

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Maria Doris Pineda,)	
no current address;)	
)	
Maria Doris Pineda,)	
on behalf of her minor child D.R.)	
no current address;)	
)	
Jasmine Ortega Sanchez,)	
no current address;)	
)	
Jasmine Ortega Sanchez,)	
on behalf of her minor child M.O.R.)	
no current address;)	Case No.
)	
Francisco Javier Castillos,)	
no current address,)	
)	
Holivia Adeline Castillos,)	
no current address;)	
)	
Francisco Javier Castillos,)	
on behalf of his minor child F.J.C.)	
no current address;)	
)	
Holivia Adeline Castillos,)	
on behalf of her minor child F.J.C.)	
no current address;)	
)	
Dina Ruc,)	
no current address;)	
)	
Dina Ruc,)	
on behalf of her minor child J.S.)	
no current address;)	
)	
Marta Lopez,)	
no current address;)	

Marta Lopez,
on behalf of her minor child L.D.L.
no current address;

Plaintiffs,

v.

Donald J. Trump,
President of the United States of America,
in his official capacity,
1600 Pennsylvania Ave, N.W.,
Washington, D.C.;

**U.S. Immigration and Customs
Enforcement ("ICE")**
500 12th St., SW
Washington, D.C. 20536;

**U.S. Department of
Homeland Security ("DHS")**
245 Murray Lane, SW
Washington, D.C. 20528;

**U.S. Customs and Border
Protection ("CBP")**
1300 Pennsylvania Ave., NW
Washington, D.C. 20229;

**U.S. Citizenship and Immigration
Services ("USCIS")**
20 Massachusetts Ave, NW
Washington, D.C. 20529;

Thomas Homan, in his official capacity as
Acting Director of ICE
500 12th St., SW
Washington, D.C. 20536;

JURY TRIAL DEMANDED

Jefferson Beauregard Sessions III, in his)
individual capacity and in his official)
capacity as Attorney General of the)
United States)
950 Pennsylvania Ave, NW)
Washington, C.C. 20530;)

Kirstjen Nielsen, in her official capacity as)
Secretary of U.S. Department of Homeland)
Security ("DHS"))
245 Murray Lane, SW)
Washington, D.C. 20528;)

Kevin K. McAleenan, in his official)
capacity as Acting Commissioner of U.S.)
Customs and Border Protection ("CBP"))
1300 Pennsylvania Ave., NW)
Washington, D.C. 20229;)

and)

L. Francis Cissna, in his official capacity as)
Director of USCIS)
20 Massachusetts Ave, NW)
Washington, D.C. 20529,)

Defendants.)

CLASS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES Plaintiffs Maria Doris Pineda, Jasmine Ortega Sanchez,
Francisco Javier Castillos, Holivia Adeline Castillos, Dina Ruc, and Marta Lopez,
and file this civil action against the Trump administration for violations of their
procedural and substantive due process rights under the Fifth Amendment of the

U.S. Constitution, violation of the APA, and for class relief pursuant to Rule 23, Fed. R. Civ. P. In support thereof, Plaintiffs state that:

INTRODUCTION

1.

Trump's professed and enacted policy towards thousands of caravanners seeking asylum in the United States is shockingly unconstitutional. President Trump continues to abuse the law, including constitutional rights, to deter Central Americans from exercising their lawful right to seek asylum in the United States, and the fact that innocent children are involved matters none to President Trump. For example, the Flores Agreement, a legally binding agreement designed to ensure the safety of immigrant alien children, as they enter this country for a variety of reasons, states that minors must be held in facilities run by *licensed* programs that are "safe and sanitary and are consistent with [Defendants'] concern for the particular vulnerability of minors." (See Ex. 1, ¶¶ 12.A, 14, Flores Agreement.) These facilities must "provide access to toilets and sinks, drinking water ... **adequate temperature control and ventilation**, adequate supervision to protect minors from others, and contact with family." (See Ex. 1)

2.

Despite the Flores Agreement's lawfully binding mandates, President Trump's policy position/initiative is to put these very children in tents, touting that "when they find out this happens, [held in tents for years in the desert] you're going to have far fewer people come up." Clearly President Trump cannot believe that his tents are facilities run by licensed programs as required by the Flores Agreements. And President Trump clearly is not talking about adequate temperature controlled and ventilated tents with toilets and sinks and drinking water, for Plaintiffs' children, noting that Trump has condoned tent encampments as recent as 8 months ago. Id. Moreover, the issue of detaining people in tents indefinitely brings about more unconstitutional conduct by our President.

3.

The only way President Trump can mandate permanent detention without even a bond hearing is for those persons to be designated as "you are an arriving alien" upon entering the United States. See Garza-Garcia v. Moore, 539 F. Supp. 2d 899, 906 (S.D. Tex. 2007). There are two other designation: (2) "You are an alien present in the United States who has not been admitted or paroled."; or (3) "You have been admitted to the United States, but are removable for the reasons stated below." See United States v. Castaneda-Barajas, No. CR-11-2069-RMP,

2011 WL 3626786, at *6 (E.D. Wash. Aug. 16, 2011). These two designations, however, permit asylum seekers to have a bond hearing. So, taking President Trump at his word – that his policy position/initiative is to detain people in tents until they have to go back to central America – President Trump must be directing officials to designate all Caravanners as “you are an arriving alien.” *Id.* The problem with this designation however is that the law requires Defendants to permit all such designated persons to *challenge their designations*; consequently, Trump’s policy of keeping all persons detained until they must leave the country necessarily violates due process rights. See Garza-Garcia, 539 F. Supp. 2d 899.

4.

On top of the above, Trump has repeatedly professed that the caravan people will not get into this county, and just as significant, Trump has taken meaningful steps to ensure the world that this is his policy position/initiative, meaningful steps such as deploying thousands of active military troops to the border, waiting on caravan persons to arrive. The legal problem with Trump’s plan to stop caravan persons from entering this country is that Plaintiffs are seeking asylum, and Trump simply cannot stop them from legally doing so by using military, or anyone.

5.

This Court should also note that President Trump has begun hysterically asserting without any evidence that “many criminals” and “many gang members” are in this “onslaught” of migration. In an effort to create fear and hysteria, Trump has gone so far as to call this “an invasion of our Country.” Despite these statements and actions, Trump has been unable to produce any evidence of criminals and gang members within the caravan, which has largely proceeded peacefully on its journey. Plaintiffs now request that this Court declare Trump’s policy positions/initiatives outlined in this Complaint unconstitutional, to end this case and controversy.

JURISDICTION

6.

This case arises under the Fifth Amendment to the United States Constitution, the Administrative Procedures Act (APA), and the Declaratory Judgment Act, *inter alia*. The court has subject matter jurisdiction under 28 U.S.C. § 1331.

7.

Personal Jurisdiction is proper because Defendants transact business in this District and thus are subject to personal jurisdiction in this Court.

VENUE

8.

Venue is proper under 28 U.S.C. § 1391 because at least one of the Defendants is subject to personal jurisdiction in this district with regards to this action.

PARTIES

9.

Plaintiff Maria Doris Pineda is a citizen of Honduras travelling by foot to the United States to seek asylum. She is the mother of "D.R."

10.

Plaintiff Jasmine Ortega Sanchez is a citizen of Honduras travelling by foot to the United States to seek asylum. She is the mother of "M.O.R."

11.

Plaintiff Francisco Javier Castillos is a citizen of Honduras travelling by foot to the United States to seek asylum. He is the father of "F.J.C."

12.

Plaintiff Holivia Adeline Castillos is a citizen of Honduras travelling by foot to the United States to seek asylum. She is the mother of "F.J.C."

13.

Plaintiff Dina Ruc is a citizen of Honduras travelling by foot to the United States to seek asylum. She is the mother of "J.S."

14.

Plaintiff Marta Lopez is a citizen of Honduras travelling by foot to the United States to seek asylum. She is the mother of "L.D.L."

15.

Defendant Donald J. Trump is the President of the United States and is responsible for the direction and control of all federal executive agencies, including all Co-Defendants. Trump is the driving force behind the policies and actions challenged in this suit.

16.

Defendant U.S. Immigration and Customs Enforcement ("ICE") is the sub-agency of DHS that is responsible for carrying out removal orders and overseeing immigration detention.

17.

Defendants U.S. Department of Homeland Security ("DHS") has responsibility for enforcing the immigration laws of the United States.

18.

Defendant U.S. Customs and Border Protection (“CBP”) is the sub-agency of DHS that is responsible for the initial processing and detention of noncitizens who are apprehended near the U.S. border.

19.

Defendant U.S. Citizenship and Immigration Services (“USCIS”) is the sub-agency of DHS that, 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.

20.

Defendant U.S. Department of Health and Human Services (“HHS”) is a department of the executive branch of the U.S. government which has been delegated with authority over “unaccompanied” noncitizen children.

21.

Defendant Thomas Homan is sued in his official capacity as the Director of ICE.

22.

Defendant Kirstjen Nielsen, is sued in official capacity as the Secretary of the Department of Homeland Security. In this capacity, she directs each of the component agencies within DHS: ICE, USCIS, and CBP. As a result, Defendant

Nielsen has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, is empowered to grant asylum or other relief.

23.

Defendant Jefferson Beauregard Sessions III is sued in his individual capacity and his official capacity as the Attorney General of the United States. At all times relevant to this Complaint, he had responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, oversaw the Executive Office of Immigration Review, was empowered to grant asylum or other relief. At all times relevant to this Complaint, he had the power to direct his subordinates to carry out any order relating to asylum petitions and detention.

24.

Defendant L. Francis Cissna is sued in his official capacity as the Director of USCIS.

25.

Defendant Kevin K. McAleenan is sued in his official capacity as the Acting Commissioner of CBP.

SOME RELEVANT LAWS AT ISSUE IN THIS CASE

26.

The care and custody of minors in Immigration Custody is controlled by the Flores Agreement, a copy of which is attached hereto as Exhibit 1. That

agreement applies to all minors, including those who are taken into custody with their parents. Flores v. Lynch, 828 F.3d 898 (9th Cir. 2016). That agreement provides that minors must be held in facilities run by licensed programs and that are “safe and sanitary and are consistent with [Defendants’] concern for the particular vulnerability of minors.” Ex. 1, ¶¶ 12.A, 14. These facilities must “provide access to toilets and sinks, drinking water ... **adequate temperature control and ventilation**, adequate supervision to protect minors from others, and contact with family.” Id.

27.

Any immigrant present in the U.S., irrespective of whether they immigrated through a designated port of arrival, must be considered an applicant for admission into the country:

An alien present in the United States who has not been admitted 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) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225 (a)(1).

28.

Immigrants who indicate an intention to apply for asylum or indicates a fear of persecution must be referred for a “credible fear interview”:

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

8 U.S.C. § 1225 (b)(1)(A)(ii).

29.

Following a credible fear interview, if an asylum officer determines that an asylum seeker has a “credible fear of persecution,” then there is a significant possibility that the asylum seeker will be granted asylum:

For purposes of this subparagraph, the term “credible fear of persecution” means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

8 U.S.C. § 1225 (b)(1)(B)(v).

RELEVANT FACTS

a. Facts Relevant to Tent City

30.

The Northern Triangle countries of Guatemala, Honduras, and El Salvador are undergoing a well-documented human rights crisis.¹ As a result, thousands

¹ See, e.g., Diego Zavala, Fleeing for Our Lives: Central American Migrant Crisis, AMNESTY USA (Apr. 1, 2016, 12:12 PM),

of immigrants have begun a journey to the United States, many children and families, in order to seek asylum.

31.

In an interview with Laura Ingraham, Trump addressed the question of those immigrants in this group seeking asylum. Specifically stating “we are going to hold them until such time as their trial takes place.”

32.

In that interview, Trump further stated that “we’re going to put up, we’re going to build tent cities, we’re going to put tents up all over the place” to house caravanners.

33.

There is no evidence that Trump’s policy position/initiative of placing people in tents and tent cities is in compliance with the requirement that alien children such as those at issue in this case are being placed in facilities run by licensed programs that provide adequate temperature control and ventilation, access to drinking water, and supervision as required by the Flores Agreement.

Ex. 1.

<http://blog.amnestyusa.org/americas/fleeing-for-our-lives-central-american-migrant-crisis/>; Lily Folkerts, A Look at the Northern Triangle of Central America in 2016: Sustained Violence and Displacement, LATIN AMERICA WORKING GROUP (Aug. 15, 2016) <http://www.lawg.org/action-center/lawg-blog/69-general/1709-a-look-at-the-northern-triangle-of-central-america-in-2016-sustained-violence-and-displacement>.

34.

Trump followed this up with “we’re going to take the people and they’re going to wait ... when they find out this happens, you’re going to have far fewer people come up.” This demonstrates that Trump is compounding violations of the Flores Agreement by again attempting to use immigration detention as a deterrent to migration, again flouting this Court’s ruling that this is unlawful. R.I.L-R v. Johnson, 80 F.Supp.3d 164, 188 (D.D.C. 2015) (citing Kansas v. Crane, 534 U.S. 407, 412, 122 S.Ct. 867, 151 L.E.2d 856 (2002)).

b. Facts Related to Denial of Access to Asylum

35.

At the same time that Trump is stating that he is going to detain all Central American asylum seekers, he is saying it doesn’t matter, “those in the Caravan, turnaround, we are not letting people into the United States illegally. Go back to your Country.”

36.

As stated by Defendant Nielsen (Secretary of DHS), “This caravan cannot come to the United States. They will not be allowed in. They will not be allowed to stay.” “If you do not have a legal right to come to this country and you come as part of this caravan, you come in our country, you will be returned home.” Id.

37.

To further enact Trump's policy position/initiative of stopping caravanners, including asylum seekers, from entering the United States, Defendants are sending more than 5,000 active duty troops to the Southern Border to join Customs and Border Patrol and the National Guard already present there. At least some number of these troops will be armed.

38.

Defendant Nielsen has already admitted that these troops, and CBP agents, cannot enter Mexico to prevent the immigrants from entering the U.S. to seek asylum.

39.

Any immigrant, even one deemed inadmissible under §§ 1182(a)(6)(C) or 1182(a)(7), who indicates an intention to apply for asylum or a fear of persecution, shall be referred to an asylum officer. 8 U.S.C. § 1225 (b)(1)(A)(ii). Thus, the Defendants are attempting to deprive these migrants of their statutory right to seek asylum, and utilizing the U.S. military against desperate, unarmed, women and children to do it. Id.

40.

As late as October 31, 2018, Mr. Trump has re-stated his policy position, stating he is now prepared to deploy as many as 15,000 troops, stating “[w]e’re going to be prepared. They are not coming into our country.”

c. Relevant Facts to the Denial of Due Process

41.

The Defendants have stated that their policy is to detain all migrants and caravanners, including asylum seekers indefinitely, without any bond hearing.

42.

All immigrants in the custody of the Defendants are issued a notice to appear by the CBP officer initially reviewing their case. Garza-Garcia v. Moore, 539 F.Supp.2d 899, 907 (S.D. Tex. 2007). In issuing this document, the officer selects from three categories, the first of which is “arriving alien” that subjects the immigrant to mandatory detention. Id.

43.

Upon information and belief, it is by use of this designation that the Defendants intend to enforce this mandatory detention. Specifically, upon information and belief, the Defendants have issued an informal directive to all CBP officers to select “arriving alien” for all of the Plaintiffs to subject them to mandatory detention. In Kim, the Supreme Court acknowledged that § 1226

includes the right to a hearing to determine if the immigrant is properly included in the mandatory detention category, which provides the individual review sufficient to satisfy constitutional requirements. Denmore v. Kim, 538 U.S. 510, 514, 123 S.Ct. 708, 155 L.Ed.2d 724. This determination has been interpreted as giving all detainees the right to review their inclusion in the class of immigrants subject to mandatory detention. Moore, 539F.Supp.3d at 907-08.

44.

Further, asylum-seekers can be provided bond and released into the United States temporarily at the discretion of the Attorney General. 8 U.S.C. § 1182(d)(5)(A). ICE has issued a directive setting forth the procedures that must be utilized when evaluating parole requests. ICE Directive No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009). This directive requires that “[e]ach alien’s eligibility for parole should be considered and analyzed on its own merits and based on the facts of the individual aliens case.” Id. at ¶ 6.2. Further, when such immigrants who establish they are not a flight risk or danger to the community, “DRO should ... parole the alien on the basis that his or her continued detention is not in the public interest.” Id.

45.

Trump's policy position/initiative of detaining caravanners, including Asylum seekers, until they are deported back to Central America prohibits those seeking Asylum from challenging their inclusion within the category of aliens that must be mandatorily detained as described in the immediate two above paragraphs.

CLASS ACTION ALLEGATIONS

46.

Plaintiffs bring this suit as a class action on behalf of themselves and all others similarly-situated (the "Class") pursuant to Rules 23(a), 23(b)(2), and 23(b)(3).

i. Class Definition

47.

Plaintiffs seek to represent the following class:

All persons (1) who are Mexican, Central American, or South American citizens (2) who are travelling to the United States or have attempted entry into the United States, whether at a designated port of entry or not, since October 31, 2018, and (3) who are seeking asylum or intending to seek asylum within the United States.

48.

Plaintiffs reserve the right to amend the class definition if further investigation and discovery demonstrates that the class definition should be

narrowed, expanded, or otherwise modified. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

49.

As a result of Defendants' stated policies and actions taken to support them, Plaintiffs seek declaratory and injunctive relief under Rule 23(b)(2) under pre-enforcement standing, to prevent the catastrophic and damaging effects of Defendants' illegal and unconstitutional actions, policies, and practices.

ii. Rule 23(a) requirements are met for the proposed Class

50.

The requirements of Rule 23(a) are satisfied by this class action.

a. Numerosity

51.

The information as to the size of the Class and the identity of Class Members is in the control of the Defendants. On information and belief, the class encompasses at least 3,600 migrant individuals and families from Honduras and

Guatemala who are currently traveling through Mexico for the United States intending to seek asylum. The number of persons who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

b. Commonality

52.

Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants complained of herein were generally applicable to the entire Class. The common answers that Plaintiffs seek are simple and will result in a common resolution for the Class. These legal and factual questions include, but are not limited to:

1. Whether housing asylum seekers, including children and families, in tent cities for the duration of their asylum case is permissible under the Flores Agreement;
2. Whether Defendants' decision to deny asylum seekers the ability to even pursue asylum claims is constitutional;
3. Whether depriving asylum seekers of the opportunity to challenge their inclusion in the category of aliens subject to mandatory detention is constitutional;
4. Whether using long term detention of asylum seekers, including

children and families, in order to deter migration is constitutional or lawful; and

5. Whether denying asylum seekers who pass their credible fear exam an individualized review of their parole decision is constitutional and lawful.

c. Typicality

53.

Plaintiffs' claims are typical of the members of the Class because Plaintiffs and all Class members are migrants crossing the southern U.S. border seeking asylum who are or will be denied the opportunity to seek asylum, who are or will be subject to mandatory immigration detention as a deterrent to migration, who are or will be denied opportunity to seek individualized review of their bond determination and inclusion in the class of aliens subject to mandatory detention, and who are or will be housed in tent cities until their asylum claims are ruled on. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

d. Adequacy

54.

Plaintiffs will fairly and adequately protect the interests of the Class.

Plaintiffs have no interests that are contrary to or in conflict with those of the Class they seek to represent.

55.

Plaintiffs have retained competent counsel in both civil rights and class action litigation. Plaintiffs' counsel has significant recent experience in substantially similar litigation against substantially similar defendants.

56.

Plaintiffs' suit is financially supported by considerable philanthropic funding.

iii. **Rule 23(b)(2) requirements are met for the proposed Class**

57.

The requirements of Rule 23(b)(2) are satisfied by this class action.

58.

Relief concerning Plaintiffs' rights under the laws herein alleged and with respect to the Class would be proper. Based on the anterior facts preceding this paragraph, Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to Class members as a whole and certification of the Class under Rule 23(b)(2) proper.

iv. **Rule 23(b)(3) requirements are met for the proposed Class**

59.

The requirements of Rule 23(b)(3) are satisfied by this class action.

60.

Questions of law or fact common to Class members predominate over any questions affecting only individual members because, *inter alia*, (i) each member of the proposed Class was injured by the same Defendants under the same subject policies, (ii) each member of the proposed Class was or will be denied opportunity to seek asylum, (iii) each member of the proposed Class was or will be determined to be an ‘arriving alien’ subject to mandatory detention without a hearing to challenge that inclusion, (iv) each member of the proposed Class was or will be denied an individualized review of their bond application pending their asylum claims, (v) each member of the proposed Class was or will be detained in tents in an effort to deter migration, and (vi) and each member of the proposed class will be detained in tent cities in violation of the Flores Agreement.

61.

A class action is superior to other available methods for fairly and efficiently adjudicating the controversy because the certification of the Class will achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly injured, without sacrificing procedural fairness

or bringing about other undesirable results, making certification of the Class under Rule 23(b)(3) proper.

CAUSES OF ACTION

COUNT I

Claim for Declaratory Relief
under the Declaratory Judgment Act, 28 U.S.C. § 2201
due to violating Due Process Clause
5th Amendment of the U.S. Constitution
(Claim for Declaratory relief against all Defendants in their official capacities)

62.

Plaintiffs hereby incorporate the preceding factual paragraphs 1 through 61, and any other paragraph this Court deems relevant, as repeated and realleged as though fully set forth herein to support this Count.

63.

The Due Process Clause of the Fifth Amendment applies to all “persons” on United States soil and thus applies to Plaintiffs when seeking admission at the Southern United States Border.

64.

Plaintiffs have a liberty interest under the Due Process Clause in being free from unwarranted government detention.

65.

Although the U.S. Supreme Court acknowledges the “broad” latitude due the Executive in the realm of immigration, Mathews v. Diaz, 426 U.S. 67, 79–80,

96 S.Ct. 1883, 48 L.Ed.2d 478 (1976), it cannot “abdicate[e]” its “legal responsibility to review the lawfulness” of detention. Zadvydas, 533 U.S. at 700, 121 S.Ct. 2491. The government's power over immigration, while considerable, “is subject to important constitutional limitations.” Id. at 695, 121 S.Ct. 2491.

66.

Previous attempts by the federal government to use a policy of “no release” to deter asylum seekers have been found to violate due process. In R.I.L. v. Johnson, the federal government argued that “in determining whether an individual claiming asylum should be released, ICE can consider the effect of release on others not present in the United States. Put another way, it maintain[ed] that one particular individual may be civilly detained for the sake of sending a message of deterrence to other Central American individuals who may be considering immigration.” R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015). The Johnson court found that the government’s consideration of the deterrence effect on whether to release asylum-seekers was “out of line with analogous Supreme Court decisions,” noting that in discussing civil commitment more broadly, the Court has declared such “general deterrence” justifications impermissible. Id. (citing Kansas v. Crane, 534 U.S. 407, 412, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002) (warning that civil detention may not “become a ‘mechanism for retribution or *general deterrence*’ — functions properly those of criminal law,

not civil commitment”) (quoting Kansas v. Hendricks, 521 U.S. 346, 372–74, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) (Kennedy, J., concurring); see id. at 373, 117 S.Ct. 2072 (“[W]hile incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.”)). The Johnson court further found that “a general-deterrence rationale seems less applicable where – unlike pedophiles, see Hendricks, 521 U.S. at 354–55, 362, 117 S.Ct. 2072, or other violent sexual offenders, see Crane, 534 U.S. at 409–11, 122 S.Ct. at 869 – neither those being detained nor those being deterred are certain wrongdoers, *but rather individuals who may have legitimate claims to asylum in this country.*” R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 189 (D.D.C. 2015) (emphasis added).

67.

Based on the incorporated facts to support this count, the policy position/initiative of detaining Plaintiffs in tents until they are deported without permitting Plaintiffs to challenge their categorization in a class of aliens subject to mandatory detention violates their substantive due process rights. Moreover, violating their substantive due process rights for the purpose of deterring migration is also unconstitutional.

68.

Based on the incorporated facts to support this count, furthermore, the policy position/initiative of entirely denying all class members access to the asylum process by stating you are not allowing any class member from even entering the United States, violates their due process rights.

69.

Based on the incorporated facts to support this count, the policy position/initiative of detaining children and families in tents in direct violation of the Flores Agreement, violates the substantive due process rights of the Plaintiffs and their minor children, for whom they are acting on behalf of.

COUNT II
Claim for Declaratory Relief
under the Declaratory Judgment Act, 28 U.S.C. § 2201
for violation of Procedural Due Process Clause
5th Amendment of the U.S. Constitution
(Claim for Declaratory relief against all Defendants in their official capacities)

70.

Plaintiffs hereby incorporate the preceding factual paragraphs 1 through 34, and any other paragraph this Court deems relevant, as repeated and realleged as though fully set forth herein to support this Count.

71.

The Due Process Clause of the Fifth Amendment applies to all “persons” on United States soil and thus applies to Plaintiffs when seeking admission at the Southern United States Border.

72.

Plaintiffs have a liberty interest under the Due Process Clause in remaining free from unwarranted government detention.

73.

Based on the incorporated facts to support this count, the policy position/initiative that mandates the detention of Plaintiffs in tents until they must leave the country violates procedural due process because the policy position/initiative denies Plaintiffs their lawful right to challenge Plaintiffs’ inclusion in a category that prohibits them from seeking bond and release from detention. This denial deprives the Plaintiffs of their procedural protections of the individualized determination of their bond eligibility.

COUNT III
Claim for Declaratory Relief
for violation of the Administrative Procedures Act ("APA"), 5 U.S.C. §
706(2)(C), by disregarding the requirements of, *inter alia*,
8 U.S.C. § 1225; 8 U.S.C. § 1182; 8 CFR § 1201
ICE Directive No. 11002.1; and the Flores Agreement
(Claim for Declaratory relief against Defendants Sessions, Nielsen, and McAleenan in
their official capacities)

74.

Plaintiffs hereby incorporate the preceding factual paragraphs 1 through 34, and any other paragraph this Court deems relevant, as repeated and realleged as though fully set forth herein to support this Count.

75.

Based on all the incorporated facts that support this count, the final agency action mandating the permanent detention of all asylum seekers in tents (or anywhere) until they are deported is an arbitrary and capricious abuse of the implementation of specific statutes that entitle Plaintiffs to challenge their categorization within a class of aliens that are not permitted bond. Further, this policy position/initiative is an arbitrary and capricious abuse of the implementation of the specific statutes permitting aliens to seek asylum. Further, the Defendants' policy position/initiative of detaining minor alien children in tents, a schematic that clearly does not meet the licensed program and other requirements of the Flores Agreement; and the tent city policy is unlawful under the APA.

COUNT IX
Attorney's Fees

Based on the foregoing, Plaintiffs are entitled to reasonable attorney's fees under all applicable laws, including the Equal Access to Justice Act, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

Plaintiffs request that the Court enter a judgment against Defendants and award the following relief:

- A. Enter judgment and declaratory judgment in favor of Plaintiffs;
- B. Declare all acts argued as unconstitutional within this Complaint as unconstitutional;
- C. Declare all acts argued as violative of the APA as violative of the APA;
- D. Award costs and attorneys' fees to Plaintiffs; and
- E. Order all other relief that is just and proper.

Respectfully submitted this 1st day of November 2018.

/s/John M. Shoreman
John M. Shoreman (#407626)

MCFADDEN & SHOREMAN, LLC
1050 Connecticut Avenue, NW
Washington, DC 20036
202-772-3188/202-204-8610 FAX
jmshoreman@verizon.net

/s/ Mario B. Williams

Mario B. Williams (Ga. # 235254)

Pro Hac Vice Application Forthcoming

/s/ Dallas S. LePierre

Dallas S. LePierre (Fl. # 101126)

Pro Hac Vice Application Forthcoming

NEXUS DERECHOS HUMANOS ATTORNEYS, INC.

44 Broad Street, NW, Suite 200

Atlanta, Georgia 30303

404-254-0442/ 703-935-2453 FAX

mwilliams@ndhlawyers.com

dlepierre@ndhlawyers.com

/s/ Julie Oinonen

Julie Oinonen (Ga. # 722018)

Pro Hac Vice Application Forthcoming

WILLIAMS OINONEN LLC

44 Broad Street, NW, Suite 200

Atlanta, Georgia 30303

404-654-0288/404-592-6225 FAX

julie@goodgeorgialawyer.com

Counsel for Plaintiffs

Exhibit 1

8/12/96

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057
(213) 388-8693

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales
114 Sansome Street, Suite 905
San Francisco, CA 94104
(415) 453-3307



Attorneys for Plaintiffs

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

Attorneys for Defendants

Additional counsel listed next page

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.)	

Plaintiffs' Additional Counsel

ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Mark Rosenbaum
Sylvia Argueta
1616 Beverly Boulevard
Los Angeles, CA 90026
Telephone: (213) 977-9500

STREICH LANG
Susan G. Boswell
Jeffrey Willis
1500 Bank of America Plaza
33 North Stone Avenue
Tucson, AZ 85701
Telephone: (602) 770-8700

Defendants' Additional Counsel:

Arthur Strathern
Mary Jane Candaux
Office of the General Counsel
U.S. Immigration & Naturalization Service
425 I St. N.W.
Washington, DC 20536
/ / /

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: 9/16/96

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

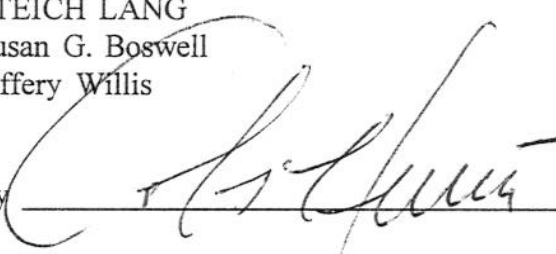
Sylvia Argueta

STEICH LANG

Susan G. Boswell

Jeffery Willis

Date: 11/13/97

By 

Date: 11/13/96

By 