claims without being coerced to waive them.

243. Defendants' coercive practice of conditioning reunification of children with their parents upon the parents' waiver of their own and their children's right to asylum and other

immigration relief violates the Due Process Clause because these waivers were not knowing, intelligent, or voluntary.

244. Defendants' conduct violates due process because it furthers no legitimate purpose, much less a compelling governmental interest.

245. The Defendants in this action have adopted, implemented, enforced, condoned, sanctioned, acquiesced to, and encouraged a pattern, practice, or custom of violating the clearly established due process rights of the class members through the unlawful conduct described above.

246. Defendants' conduct shocks the conscience and demonstrates their deliberate indifference to the violation of the class members' constitutional right to due process.

247. As a direct and proximate result of the Defendants' Due Process violations, the class members have suffered harm.

248. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the class members to punitive damages.

COUNT VI
Violation of Substantive Due Process
Failure to Provide Adequate Mental Health Services

249. Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

250. At all relevant times, all Defendants were acting under color of federal law.

251. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and therefore applies to Plaintiffs and to all proposed class members.

252. Plaintiffs and all class members have a liberty interest under the Due Process Clause in receiving adequate medical care, including mental health care, while in the custody of the Defendants.

253. The Defendants' failure to provide adequate and necessary mental health care to the class members after forcibly separating them from their parents violates substantive due process because it furthers no legitimate purpose, much less a compelling governmental interest.

254. Moreover Defendants were aware of the severe harm that their conduct caused to the mental health of the class members, yet they failed to provide adequate and necessary treatment to them.

255. Defendants' conduct shocks the conscience and demonstrates their deliberate indifference to the violation of the class members' constitutional right to due process.

256. The Defendants in this action have adopted, implemented, enforced, condoned, sanctioned, acquiesced to, and encouraged a pattern, practice, or custom of violating the clearly established due process rights of the class members by failing to provide adequate mental health care to the class members after forcible separation from their parents.

257. As a direct and proximate result of the Defendants' Due Process violations, the class members have suffered harm.

258. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the class members to punitive damages.

COUNT VII

Conspiracy to Interfere with Civil Rights in Violation of 42 U.S.C. § 1985(3)

259. Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

260. The Defendants are located in States or Territories of the United States.

261. The Defendants are "persons" for the purposes of 42 U.S.C. § 1985(3).

262. Two or more of the Defendants conspired or furthered a conspiracy to deprive Plaintiffs and class members of equal protection of the laws.

263. The Defendants furthered their conspiracy by, at various times, creating, adopting, implementing, enforcing, condoning, sanctioning, acquiescing to, and encouraging a pattern, practice, or custom of taking children and parents, particularly those from Central and South America, arriving at or between designated ports of entry to the United States into custody and forcibly separating them.

264. The Plaintiffs and the class members include Central and South American children, sharing characteristics of race, ethnicity, and/or national origin, who arrived at the United States border with their parents and were forcibly separated from them by Defendants.

265. The Defendants were motivated to discriminate against the Plaintiffs and other class members due to their race, ethnicity, and/or national origin.

266. As a direct and proximate result of the Defendants' unlawful conspiracy, the Plaintiffs and other class members have suffered pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses and have been deprived of their constitutionally protected rights to substantive and procedural due process and equal protection.

267. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the Plaintiffs and class members to punitive damages.

268. The Plaintiffs and class members are entitled to recover costs, reasonable attorney's fees, and expert fees under 42 U.S.C. § 1988.

COUNT VIII

**Refusal or Neglect to Prevent or Aid in Preventing
Conspiracy to Interfere with Civil Rights in Violation of 42 U.S.C. § 1986**

269. The Plaintiffs incorporate all of the preceding allegations in this Complaint as if fully set forth here.

270. The Defendants are "persons" for the purposes of 42 U.S.C. § 1986.

271. The Defendants possessed knowledge of a conspiracy to injure and interfere with the constitutionally-protected rights of the Plaintiffs and class members in violation of 42 U.S.C. § 1985.

272. The Defendants had power to prevent or aid in the prevention of such a conspiracy and neglected or refused to do so.

273. As a direct and proximate result of the unlawful conspiracy which the Defendants knew of but neglected or refused to prevent, the Plaintiffs and class members have suffered pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

274. The nature of the relief sought and the harm suffered by the Plaintiffs meets the jurisdictional requirements and thresholds of this Court.

275. Defendants' conduct was intentional, wanton, malicious, reckless, callously indifferent, and oppressive, thus entitling the Plaintiffs and class members to punitive damages.

276. The Plaintiffs and class members are entitled to recover costs, reasonable attorney's fees, and expert fees under 42 U.S.C. § 1988.

WHEREFORE, Plaintiffs K.O. and E.O., Jr., by and through their parents and next friends, E.O. and L.J, and C.J, by and through his father and next friend F.C., on behalf of

themselves and all others similarly situated, respectfully request that the Court grant the following relief:

- A. Enter judgment declaring this action to be a class action under Fed. R. Civ. P. 23 and certifying Plaintiffs K.O. and E.O., Jr., by and through their parents and next friends, E.O. and L.J, and C.J, by and through his father and next friend F.C., as the class representatives and Plaintiffs' counsel as class counsel;
- B. Enter judgment in favor of Plaintiffs and the class, and against Defendants, on all counts of the Complaint;
- C. Enter an order requiring the Defendants to establish a fund in an amount to be determined at trial for the mental health treatment and ongoing mental health monitoring of the class members;
- D. Award to Plaintiffs and the class all damages in an amount to be determined at trial sufficient to compensate the class for their injuries, including, but not limited to, emotional pain and suffering, mental anguish, embarrassment, and humiliation;
- E. Award to Plaintiffs and the class punitive or exemplary damages as permitted by law;
- F. Award to Plaintiffs and the class their attorneys' fees, costs, and interest as permitted by law; and
- G. Grant such further and other relief as may be just and proper.

**PLAINTIFFS ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED
DEMAND A TRIAL BY JURY ON ALL CLAIMS AND ISSUES SO TRIABLE**

Respectfully submitted,

K.O. and E.O., Jr., by and through their parents and next friends, E.O. and L.J.; and C.J, by and through his father and next friend F.C.; each individually and on behalf of all others similarly situated, on behalf of themselves and all others similarly situated,

By their attorneys,

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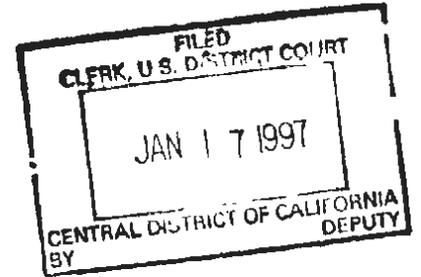
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4845-1239-5886, v. 14

8/12/96

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,)	Case No. CV 85-4544-RJK(Px)
)	
Plaintiffs,)	Stipulated Settlement
)	Agreement
-vs-)	
)	
JANET RENO, Attorney General)	
of the United States, et al.,)	
)	
Defendants.)	

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/ / /

STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement

(the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.

2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.

3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.

4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.

5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.

6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in

Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with

major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this

Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of this Agreement, attached hereto as Exhibit 2.

III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12.A. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to

protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19, (i) within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such

emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that

of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;
- B. a legal guardian;
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;
- E. a licensed program willing to accept legal custody; or
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;

- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian, in writing, seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

- A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject

of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

- i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);
- ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

- B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;
- C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);
- D. is an escape-risk; or
- E. must be held in a secure facility for his or her own safety, such as when the INS has

reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

- A. the minor is currently under a final order of deportation or exclusion;
- B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;
- C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24.A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any

United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770, (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services available in the district pursuant to INS regulations (unless previously given to the minor).

E. 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 District Court. Prior to initiating any such action, however, the minor and/or the minors' 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.

VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except:

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause B, minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1)

biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the

terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

XI ATTORNEY-CLIENT VISITS

32.A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who

may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minors in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

XV RESERVATION OF RIGHTS

36. Nothing in this Agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that a party has violated the terms of this Agreement shall be served on plaintiffs addressed to:

///

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales
114 Sansome Street, Suite 905
San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson
Assistant United States Attorney
300 N. Los Angeles St., Rm. 7516
Los Angeles, CA 90012

Allen Hausman
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

XVIII ATTORNEYS' FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of \$374,110.09, in full settlement of all attorneys' fees and costs in this case.

///

XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement, except that the INS shall continue to house the general population of minors in INS custody in facilities that are licensed for the care of dependent minors.

XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

For Defendants: Signed: Louis Meissner Title: Commissioner, INS

Dated: 7/16/88

For Plaintiffs: Signed: per next page Title: _____

Dated: _____

The foregoing stipulated settlement is approved as to form and content:

CENTER FOR HUMAN RIGHTS AND
CONSTITUTIONAL LAW

Carlos Holguin
Peter Schey

NATIONAL CENTER FOR YOUTH LAW

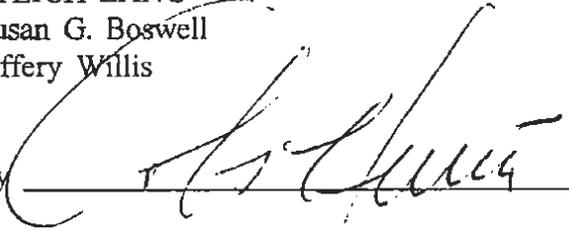
Alice Bussiere
James Morales

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

Mark Rosenbaum
Sylvia Argueta

STEICH LANG
Susan G. Boswell
Jeffery Willis

Date: 11/13/97

By 

Date: 11/13/96

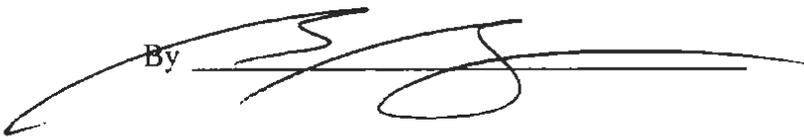
By 

Exhibit 1

EXHIBIT 1

MINIMUM STANDARDS FOR LICENSED PROGRAMS

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be

residing in the United States and may be able to assist in family reunification.

4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.
5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.
6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.
7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management

is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.
9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.
10. Whenever possible, access to religious services of the minor's choice.
11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.
12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.
13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.
14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or

exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

EXHIBIT 2

INSTRUCTIONS TO SERVICE OFFICERS RE:
PROCESSING, TREATMENT, AND PLACEMENT OF MINORS

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

(a) Minors. A minor is a person under the age of eighteen years. However, individuals who have been “emancipated” by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

(b) General policy. The INS treats, and will continue to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

(c) Processing. The INS will expeditiously process minors and will provide a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS's concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the juvenile cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in

INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

(d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others. Minors shall be released, in the following order of preference, to:

- (i) a parent;
- (ii) a legal guardian;
- (iii) an adult relative (brother, sister, aunt, uncle, or grandparent);
- (iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;
- (v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or
- (vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

(e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- (i) provide for the minor's physical, mental, and financial well-being;
- (ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;
- (iii) notify the INS of any change of address within five (5) days following a move;
- (iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;
- (v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

(vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

(f) Suitability assessment. An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

(g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue as long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

(h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. Exhibit 1 of the *Flores v. Reno* Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

- (i) the minor is an escape risk or delinquent, as defined in Paragraph (i) below;
- (ii) a court decree or court-approved settlement requires otherwise;
- (iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or
- (iv) the minor must be transported from remote areas for processing or speaks an unusual

language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

(i) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor —

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

“Chargeable” means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

(a) the minor is currently under a final order of deportation or exclusion;

(b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

(c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional Juvenile Coordinator.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review as set out in Exhibit 6 of the *Flores v. Reno* Settlement Agreement, and (2) the list of free legal services providers compiled pursuant to INS regulations (unless previously given to the minor).

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The INS may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. Statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours must be reported to the Juvenile Coordinator by all INS district offices and Border Patrol stations. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration

status, and (f) hearing dates. INS officers should also inform the Juvenile Coordinator of the reasons for placing a minor in a medium-security facility or detention facility as described in paragraph (i).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit the lawyers for the *Flores v. Reno* plaintiff class to visit minors, even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

EXHIBIT 3

CONTINGENCY PLAN

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in programs licensed by an appropriate state agency as expeditiously as possible. An "emergency" is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An "influx" is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that the INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the List. The Emergency Placement List will include the facility name; the number of beds potentially available at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.

2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, (3) date placed in INS custody, and (4)

place and date of current placement.

3. Within one business day of the emergency or influx the Juvenile Coordinator or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

EXHIBIT 4

AGREEMENT CONCERNING FACILITY VISITS UNDER PARAGRAPH 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

EXHIBIT 5

LIST OF ORGANIZATIONS TO RECEIVE INFORMATION RE: SETTLEMENT AGREEMENT

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137

Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W. 4th Floor, Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

EXHIBIT 6
NOTICE OF RIGHT TO JUDICIAL REVIEW

“The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form.”

1 PROOF OF SERVICE BY MAIL

2 I, Sonia Fuentes, declare and say as follows:

3 1. I am over the age of eighteen years and am not a party to this action. I am
4 employed in the County of Los Angeles, State of California. My business address is 256
5 South Occidental Boulevard, Los Angeles, California 90057, in said county and state.

6 2. On January __, 1997, I served the attached STIPULATED SETTLEMENT AGREEMENT
7 on defendants in this proceeding by placing a true copy thereof in a sealed envelope
8 addressed to their attorneys of record as follows:

9 Mr. Michael Johnson
10 Assistant U.S. Attorney
11 300 N. Los Angeles St. #7516
12 Los Angeles, CA 90012

13 and by then sealing said envelope and depositing the same, with postage thereon fully
14 prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between
15 the place of mailing and the place so addressed.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this __th day of January, 1997, at Los Angeles, California.

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

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CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
Charles Song
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693; Fax: (213) 386-9484

LATHAM & WATKINS
Steven Schulman
555 Eleventh St., NW, Suite 1000
Washington, DC 20004
Telephone: (202) 637-2184

Of counsel:

YOUTH LAW CENTER
Alice Bussiere
417 Montgomery Street, Suite 900
San Francisco, CA 94104
Telephone: (415) 543-3379 x 3903

Attorneys for plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al ,)	Case No. CV 85-4544-RJK(Px)
)	
Plaintiffs,)	STIPULATION EXTENDING
)	SETTLEMENT AGREEMENT AND FOR
-vs-)	OTHER PURPOSES; AND ORDER
)	THEREON
JANET KING, Attorney General)	
of the United States, et al.)	
)	
Defendants)	

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IT IS HEREBY STIPULATED by and between the parties as follows:

1. Paragraph 40 of the Stipulation filed herein on January 17, 1997, is modified to read as follows:

~~“All terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement, 45 days following defendants’ publication of final regulations implementing this Agreement~~
~~except that~~ Notwithstanding the foregoing, the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors.”

///

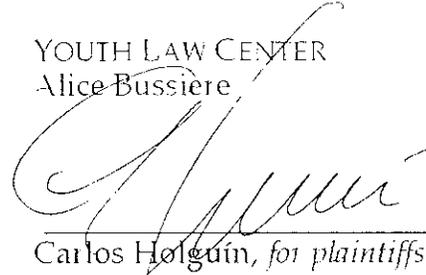
2 For a period of six months from the date this Stipulation is filed, plaintiffs shall not
3 initiate legal proceedings to compel publication of final regulations implementing this
4 Agreement. Plaintiffs agree to work with defendants cooperatively toward resolving
5 disputes regarding compliance with the Settlement. The parties agree to confer regularly no
6 less frequently than once monthly for the purpose of discussing the implementation of and
7 compliance with the settlement agreement. However, nothing herein shall require plaintiffs
8 to forebear legal action to compel compliance with this Agreement where plaintiff class
9 members are suffering irreparable injury

Dated: December 7, 2001.

CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey

LATHAM & WATKINS
Steven Schulman

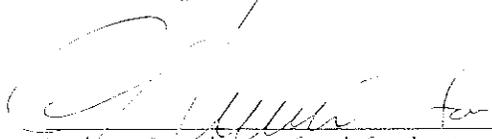
YOUTH LAW CENTER
Alice Bussiere



Carlos Holguín, for plaintiffs.

Dated: December 7, 2001

Arthur Strathern
Office of the General Counsel
U.S. Immigration & Naturalization Service



Arthur Strathern, for defendants
Per fax authorization

IT IS SO ORDERED

Dated: December _____ 2001

UNITED STATES DISTRICT JUDGE

1 2. For a period of six months from the date this Stipulation is filed, plaintiffs shall not
2 initiate legal proceedings to compel publication of final regulations implementing this
3 Agreement. Plaintiffs agree to work with defendants cooperatively toward resolving
4 disputes regarding compliance with the Settlement. The parties agree to confer regularly no
5 less frequently than once monthly for the purpose of discussing the implementation of and
6 compliance with the settlement agreement. However, nothing herein shall require plaintiffs
7 to forebear legal action to compel compliance with this Agreement where plaintiff class
8 members are suffering irreparable injury.

9 Dated: December 7, 2001.

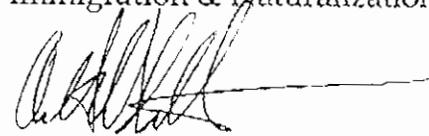
CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Carlos Holguin
Peter A. Schey

LATHAM & WATKINS
Steven Schulman

YOUTH LAW CENTER
Alice Bussiere

18 Dated: December 7, 2001.

17 _____
Carlos Holguin, for plaintiffs
19 Arthur Strathern
Office of the General Counsel
U.S. Immigration & Naturalization Service



23 _____
Arthur Strathern, for defendants
Per fax authorization

25 IT IS SO ORDERED

26 Dated: December 7, 2001.

27 _____
UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE BY MAIL.

I, Carlos Holguin, declare and say as follows:

1 I am over the age of eighteen years and am not a party to this action. I am
2 employed in the County of Los Angeles, State of California. My business address is 256
3 South Occidental Boulevard, Los Angeles, California 90057, in said county and state

4
5
6 2 On December 7, 2001, I served the attached STIPULATION on defendants in this
7 proceeding by placing a true copy thereof in a sealed envelope addressed to their attorneys
8 of record as follows:

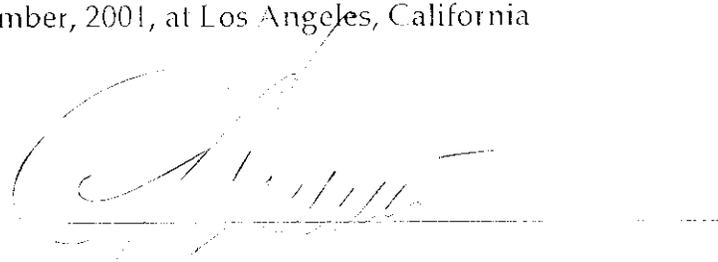
9 Arthur Strathern
10 Office of the General Counsel
11 U.S. Immigration & Naturalization Service
12 425 I St. N.W.
13 Washington, DC 20536

14 and by then sealing said envelope and depositing the same, with postage thereon fully
15 prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between
16 the place of mailing and the place so addressed.

17 I declare under penalty of perjury that the foregoing is true and correct

18 Executed this 7th day of December, 2001, at Los Angeles, California

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JUSTICE NEWS

Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration

San Diego, CA ~ Monday, May 7, 2018

Thank you all for being here.

Thank you to Tom Homan. Tom, you have done outstanding work leading ICE. Thank you for your more than 30 years of service in law enforcement. We are going to miss you.

Today we are here to send a message to the world: we are not going to let this country be overwhelmed.

People are not going to caravan or otherwise stampede our border.

We need legality and integrity in the system.

That's why the Department of Homeland Security is now referring 100 percent of illegal Southwest Border crossings to the Department of Justice for prosecution. And the Department of Justice will take up those cases.

I have put in place a "zero tolerance" policy for illegal entry on our Southwest border. If you cross this border unlawfully, then we will prosecute you. It's that simple.

If you smuggle illegal aliens across our border, then we will prosecute you.

If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law.

If you make false statements to an immigration officer or file a fraudulent asylum claim, that's a felony.

If you help others to do so, that's a felony, too. You're going to jail.

So if you're going to come to this country, come here legally. Don't come here illegally.

In order to carry out these important new enforcement policies, I have sent 35 prosecutors to the Southwest and moved 18 immigration judges to the border. These are supervisory judges that don't have existing caseloads and will be able to function full time on moving these cases. That will be about a 50 percent increase in the number of immigration judges who will be handling the asylum claims.

These actions are necessary. And they are made even more necessary by the massive increases in illegal crossings in recent months. This February saw 55 percent more border apprehensions than last February. This March saw triple the number from last March. April saw triple the number last April.

The trends are clear: this must end.

Eleven million people are already here illegally. That's more than the population of Portugal or the state of Georgia.

The Congressional Budget Office estimates that those 11 million have 4.5 million children who are American citizens. Combined, that group would be our fifth-most populous state.

This situation has been many years in the making.

For decades, the American people have been pleading with our elected representatives for a lawful system of immigration that serves the national interest—a system we can be proud of.

That is not too much to ask. The American people are right and just and decent to ask for this. They are right to want a safe, secure border and a government that knows who is here and who isn't.

Donald Trump ran for office on that idea. I believe that is a big reason why he won. He is on fire about this. This entire government knows it.

The American people have a right to expect that the laws that their representatives voted for are going to be carried out. Failure to enforce our duly-enacted laws would be an affront to the American people and a threat to our very system of self-government.

And these laws are the most generous immigration laws in the world. We accept 1.1 million lawful permanent residents every year—that's more than the population of Montana, every single year. These are the highest numbers in the world.

I have no doubt that many of those crossing our border illegally are leaving difficult situations. But we cannot take everyone on Earth who is in a difficult situation.

According to a Gallup poll from a few years ago, 150 million people around the world want to immigrate to the United States. Gallup says that 37 percent of Liberians want to immigrate to the United States. One fifth of Cambodians want to move here. One-in-six Salvadorans are already in the United States—and another 19 percent tell Gallup they want to come here.

It's obvious that we cannot take everyone who wants to come here without also hurting the interests of the citizens we are sworn to serve and protect.

We have to have limits. And Congress has already set them.

And if you want to change our laws, then pass a bill in Congress. Persuade your fellow citizens to your point of view.

Immigrants should ask to apply lawfully before they enter our country. Citizens of other countries don't get to violate our laws or rewrite them for us. People around the world have no right to demand entry in violation of our sovereignty.

This is a great nation—the greatest in the history of the world. It is no surprise that people want to come here. But they must do so properly. They must follow our laws—or not come here at all. Make no mistake, the objections, the lawsuits, the sanctuary jurisdictions are often the product of a radical open border philosophy. They oppose all enforcement.

And so this Department, under President Trump's leadership, is enforcing the law without exception. We will finally secure this border so that we can give the American people safety and peace of mind. That's what the people deserve.

Thank you.

Speaker:

Attorney General Jeff Sessions

Topic(s):

Immigration

Component(s):

Office of the Attorney General

Updated May 7, 2018

via electronic mail

January 23, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016

**Urgent Appeal from Experts in Child Welfare, Juvenile Justice and Child Development to
Halt Any Plans to Separate Children from Parents at the Border**

Dear Secretary Nielsen:

We, the more than 50 national organizations and more than 150 additional organizations from 33 states and the District of Columbia, have well-recognized expertise in the fields of child welfare, juvenile justice and child health, development and safety. We first sent this letter to you on January 16, 2018, but are resubmitting it today to include additional organizations that wished to be listed in this appeal. We are also submitting it as part of the record of the oversight hearing before the Senate Judiciary Committee on January 16, 2018 at which you testified.

We understand that your agency is considering plans to separate children from their parents when they arrive at or are found near the U.S. border. We fear these actions will have significant and long-lasting consequences for the safety, health, development, and well-being of children, and urgently request that the Administration reverse course on any policies that would separate families.

Countless reports have documented that these families are fleeing persecution and violence in their countries, and come here seeking protection. While many come from Central American countries, the parents and children arrive at our border from all over the world, including countries in Africa, the Caribbean, South America, Asia, the Middle East and Europe. According to recent reports, the proposed plan would require that parents be placed in adult immigration detention centers and/or summarily deported, while their children would be transferred to the custody of the Department of Health and Human Services in facilities across the country—as far away as Illinois, Washington, New York, Florida, and Michigan. HHS would bear the responsibility of caring for the traumatized children and finding suitable, alternative caregivers. These children could remain in government care for months or more than a year, during which time the continued separation from their parents would compound their trauma and the time it would take them to recover and return to a trajectory of good health and normal development. Nor would it make any sense to require those children to participate in a formal legal proceeding about their immigration case while separated from the parent who brought them here, who may have critical information—or the only information—about the child’s claim for protection.

There is overwhelming evidence that children need to be cared for by their parents to be safe and healthy, to grow and develop.¹ Likewise, there is ample evidence that separating children from their mothers or fathers leads to serious, negative consequences to children's health and development.² Forced separation disrupts the parent-child relationship and puts children at increased risk for both physical and mental illness. Adverse childhood experiences—including the incarceration of a family member—are well-recognized precursors of negative health outcomes later in life.³ And the psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation—even after eventual reunification with a parent or other family. We are deeply concerned that the proposed plan would formalize such harm by taking children from their parents as a matter of policy.

Family unity is a foundational principle of child welfare law. In order to grow and develop, children need to remain in the care of their parents where they are loved, nurtured and feel safe. Thus parents' rights to the care and custody of their children are afforded particularly strong protection under the U.S. Constitution.⁴ While parent-child relationships are generally the province of state law, federal law also recognizes the principle of family unity by providing strong incentives for states to keep children with their parents and to provide services to families to prevent separation and maintain family unity.⁵ The proposed changes to your agency's policies would eviscerate that principle.

¹ See, e.g., American Psychological Assn, *Parents and Caregivers are Essential to Children's Healthy Development*, available at <http://www.apa.org/pi/families/resources/parents-caregivers.aspx>.

² See, e.g., Sankaran, Vivek, Church, Christopher, "Easy Come, Easy Go: The Plight of Children Who Spend Less than 30 Days in Foster Care," 19 U. Pa. J. L. Soc. Change 207 (2017) (identifying harms to children arising from even short-term separation from a parent's custody as a result of state action); and Zayas LH, Aguilar-Gaxiola S, Yoon H, Rey GN, "The Distress of Citizen-Children with Detained and Deported Parents," J. Child & Fam. Studies, 2015; 24(11):3213-3223 (the arrest and separation of parents "serve[s] only to complete the trauma, and the certain detrimental impact on the children's mental health.").

³ See, e.g., Dube SR, Cook ML, Edwards VJ, Health-related Outcomes of Adverse Childhood Experiences in Texas, 2002, *Prev Chronic Dis.*, 2010; 7(3):A52, available at http://www.cdc.gov/pcd/issues/2010/may/09_0158.htm.

⁴ See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (a parent's right to the care and custody of her child is a fundamental liberty interest).

⁵ See U.S. Dep't of Health and Human Services, Children's Bureau, *Child Welfare Information Gateway, Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children*, (March 2016), available at <https://www.childwelfare.gov/pubPDFs/reunify.pdf> ("Federal law has long required State agencies to demonstrate that reasonable efforts have been made to provide assistance and services to prevent the removal of a child from his or her home.").

For all of these reasons, we urge you to abandon any plans to systematically separate children from their families absent evidence that a specific parent posed a threat to the safety and well-being of his or her child, as required by the laws of all 50 states.

Sincerely,

MaryLee Allen
Director of Policy
Children's Defense Fund
on behalf of:

National Organizations

Alliance for Strong Families and Communities
American Academy of Pediatrics
Campaign for Youth Justice
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Center for Children's Law and Policy
Center for Law and Social Policy (CLASP)
Center for the Study of Social Policy
Child Welfare League of America
Children's Advocacy Institute
Children's Defense Fund
Coalition for Juvenile Justice
Disability Rights Education & Defense Fund
Dorothy Day Catholic Worker
Every Mother is a Working Mother Network
Family Focused Treatment Association
Field Center for Children's Policy, Practice & Research
First Focus
First Star Institute
Foster Care Alumni of America
Futures Without Violence
Generations United
Healthy Teen Network
Jim Casey Youth Opportunities Initiative
Justice Policy Institute
Juvenile Law Center
National Alliance of Children's Trust Funds
National Association for Children's Behavioral Health
National Association of Counsel for Children
National Association of Pediatric Nurse Practitioners
National Association of Social Workers
National Center for Housing and Child Welfare
National Center for Parent Leadership, Advocacy, and Community Empowerment
National Center for Youth Law
National Center on Adoption and Permanency

National Coalition Against Domestic Violence
National Crittenton Foundation
National Domestic Violence Hotline
National Indian Child Welfare Association
National Juvenile Defender Center
National Juvenile Justice Network
North American Council on Adoptable Children
Partnership for America's Children
RISE
Robert F Kennedy Children's Action Corps
School Social Work Association of America
The Children's Village
The Sentencing Project
UNICEF USA
Voices for Adoption
W. Haywood Burns Institute
Year Up
Youth Advocate Programs (YAP)
Youth Law Center

State and Local Organizations

A New Leaf (AZ)
ACTIONN (NV)
Advocates for Children and Youth (MD)
AIDS Foundation of Chicago (IL)
Alaska Children's Trust
All Faiths Children's Advocacy Center (NM)
Allendale Association (IL)
Alliance for Childhood Education (KS, MO)
Arden Shore Child and Family Services (IL)
Bronx Defenders (NY)
Brooklyn Defender Services (NY)
California Department of Social Services
Catholic Charities Community Maternity Services (NY)
Center for Advanced Studies in Child Welfare at the University of Minnesota
Center for Children's Advocacy, Inc. (CT)
Center for Family Representation (NY)
Center on Halsted (IL)
Chicago Children's Advocacy Center (IL)
Chicago Survivors
Child and Family Policy Center (IA)
Child and Family Resources (AZ)
Child and Family Services (NY)
Child Welfare Organizing Project (NY)
Children's Action Alliance (AZ)
Children's Advocacy Alliance (NV)

Children's Defense Fund - Texas
Children's Law Center of Minnesota
Children's Place Association (IL)
Children's Law Center (DC)
Children's Service Society (UT)
CHRIS 180 (GA)
Citizens' Committee for Children of New York, Inc. (NY)
Citizens for Juvenile Justice (MA)
Coalition for Asian American Children and Families (NY)
Committee for Public Counsel Services (MA)
Community Behavioral Healthcare Association of Illinois (IL)
Community Chest, Inc (NV)
Connecticut Alliance of Foster and Adoptive Families, Inc
Connecticut Association for Human Services
Connecticut Voices for Children
Council of Family and Child Caring Agencies (NY)
County Welfare Directors Association of California (CA)
Duane Dean Behavioral Health Services (IL)
EPIC 'Ohana
Esperanza Health Centers (IL)
EverThrive Illinois
Families and Friends of Louisiana's Incarcerated Children
Families First (GA)
Family to Family Connection, ISD 13 (NV)
Family Violence Appellate Project (CA)
Forefront (IL)
Forestdale, Inc. (NY)
Foster Adopt Connect (MO, KS)
Foster Care Alumni of America-Illinois Chapter
Foster Change (NV)
Foster Kinship (NV)
Harriet Buhai Center for Family Law (CA)
Heartland for Children (FL)
Heartland Human Care Services (IL, MI)
Hillsides (CA)
Hispanic Caucus (NV)
Identity, Inc. (MD)
Illinois Childhood Trauma Coalition/
Illinois Collaboration on Youth
Illinois Partners for Human Service
Illinois PTA
Illinois Public Health Association
Illinois Public Health Institute
Instituto del Progreso Latino (IL)
Interfaith Movement for Human Integrity (CA)
JCCA (NY)

Juvenile Justice Initiative of Illinois
Juvenile Protective Association (IL)
Juvenile Restorative Justice, Inc. (KY)
Kaleidoscope (IL)
Kansas Action for Children
Kansas Appleseed
Kansas Association for the Education of Young Children
Kansas Head Start Association
Kids Forward (WI)
Kids in Common, a program of Planned Parenthood Mar Monte (CA)
Kingsley House (LA)
Legal Council for Health Justice (IL)
Legal Services for Children (CA)
Lower Roxbury Coalition (MA)
Loyola University Chicago Civitas Childlaw Center (IL)
Lutheran Social Services of the Southwest
Lutheran Social Services of Wisconsin
Maine Children's Alliance
Make it Work Nevada
Martin de Porres Group Homes (NY)
Mary's Center (DC)
Maryville Academy (IL)
Massachusetts Adoption Resource Exchange (MA)
MercyFirst (NY)
Methodist Children's Home Society (MI)
Metropolitan Family Services (IL)
Michigan's Children
Montgomery County Department of Health and Human Services (MD)
National Association of Social Workers (NASW) Connecticut Chapter
National Association of Social Workers (NASW) Illinois Chapter
National Association of Social Workers (NASW) Kentucky Chapter
National Association of Social Workers (NASW) Massachusetts Chapter
National Association of Social Workers (NASW) Michigan Chapter
National Association of Social Workers (NASW) Minnesota Chapter
National Association of Social Workers (NASW) New Jersey Chapter
National Association of Social Workers (NASW) New Mexico Chapter
National Association of Social Workers (NASW) Tennessee Chapter
National Association of Social Workers (NASW) Texas Chapter
NC Child
New Jersey Parents Caucus, Inc
New Mexico Voices for Children
New York City Administration for Children's Services
Northern River Family of Services (NY)
One Hope United (IL, FL, MO, WI)
OneJustice (CA)
Ounce of Prevention Fund (IL)

Prevent Child Abuse Arizona (AZ)
Pride Inc., Pride Manchester, Inc., Pride Wilton, Inc. (ND)
PromiseShip (NE)
Rhode Island Coalition for Children and Families
Rhode Island KIDS COUNT
Rincon Family Services (IL)
San Diego Volunteer Lawyer Program (CA)
Schuyler Center for Analysis & Advocacy (NY)
Southwest Key Programs (AZ, CA, FL, NY, TX, WI)
SPAN Parent Advocacy Network (NJ)
Starfish Family Homes (IL)
Sunny Hills Services (CA)
Texans Care for Children
The Adoption Exchange (CO, NV, UT)
The Children 's Home Society of New Jersey
The Children's Partnership (CA)
The Foster and Adoption Coalition of Nevada
The Gay and Lesbian Community Center of Southern Nevada
The Hills Preschool (NV)
The Law Foundation of Silicon Valley (CA)
The Villages of Indiana, Inc.
Three Rivers Adoption Council (PA)
Thresholds (IL)
Treatment Alternatives for Safe Communities (IL)
United Community Services of Johnson County (KS)
Voice for Children in Nebraska
Voices for Children of San Antonio (TX)
Voices for Georgia's Children
Voices for Illinois Children
VOICES Youth Centers (CA)
Wayfinder Family Services (CA)
Whittier Street Health Center (MA)
Wisconsin Association of Family & Children's Agencies (WI)
Youth Employment Coalition (IL)
Youth Justice Coalition (CA)
Youth Service, Inc. (PA)
Youth, Rights and Justice (OR)

United States Senate

WASHINGTON, DC 20510

February 12, 2018

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue N.W.
Washington, D.C. 20528

Dear Secretary Nielsen:

We write to express our deep concern that the Department of Homeland Security (DHS) under the Trump Administration is considering a proposal to systematically separate immigrant children from their parents upon arrival in the United States. We condemn such a proposal in the strongest possible terms and urge you to unequivocally reject this cruel measure.

We believe that a systematic and blanket policy to separate a child from a parent would likely violate the constitutional rights of the parents, violate the spirit of the *Flores Agreement*, inflict significant trauma on small children, create additional unnecessary due process obstacles to accessing a meaningful day in court, is contrary to arguments the Department of Justice has made before federal courts in the past, and is grotesquely inhumane.

Further, we are deeply concerned that DHS may already be carrying out such a policy. In one recent case, a one-year-old child was separated from his father.¹ The child was placed in a children's shelter in Texas while the father was detained in an adult facility in San Diego.² Numerous other cases in which parents have been separated from their children have been documented.³ It is unconscionable that the Department would consider tearing these children away from their parents, deliberately agonizing children and parents alike.

Terrorizing children and their parents in an effort to prevent future migration also ignores the horrifying circumstances they have experienced. For many of these children and their parents, fleeing their home country is literally a life-or-death situation. Threatening to separate them and impairing their ability to seek protection is not who we are as a country.

During a recent Senate Judiciary Committee hearing, you failed to repudiate this proposal.⁴ We ask you to refrain from staining America's long-standing role as a human rights leader and to

¹ Caitlin Dickerson & Ron Nixon, *Trump Administration Considers Separating Families to Combat Illegal Immigration*, N.Y. TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/trump-immigrant-families-separate.html>.

² *Id.*

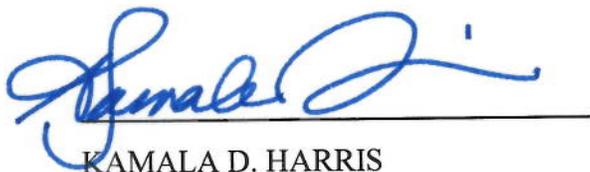
³ *The Separation of Family Members Apprehended by or Found Inadmissible While In U.S. Customs and Border Protection (CBP) Custody at the U.S.-Mexico Border*, AM. IMMIGR. COUNCIL, Dec. 11, 2017, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/family_separation_complaint.pdf.

⁴ *Oversight of the U.S. Dep't of Homeland Sec.: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. (2018) (statement of Kirstjen Nielsen, Secretary, Department of Homeland Security).

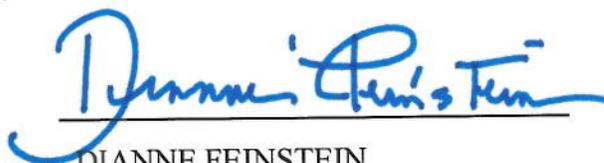
choose a different path on this issue. In a March 7, 2017 interview with Wolf Blitzer, your predecessor, Mr. John Kelly, said that DHS was considering a policy to separate families at the border, a position he later reversed.⁵ We urge you to do the same. Do not forsake children, Madam Secretary, especially when they have had no say in their present situation.

We ask you to instead employ policies such as alternatives to detention that better protect families and reduce reliance on a costly and inhumane immigrant detention system. America can and should treat children with care when we take them into federal custody. We appreciate your consideration and request a prompt response on this important matter.

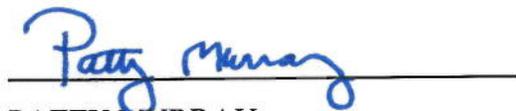
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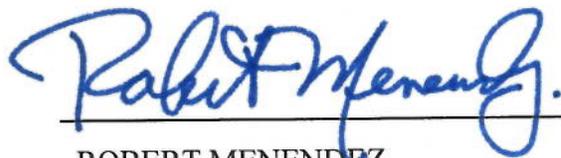
KAMALA D. HARRIS
United States Senator



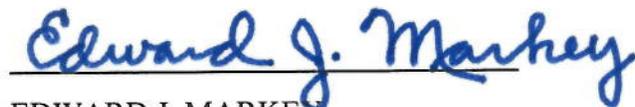
DIANNE FEINSTEIN
United States Senator



PATTY MURRAY
United States Senator



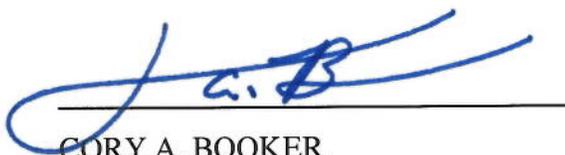
ROBERT MENENDEZ
United States Senator



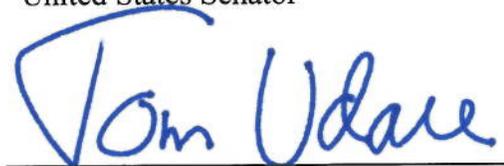
EDWARD J. MARKEY
United States Senator



KIRSTEN GILLIBRAND
United States Senator



CORY A. BOOKER
United States Senator

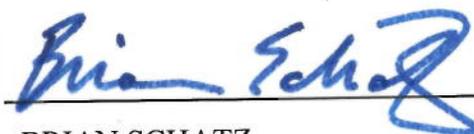


TOM UDALL
United States Senator

⁵ Daniella Diaz, *Kelly: DHS is Considering Separating Undocumented Children from their Parents at the Border*, CNN (Mar. 7, 2017), <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>.



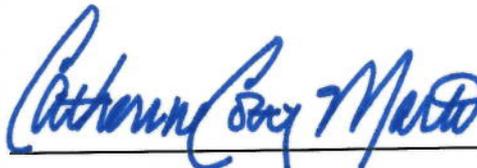
TINA SMITH
United States Senator



BRIAN SCHATZ
United States Senator



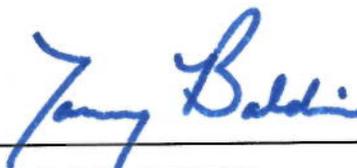
ELIZABETH WARREN
United States Senator



CATHERINE CORTEZ MASTO
United States Senator



BERNARD SANDERS
United States Senator



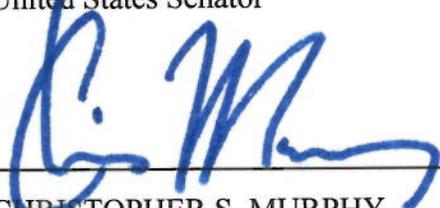
TAMMY BALDWIN
United States Senator



MAZIE K. HIRONO
United States Senator



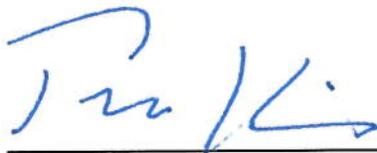
BENJAMIN L. CARDIN
United States Senator



CHRISTOPHER S. MURPHY
United States Senator



SHELDON WHITEHOUSE
United States Senator



TIM KAINE
United States Senator



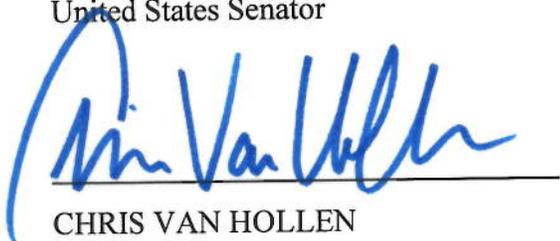
RICHARD BLUMENTHAL
United States Senator



TAMMY DUCKWORTH
United States Senator



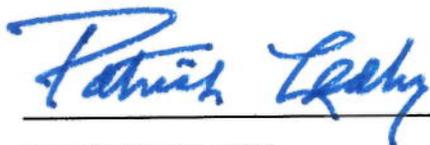
RICHARD DURBIN
United States Senator



CHRIS VAN HOLLEN
United States Senator



MICHAEL F. BENNET
United States Senator



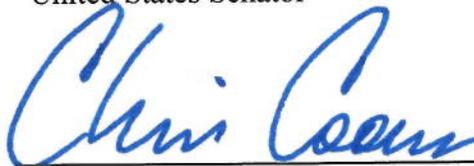
PATRICK LEAHY
United States Senator



AMY KLOBUCHAR
United States Senator



MARTIN HEINRICH
United States Senator



CHRISTOPHER A. COONS
United States Senator



SHERROD BROWN
United States Senator



RON WYDEN
United States Senator



JACK REED
United States Senator



MARIA CANTWELL
United States Senator

Bob Casey, Jr.

ROBERT P. CASEY, Jr.
United States Senator

July 16, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen,

We have valued our membership on the Homeland Security Advisory Council, because it has provided opportunities to offer advice on DHS missions and to support the efforts of its workforce.

Very unfortunately, however, there was no call for advice before recent immigration decisions were announced, enforced, and then retracted by this Administration. Were we consulted, we would have observed that routinely taking children from migrant parents was morally repugnant, counter-productive and ill-considered.

We cannot tolerate association with the immigration policies of this administration, nor the illusion that we are consulted on these matters.

Accordingly, please take this letter as a formal tender of our resignations from the Homeland Security Advisory Council.

Sincerely,

Richard J. Danzig
Elizabeth Holtzman
David A. Martin
Matthew G. Olsen

Elizabeth Holtzman
180 Bergen Street
Brooklyn, NY 11217

July 16, 2018

The Honorable Kirstjen Nielsen
Secretary of the Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen:

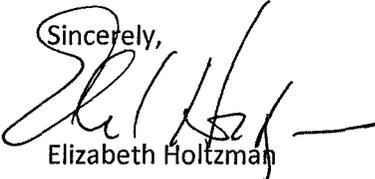
I have joined today with others in a separate letter of resignation from the Department of Homeland Security Advisory Council and am writing to add some further comments now.

As an author of the Refugee Act of 1980, along with Senator Ted Kennedy, I believe the treatment of refugees by you and President Trump violates that law and our treaty obligations to refugees. The 1980 Act created a framework for the admission of refugees, which it viewed as an integral and important part of US policy. The Act was adopted against the background of the Holocaust, in which the US took only a tiny handful of refugees from the Nazis, leaving untold numbers to perish at their hands. The Act was intended to prevent any repetition of that. It was also passed in response to the massive exodus of boat people from Vietnam. There was a time that the US welcomed refugees. We readily accepted and absorbed more than 600,000 refugees from Cuba, 750,000 refugees from Vietnam and more than 100,000 Jews from the Soviet Union. Considering that history, the thought that the US government is afraid today of 2,000 children and their parents is both laughable and appalling.

Under your administration and that of Donald Trump's, DHS has been transformed into an agency that is making war on immigrants and refugees. The ethnically and religiously motivated travel ban, the refusal to provide relief to the Dreamers and the new mass deportation program that does not prioritize the removal of undocumented aliens with serious criminal records (thereby harming American citizen children and spouses by removing a parent and a breadwinner from the family and hurting the country by removing productive people who have been living here for decades) are malign and ultimately self-destructive policies.

The final straw has been the separation of children from their parents at the Southwest border. This is child kidnapping, plain and simple. Seizing children from their parents in violation of the constitutional rights of both is bad enough (mentally harmful to the children and infinitely painful to both the parents and children), but doing so without creating proper records to enable family reunification shows utter depravity on the part of the government officials involved.

Although it is I who am resigning in protest against these policies, it is you who should be tendering your resignation instead.

Sincerely,

Elizabeth Holtzman



DAVID A. MARTIN

WARNER-BOOKER DISTINGUISHED PROFESSOR OF INTERNATIONAL LAW EMERITUS

July 16, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen:

I joined today's letter from several HSAC members tendering our resignations from the Homeland Security Advisory Council, but I write to expand on the reasons for my action.

The unjust policy of separating families at the border obviously was the precipitating event, as indicated in the joint letter. Now it has become clear that the policy was also executed with astounding casualness about precise tracking of family relationships – as though eventual reunification was deemed unlikely or at least unimportant, even for toddlers and preschoolers.

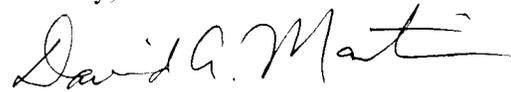
I have spent much of my working life studying and implementing effective, realistic asylum adjudication systems, and also trying to lay the groundwork for serious and resolute immigration enforcement. I know that both objectives can be reached in humane ways. From the beginning, however, the administration has opted instead for gratuitously severe actions in the immigration arena, such as the travel ban and the termination of the DACA program, combined with commitment to a vast wall that no serious professional thinks is an effective way to spend 25 billion enforcement dollars. These actions have fueled polarization, alienated state and local governments, and moved us much further from a sustainable, effective, and strategically sensible immigration enforcement program.

Further, the family separation policy crystallized for many HSAC members profound doubts about the administration's commitment to the rule of law. These doubts were sown, for example, when the president pardoned Sheriff Joe Arpaio, who had been found in criminal contempt of court for willfully violating a civil-rights-based injunction. That pardon was issued less than two weeks after the President refused to condemn the violent massing of Nazi and KKK sympathizers in Charlottesville. Our doubts have then been nurtured regularly by tweets and statements falsely impugning the integrity of the FBI, the Justice Department, the intelligence community, and various federal courts.

Commitment to the rule of law is essential to the protection of homeland security – both constitutionally and operationally. Our nation's past successes in thwarting terrorist acts and receiving information on nascent plots derive in major part from an understanding by the members of our national community, including ethnic and religious minorities – and by our global allies – that the US government stands for such values.

I greatly valued my time as an officer of DHS, and I then worked hard to contribute constructively as a member of HSAC. Many friends remain at the Department, and I respect their ongoing efforts to fulfill a complex and challenging mission. I regret that the administration's actions have pushed me and several other colleagues to this departure from the Council.

Sincerely,

A handwritten signature in black ink that reads "David A. Martin". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

David A. Martin