IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

J.E.C.M.,[1] a minor, by and through his next friend JOSE JIMENEZ SARAVIA, and JOSE JIMENEZ SARAVIA;

B.G.S.S., a minor, by and through his next friend INGRID SIS SIS, and INGRID SIS SIS;

R.A.I., a minor, by and through her next friend SANDRA ALVARADO, and SANDRA ALVARADO;

K.T.M., a minor, by and through his next friend CINTHIA VELASQUEZ TRAIL; and CINTHIA VELASQUEZ TRAIL;

M.C.L., a minor, by and through her next friend REYNA LUVIANO VARGAS, and REYNA LUVIANO VARGAS;

A.Y.S.R., a minor, by and through her next friend LINDSAY TOCZYLOWSKI;

J.A.T.L., a minor, by and through his next friend CANDY LEMUS, and CANDY LEMUS;

C.E.C.P., a minor, by and through his next friend KAYLA VAZQUEZ, and KAYLA VAZQUEZ;

E.A.R.R., a minor, by and through his next friend FRANCISCO RAMOS CHILEL, and FRANCISCO RAMOS CHILEL;

Y.R.R.B., a minor, by and through his next friend ASTRIN MELISSA CENTENO IRIAS, and ASTRIN MELISSA CENTENO IRIAS;

C.M.M., a minor, by and through his next friend MAGDALENA MIGUEL, and MAGDALENA MIGUEL; and

Case No. 1:18-CV-903-LMB

THIRD AMENDED CLASS ACTION COMPLAINT AND PETITION FOR A WRIT OF HABEAS CORPUS

[1] In compliance with Local Civil Rule 7(C) and Fed. R. Civ. P. 5.2, J.E.C.M., B.G.S.S., R.A.I., K.T.M., M.C.L., A.Y.S.R., J.A.T.L., C.E.C.P., E.A.R.R., Y.R.R.B., C.M.M. and A.C.M.S., minors, are identified only by their initials. Plaintiffs' counsel will e-mail a list of full names to counsel for Defendants.

A.C.M.S., a minor, by and through her next friend JUAN BAUTISTA MALDONADO MURILLO, and JUAN BAUTISTA MALDONADO MURILLO,

On behalf of themselves and others similarly situated;

CATHOLIC LEGAL IMMIGRATION NETWORK, INC.; and

NORTHWEST IMMIGRANT RIGHTS PROJECT;

Plaintiffs/Petitioners,

v.

JONATHAN HAYES, Acting Director, Office of Refugee Resettlement;

JALLYN SUALOG, Deputy Director, Office of Refugee Resettlement;

LYNN JOHNSON, Assistant Secretary for the Administration for Children and Families, U.S. Department of Health and Human Services;

ALEX AZAR, Secretary, U.S. Department of Health and Human Services;

NATASHA DAVID, Federal Field Specialist, Office of Refugee Resettlement;

RICHARD ZAPATA, Federal Field Specialist, Office of Refugee Resettlement;

ALEX SANCHEZ, Federal Field Specialist, Office of Refugee Resettlement;

KAREN HUSTED, Federal Field Specialist, Office of Refugee Resettlement;

KRISTOPHER CANTU, Federal Field Specialist, Office of Refugee Resettlement;

CATHERINE LAURIE, Federal Field Specialist, Office of Refugee Resettlement;

YESSENIA HEATH, Federal Field Specialist, Office of Refugee Resettlement;

FEDERAL FIELD SPECIALIST FOR HOMESTEAD FLA., Federal Field Specialists, Office of Refugee Resettlement;

JOHNITHA MCNAIR, Executive Director, Northern Virginia Juvenile Detention Center;

TIMOTHY SMITH, Executive Director, Shenandoah Valley Juvenile Detention Center;

GARY L. JONES, Chief Executive Officer, Youth For Tomorrow;

LAURIE ANNE SPAGNOLA, President & CEO, Board of Child Care;

KEVIN DINNIN, Executive Director, BCFS;

KAREN LEE, Chief Executive Officer, Pioneer Human Services;

MELINDA GIOVENGO, Chief Executive Officer and President, YouthCare;

JOYCE CAPELLE, CEO, Crittenton Services for Children and Families; and

GARY PALMER, President and CEO, Comprehensive Health Services,

Defendants/Respondents.

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INTRODUCTION

1. As revealed by a recently leaked memorandum, the Trump administration decided to deter illegal immigration by enacting a policy to use detained immigrant children as bait to arrest immigrants who come forward to sponsor them, even while explicitly acknowledging that this would prolong the detention of immigrant children. To do this, they twisted the sponsorship process from its Congressionally mandated purpose of ensuring children's safety while placing them in the least restrictive setting as quickly as possible, introducing steps counterproductive to that goal that were instead designed to facilitate civil immigration enforcement against sponsors.

2. Plaintiffs J.E.C.M., B.G.S.S., R.A.I., K.T.M., M.C.L., A.Y.S.R., J.A.T.L., C.E.C.P., E.A.R.R., Y.R.R.B., C.M.M. and A.C.M.S. (the "child Plaintiffs") are among many tens of thousands of unaccompanied immigrant children who have made the long and perilous journey to the United States surviving trauma and fleeing violence and persecution in their home countries, only to find themselves detained by the federal Office of Refugee Resettlement (ORR) at sites around the country.

3. Plaintiffs Jose Jimenez Saravia, Ingrid Sis Sis, Sandra Alvarado, Cinthia Velasquez Trial, Reyna Luviano Vargas, Candy Lemus, Kayla Vazquez, Francisco Ramos Chilel, Astrin Melissa Centeno Irias, Magdalena Miguel and Juan Bautista Maldonado Murillo (the "sponsor Plaintiffs") are individuals who have agreed to open their homes to the child Plaintiffs so that they need no longer be detained at government institutions, and now find themselves subject to an arbitrary, standard-free, seemingly endless vetting process that furthermore unnecessarily places them at heightened risk for arrest by federal immigration authorities.

4. Plaintiffs Catholic Legal Immigration Network, Inc. ("CLINIC") and Northwest Immigrant Rights Project ("NWIRP") are organizations that assist immigrant youth and their

family members in navigating the immigration system in the United States, including the ORR sponsorship process. They now find this work to be much more difficult and costly based on the ORR policies challenged herein.

5. In recognition of the plight and vulnerability of unaccompanied immigrant children, Congress enacted laws specifically to protect them, establishing a preference for release over lengthy detention and requiring that ORR promptly reunite these children with loved ones in the United States, while their immigration cases are adjudicated. As Defendant Lynn Johnson, Assistant Secretary for the Administration for Children and Families, U.S. Department of Health and Human Services, put it: "The children should be home with their parents. The government makes lousy parents."[2]

6. Yet the government's policies and practices regarding the release of immigrant children and the reunification of immigrant families do just the opposite. ORR has implemented the sponsorship process in an opaque and arbitrary manner, lacking sufficient notice and opportunity to be heard, and designed to stymie—rather than facilitate—the release of detained immigrant children. Family members or other sponsors seeking to open their home to a child in ORR custody must submit to an opaque process with shifting goalposts; with no delineated timelines whatsoever; which includes procedural steps designed solely to facilitate immigration enforcement against the sponsor, to the detriment of the child's interest in speedy release from detention and in family unity; where the primary decisionmaker, a case manager, has tremendous subjective discretion and unreviewable power to deny a sponsorship application; and which

[2] John Burnett, "Several Thousand Migrant Children In U.S. Custody Could Be Released Before Christmas," Dec. 18, 2018, National Public Radio, *available at* https://www.npr.org/2018/12/18/ 677894942/several-thousand-migrant-children-in-u-s-custody-could-be-released-before-christ.

(unless the sponsor is the child's parent) results in no written decision and no opportunity for appeal. Meanwhile, the children are trapped in highly restrictive government-controlled facilities, as if they were prisoners serving out criminal sentences without any semblance of due process.

7. To make matters worse, in April 2018, ORR entered into a Memorandum of Agreement (MOA) with the Department of Homeland Security (DHS), whereby ORR agreed to share with ICE the information it gathered during the family reunification petition process about sponsors and others living in the household. It has become clear that the intended purpose of sharing this information was to facilitate DHS's efforts to arrest and remove undocumented immigrants. The effects of this policy have predictably led to fewer individuals coming forward to sponsor children in ORR detention, thus increasing the time that children were detained. The MOA also directly increased the length of children's detention by adding new procedural hurdles, again designed to facilitate DHS immigration enforcement against sponsors and others in their household.

8. As a result of these policies, ORR has held tens of thousands of children across the country in custody for excessive amounts of time and has illegally and improperly denied them the opportunity to reunite with their families. These children deserve the opportunity to live in a healthy, nurturing, and healing environment that their sponsors are prepared to provide while awaiting adjudication of their immigration claims, and Defendants should not be permitted to delay this reunification any further.

9. Given the continued specter of indefinite detention of immigrant children, and given ORR's continued facilitation of ICE arrests of sponsors to the detriment of the children in its care, Plaintiffs now seek the Court's intervention so that detained immigrant children will no

longer be subjected to the grievous harms that children suffer when separated from their families. Defendants' actions violate the federal statute that governs the detention and release of immigrant children, the Administrative Procedure Act's (APA) requirements for promulgating rules, the APA's prohibition on unreasonable delays and arbitrary and capricious agency conduct, and the Constitution's Due Process Clause. Defendants' actions are causing serious and irreparable harm to Plaintiffs and the other potential sponsors and caregivers of released unaccompanied children (UACs). Plaintiffs therefore seek declaratory and injunctive relief from this Court to end these violations and harms.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1361 (mandamus).

11. Venue is proper in the Alexandria Division of the Eastern District of Virginia under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to these claims occurred and continue to occur in this district. Venue is also proper under 28 U.S.C. § 2241(d) because Plaintiffs J.E.C.M., R.A.I., and K.T.M. were detained within this district at the time the Complaint [Dkt. #1] and First and Second Amended Complaints [Dkts. ##4, 21] were filed.

THE PARTIES

Plaintiffs

12. Plaintiff J.E.C.M. is a 13-year-old boy from Honduras who was detained by the defendants beginning on or about February 27, 2018 until July 26, 2018.

13. Plaintiff Jose Jimenez Saravia is J.E.C.M.'s brother-in-law and ORR sponsor. He lives in New Jersey. Prior to J.E.C.M.'s detention by defendants, Mr. Jimenez Saravia has had a long history of contact and a close relationship with him from an early age.

14. Plaintiff B.G.S.S. is a 17-year-old boy from Guatemala who has been detained by the defendants beginning on or about May 11, 2018, and remains detained by Defendants as of the date of filing this pleading.

15. Plaintiff Ingrid Sis Sis is B.G.S.S.'s ORR sponsor, and his niece. She lives in Virginia. Prior to B.G.S.S.'s detention by Defendants, Ms. Sis has had a long history of contact and a close relationship with B.G.S.S. from an early age.

16. Plaintiff R.A.I. is a 15-year-old girl from Honduras who was detained by the Defendants beginning on or about April 26, 2018 until some time after September 21, 2018.

17. Plaintiff Sandra Alvarado is R.A.I.'s sister and ORR sponsor, and has been her primary caregiver since she was 5 years old. She lives in Maryland.

18. Plaintiff K.T.M. is a 15-year-old boy from Honduras who was detained by defendants beginning on or about March 31, 2018 until some time after September 21, 2018.

19. Plaintiff Cinthia Velasquez Trail is K.T.M.'s sister and ORR sponsor. She lives in Texas. Prior to K.T.M.'s detention by Defendants, Ms. Velasquez Trail had a long history of contact and a close relationship with him from an early age.

20. Plaintiff M.C.L. is a 14-year-old girl from Mexico who has been detained by Defendants since about November 6, 2018, and remains detained by Defendants as of the date of filing this pleading.

21. Plaintiff Reyna Luviano Vargas is M.C.L.'s mother and ORR sponsor. She lives in California.

22. Plaintiff A.Y.S.R. is a 17-year-old girl from El Salvador who has been detained by Defendants since about September 21, 2018, and remains detained by Defendants as of the date of filing this pleading.

23. Plaintiff J.A.T.L. is an eleven-year-old boy from Honduras who has been detained by Defendants since about August 27, 2018, and remains detained by Defendants as of the date of filing this pleading.

24. Plaintiff Candy Lemus is J.A.T.L.'s aunt and ORR sponsor. Prior to J.A.T.L.'s detention by Defendants, Ms. Lemus has had a long history of contact and a close relationship with J.A.T.L. from an early age. She lives in South Carolina.

25. Plaintiff C.E.C.P. is a 17-year-old boy from Honduras who has been detained by Defendants since about August 22, 2018, and remains detained by Defendants as of the date of filing this pleading.

26. Plaintiff Kayla Vazquez is the wife of C.E.C.P.'s cousin, and is C.E.C.P.'s ORR sponsor. Prior to C.E.C.P.'s detention by Defendants, Ms. Vazquez had a history of contact and a personal relationship with C.E.C.P. She lives in Connecticut.

27. Plaintiff E.A.R.R. is a 17-year-old boy from Guatemala who has been detained by Defendants since about July 2018, and remains detained by Defendants as of the date of filing this pleading.

28. Plaintiff Francisco Ramos Chilel is E.A.R.R.'s father and ORR sponsor. He lives in Florida.

29. Plaintiff Y.R.R.B. is a 16-year-old boy from Honduras who has been detained by Defendants since about September 2018, and remains detained by Defendants as of the date of filing this pleading.

30. Plaintiff Astrin Melissa Centeno Irias is Y.R.R.B.'s older sister and ORR sponsor. Prior to Y.R.R.B.'s detention by Defendants, Ms. Centeno Irias has had a long history of contact and a close relationship with Y.R.R.B. from his birth. She lives in Texas.

31. Plaintiff C.M.M. is a 15-year-old boy from Guatemala who has been detained by Defendants for about six months, and remains detained by Defendants as of the date of filing this pleading.

32. Plaintiff Magdalena Miguel is C.M.M.'s mother and ORR sponsor. She lives in Florida.

33. Plaintiff A.C.M.S. is a 17-year-old girl from Honduras who has been detained by Defendants since September 2018, and remains detained by Defendants as of the date of filing this pleading.

34. Plaintiff Juan Bautista Maldonado Murillo is A.C.M.S.'s father and ORR sponsor. He lives in New Jersey.

35. Plaintiff Catholic Legal Immigration Network, Inc. ("CLINIC") is a nonprofit organization incorporated in Washington, DC, with a principal place of business in Silver Spring, Maryland. CLINIC is the largest nationwide network of nonprofit immigration programs, with approximately 341 affiliates in 47 states and the District of Columbia. Through its affiliates, as well as through the BIA Pro Bono Project and the Dilley Pro Bono Project (formerly known as the CARA Pro Bono Project), CLINIC advocates for the just and humane treatment of immigrants through direct representation, pro bono referrals, and engagement with policy makers.

36. Plaintiff Northwest Immigrant Rights Project ("NWIRP") is a nonprofit organization incorporated in Washington with a principal place of business in Seattle, Washington. NWIRP's mission is to advance and defend the legal rights of immigrants in Washington State.

Defendants/Habeas Corpus Respondents

37. Defendant Alex Azar is the Secretary of the Department of Health and Human Services, the department of which ORR is part. Mr. Azar is a legal custodian of the child Plaintiffs and is sued in his official capacity.

38. Defendant Lynn Johnson is the Assistant Secretary for the Administration for Children and Families under the U.S. Department of Health and Human Services. The Administration for Children and Families is the office within HHS that has responsibility for ORR. Ms. Johnson is a legal custodian of the child Plaintiffs and is sued in her official capacity.

39. Defendant Jonathan Hayes is the Acting Director of the Office of Refugee Resettlement ("ORR"). ORR is the government entity directly responsible for the detention of the child plaintiffs. Mr. Hayes is a legal custodian of the child Plaintiffs and is sued in his official capacity.

40. Defendant Jallyn Sualog is the Deputy Director of ORR. Ms. Sualog is a legal custodian of the child Plaintiffs and is sued in her official capacity.

Habeas Corpus Respondents Only

41. Respondents Natasha David, Alex Sanchez, Karen Husted, Kristopher Cantu, Catherine Laurie, Yessenia Heath, and Federal Field Specialist for Homestead Fla. are Federal Field Specialists at ORR, and are sued in their official capacity. They are the federal officials who oversee the ORR contracts with the various private and state/county facilities listed herein, at which the above-named child plaintiffs are or were detained, and as such are or were the legal custodians of those child plaintiffs.

42. Respondent Johnitha McNair is the Executive Director of Northern Virginia Juvenile Detention Center ("NOVA"), and is the warden of that facility. J.E.C.M. was held at NOVA at the time he filed his habeas corpus petition [Dkt. #1] until his release on July 26,

approximately one week after the initial filing of this suit. Ms. McNair was a legal custodian of J.E.C.M. and is sued in her official capacity.

43. Respondent Timothy Smith is the Executive Director of Shenandoah Valley Juvenile Detention Center ("SVJC"), and is the warden of that facility, where B.G.S.S. was detained at the time he filed his habeas corpus action [Dkt. #21]. Mr. Smith was a legal custodian of B.G.S.S. and is sued in his official capacity.

44. Respondent Gary L. Jones is the Chief Executive Officer of Youth For Tomorrow ("YFT"), and is the warden of that facility, where R.A.I. and K.T.M were detained at the time they filed their habeas corpus action [Dkt. #21]. Dr. Jones was a legal custodian of R.A.I. and K.T.M. and is sued in his official capacity.

45. Respondent Laurie Anne Spagnola is the President & CEO of the Board of Child Care in Maryland, where J.A.T.L. is currently held. She is a legal custodian of J.A.T.L. and is sued in her official capacity.

46. Respondent Kevin Dinnin is the Executive Director of BCFS, which operates the BCFS International Children's Center where C.E.C.P. is currently held. He is a legal custodian of C.E.C.P. and is sued in his official capacity.

47. Respondent Karen Lee is the Chief Executive Officer of Pioneer Human Services, which operates the Selma Carson Home where Y.R.R.B. and C.M.M. are currently held. She is a legal custodian of Y.R.R.B. and C.M.M. and is sued in her official capacity.

48. Respondent Melinda Giovengo is the Chief Executive Officer & President of YouthCare, which operates the YouthCare Seattle center where A.M.C.S. is currently held. She is a legal custodian of A.M.C.S. and is sued in her official capacity.

49. Respondent Joyce Capelle is the CEO of Crittenton Services for Children and Families, where A.Y.S.R. is currently held. She is a legal custodian of A.Y.S.R. and is sued in her official capacity.

50. Respondent Gary Palmer is President and CEO of Comprehensive Health Services, which operates ORR's facility in Homestead, Florida, where M.C.L. and E.A.R.R. are currently held. Mr. Palmer is a legal custodian of M.C.L. and E.A.R.R., and is sued in his official capacity.

BACKGROUND AND LEGAL FRAMEWORK

The governing legal framework requires ORR to promptly release children to adequate sponsors, and otherwise act in the best interests of the children in its custody.

51. Each year, thousands of unaccompanied immigrant children ("UACs") arrive in the United States to escape persecution and harm in foreign countries. In recent years, the U.S. has seen an influx of children from Mexico and Central America fleeing endemic levels of crime and violence that have made those countries extremely dangerous, especially for children and young adults.

52. Government care and custody of UACs is governed by a legal framework consisting primarily of two statutory provisions—§ 279 of Title 6 and § 1232 of Title 8—plus a settlement agreement that is binding on the pertinent federal agencies. In the 1980s and 1990s, immigrant children who arrived in the U.S. were routinely locked up for months in unsafe and unsanitary jail cells in remote facilities across the country. These conditions prompted a federal lawsuit, *Flores v. Reno*, which resulted in a 1997 consent decree (the "*Flores* Agreement") binding on DHS and ORR, still effective today, that sets national standards for the detention, release, and treatment of immigrant children in government custody.

53. In addition to setting certain minimal detention standards, *Flores* guarantees that children shall be released "without unnecessary delay" while they await their immigration status and requires the Government to undertake "prompt and continuous efforts" towards family reunification. As the Fourth Circuit explained, "[t]he *Flores* Agreement spells out a general policy favoring less restrictive placements of alien children (rather than more restrictive ones) and their release (rather than detention)." *D.B. v. Cardall*, 826 F.3d 721, 732 (4th Cir. 2016). Under the Agreement, "[U]nless detention is necessary to ensure a child's safety or his appearance in immigration court, he *must* be released without unnecessary delay, preferably to a parent or legal guardian." *Id.* (citing *Flores* Agreement ¶ 14) (emphasis added) (internal citations omitted). The *Flores* consent decree also gives these children the right to a bond hearing before an immigration judge.[3]

54. In 2002, Congress took further action to protect this vulnerable population when it passed the Homeland Security Act ("HSA") and transferred the care and custody of unaccompanied immigrant children from the Immigration and Naturalization Service ("INS") to the Office of Refugee Resettlement, housed within the Department of Health and Human Services. ORR is not a security agency; its mission is to "incorporate[e] child welfare values" into the care and placement of unaccompanied immigrant children. The *Flores* Agreement is binding on all successor agencies to the INS, including ORR.[4]

[3] The *Flores* bond hearing does not empower an immigration judge to order a child's release from ORR custody or even to review the reunification process. It merely permits the immigration judge to determine whether a child is a danger to the community, thus substantiating or contradicting ORR's claims that it continues to have authority to detain a child. *See Flores v. Sessions*, 862 F.3d 863, 867-69 (9th Cir. 2017).

[4] ORR recognizes its continuing obligations under the *Flores* Agreement. *See* Exh. 1 at § Sec. 3.3 (outlining obligations imposed by *Flores* Agreement on ORR care provider facilities).

55. Building on *Flores* and the provisions of the HSA regarding immigrant children, Congress further passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), codified at 8 U.S.C. § 1232, which grants legal protections to children in ORR custody and tasks the agency with ensuring they are "promptly placed in the least restrictive setting that is in the best interest of the child." Senator Diane Feinstein, a sponsor of the bill that would become the TVPRA, explained that the legislation was intended to redress situations like one she had personally witnessed, where an unaccompanied child remained in custody for nine months after her initial detention. Congress enacted the TVPRA specifically to facilitate the speedy release and minimally restrictive placement of immigrant children.

56. As the Fourth Circuit observed, the TVPRA contained various provisions that mirror the *Flores* Agreement's focus on the welfare of the child. "[T]he Office shall promptly place a UAC in the *least restrictive* setting that is in the UAC's best interest, subject to the need to ensure the UAC's safety and timely appearance at immigration hearings." *Cardall*, 826 F.3d at 733 (citing 8 U.S.C. § 1232(c)(2)(A)). As important, "[t]he Office shall not place a UAC in a secure facility [*e.g.*, NOVA] absent a determination that the UAC poses a danger to self or others or has been charged with having committed a criminal offense." *Id.*

ORR's current reunification policies and practices do not work to promptly release children to adequate sponsors, and violate the Due Process rights of children and their sponsors.

57. ORR has promulgated but not yet enacted regulations under the TVPRA.[5] The only public guidance on ORR's detention and release procedures is a guide that has existed for at least a decade but was not published online until 2015. *See* Exh. 1 hereto (ORR Policy Guide). ORR frequently edits and amends this guide without any explanation or announcement of the

[5] Notice of Proposed Rulemaking, "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children," 83 Fed. Reg. 45486 (Sept. 7, 2018).

changes. ORR also regularly advises its staff and service providers of nonpublic changes to this guide by email or phone. The ORR Policy Guide contains the procedures that control more than 10,000 children in ORR custody nationwide.

58. Reviewing ORR's placement practices in 2016, a subcommittee of the Senate Committee on Homeland Security and Governmental Affairs found that ORR had "failed to adopt and maintain a regularized, transparent body of policies and procedures concerning the placement of UACs" and castigated the agency for what it called "[s]etting governmental policy on the fly" in a manner "inconsistent with the accountability and transparency that should be expected of every administrative agency."[6]

59. ORR prioritizes placement with sponsors as follows: Category 1 sponsors are parents or legal guardians; Category 2 sponsors are immediate relatives, including brothers, sisters, aunts, uncles, grandparents, first cousins, and step-parents; Category 3 sponsors are all other adults, including relatives or unrelated adults like family friends. *See* Exh. 1 (ORR Policy Guide) at § 2.2.1.

60. ORR allows itself to deny a child's release to a parent or legal guardian where ORR itself determines that "[t]here is substantial evidence that the child would be at risk of harm if released to the parent or legal guardian" without requiring termination of parental rights or even a petition before a juvenile or family court. *Id.*

[6] United States Senate Permanent Subcommittee on Investigations, Staff Report, "Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement," January 28, 2016, at p.51, *available at* https://www.hsgac.senate.gov/imo/media/doc/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses%202016-01-282.pdf.

61. Under current policy, once a "qualifying" custodian or sponsor has been identified, he or she must complete several forms—including a broad authorization for release of information and a family reunification application—and provide documentation of the identity of the child, the sponsor's identity and address, his or her relationship to the child, and "evidence verifying the identity of all adults residing with the sponsor and all adult care givers identified in a sponsor care plan." Notably, ORR requires potential sponsors to identify all adults in the household *and* an alternative caregiver who is able to provide care in the event the original sponsor is unavailable. *See* Exh. 1. at § 2.2.4.

62. If a sponsor is able to provide all the information required by ORR, including biographical and biometric information for the household adults and alternate care givers identified in the sponsor application, an ORR care provider and a nongovernmental third-party reviewer, called a "case coordinator," may "conclude[] that the release is safe and the sponsor can care for the physical and mental well-being of the child;" the care provider then "makes a recommendation for release" to the ORR Federal Field Specialist (FFS), an individual who acts as the local ORR liaison with the facility. The FFS then either approves or denies release, or requests more information. *See* Exh. 1. at § 2.7.

63. ORR's family reunification process is riddled with due process violations. Government contractors are the primary gatekeepers for a sponsor's ability to even complete a reunification application, before a sponsor receives any official ORR decision. These third party contractors have nearly unfettered power to permit sponsorship applications to go forward, to deny sponsorship as not being viable before the application has been completed (or even begun), to require a time-consuming home study of the sponsor, and to forward the application for final decision to supervisors. Exh. 1 at §§ 2.3.3, 2.3.4. In wielding this power, upon information and

belief, they are subjected to pressures from the current administration and directives from ORR administrators that are not necessarily contained in the ORR Policy Guide. At the same time, they are charged with directly assisting sponsors in completing the application in the first place, and describe themselves to the sponsors as their advocates. Exh. 1 at § 2.2.3.

64. In the stages prior to an elusive final decision on a sponsor's application, there is little or no notice as to why a sponsor may be rejected, what steps remain and what requirements will ultimately complete the reunification application, and no recourse to challenge either specific requirements or a case manager's subjective determination that a sponsor is not viable. In fact, ORR grants itself discretion to raise additional barriers to sponsorship, prolonging children's detention by requiring additional documentation and reunification steps prior to calling the application complete. *See* Exh. 1 at § 2.2.4 ("ORR may in its discretion require potential sponsors to submit additional documentation beyond the minimums specified below"). These policies prolong children's time in ORR custody and raise serious due process concerns for those children and for their family members trying to reunify with them.

65. When ORR transfers a minor from one detention center to another—which it does frequently, without prior notice or opportunity to be heard, and in its sole discretion—the reunification process usually has to start over from the beginning, even without any change in sponsor, which adds considerable delays. In addition, even when sponsors have already been previously vetted, they have to go through the entire vetting process all over again from the beginning, which adds considerable delays. If a sponsor temporarily withdraws from the sponsorship process, they often have to start the reunification process over from the beginning, which adds considerable delays. Indeed, sometimes the mere passage of time during the

sponsorship process due to ORR's delays causes ORR to tell a sponsor that their fingerprints are "stale" and must be re-taken and re-processed, adding considerable delays.

66. U.S. District Courts for both the Eastern and Western Districts of Virginia have admonished ORR that its reunification process violates the Due Process Clause. *See Beltran v. Cardall*, 222 F. Supp. 3d 476 (E.D. Va. 2016) (holding that ORR's family reunification procedures did not provide the child petitioner or his mother due process of law); *Santos v. Smith*, 260 F. Supp. 3d 598 (W.D. Va. 2017) (holding that ORR's family reunification procedures caused even more egregious violations of the child petitioner's and his mother's due process rights than had occurred in *Beltran*).[7] Yet ORR has failed to develop sufficient processes to protect its child wards or their sponsors' interests, and instead has made the reunification process more cumbersome and lengthy.

67. Specifically, four of ORR's written policies, taken together, form an opaque, impenetrable process in which sponsors and children have little sense of what will be required of them to achieve reunification, let alone any way to challenge those requirements or early peremptory decisions about sponsor viability. The policies establish an unbridled level of discretion, allowing front-line government contractors to cut the reunification process short or

[7] Although the sponsors in *Beltran* and *Santos* were both the mothers of the petitioners, the liberty interest in family unity is not limited to the nuclear or even biological family. *See Smith v. Org of Foster Families for Equal. & Reform*, 431 U.S. 816, 843 (1977) ("biological relationships are not [the] exclusive determina[nt] of the existence of a family"). Indeed, courts have given great weight to the family unity interests between more distantly related relatives, including siblings, grandparents, and aunts and sisters. *See Moore v. City of East Cleveland*, 431 U.S. at 496-506 (affirming the constitutional conception of family between a grandmother and her grandsons); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (affirming a constitutionally recognized family relationship between an aunt and her niece); *Rivera v. Marcus*, 696 F.2d 1016 (2d Cir. 1982) (upholding the family unity interests of a half-sister). Likewise, children's liberty interest in being free from government detention does not depend on their would-be sponsors also being their parents.

stop it all together before any official grant or denial of reunification with a sponsor. Additionally, the case manager must play the role of the prosecutor and judge for each potential sponsor, even while telling sponsors they are acting as their advocates. The four ORR written policies, in particular, lack any constitutionally sufficient process and enshrine a process nearly identical to (or worse than) the process that the court in *Santos* rejected, *see* Exh. 1:

- Section 2.2.3 of the ORR Guide establishes that the "care provider" or case manager helps the sponsor complete the application and outlines what must be sent to the sponsor to complete for a sponsorship application. It establishes the case manager as the gate keeper of the reunification process.

- Section 2.2.4 of the ORR Guide sets forth the required documentation for potential sponsors and other adults in the household, while simultaneously granting ORR itself unfettered discretion to require that sponsors provide additional information and take additional steps in the reunification process, without any indication as to the basis or timing of these additional requirements.

- Section 2.4.1 sets out supposed criteria for assessing a sponsor's viability, to be evaluated by the case manager, but does not establish any standards to meet any of the criteria or the weight given to each of the criteria. It also establishes highly subjective criteria and improperly places additional burden on would-be sponsors.

- Section 2.4.2 sets out requirements for mandatory home studies, and also grants broad discretion to the government-contracted case manager and case coordinator to recommend "discretionary" home studies. Upon information and belief, this section does not include the internal policy of requiring home studies for all UACs held in a secure detention center. And although this section suggests that the case managers and case coordinators independently recommend additional home studies, upon information and belief, ORR administrators have begun to require case managers to recommend home studies in far more cases, with little or no justifying concerns about a sponsor's ability to care for a UAC. Home studies significantly slow the release process and force potential sponsors to submit to an invasive procedure in which they must open up their homes and their families, including minor children, to a stranger.

68. Taken together, these policies establish an opaque and overly burdensome reunification process, relying on the discretion of government-contracted case managers and subject to manipulation by the whims and directives of ORR administrators before any "official" reunification decisions are made. This means that for many would-be and current sponsors, ORR

does not provide notice as to the reason that their sponsorship was or may be rejected, nor does it require case managers to divulge the basis for demanding that sponsors meet additional requirements. Further, the present framework does not provide sponsors with the ability to challenge a case manager's determination of viability. The current framework deters sponsors from raising concerns regarding any additional requirements or non-viability decisions with the case manager, because the case manager is also charged with helping the sponsor complete the application, and any challenge to the case manager's authority or decision-making power may result in retaliation during the process of assessing the viability of the sponsor's application. For detained children, this means many more weeks or months in detention, while the case manager works with the sponsor to complete a process with no definitive end and no definitive number of steps or requirements. The process does not accord the children or their sponsors a hearing or other meaningful notice or opportunity to be heard, nor is there any procedure establishing such an opportunity for them. *Contra, e.g.*, 22 Va. Admin. Code §§ 40-201-10 *et seq.* (setting out detailed criteria and strict timelines for foster care placements in Virginia).

69. Under the above-mentioned policies, ORR does not sufficiently make the sponsors "aware of . . .the evidence or factual findings upon which ORR relied in withholding [the child petitioners] from [their sponsors'] care and custody," which "opaque procedure deprive[s] Petitioner of any opportunity to contest ORR's findings, and thus any meaningful opportunity to alter its conclusions." *Beltran*, 222 F. Supp. 3d at 485.

70. Both the *Beltran* and *Santos* courts found that ORR's procedures "created a significant risk that [sponsors and children] would be erroneously deprived of their right to family integrity" and that additional procedural safeguards of the nature routinely employed where government interferes with fundamental rights could have mitigated the risk. *Beltran*, 222

F. Supp. 3d at 488; *see also Santos*, 260 F. Supp. 3d at 614 ("had better or more process been given especially as to the delay and the burden being on Ms. Santos to initiate and justify reunification, rather than the default rule being otherwise, the outcome could have been different"). The likely risk of erroneous deprivation of the most fundamental liberty interests is thus significantly higher, and unacceptable, under these circumstances.

71. Further, ORR's actions continue to improperly place the burden onto potential sponsors to challenge ORR's decision and, if unable to obtain relief from ORR, to initiate court proceedings. "At no point [is] the onus on ORR to justify its deprivation of Petitioner's fundamental [familial] rights." *Id. Beltran* and *Santos* both concluded that "having determined that it would deprive [mother] and [child] of their fundamental right to family integrity, ORR could not adopt for itself an attitude of 'if you don't like it, sue.'" *Beltran*, 222 F. Supp. 3d at 485; *see also Santos*, 260 F. Supp. 3d at 613; *see also Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (procedures that "insist[] on presuming rather than proving" are insufficient under the Due Process Clause). But that is precisely what ORR policies and practices require plaintiffs to do.

72. In May 2017, likely as a result of the opinion in the *Santos* case, ORR's online policy guide was amended to provide for the possibility of an "appeal" to the Assistant Secretary of ORR if a reunification request is denied. But this process—at which sponsors have no right to call witnesses, includes no requirement of a reasoned decision, and uses a politically appointed official as an adjudicator—is available only once a final decision is rendered on a reunification request. Setting aside the other fatal procedural flaws, this appeal process also fails because, given current ORR procedures and practices, very few cases will reach ripeness, given the indefinite delays that sponsors face during the application process, set forth above.

73. For children, the devastating effect of these delays in release and reunification can include depression, deterioration in mental health, and behavioral problems associated with prolonged detention. Children can feel a sense of hopelessness stemming from their indefinite detention, particularly once they know that the ORR staff members or field professionals with whom they have had contact continually provide positive recommendations on their performance and progress, and yet they remain detained in a highly restrictive environment. Discouragement becomes despair, and in some cases, children respond by misbehaving in ways that cause them to face progressively more restrictions on their movement in custody, exacerbating their already significant depression and hopelessness. In other cases, children who fear persecution in their home countries nonetheless opt to accept removal and return there, rather than endure further detention which for all intents and purposes resembles imprisonment in their view.

74. Another effect of prolonged detention, and one that is known to ORR, is that when children detained in ORR's custody reach their 18th birthday, ORR no longer considers them subject to its detention and custody. 6 U.S.C. § 279(g)(2)(B). The TVPRA provides that most of these children should generally be released upon turning 18. 8 U.S.C. § 1232(c)(2)(B). In fact, however, most of the children are sent to ICE custody instead. *See Ramirez v. U.S. Immigration & Customs Enf't*, 310 F. Supp. 3d 7, 30 (D.D.C. 2018). As one immigration attorney described the regular practice at ORR's current largest detention center nationwide, in Homestead, Fla., "When they turn 18, it's basically, 'Happy birthday,' and then they slap on handcuffs and take them off to adult detention centers."[8]

[8] Tim Elfrink, "ICE Handcuffs Immigrant Kids on Their 18th Birthdays, Drags Them to Jail," Aug. 23, 2018, Miami New Times, *available at* https://www.miaminewtimes.com/news/ice-handcuffs-immigrants-on-18th-birthday-at-homestead-childrens-center-sends-them-to-jail-10651093.

ORR's fingerprint-sharing agreement with ICE frustrates its mission of promptly releasing children to adequate sponsors, was designed for an improper purpose, and is not in the best interests of the children in ORR's custody.

75. Making matters worse, ORR has agreed to allow one aspect of its reunification process, namely the background vetting of potential sponsors, to be used towards a purpose for which it was never intended: civil immigration enforcement against the very sponsors who are willing to open their homes to enable children to leave government custody.

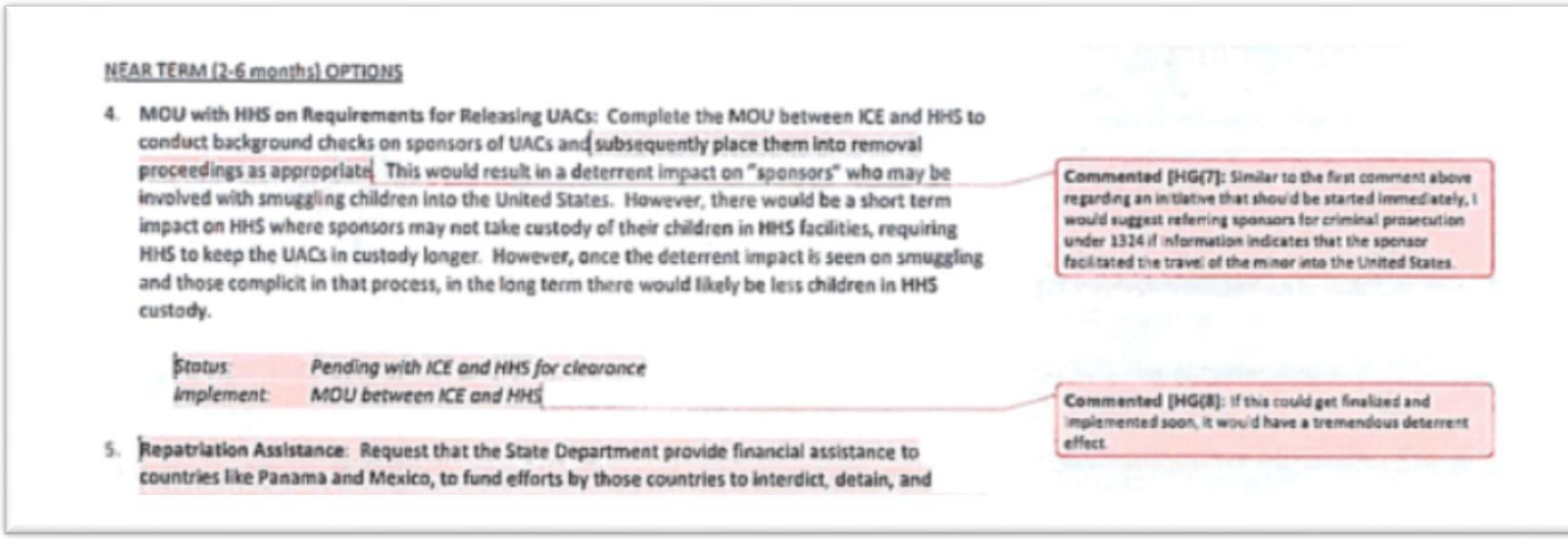
76. Upon information and belief, ORR has long been aware that the vast majority of children in its care came to the United States intending to unite or reunite with family members who are also immigrants; that these family members are generally the best sponsors for the children; and that a disproportionately large number of these family members lack any legal status in the United States, like the children themselves.

77. For many years, ORR has routinely collected fingerprint information of non-parent sponsors, in order to run criminal background checks on them.[9] ORR did not routinely fingerprint sponsors who were the parents of the children they hoped to sponsor unless some specific 'red flag' appeared to make it necessary; nor did they routinely fingerprint household members of sponsors unless some specific 'red flag' appeared to make it necessary. Most importantly, any fingerprints that ORR collected were not shared with immigration enforcement agencies.

78. In late 2017, seeking to reduce the number of immigrants who crossed the Mexico-United States border, Trump administration immigration policy advisers drafted a

[9] ORR also conducts a number of other background checks on potential sponsors and their household members using names and other forms of identity verification, that do not require fingerprints to run. *See* Exh. 1 (ORR Guide) at § 2.5.1.

memorandum containing a number of "Policy Options to Respond to Border Surge of Illegal Immigration."[10] The memorandum and the comments thereto set forth a strategy whereby immigrant children and families would be made to suffer, that suffering would be publicized in the media, and this would deter future immigrant families from crossing the border. One of the policy proposals set forth in the memorandum was the now-infamous family separation policy, *see Ms. L. v. ICE*, 310 F.Supp.3d 1133 (S.D. Cal. 2018). Another policy proposed in the same memorandum as family separation was described as an "MOU with HHS on Requirements for Releasing UACs." The policy proposal as relevant to ORR stated, in full:



NEAR TERM (2-6 months) OPTIONS

4. **MOU with HHS on Requirements for Releasing UACs:** Complete the MOU between ICE and HHS to conduct background checks on sponsors of UACs and subsequently place them into removal proceedings as appropriate. This would result in a deterrent impact on "sponsors" who may be involved with smuggling children into the United States. However, there would be a short term impact on HHS where sponsors may not take custody of their children in HHS facilities, requiring HHS to keep the UACs in custody longer. However, once the deterrent impact is seen on smuggling and those complicit in that process, in the long term there would likely be less children in HHS custody.

   Status: *Pending with ICE and HHS for clearance*
   Implement: *MOU between ICE and HHS*

5. **Repatriation Assistance:** Request that the State Department provide financial assistance to countries like Panama and Mexico, to fund efforts by those countries to interdict, detain, and

Commented [HG(7]: Similar to the first comment above regarding an initiative that should be started immediately, I would suggest referring sponsors for criminal prosecution under 1324 if information indicates that the sponsor facilitated the travel of the minor into the United States.

Commented [HG(8]: If this could get finalized and implemented soon, it would have a tremendous deterrent effect.

79. The purpose of the proposed MOU with HHS was not child welfare, or better vetting of sponsors. Rather, the purpose was to "place [sponsors] into removal proceedings as appropriate" in order to "result in a deterrent impact on 'sponsors' who may be involved with smuggling children into the United States." *Id.* at p.2. The unnamed author of the memorandum recognized that as a direct result of this policy proposal, "sponsors may not take custody of their

[10] *Available at* https://www.documentcloud.org/documents/5688664-Merkleydocs2.html, and attached hereto as Exh. 5.

children in HHS facilities, requiring HHS to keep UACs in custody longer." *Id.* An unnamed reviewer of this memorandum agreed with the author's recommendation to keep children detained in HHS facilities for longer, commenting, "If [the MOA] could get finalized and implemented soon, it would have a tremendous deterrent effect." *Id.*

80. The memorandum attached hereto as Exh. 5 was leaked to Sen. Jeff Merkley by a whistleblower, and was made available to the public on the evening of January 17, 2019.[11]

81. As proposed in the memorandum, so implemented by Defendants: on April 13, 2018, ORR signed a Memorandum of Agreement (MOA) with Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE), agreeing to vastly expand the information collected from sponsors and all of their household members, and to share that information among the agencies. *See* Exh. 2 (Memorandum of Agreement). The MOA addresses the collection and sharing of sponsor, household member, and caregiver information through the sponsorship application process. *Id.* Hiding its true purpose of deterring immigration and adopting the pretext of protecting child welfare, the MOA outlined vastly expanded information collection not just from potential sponsors, but from every adult household member and a required alternate caregiver. *Id*. at Sec. 5(B) ("ORR will provide ICE with the name, date of birth, address, fingerprints . . . and any available identification documents or biographic information regarding the potential sponsor and all adult members of the potential sponsor's household"). ORR incorporated this information collection and sharing policy into various sections of its ORR Policy Guide.

[11] *See* Julia Ainsley, "Trump admin weighed targeting migrant families, speeding up deportation of children," Jan. 17, 2019, NBC News, *available at* https://www.nbcnews.com/politics/immigration/trump-admin-weighed-targeting-migrant-families-speeding-deportation-children-n958811?fbclid=IwAR3Et5WKKmN3ymF-np_sgWc9bOg6gpkAdLiFu-H4TXxOwLzgfG1xa9o5KpQ.

82. While the publicly stated purpose of this MOA was for ORR to obtain more information about would-be sponsors and their household members and thereby make better-informed placement decisions, the memorandum attached hereto as Exh. 5 demonstrates that the primary intent and purpose of the MOA was to assist ICE in enforcing immigration laws against sponsors and their household members—a purpose that not only has no relationship to ORR's mission, but actually runs contrary to ORR's statutory obligation to act in the best interests of the children in its care. (When ICE arrests a would-be sponsor of an immigrant child, that immigrant child obviously cannot be released to the sponsor; when ICE arrests the sponsor of a recently released immigrant child, that sponsor is prevented from carrying out the terms of his sponsorship agreement with ORR, and the child will be plunged into instability and often poverty.)[12]

[12] For example, one 17-year-old Guatemalan child named E.A.X. came to the United States on July 20, 2018 with his two younger brothers and were detained by Defendants at a 300-bed shelter in Arizona. Their father, who lived in Nebraska with his wife and their son, began the sponsorship process for his three older boys. After a disciplinary incident, E.A.X. was separated from his brothers and transferred to a staff-secure facility in northern California.

On or around September 4, 2018, E.A.X.'s father submitted his fingerprints to ORR as part of the reunification process. Just three days later, E.A.X.'s father got in his car to go to work. A few blocks from his home, he was pulled over by ICE agents, arrested, and quickly deported to Guatemala. After E.A.X. found out that his father had been deported as a result of submitting fingerprints to sponsor him, E.A.X. felt guilt-ridden and devastated.

The brothers' stepmother continued the sponsorship process in her husband's place. E.A.X.'s brothers were released to her, but because E.A.X is in a higher security facility than his brothers, he has not been released. As a result of his prolonged detention, the restrictive nature of the staff-secure facility, the separation from his brothers, the release of his brothers, and the deportation of his father, E.A.X.'s behavior became more erratic. The number of minor incidents E.A.X. was involved in increased, further decreasing his chances of release to his step-mother.

Finally, in November of 2018, after E.A.X. had been in detention for four months, he learned that his stepmother was considering withdrawing from the sponsorship process due to the burdensome policies challenged in this lawsuit. E.A.X.'s emotional and psychological condition

83. Indeed, in just the first four months of the MOA's operation, ICE used the MOA and the information obtained thereby to carry out civil immigration arrests of 170 sponsors.[13] The majority of whom (109) did not have a criminal record. Of the sixty-one (61) who had a criminal record, most were for charges involving nonviolent and other offenses that would generally be considered to have no bearing on an individual's fitness to sponsor a child. *Id.*

84. ORR staff and leadership had previously studied and deliberated the pros and cons of putting into place a policy of this nature, but concluded that the marginal increase in useful information would be minimal, and would be vastly outweighed by the predictable negative consequences including a drastic reduction in the number of willing sponsors and a corresponding dramatic increase in the average length of detention of children in ORR custody and number of children detained, and therefore concluded that such a policy would not be in the best interests of the children in ORR's custody. Upon information and belief, when ORR decided to enter into the ICE fingerprint-sharing MOA in April 2018, ORR did not revisit these deliberations and this conclusion, but instead simply ignored them.

85. Consequently, as an entirely predictable result of this ICE fingerprint-sharing policy (indeed, the result that was anticipated and intended by the unnamed drafter of the memorandum attached hereto as Exh. 5), countless would-be sponsors withdrew from the

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further deteriorated, and he attempted suicide. When the paramedics arrived, E.A.X. believed they were there to kill him. He was hospitalized for several days.

Instead of working to release E.A.X. to a sponsor as quickly as possible, or alternatively place him in a facility where his mental health needs could be adequately met, ORR transferred E.A.X. to the Yolo County Detention Facility, its most secure and jail-like detention facility in the United States, where his freedoms are even further curtailed, and he is surrounded by other children who have similar difficulties adjusting to prolonged detention.

[13] Daniella Silva, "ICE arrested 170 immigrants seeking to sponsor migrant children," Dec. 11, 2018, NBC News, *available at* https://www.nbcnews.com/news/latino/ice-arrested-170-immigrants-seeking-sponsor-migrant-children-n946621.

sponsorship process or declined to step forward to sponsor detained immigrant children, rather than participate in a fingerprint-sharing process that was designed to enable ICE to arrest them. Even more sponsors who were willing to come forward were nonetheless stymied when their household members refused to have their fingerprints sent to ICE to be used against them. In addition, the fingerprinting system became overwhelmed with months-long delays added on to each release decision as sponsors waited many weeks for a fingerprinting appointment, and then waited many weeks more for the results to come back. As a result, reunifications ground to a near-halt, and the population of children detained by ORR ballooned from less than 3,000 just a year and a half earlier to nearly 15,000 children, a never-before-seen record.[14] More than one-third of those children were detained at mega-facilities with over 1,000 children each, a far cry from the level of individualized attention implied by the concept of "shelter-level care." *Id.*

86. ORR was unable to accommodate all of those children within its existing network of shelters, and was forced to erect temporary facilities with much more restrictive conditions.[15] The most infamous of these facilities was a fenced-in tent city in the middle of the desert, just steps from the Rio Grande river in Tornillo, Texas, in which children were warehoused in conditions reminiscent of the World War II-era Japanese internment camp at Manzanar,[16] with

[14] Andres Leighton, "Nearly 15,000 migrant children in federal custody jammed into crowded shelters," Dec. 19, 2018, Associated Press, *available at* https://www.cnbc.com/2018/12/19/nearly-15000-migrant-children-in-federal-custody-jammed-into-crowded-shelters.html.

[15] Julián Aguilar, "Operator of migrant facility in Tornillo says it might not stay open past July 13 when contract expires," June 25, 2018, The Texas Tribune, *available at* https://www.texastribune.org/2018/06/25/operator-migrant-facility-tornillo-says-it-might-not-stay-open-past-ju/.

[16] Algernon D'Ammassa, "Tornillo tent city for children could become Trump's Manzanar," Oct. 5, 2018, Las Cruces Sun-News, *available at* https://www.lcsun-

woefully insufficient educational or psychological programming available to them.[17] The situation of these children was so dire that on December 17, 2018, the operator of the Tornillo tent city camp sent a letter to ORR advising that they would no longer accept more detained children at the facility: "We as an organization finally drew the line," Defendant Kevin Dinnin, the Executive Director of the organization running the Tornillo detention facility, would later explain. "You can't keep taking children in and not releasing them."[18]

87. Just as predictably, the mandatory fingerprinting and information-sharing of sponsors' household members turned out not to be necessary or even helpful: Defendant Johnson would later state that the policy did not "add[] anything to the protection and safety of the children."[19]

88. The MOA significantly impacted the rights and legal status of thousands of children in ORR custody, and the potential sponsors, household members, and caregivers of those children. Further, like the ORR Guide, ORR and ICE entered into this MOA and carried out its policies and procedures without providing the public and interested parties any notice or opportunity to comment on the new rules.

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news.com/story/opinion/columnists/2018/10/05/tornillo-tent-city-children-could-become-donald-trump-manzanar-family-case-management-immigration/1518678002/.

[17] Nomaan Merchant, "Beto O'Rourke says immigrant minors not receiving education in Tornillo facility," Oct. 3, 2018, Associated Press, *available at* https://kfoxtv.com/news/local/beto-orourke-says-immigrant-minors-not-receiving-education-in-tornillo-facility.

[18] Emily Green, "Head of controversial tent city says the Trump administration pressured him to detain more young migrants," Jan. 11, 2019, Vice News, *available at* https://news.vice.com/en_us/article/kzvmg3/head-of-controversial-tent-city-says-the-trump-administration-pressured-him-to-detain-more-young-migrants.

[19] John Burnett, "Several Thousand Migrant Children In U.S. Custody Could Be Released Before Christmas," Dec. 18, 2018, National Public Radio, *available at* https://www.npr.org/2018/12/18/ 677894942/several-thousand-migrant-children-in-u-s-custody-could-be-released-before-christ.

89. The only rationale for collecting immigration status information provided by ORR in the ORR Guide is listed in Sec. 2.6 of that guide. *See* Exh. 1. That section of the guide states, "ORR does not disqualify potential sponsors on the basis of their immigration status. ORR does seek immigration status information, but this is used to determine if a sponsor care plan will be needed if the sponsor needs to leave the United States; it is not used as a reason to deny a family reunification application." *Id.* There was no rationale provided regarding seeking or sharing information about household members' immigration status, which has no bearing on whether the sponsor would need to leave the United States; nor is there any rationale provided regarding sharing sponsors' address information with ICE or otherwise facilitating ICE immigration enforcement against sponsors.

90. DHS and HHS subsequently published notices in the Federal Register. HHS announced in its notice, however, that the agency had already adopted and implemented these changes to their policies, but nonetheless invited public comment. In a notice published on May 11, 2018 ("May 11 notice"), ORR "requests the use of emergency processing procedures . . . to expand the scope of . . . information collection" conducted as part of the reunification process. 83 Fed. Reg. 22490. In the May 11 notice, ORR states that "the information collection allows ORR to obtain biometric and biographical information from sponsors, adult members of their household, and adult care givers identified in a sponsor care plan." *Id.* Although comment was not due on this notice until July 10, 2018, ORR had clearly begun implementation of the changes to the information collection process, stating that "the instruments used in this submission [were] available for use by mid-May 2018," the same date that the notice was published. *Id.*

91. DHS also published a notice on May 8, 2018, to update its System of Records to implement the MOA, stating that one purpose of the system is "[t]o screen individuals to verify

or ascertain citizenship or immigration status and immigration history, and criminal history to inform determinations regarding sponsorship of unaccompanied alien children . . . and to identify and arrest those who may be subject to removal." 83 Fed. Reg. 20846.

92. ORR made vast and drastic changes to the information it collects, and more importantly, the manner in which it uses and shares that information. It did so unilaterally, without any public input or any apparent thought or consideration to the way these new rules would impact its own mission: to protect these children's best interest, and promptly reunify them with sponsors in the least restrictive environment possible.

93. Several public groups nonetheless submitted comments to both DHS and HHS denouncing the new "proposed" regulations as contrary to law and to the mission of ORR.[20] Upon information and belief, based upon internal stakeholder meetings, DHS had no plan or intention of providing information to ORR beyond what ORR was already able to obtain on its own. The MOA and accompanying procedures were designed purely as an extension of DHS's law enforcement authority in order to use children in ORR custody as bait to vastly expand the

[20] *See, e.g.*, Legal Aid Justice Center, Memo Re: HHS ACF Sponsorship Review Procedures, *available at*, https://www.justice4all.org/wp-content/uploads/2018/07/LAJC_Comments-on-OMB-No-0970-0278-Sponsorship-Review-Procedures-002.pdf; National Immigrant Justice Center, Memo Re: HHS ACF Notice of Sponsorship Review Procedures, *available at* http://www.immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2018-07/NIJC%20Comment%20on%20HHS%20revisions%20to%20UC%20sponsor%20forms.pdf; National Immigrant Justice Center, Memo Re: DHS Notice of Modified System of Records, *available at*, https://www.immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2018-06/NIJC%20Comments%20on%20DHS-2018-0013%20System%20of%20Records%20Notice.pdf; American Civil Liberties Union, Memo Re: DHS Notice of Modified System of Records, *available at* https://www.aclu.org/sites/default/files/field_document/2018.06.07_aclu_comments_dhs_system_of_records_notice_dkt._2018-0013-0001.pdf.

reach of ICE enforcement. The result of ORR being unable to identify closely related sponsors for the children in its care, as a result of the sharing of sponsor information with ICE, and any subsequent enforcement action by DHS against a child's sponsor or the other adults in that sponsor's home, places children at significantly *greater* risk of being trafficked, smuggled, or otherwise abused.[21]

94. ORR's online guide provides little to no rationale for any given policy change that has occurred over the past year and a half. ORR's online guide and MOA specifically give only a cursory and empty explanation for the new requirements. Upon information and belief, the additional criminal background checks provided for in the Procedures merely duplicate those that ORR currently performs. *See* Exh. 1 at § 2.5.1. According to the MOA, ORR will continue to be responsible for criminal history checks on the national, state, and local level. *See* Exh. 2. Duplicative background checks serve only to waste time and resources of two already over-burdened agencies. This practice is both arbitrary and capricious, and on information and belief, motivated solely by factors divorced from carrying out the mandate of the statute and case law governing detention and release of UACs by ORR.

95. In recognition that the policy had been a failure, on December 18, 2018—just one day after the head of the Tornillo tent city detention facility advised ORR that he would no longer accept any more child detainees—ORR revised its policy: no longer would sponsors' household members be fingerprinted in all cases. However, the new policy requiring fingerprinting of all parent sponsors was not changed; the sharing of sponsors' fingerprints with ICE for the explicit purpose of immigration enforcement against them was not changed; and the fingerprinting of all household members would still be required in various cases, including any

[21] *See generally* Human Trafficking Legal Center, *Amicus Curiae* Brief [Dkt. #45].

case where a home study was ordered for any reason whatsoever (with no meaningful standards limiting when a home study may be required). *See* Exh. 1 at §§ 2.5, 2.5.1. These changes were expected to result in the immediate release of a few thousand children, but would leave the population of detained immigrant children at over 10,000, well more than double what it was when the MOA first went into effect.

96. By means of a memorandum from Defendant Sualog to Defendants Hayes and Johnson, ORR recognized that the MOA and the policies set forth therein had not yielded any additional information about potential sponsors that was not otherwise available under the prior policy. *See* Exh. 3 (Memorandum from Jallyn Sualog, Dec. 18, 2018) at p.1. ORR also recognized that the MOA and the policies set forth therein were responsible for an increase in the median length of custody that presented a risk of harm to children. *Id.* The memorandum recognized that in six months, in *not one single case,* had the ICE fingerprint-sharing policy identified a new child welfare risk, *id.* at p.3; but that it was responsible for the median length of detention increasing to 90 days, *id.* at p.4. ORR considers it best practices to release a child within 30 days, and recognizes that children may suffer negative child welfare consequences after 60 days. *Id.* at pp.3-4.

97. The December 18 Suallog memorandum therefore recommended that the mandatory fingerprinting of sponsors' household members be terminated, a recommendation that Defendant Hayes accepted. *Id.* at p.4.

98. But even though the December 18 Suallog memorandum found that children suffer negative child welfare consequences as a result of prolonged detention in ORR's care, and that the ICE fingerprint-sharing MOA was resulting in prolonged detention, the December 18 Suallog memorandum did not recommend the termination of the MOA or an end to fingerprint

sharing with ICE. *Id.* To the contrary, the memorandum recommended that ORR continue fingerprinting all categories of sponsors, and continue sharing those fingerprints with ICE. The purported reason for this is to verify the identity of the sponsor. *Id.* But the memorandum undercut this reasoning by allowing ORR staff the discretion to release a child to a sponsor *even before the fingerprint results came back,* if ORR was otherwise able to confirm the sponsor's identity. *Id.* In other words, ORR would continue to send all sponsors' fingerprints to ICE, placing them at risk of ICE arrest, even where other records or forms of identification were sufficient to accomplish the only remaining justification for the fingerprint-sharing, namely verifying the identity of the sponsors.

99. The December 18 Suallog memorandum states, "The ORR field staff[] has informed me that biometric ICE background checks of all categories of sponsors are helpful for suitability analyses because they confirm the sponsor's identify." *Id.* at p.3. But the memorandum then proceeds to entirely undercut this justification by allowing ORR to release a child to a Category 1 or 2 sponsor before the biometric ICE background check even comes back, where the sponsor can otherwise confirm their identity. Furthermore, the memorandum makes no effort to balance or weigh the purported benefit of further confirmation of the sponsor's identity against the real and demonstrated harm to children caused by prolonged detention as detailed in the same memorandum. *See also* Exh. 4 (ORR Frequently Asked Questions guide) (listing only two reasons for the continuation of the ICE fingerprint sharing policy: identity verification of sponsors, and determining the immigration status of sponsors to determine whether a backup care plan might be required should the primary sponsor leave the United States).

FACTS PERTAINING TO PLAINTIFFS

J.E.C.M. and his sponsor Jose Jimenez Saravia

100. J.E.C.M. is a 14-year-old citizen of Honduras who came to the U.S. in February 2018 accompanied by a friend. He fled Honduras to escape persecution, including threats to his own life.

101. J.E.C.M. has known and been close with his brother-in-law Jose Jimenez Saravia since he was a toddler. He spoke with his sister and brother-in-law by phone on a regular basis when he was living in Honduras, every week or every other week. They often sent money to support him in Honduras so that he could attend school.

102. J.E.C.M. has never been arrested for or charged with a crime. Prior to coming to the United States at the age of 13, he went to school and mostly stayed in his home with his family out of fear of violence.

103. J.E.C.M. fled Honduras in at the end of December 2017. J.E.C.M. arrived in the U.S. at the end of February 2018, and was apprehended by Customs and Border Patrol. He was placed in an unaccompanied children's shelter in San Diego, California operated by Southwest Key Programs.

104. On March 9, 2018, J.E.C.M. was transferred to Selma Carson Home in Fife, Washington, a staff secure facility near Tacoma. He was transferred to the staff secure facility because he had been labeled as an escape risk by his clinician based on his confiding in his clinician that he did not want to be in the shelter and wanted to be with his family instead.

105. J.E.C.M.'s case manager prepared an ORR Release Notification on April 5, 2018 stating "ORR has determined that the below Juvenile Respondent should be released to a sponsor," and listed J.E.C.M.'s brother-in-law, Mr. Jimenez Saravia, as the custodian. However, J.E.C.M. was not released to Mr. Jimenez Saravia. Instead, J.E.C.M. remained in ORR custody

at Selma Carson Home until about April 19, 2018, when he was transferred to secure detention at the Northern Virginia Juvenile Detention Center ("NOVA") in Alexandria, Virginia.

106. J.E.C.M. was officially transferred to NOVA on April 19, 2018 and remained there until July 26, 2018, a week after this action was initially filed with this court. For the last three months of his detention, he was detained in this high security facility (i.e., most restrictive) in Northern Virginia. The conditions of the high security NOVA facility severely limited J.E.C.M.'s movement within the facility, and his time to socially interact, play, and learn with his peers or on his own. And given that J.E.C.M. was placed with other, older children who had been deemed at-risk, all of these factors would be expected to mentally break down any individual, let alone a 13-year-old boy who had already suffered greatly.

107. J.E.C.M.'s mental health deteriorated while at NOVA. He was the youngest resident and was the target of constant bullying. He did not feel that he could trust the other residents, and was afraid to report bullying to staff for fear of retaliation. He had significant difficulty coping with the conditions at NOVA, which he calls a jail. He felt he would never get used to being held in a jail. He wanted only to be with his family, and did not understand why he was still being held by ORR.

108. Upon information and belief, despite ORR staff recommendations that J.E.C.M. be reunified with Mr. Jimenez Saravia, ORR began requiring Mr. Jimenez Saravia's partner, J.E.C.M.'s sister, and other adult members of the household to submit biographical and biometric information as a pre-condition to J.E.C.M.'s release. The adults in Mr. Jimenez Saravia's household feared, correctly, that this information would be used for immigration enforcement purposes. As is common practice, Mr. Jimenez Saravia never received written notice that he had been denied as a sponsor or that he was not a viable sponsor without his household member's

fingerprints. Nonetheless, J.E.C.M. remained locked in a juvenile jail only because of a change in ORR policy and the MOA.

109. J.E.C.M.'s prolonged imprisonment at a very young age, and his inability to be with his family caused him significant anxiety and sadness. He often cried when speaking to family members on the phone and struggled to cope with the daily bullying he experienced at NOVA. J.E.C.M. sought to leave this environment where he felt depressed, sad, and alone, and to be placed with his brother-in-law and family who he knew would provide him the care and attention he needed.

110. J.E.C.M. was released to Mr. Jimenez Saravia on or about July 26, 2018, just days after the filing of the First Amended Complaint [Dkt. #4] and first Motion for Class Certification [Dkt. #5] in this action. He remains living with Mr. Jimenez Saravia subject to ORR's sponsorship agreement and may be re-detained and placed in ORR custody again in the future.

B.G.S.S. and his sponsor, Ingrid Sis Sis

111. B.G.S.S. is a 17-year-old citizen of Guatemala who came to the U.S. in May 2018. He fled Guatemala to escape persecution and because his mother had passed away.

112. Ingrid Sis Sis is B.G.S.S.'s niece, although she is older than him. The two have known each other since B.G.S.S. was a child and Ms. Sis Sis was a young adult. They would often spend time together at B.G.S.S.'s great-grandmother's house in Guatemala. After Ms. Sis Sis came to the United States and B.G.S.S. stayed in his grandmother's care in Guatemala, Ms. Sis Sis would call B.G.S.S.'s grandmother regularly and ask about his wellbeing and schooling, and often speak to him directly. Ms. Sis Sis also has stayed in regular communication with B.G.S.S. through text messages.

113. B.G.S.S. has never been arrested for or charged with a crime. Prior to coming to the United States, he went to school, worked, and mostly stayed in his home with his family.

114. B.G.S.S. was initially placed in a small BCFS-operated ORR shelter in Raymondville, Texas which houses approximately 50 children. B.G.S.S. did well in the small program, getting along with the other children and adjusting well as the staff worked on family reunification. But after approximately 10 days at BCFS Raymondville, B.G.S.S. was transferred to Casa Padre due to "emergency influx." Unlike BCFS Raymondville, Casa Padre was a warehouse of about 1,500 children, housed in a converted Walmart.[22] Despite the number of children, there were only 313 "door-less rooms" for children to sleep in.[23] The facility was noisy, and the rooms were merely walls that do not reach all the way to the ceiling, creating a cacophonous echo chamber of 1,500 children day and night.[24] Casa Padre had a poor reputation

[22] Dan Barry et al., "Cleaning Toilets, Following Rules: A Migrant Child's Days in Detention" July 14, 2018, The New York Times, *available at* https://www.nytimes.com/2018/07/14/us/migrant-children-shelters.html; *see also* Michael Miller, Emma Brown and Aaron C. Davis, "Inside Casa Padre, the converted Walmart where the U.S. is holding nearly 1,500 immigrant children;" June 14, 2018, The Washington Post, *available at* https://www.washingtonpost.com/local/inside-casa-padre-the-converted-walmart-where-the-us-is-holding-nearly-1500-immigrant-children/2018/06/14/0cd65ce4-6eba-11e8-bd50-b80389a4e569_story.html?utm_term=.a04e5b7ab55d; "Casa Padre: Inside the Texas shelter holding immigrant children," June 18, 2018, Reuters, *available at* https://www.reuters.com/news/picture/casa-padre-inside-the-texas-shelter-hold-idUSRTX69KSC ("An influx of immigrants has brought the facility to the brink of capacity with the shelter receiving a waiver to house nearly 300 more children than it is licensed for.").

[23] *See* Tara Francis Chan, "There are so many migrant children in one shelter a prison-style headcount is taking hours," Business Insider, Jun. 25, 2018, *available at* https://www.businessinsider.com/headcount-of-migrant-children-in-casa-padre-shelter-takes-hours-2018-6.

[24] Dan Barry et al., "Cleaning Toilets, Following Rules: A Migrant Child's Days in Detention" July 14, 2018, The New York Times, *available at* https://www.nytimes.com/2018/07/14/us/migrant-children-shelters.html; *see also* Michael Miller, Emma Brown and Aaron C. Davis, "Inside Casa Padre, the converted Walmart where the U.S. is holding nearly 1,500 immigrant children;" June 14, 2018, The Washington Post, *available at* https://www.washingtonpost.com/local/inside-casa-padre-the-converted-walmart-where-the-us-is-holding-nearly-1500-immigrant-children/2018/06/14/0cd65ce4-6eba-11e8-bd50-b80389a4e569_story.html?utm_term=.a04e5b7ab55d.

for caring for children. Children were highly monitored and controlled, and have reported that staff have been at best unkind and at worst abusive.[25] Despite being ordered by a judge to permit an Ad Litem investigator to inspect the facility and interview the children there, ORR refused access and delayed inspection by removing the matter to federal court.[26]

115. After being transferred to Casa Padre, B.G.S.S. became depressed, irritable, and hopeless. He was overwhelmed by the sheer number of children and people around him all the time. He could not sleep at night because of the noise, and shared a room with four other children. Unlike at BCFS Raymondville, each child only had 8 minutes to shower each day, and staff zealously wrote behavior reports about children for even the smallest transgression. With so many children together, it was inevitable that they would not all get along, so bullying and disagreements with other children were common.

116. Under the constant stress of being in the Casa Padre environment, B.G.S.S.'s mental and behavioral health deteriorated. He received several significant incident reports (SIRs) for things ORR staff alleged he said either to them or to other residents, or for not following

[25] *See* Mary Tuma, "Allegations of Mistreatment at Southwest Key Shelter: The deportation complex," The Austin Chronicle, August 3, 2018, *available at* https://www.austinchronicle.com/news/2018-08-03/allegations-of-mistreatment-at-a-southwest-key-shelter/; *see also* Alan Pyke, "'This is it for you. You're fu**ed.': Inside Trump's abuse of migrant kids at an old Walmart," ThinkProgress, July 19, 2018, *available at* *https://thinkprogress.org/inside-the-icebox-hielera-kids-own-words-trump-border-af33e9e0a7fb/;* Rebekah Entralgo, "Employee at immigrant shelter in Arizona arrested for allegedly sexually abusing teen girl," ThinkProgress, August 1, 2018, *available at* https://thinkprogress.org/employee-at-immigrant-shelter-in-arizona-arrested-for-allegedly-sexually-abusing-teen-girl-7c73f67e2ac3/.

[26] Mark Reagan, "County appoints investigator to look into Casa Padre," The Brownsville Herald, July 16, 2018, *available at* https://www.brownsvilleherald.com/news/local/county-appoints-investigator-to-look-into-casa-padre/article_d8fc8c4b-69c3-535a-8588-e5b866c4c9f7.html.

program rules, mostly in response to the conditions at Casa Padre. He never received an SIR for any violent behavior.

117. One conversation with ORR staff in which B.G.S.S. made inappropriate but false claims about his age and about past and future violence ultimately resulted in his being transferred directly to a secure facility.

118. Prior to his arrival at SVJC, B.G.S.S. was never advised that his conversations with staff would be reported to ORR or could be used against him to place him in more restrictive settings. Despite his clinician, case manager, and other staff asking him about his past, his behaviors, and his statements in order to convey that information to ORR for use in making placement decisions, he was not advised of the impact his statements could have on his placement, his reunification, or potentially his immigration case.

119. Following the incident in which ORR alleges that B.G.S.S. made criminal self-disclosures, B.G.S.S. has consistently denied being an adult or having committed violence in the past. His birth certificate has been verified by the Guatemalan embassy and by his family in Guatemala and in the United States. B.G.S.S. and all of his family not only denied that B.G.S.S. had ever committed violence in his home country but also offered plausible, age-appropriate explanations for his admittedly misguided but certainly not criminal false reports regarding his age and past. B.G.S.S. has also consistently denied having any plan to commit violence in the future. Nonetheless, despite investigating the veracity of B.G.S.S.'s "self-disclosures" pursuant to ORR Policy 1.4.2, and finding no credible support for any of them, ORR staff recommended that B.G.S.S. be placed in a staff secure facility following these uncorroborated "admissions."

120. B.G.S.S.'s case manager recommended that he be transferred to a staff secure, or medium-level security program. Instead, and without explanation, B.G.S.S. was sent directly to

the most secure program available at SVJC, which serves both as an ORR facility and as a juvenile jail for minors in Virginia who have been adjudicated delinquent in state court. B.G.S.S. was detained at SVJC in the custody of ORR on August 16, 2018, when he joined this action and filed a habeas corpus petition by means of the Second Amended Complaint [Dkt. #21].

121. Thereafter, ORR transferred him to other secure and staff-secure facilities. He remains detained by ORR in San Antonio, Texas as of the date of filing this pleading.

122. B.G.S.S.'s sister, Blanca Jeronimo Sis, who resides and works in Virginia, first sought to sponsor B.G.S.S. and take custody of him. Ms. Jeronimo Sis formally applied with ORR to be B.G.S.S.'s sponsor and submitted her biographical and biometric information. On June 20, 2018, while at Casa Padre, ORR staff completed a release request for B.G.S.S.'s release to his sponsor. But after B.G.S.S. was transferred to SVJC, ORR added onerous steps to his reunification process, pursuant to the policies and practices described above, and told Ms. Jeronimo Sis over the phone that her sponsorship of B.G.S.S. would likely not be approved, or if it was approved would take a long time. Ms. Jeronimo Sis then gave up on the idea of being able to sponsor B.G.S.S.

123. On or about January 3, 2019, B.G.S.S.'s 27-year-old niece Ingrid Sis Sis, also a resident of Virginia, was given a sponsorship package, which she submitted to the caseworker just one day later in an effort to sponsor B.G.S.S. and finally bring him home to live with family, instead of in an institution. Some days thereafter, she was given another five pages to fill out, which she submitted within about a week. She submitted her fingerprints on January 15, 2019. Notwithstanding having quickly complied with every request by the caseworker, Ms. Sis Sis has

not been told the current status of her sponsorship application, nor has she been given a timeline for when she can expect B.G.S.S. to be released to her care.

124. B.G.S.S.'s prolonged imprisonment at a young age, and his inability to be with his family has caused him significant anxiety and sadness. B.G.S.S. seeks to leave this environment where he feels depressed, sad, and alone, and to be placed with his family who will provide him the care and attention he needs.

R.A.I. and her sponsor Sandra Alvarado

125. R.A.I. is a 15-year-old girl from Honduras. At the age of five, she left her parents' house and went to live with her sister, Sandra Alvarado, because her parents could no longer care for her or support her.

126. R.A.I. came with her sister to the United States in April 2018. They came because there was significant violence in their community and to enable R.A.I. to study. Ms. Alvarado wanted a better future for her young sister.

127. Despite Ms. Alvarado being R.A.I.'s primary caretaker, the two were separated at the border by U.S. immigration officials. R.A.I. was placed in ORR custody in Virginia at Youth for Tomorrow ("YFT"). Ms. Alvarado was paroled to Maryland where she lived in an apartment with a friend.

128. Ms. Alvarado was initially told that she could not sponsor her younger sister R.A.I., whom she had raised, because the adult roommates living in her apartment refused to send any biographical or biometric information to ORR. As is common practice, Ms. Alvarado never received written notice that she had been denied as a sponsor or that she was not a viable sponsor without her household member's fingerprints. Ms. Alvarado had to move out of her apartment and into a different home with her siblings, who were willing to provide their biographical and biometric information for the sponsorship application. Only after moving in

with her siblings and communicating their willingness to participate in the reunification process was she able to officially begin the sponsorship process.

129. R.A.I. was detained at YFT in the custody of ORR on August 16, 2018, when she joined this action and filed a habeas corpus petition by means of the Second Amended Complaint [Dkt. #21]. ORR released R.A.I. into the custody of her sister Ms. Alvarado only after the filing of the Second Amended Complaint [Dkt. #21] and Supplemental Motion for Class Certification [Dkt. #28] identifying her as a Plaintiff and putative class representative in this action. She remains living with Ms. Alvarado subject to ORR's sponsorship agreement and may be re-detained and placed in ORR custody again in the future.

K.T.M. and his sponsor Cinthia Velasquez Trail

130. K.T.M. is a 15-year-old boy from Honduras. He fled Honduras with his older sister, Wendy, to escape violent and credible threats on his life after his father was murdered in front of him. He has experienced severe trauma and has relied on his older siblings to care for him and help him cope with the violence to which he has been exposed. He and his other sister Cinthia Velasquez Trail have always had an especially close relationship: after Ms. Velasquez Trail moved to the United States a few years ago, K.T.M. spoke with her every day by phone. He also spoke to her husband several times a week by phone. He has a close and loving relationship with both his older sisters and with his brother-in-law.

131. K.T.M. and his sister Wendy arrived in the U.S. in March 2018. Although Wendy was caring for K.T.M., they were separated at the border by U.S. immigration officers, despite K.T.M.'s desire to remain with his sister. K.T.M. was placed in ORR custody in Virginia at YFT. His sister Wendy was paroled to Texas where she is living with their sister, Cynthia Velasquez Trail.

132. K.T.M.'s sister, Ms. Velasquez Trail, submitted all the requisite paperwork to be K.T.M.'s sponsor. She lives with her partner and with K.T.M.'s other sister, Wendy, with whom K.T.M. traveled to the U.S. Although K.T.M.'s sister and brother-in-law both submitted all the required documentation and passed their background checks, upon information and belief, Wendy was unable to be scheduled for her background check and fingerprint appointment because ICE had confiscated her identification upon apprehension and she did not have another form of valid photo ID. As is common practice, Ms. Velasquez Trail never received written notice that she had been denied as a sponsor or that she was not a viable sponsor without her household member's fingerprints.

133. K.T.M. was detained at YFT in the custody of ORR on August 16, 2018, when he joined this action and filed a habeas corpus petition by means of the Second Amended Complaint [Dkt. #21]. ORR released K.T.M. into the custody of his sister Ms. Velasquez Trail only after the filing of the Second Amended Complaint [Dkt. #21] and Supplemental Motion for Class Certification [Dkt. #28] identifying him as a Plaintiff and putative class representative in this action. He remains living with Ms. Velasquez Trail subject to ORR's sponsorship agreement and may be re-detained and placed in ORR custody again in the future.

M.C.L. and her sponsor, Reyna Luviano Vargas

134. Plaintiff M.C.L., 14 years old, fled Mexico last fall. She was forced to leave her home after a series of events involving the same group of violent men. They killed three of her uncles, broke into her family's home, and threatened her at gunpoint.

135. When she entered the United States on November 6, 2018, M.C.L. was taken to a jail-like holding facility in San Diego, California.

136. M.C.L.'s mother, Reyna Luviano Vargas, lives about 150 miles from San Diego in San Fernando, California. Her husband and their daughters, ages 9 and 11, live with her.

137. Four days after M.C.L.'s arrival, ORR transferred her to an emergency shelter across the country in Homestead, Florida. The federal government is currently expanding that facility to hold up to hold as many as 2,350 children at a time.[27] Homestead, like the above-described Tornillo tent city that ORR recently closed, is not subject to state licensure and corresponding child welfare inspections.[28]

138. Within a week of M.C.L.'s arrival, Ms. Luviano Vargas had submitted her daughter's sponsorship application to ORR. In it, she disclosed a 2015 insurance fraud offense for which she had served a few months in jail and completed probation.

139. Ms. Luviano Vargas and her daughter talk by phone twice a week for 10 minutes at a time. Ms. Luviano Vargas hears fear in M.C.L.'s voice, and M.C.L. tells her that she can't be completely honest with her because case workers can overhear her conversations.

140. M.C.L. has asthma and took medication for it in Mexico. Ms. Luviano Vargas has reason to think she is not receiving appropriate medical attention in the Homestead facility, based on her daughter's comments to her. Because of this, Ms. Luviano Vargas is consumed with worry.

141. Case workers have told M.C.L. that the reason she has been detained so long is because her mother committed a crime, and that she may have to go up for adoption due to that.

[27] Andres Leighton, "The Rise and Fall of the Tornillo Tent City for Migrant Children," Jan. 9, 2019, Associated Press, *available at* https://www.texasmonthly.com/news/migrant-children-tornillo-tent-city-released/.

[28] Graham Kates, "Some detention centers for migrant children not subject to state inspections," July 5, 2018, CBS News, *available at* https://www.cbsnews.com/news/some-detention-centers-for-immigrant-children-wont-be-subject-to-traditional-inspections/.

142. A supervisor reprimanded Ms. Luviano Vargas when she asked how long she could expect to wait. He told her the wait would be five to seven months, and that the long wait was her fault because she had committed a crime.

143. On January 9, 2019, Ms. Luviano Vargas was promised reunification by the case manager, who said she had gotten the results of the fingerprint check and would submit the release application that day.

144. Five days later, reunification had not occurred, so Ms. Luviano Vargas called the case manager. The case manager said she was still waiting for fingerprint results, and did not acknowledge her promise of January 9, 2019.

145. M.C.L. is desperate to leave the Homestead facility and join her mother, stepfather, and half-sisters in California. Ms. Luviano Vargas feels betrayed and distressed by the shifting representations as to when her child will come home.

A.Y.S.R.

146. Plaintiff A.Y.S.R., 17, left her hometown in El Salvador about four months ago with her one-year-old son, K.E.G.S. The violence in A.Y.S.R.'s life had reached a breaking point. From age 7 to 14, she was sexually abused by her father, a high-ranking member of a Salvadoran gang. At 14, she told her mother, who refused to believe her. Her mother died a few months later, and A.Y.S.R. was forced to keep living with her father. About three years ago, as her father was making plans to leave the country with her, she ran away from home.

147. A.Y.S.R. fell in love with a boy from her town who was one year older than her. Almost two years ago, A.Y.S.R. gave birth to their son, who suffers from convulsions.

148. They lived in relative peace despite the gang violence in their community until A.Y.S.R.'s father returned, looking for her. Members of a rival gang learned he was there and pressured A.Y.S.R. to deliver him to them. She did not want to be responsible for the death of

her father, but she feared the rival gang would hurt her and her baby for refusing. So she fled, heading north for the United States.

149. A.Y.S.R. did not have many close relatives in her life whom she could trust. Thankfully, she had grown to love and trust Myrna, the wife of her father's cousin. Though Myrna lived in Colorado with her daughter, she visited A.Y.S.R. often and kept in regular contact by phone. A.Y.S.R. would not hesitate to ask Myrna for help with things for K.E.G.S. A.Y.S.R. knew that if she made it to the United States, she wanted to live with Myrna.

150. A.Y.S.R. and her son presented at a port of entry in Arizona on September 21, 2018. U.S. immigration officials tried to separate them, but A.Y.S.R. resisted. They spent four days in a Border Patrol holding facility commonly known as an "icebox" for its freezing temperatures and lack of adequate facilities for the care of children, and then were transferred to Crittenton, a youth detention center in California.

151. Myrna and her husband submitted sponsorship materials to ORR and were fingerprinted more than two months ago. They are still waiting for the results of the fingerprints. An official in Denver told Myrna the delay was due to the high number of people in detention.

152. As part of the sponsorship application process, Myrna and her husband also underwent a home study, where their lives were extensively probed and they felt their home and offer to help were criticized.

153. For the first several weeks she was detained, A.Y.S.R. was not able to talk to any loved ones outside Crittenton. Myrna had to tell the social worker that A.Y.S.R. had the right to phone calls with her. Since then, A.Y.S.R. and Myrna talk twice a week, 20 minutes at a time. A.Y.S.R. is not allowed to talk to her baby's father, her partner.

154. A.Y.S.R. is depressed. She feels trapped and unwanted at Crittenton. She has trouble sleeping for the first time in her life, and when she wants to be alone she is not allowed to be. Staff took away tools A.Y.S.R. could use to hurt herself. A.Y.S.R. has been through serious trauma, and has been deprived of access to her support system – her partner and Myrna.

155. A.Y.S.R. did not know when she left home for the United States that she and K.E.G.S. would be held against their will for four months. It has been extremely hard for A.Y.S.R. to adjust to life in Crittenton despite her best efforts.

156. A.Y.S.R. turns 18 in less than three months.

J.A.T.L. and his sponsor, Candy Lemus

157. J.A.T.L. is an eleven-year-old boy from Honduras.

158. J.A.T.L. entered the United States on or around August 25, 2018, near Hidalgo, Texas with an uncle. At the border, J.A.T.L. was separated from his uncle and sent to the Board of Child Care shelter in Baltimore, Maryland, where he was admitted on or around August 27, 2018. Several weeks later, J.A.T.L. was told that his uncle had been deported, which upset him.

159. In the shelter, J.A.T.L. has experienced nightmares. He has been sick on at least one occasion.

160. J.A.T.L. has received individual counseling in the shelter to help him manage his anger and build coping skills. On one occasion, he hid under his counselor's desk at the end of his counseling session and refused to leave.

161. Staff members have reported that J.A.T.L. shows irritability and distress when he prays.

162. A psychiatric evaluation of J.A.T.L. states that J.A.T.L. feels "anxious, frightened, and alone" and concludes that his "attention seeking behaviors, clinginess, and his

fighting with other boys are likely caused by stress." It recommends that he "[r]eunify with family as soon as possible."

163. Candy Lemus, J.A.T.L.'s aunt, is seeking to sponsor J.A.T.L. She resides in South Carolina with her partner and her 4-year-old daughter.

164. Ms. Lemus submitted the sponsorship documentation to ORR in October and November 2018. In or around November, she submitted her biometric information. About several weeks later, her partner submitted his biometric information.

165. In November or December 2018, ORR performed a home visit at Ms. Lemus' residence.

166. J.A.T.L.'s mother, Ms. Lemus' sister, also resides in South Carolina. J.A.T.L.'s mother originally sought to sponsor him, but her husband was reluctant to submit his biometric information to ORR out of a well-founded concern that it would be shared with immigration enforcement officials.

167. A case manager named Iliana initially helped Ms. Lemus fill out the sponsorship paperwork. Since Ms. Lemus submitted the sponsorship packet, various other case managers have contacted her about J.A.T.L.'s case, causing delays because when she had questions about her sponsorship application, she did not know whom to contact. She tried calling Iliana and left her a voice message, but Iliana did not respond.

168. In or around December 2018, a case manager called Ms. Lemus to inform her that they did not receive some paperwork. Ms. Lemus believes the case manager was referring to paperwork from the home visit that Ms. Lemus had previously submitted. Ms. Lemus subsequently re-sent the home visit paper work to ORR.

169. Around this same time, another case manager contacted Ms. Lemus. She told her that they were still waiting on paperwork from J.A.T.L.'s mother granting custody to Ms. Lemus.

170. A case manager recently told Ms. Lemus that they are still missing two documents as well as the custody paperwork from J.A.T.L.'s mother.

171. Around Christmas 2018, Ms. Lemus drove from South Carolina to Maryland in hopes of visiting J.A.T.L. Unfortunately, she was not allowed to visit him because the shelter had not yet received a response about whether Ms. Lemus' biometric information had been cleared.

172. Before she left Honduras around December 2016, Ms. Lemus helped raise J.A.T.L. When J.A.T.L. was younger, his mother moved to another town in Honduras for work. J.A.T.L. stayed with Ms. Lemus, Ms. Lemus' mother, and other family members. Ms. Lemus had primary responsibility for J.A.T.L. when his mother was absent. J.A.T.L.'s mother came to the United States in 2015 or 2016.

173. Ms. Lemus speaks with J.A.T.L. about once a week, usually on Tuesdays. A case manager calls Ms. Lemus and hands the phone to J.A.T.L. J.A.T.L. generally tells Ms. Lemus that he is OK and that the shelter is taking care of him and feeding him. But Ms. Lemus can hear in J.A.T.L.'s voice that he wants to be reunited with his family. Ms. Lemus tries to reassure him that they will be together soon, but she cannot tell him when that will be.

C.E.C.P. and his sponsor, Kayla Vazquez

174. Plaintiff C.E.C.P. is a 17-year-old boy from Honduras. He turns 18 in four months.

175. From birth until he was about age 5, C.E.C.P. lived with his parents, his aunt, and his cousin Carlos. Carlos treated C.E.C.P. more like a brother, and C.E.C.P. grew to see him that way.

176. Carlos migrated to the United States in 2006, but he remained close to his relatives in Honduras, including C.E.C.P. In 2012, when Carlos met his future wife, he began to include her in his weekly calls with family.

177. Carlos' wife is Plaintiff Kayla Vazquez. By the time they married in 2015, Ms. Vazquez had built a relationship of her own with C.E.C.P and had come to love him.

178. Early in 2018, Ms. Vazquez learned that C.E.C.P.'s father was physically abusing him. C.E.C.P. told Ms. Vazquez that he was desperate to escape the beatings and abuse at home.

179. C.E.C.P. left home and headed north around June 2018. On August 22, 2018, Ms. Vazquez learned that C.E.C.P. had been taken into U.S. government custody along the border. C.E.C.P. remains confined at BCFS International Children's Shelter in Harlingen, Texas.

180. Ms. Vazquez, who is a native-born U.S. citizen, volunteered to sponsor C.E.C.P. Initially, she thought her citizenship status would facilitate a faster reunification. She submitted all the required information, including certified copies of C.E.C.P.'s passport and birth certificate. She and Carlos were fingerprinted, and in December 2018, they submitted to a home visit. At that time, the investigator said C.E.C.P. would be home by Christmas.

181. Instead, the government has raised new barriers that have prolonged this family's separation. Now the government claims to suspect that C.E.C.P. is older than 17. Without disclosing the basis for this suspicion, the case manager requested certified copies of C.E.C.P. passport and birth certificates – the same documents Ms. Vazquez produced months ago with the initial sponsorship application.

182. The government's imposition of new obstacles to reunification without disclosure of a legitimate basis, coupled with the requests for duplicative information, frustrate Ms. Vazquez and impose needless financial costs on her family.

E.A.R.R. and his sponsor, Francisco Ramos Chilel

183. Plaintiff E.A.R.R., a native of Guatemala, lived with his mother and father until he was about 7, when his father migrated to the United States. His mother later abandoned him, and he moved in with his paternal grandmother until she was unable to care for him. E.A.R.R. then went to live with an adult cousin in Mexico. This cousin abused E.A.R.R., beating him and locking him inside rooms for long periods of time.

184. Plaintiff Francisco Ramos Chilel, 41, is E.A.R.R.'s father. For ten years, Mr. Ramos Chilel has sent his son financial support and spoken to him on a weekly basis. When he learned that E.A.R.R. was being physically abused, he decided E.A.R.R. needed to live with him.

185. Around July 2018, E.A.R.R. entered the United States. He spent several days confined in Texas and was then taken to an emergency shelter for immigrant youth in Homestead, Florida.

186. Despite not knowing how to read or write, Mr. Ramos Chilel submitted his sponsorship application and supporting evidence in July 25, 2018, after paying for assistance.

187. To date, Mr. Ramos Chilel has complied with every requirement caseworkers have put forth. When he was told E.A.R.R. would need his own room, he rented a second room in the house where he lived. When he was told all roommates would have to be fingerprinted, he asked his roommates, but one refused. When he was encouraged to move, he did so. Though he could not afford rent for a single-family unit, he moved in with his brother and nephew once a room became available in November 2018.

188. Since July 2018, Mr. Ramos Chilel has made three additional submissions in response to case worker requests, each time paying someone for writing services. He has been fingerprinted, as have a prior roommate, his brother, and his nephew. All four traveled to Miami for fingerprinting at the case worker's request, which has cost Mr. Ramos Chilel hundreds of

dollars in transportation costs. In Mr. Ramos Chilel's case, delays in fingerprint processing extended to 89 days. At that point, the case worker said the results were no longer valid, and told him second prints would be necessary.

189. Mr. Chilel's brother and nephew have also complied with all requests for information. Besides the fingerprinting, they prepared statements attesting to their lack of criminal history and their encounters with immigration authorities. They also signed releases to authorize background checks for abuse and neglect.

190. Notwithstanding all these efforts, E.A.R.R. remains detained with no explanation for his continued separation from his father. More than five months of detention in the Homestead facility have harmed E.A.R.R.'s physical and emotional health. At one point, E.A.R.R. suffered from a headache so severe that he broke out in screams, and was taken to a hospital. He has become anxious and depressed, and has begun mental health treatment and medication.

191. Mr. Ramos Chilel was told by a case worker not to join this suit. Mr. Ramos Chilel is desperate to alleviate his son's suffering by getting him out of detention and bringing him home.

Y.R.R.B. and his sponsor, Astrin Melissa Centeno Irias

192. Plaintiff Y.R.R.B., 16, grew up in a neighborhood in Honduras that was heavily controlled by gangs. He was the victim of gang violence as a child and regularly witnessed crime.

193. Y.R.R.B. began working on a bus when he was 14. He collected fares and helped passengers embark and disembark. Gang members would regularly present "extortion letters" to the bus owners, demanding they pay the gangs for permitting them to carry out their routes.

194. Y.R.R.B. fled Honduras because gang members used him to carry extortion payments from the bus owner to a "drop," and Y.R.R.B. did not want to be involved out of fear for his safety.

195. Astrin Melissa Centeno Irias is Y.R.R.B.'s sister. She has lived in Texas with her minor son and roommate since 2016.

196. Ms. Centeno Irias has worked with two case managers to be reunified with her brother, and has done everything the case managers asked of her. She is frustrated because the case managers always seem to come up with more requirements for her, some of which she has had to do more than once. Y.R.R.B. has been detained for almost four months in the interim.

197. Ms. Centeno Irias and her roommate both provided fingerprints on September 27, 2018. They were told they would take 4-6 weeks to process. As of January 17th, 2019, Ms. Centeno Irias's roommate's fingerprints still had not been processed.

198. Ms. Centeno Irias and her roommate have both provided copious information on their work, salaries, and residences over the past five years. Providing this information made Ms. Centeno Irias's roommate uncomfortable, but she did it anyway. Ms. Centeno Irias has also had to provide information about her minor child, like his residences and his school.

199. Ms. Centeno Irias was also asked to submit legal records. From these records the case manager discovered Ms. Centeno Irias and her child had been the victims of domestic violence. The case manager then asked Ms. Centeno Irias to request the entire archive of documents related to the abuse. Ms. Centeno Irias went to the Child Protective Services office to ask for the archive and was told the retrieval could take up to six months. Ms. Centeno Irias relayed the information to the case manager and asked if the documents she had were sufficient.

On January 17, 2019, the case manager renewed her request for the complete archive of documents.

200. Since November, Ms. Centeno Irias and her roommate have been asked to submit their photo identification four separate times. Most recently, on January 15, 2019, Ms. Centeno Irias's roommate was asked again to submit her photo identification and a list of residences for the last five years.

201. Ms. Centeno Irias submitted to a home study in November. The woman who conducted the study told her she expected imminent reunification.

202. While this has been going on, Ms. Centeno Irias worries that Y.R.R.B. is deteriorating in detention. Y.R.R.B first stayed in a detention center in Kansas City where he had more freedom. In October of 2018, he got into a fight with another child. Neither he nor the other child were seriously hurt. That night Y.R.R.B went to bed. At around three in the morning, he was abruptly awakened, taken out of the facility in the dark, and put on a plane. Y.R.R.B kept asking what was going on, but no one would tell him.

203. Y.R.R.B was transferred to a staff secure facility in Fife, Washington, Selma Carson Home. Upon arrival, Y.R.R.B was told he had been transferred because he was suspected of being in a gang. Y.R.R.B is upset that he is being accused of the very thing he left Honduras to get away from. There's been no opportunity to defend himself against the allegations, yet he feels like he is being punished all the same.

204. Y.R.R.B lives a diminished quality of life at Selma Carson Home. Only about eight boys are housed there. The building is small and dark, with low ceilings. The boys are only permitted outside one to two hours a day.

205. Y.R.R.B has grown frustrated with the unchanging situation and with the lack of progress despite his sister's compliance. Depression and despair have taken hold. Y.R.R.B. feels like his current case manager doesn't like him, and he doesn't see her nearly as often as he saw his case manager in Kansas City. He doesn't feel confident that she is doing what she can to reunite him with his sister. Y.R.R.B. had begun to give up hope that he would ever be released.

C.M.M. and his sponsor, Magdalena Miguel

206. Plaintiff C.M.M., 15, grew up in Huehuetenango, Guatemala. He never knew his father and was raised by his grandmother. C.M.M. completed less than one year of school in Guatemala, and cannot read or write.

207. C.M.M.'s native language is Jakaltek. Like many people in his community, C.M.M. had heard some Spanish, but didn't speak it. C.M.M only began to actively learn Spanish when he entered the United States.

208. C.M.M. has been at two facilities since he entered the United States about six months ago. The first was Casa Padre, in Brownsville, Texas. Currently, he is in Selma Carson home, a staff-secure facility in Fife, Washington.

209. Magdalena Miguel is C.M.M.'s mother. She had C.M.M. when she was very young and moved to the United States when C.M.M. was a baby. She lives in Florida with her six daughters.

210. Ms. Miguel has had a close relationship with C.M.M. his entire life. When she found out he was in the United States, she enthusiastically wanted to sponsor him.

211. Ms. Miguel has worked with four case managers since she began the reunification process. None of the case managers spoke Jakaltek, and one of the case managers did not even speak Spanish. Ms. Miguel has a friend who, when available, acted as an interpreter with that particular case manager.

212. Ms. Miguel has done everything the case managers have asked of her. She has submitted paperwork, a copy of her ID, a copy of C.M.M.'s birth certificate, and a list of her daughters' names and birthdates. She also submitted three copies of her electric bill. In September 2018, she was asked to get fingerprinted, so she did.

213. A home inspection was performed in or around October. Ms. Miguel and her daughters live in a two-bedroom apartment. The social worker told Ms. Miguel she'd need to have a separate bedroom for C.M.M., which Ms. Miguel said she'd achieve by giving her room to C.M.M. and sleeping on the sofa.

214. A social worker also told Ms. Miguel that she would have to install cameras in the house, but Ms. Miguel didn't understand why.

215. Ms. Miguel has been very worried about her son, especially since he started working with his newest case manager. The new case manager made a rule that C.M.M.'s phone calls must be monitored, and she insists that C.M.M speak in Spanish. She won't let him use the phone if he tries to speak in Jakaltek. This effectively inhibits their ability to communicate to one another because C.M.M. only started learning Spanish six months ago, and Spanish is Ms. Miguel's second language. C.M.M. can't express himself to her when they are on the phone.

216. Moreover, C.M.M. is sad because since his grandmother doesn't speak any Spanish at all, he can't call her on the phone to see how she is doing even though she is old and in frail health.

217. C.M.M. feels completely alone and like he has no support. His behavior is defensive and emotional. He often cries and stays in his room on his own. None of the other boys at Selma Carson Home speak Jakaltek. Between this and his case manager's rules about phone use, C.M.M. has no one he can easily communicate with.

218. Isolation and despair about reuniting with his mother has lead C.M.M. to act out. As a result, C.M.M. is punished, even for minor offenses. C.M.M. is not allowed to play team sports with the other boys, he is not allowed to share a room, and he is not allowed to share a sofa while in the common room. He takes his classes separately from the other boys. His bedroom television and music privileges have been taken away. He feels trapped and completely alone.

219. When Ms. Miguel tried to ask her son about an alleged incident that C.M.M. had gotten in trouble for, the case manager yelled at Ms. Miguel for bringing up the topic and making C.M.M. emotional.

220. Ms. Miguel fears that if he is not released soon, C.M.M. is going to break down completely.

A.C.M.S. and her sponsor, Juan Bautista Maldonado Murillo

221. Plaintiff A.C.M.S., 17, fled Honduras last fall after being sexually abused and exploited.

222. She entered the United States in September of 2018 and was promptly transferred to a facility in Seattle, Washington.

223. A.C.M.S's father Juan Bautista Maldonado Murillo lives in New Jersey, more than 2800 miles away from where his daughter is detained.

224. Mr. Maldonado Murillo was an enthusiastic sponsor of his daughter, and started the reunification process as soon as he found out A.C.M.S was in the United States. Even though he is illiterate, he completed a lengthy application with the help of his sister-in-law, submitted finger prints, and paid for and took parenting classes.

225. When Mr. Maldonado Murillo started the sponsorship process, he lived with roommates. A.C.M.S.'s case manager told Mr. Maldonado Murillo he would need to get his

roommates to submit their fingerprints, but the roommates told Mr. Maldonado Murillo they did not want to.

226. A.C.M.S.'s case manager told Mr. Maldonado Murillo he should find his own apartment. Not only was this a great financial strain for Mr. Maldonado Murillo, it was also something he felt he needed to do quickly to avoid his daughter's detention from being unnecessarily prolonged. Knowing the situation, Mr. Maldonado Murillo's brother offered him his apartment to move into. Mr. Maldonado Murillo moved in and took over the rent payments, and his brother moved out.

227. In December, the case manager ordered an inspection of the apartment, and Mr. Maldonado Murillo was hopeful the inspection would be the last step in the reunification process. But it was not, and Mr. Maldonado Murillo does not know why.

228. Most recently, A.C.M.S.'s case manager asked Mr. Maldonado to sign a form indicating that he is the one living in and paying for the apartment. Although the case manager says she sent the form, it still has not arrived.

229. In the meanwhile, A.C.M.S. has been waiting at the detention center in Seattle, a facility that currently houses between 7 to 12 girls. There she is receiving counseling to cope with the sexual abuse she suffered in Honduras.

230. The detention center has a strict no touch policy. Any kind of touching between the staff and the girls is strictly prohibited. But in recent weeks, one of the male staffers who works the night shift has been touching the girls, including stroking A.C.M.S.'s arm, and sitting on the bed and touching the feet of one of A.C.M.S.'s friends. This has been a triggering experience for A.C.M.S., who continues to cope with the emotional trauma of sexual abuse. She

has been terrified to sleep at night for fear the staff person will enter her room and do something to her. When she does sleep, she has terrible nightmares and wakes up screaming.

231. Four of the girls in the detention center met with the center supervisor to inform her of what the staff person had done to them. The supervisor asked the girls what they wanted the center to do about the situation, and the girls said they wanted the staff member banned from entering the center.

232. A.C.M.S. longed for the supervisor's assurance that the staff member would not be back to work. However, the center supervisor did not tell the girls she would do as they had suggested; rather, she told them the matter would be investigated.

233. A.C.M.S. worries that the male staff member might try to do something to her for getting him in trouble. Recently, A.C.M.S. saw the staff member drive up, park his car, and walk the grounds of the facility, but he did not come into the shelter.

Catholic Legal Immigration Network, Inc.

234. Plaintiff Catholic Legal Immigration Network, Inc. ("CLINIC") is a nonprofit organization incorporated in Washington, DC. CLINIC's main office is in Silver Spring, Maryland. CLINIC was founded in 1988.

235. CLINIC embraces the core Gospel value of welcoming the stranger. CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs to whom it provides training and technical assistance.

236. CLINIC is the largest nationwide network of nonprofit immigration programs, with approximately 341 affiliates in 47 states and the District of Columbia. Through its affiliates, as well as through the BIA Pro Bono Project and the Dilley Pro Bono Project (formerly known as the CARA Pro Bono Project), CLINIC advocates for the just and humane treatment of

immigrants through direct representation, pro bono referrals, and engagement with policy makers.

237. In response to growing anti-immigrant sentiment and to prepare for policy measures that hurt immigrant families, CLINIC launched the Defending Vulnerable Populations Project. The Defending Vulnerable Populations Project seeks to increase access to competent, affordable representation for the most vulnerable immigrants—those at immediate risk of deportation, which includes unaccompanied minors fleeing danger.

238. CLINIC also advocates for systemic change to policies and practices that affect immigrants by engaging in litigation, public policy work, and community education.

239. As part of this effort, CLINIC regularly monitors and submits comments on proposed federal regulatory changes that impact immigrants. In 2018, CLINIC submitted comments on regulatory changes by the Department of Homeland Security including: comments opposing changes that would end the *Flores* Settlement Agreement and comments opposing a DHS system that announced new information collections from potential sponsors of unaccompanied children and other adults in the sponsors' households. If ORR had provided an opportunity to submit public comments on the policies promulgated through the MOA, CLINIC would have submitted comments on such proposals.

240. In the past year, CLINIC has had to divert resources to educate its network and immigrant communities about the potential effects of the MOA.

241. Defendants' ORR policies harm CLINIC by undermining its mission and causing it to divert its resources to respond to the family separation crisis Defendants created.

242. As a result of the ORR policies, CLINIC has been forced to direct resources towards identifying and overcoming obstacles to family reunification. It has taken significant resources for CLINIC to develop capacity and expertise.

243. Specifically, since the release of the MOA, CLINIC has had to devote resources to this issue through the following activities:

- Submitted a comment on the DHS Notice of Modified System of Records, Docket Number DHS-2018-0013 (June 2018);
- Participated in AILA annual conference meeting on asylum, and prepared for and led discussion on the effects of the MOA (June 2018);
- Spoke with press on this issue including researching and providing background information (August 2018);
- Researched and prepared a fact sheet in English and Spanish for Proposed Sponsors of Unaccompanied Children that informs Sponsors of the risks of sponsorship under the new policies and provides sponsors with additional resources (November 2018);
- Continuing individual technical assistance for direct service providers working with unaccompanied children and their families; and
- Continuing guidance for families navigating the ORR reunification process. For example, since November 2018 CLINIC has assisted a mother whose two daughters are still in ORR custody in Florida.

244. The time that CLINIC staff has had to dedicate to these activities has been diverted from time that would have been spent providing assistance in other matters.

245. If the ORR policies continue to be in effect, CLINIC anticipates having to shift even more staff time to respond to family reunification inquiries and policy matters.

Northwest Immigrant Rights Project

246. Plaintiff Northwest Immigrant Rights Project ("NWIRP") is a nonprofit organization incorporated in Washington State. NWIRP's main office is in Seattle, Washington.

247. Established in 1984, NWIRP's mission is to advance and defend the legal rights of immigrants in Washington State.

248. Since the 1980s, at the height of a refugee crisis in Central America, NWIRP has represented children and adults fleeing violence and persecution in this region. To date, NWIRP has represented thousands of children–accompanied and unaccompanied–before immigration courts and other immigration agencies.

249. NWIRP is the largest nonprofit in the western United States dedicated exclusively to providing immigration legal services. In 2018, NWIRP submitted more than 4,500 applications for immigration benefits on behalf of clients. It is currently assisting more than 1,200 individuals with removal cases pending in immigration courts.

250. NWIRP uses a range of advocacy strategies to accomplish its mission. Besides seeking immigration benefits for clients before immigration courts and agencies, it vindicates the civil rights of immigrants through federal litigation and engages in policy advocacy on issues that impact immigrants.

251. NWIRP's policy work spans local, state, and federal governments. At the federal level, NWIRP regularly monitors and submits comments on proposed rule changes that affect immigrants. In 2018, NWIRP submitted comments on three such proposals, including one to end the settlement in *Flores v. Reno*, the landmark case setting minimum standards for the care of immigrant minors in federal custody. NWIRP would have submitted comments on the policies challenged in this action if ORR had promulgated the rules through notice and comment rulemaking.

252. Because NWIRP is the primary immigration legal services provider in Washington, dozens of community organizations refer most requests for assistance from immigrants to NWIRP.

253. In the past year, NWIRP has begun to assist parents of children in ORR custody in advocating for family reunification. Initially, NWIRP had no protocols for offering such representation to potential sponsors, so cases were declined at intake. As requests from adults based in Washington surged, NWIRP inquired with other nonprofit providers and determined that no agency was addressing the mounting need for services caused by the challenged ORR policies.

254. NWIRP was compelled to fill that void because it furthered NWIRP's core purpose of defending the legal rights of immigrants in Washington State. In each of the cases, parents were being denied fundamental parental rights solely because of their immigration status and that of their children. As the primary provider of immigration legal services in Washington, it had to take action.

255. NWIRP has developed an advocacy strategy that combines efforts at the administrative and legislative levels. Because no avenue exists to appeal denials or delays in sponsorship applications, NWIRP staff have pursued alternatives, contacting ORR and shelter staff directly and contacting members of Congress to intervene in problem cases.

256. NWIRP has also directed intake staff to channel such requests for assistance and conduct necessary follow-up to gather facts.

257. Defendants' ORR policies harm NWIRP by undermining its mission to advance immigrants' rights. The policies have also caused NWIRP to channel resources to respond to sponsor requests for assistance with family reunification.

258. Because of Defendants' ORR policies, NWIRP has had to shift resources to devise avenues for reunification advocacy and provide representation to sponsors.

259. The longer the ORR policies remain in force, the more staff time will be required to work on family reunification cases. And since some of NWIRP's funding sources compensate NWIRP on the basis of number of cases handled, NWIRP may lose resources as a result of having to divert staff time to family reunification activities.

CLASS ACTION ALLEGATIONS

260. This case is brought as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), or in the alternative, as a representative habeas action on behalf of the following classes:

(1) *Detained Children Class*: All children who:

a. are or will be in the custody of ORR, anywhere in the United States;

b. at any date on or after July 20, 2018; and

c. for whom a potential sponsor has begun the sponsorship application process, and who has not yet been released to that sponsor.

(2) *Sponsor Class*: All individuals, anywhere in the United States, who:

a. have initiated the sponsorship process to sponsor a member of the Detained Children Class;

b. by either

i. returning a family reunification packet to ORR or to an ORR-contracted caseworker, or

ii. otherwise formally advising ORR or an ORR-contracted caseworker of their desire or willingness to sponsor a child; and

c. to whom the Detained Children classmember has not been released.

261. Plaintiffs reserve the right to amend the class definitions if discovery or further investigation reveals that the classes should be expanded or otherwise modified.

262. Plaintiffs reserve the right to establish sub-classes as appropriate.

263. This action is brought and properly may be maintained as a class action under Fed. R. Civ. P. 23(a)(1)-(4).

264. Numerosity: With over 10,000 children detained by ORR nationwide, the proposed classes are sufficiently numerous so as to render joinder impracticable. Moreover, additional children will continue to enter the class in the future on a regular basis.

265. Joinder is also impractical because the proposed Detained Children Class consists of children who are separated from their families and other adult caretakers, many of whom are indigent, have limited English proficiency, and/or have a limited understanding of the U.S. judicial system. The proposed Sponsor Class consists of adults across the country who are attempting to sponsor UACs in ORR custody, many of whom are indigent, have limited English proficiency, and/or have a limited understanding of the U.S. judicial system. The guarantee of future unidentified class members renders joinder impractical.

266. Commonality: Common questions of law and fact affect class members, including:

(a) whether the Government is in compliance with its obligations under the TVPRA to promptly place children in the least restrictive setting possible;

(b) whether the government's reunification policies, establishing the discretionary and opaque decision-making system described in §§ 2.2.3, 2.2.4, 2.4.1, and 2.4.2, which impact all children in ORR custody and all potential sponsors, violate UACs and their sponsors' due process rights by creating a system in which case managers make the majority of reunification decisions without any notice or opportunity for UACs or

sponsors to be heard, regarding either additional discretionary requirements imposed by case managers, or non-viability decisions made by case managers;

(c) whether the blanket sharing of sponsors' biometric and biographic information with DHS for immigration enforcement purposes is in compliance with ORR's obligations under the TVPRA to promptly place children in the least restrictive setting possible;

(d) whether the blanket sharing of sponsors' biometric and biographic information with DHS for immigration enforcement purposes were unlawfully promulgated through an online Policy Guide and MOA between ORR and DHS in a manner not in accordance with the APA; and

(e) whether the blanket sharing of sponsors' biometric and biographic information with DHS for immigration enforcement purposes are arbitrary, capricious, or otherwise contrary to law under the APA.

267. Both the Detained Children Class and the Sponsor Class are negatively impacted by the same ORR policies, either now or in the imminent future. A finding that these policies were promulgated in violation of the APA, the TVPRA, or operate in violation of the Due Process Clause would remove the same barriers from all members of both classes in a single stroke.

268. Typicality: Plaintiffs' claims are typical of the claims of the proposed class, as all members of the Detained Children Class are subject to prolonged detention because of ORR's unlawful policies, violating the TVPRA and their due process rights, and issued in violation of the APA as set forth herein; and all members of the Sponsor Class are denied their ability to sponsor their loved ones because of ORR's unlawful policies violating their due process rights and issued in violation of the APA as set forth herein.

269. While the child Plaintiffs are seeking immediate release, having already suffered serious harms and infringement of their constitutional rights under the policies set forth herein, Plaintiffs recognize that not all UACs will be immediately released if the Plaintiff classes win this case. This does not defeat typicality, however, because if Plaintiff classes are successful, every class member will significantly benefit from a judgment in their favor. Requiring ORR to come into compliance with the TVPRA obligations to place children promptly in the least restrictive environment, including with their families, that is in the best interests of the child will reduce the institutionalization of immigrant children and promote their best interests, as intended by the statute. Requiring ORR to revise its policies to come into compliance with due process requirements will serve to protect the due process rights of members of both classes. Enjoining ORR and ICE's MOA, including enjoining ORR from implementing expanded information collection and from transferring information to DHS, unless specifically warranted by an individual case, will significantly speed up the reunification process for all class members and will allow the most appropriate caregivers to proceed with the reunification process.

270. Adequacy: Plaintiffs will fairly and adequately protect the interests of the proposed classes. Plaintiffs' claims are identical to the members of the proposed classes, they have no relevant conflicts of interest with other members of the proposed classes, and they have retained competent counsel experienced in class-action and immigration law.

271. This action is brought and properly may be maintained as a class action under Federal Rule 23(b)(1), (b)(2), or (b)(3).

272. Separate actions by or against individual class members would create a risk of inconsistent or varying adjudications regarding the legality of ORR's policies as set forth herein.

273. The U.S. government presently takes the position that its policies as set forth herein are lawfully promulgated, and to the extent that this causes the prolonged detention of immigrant children, such detention is a regrettable necessity. Thus, Respondents have acted or refused to act on grounds that apply generally to the proposed class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the proposed class as a whole.

274. Common questions of law or fact predominate over questions affecting only individual members, and a class action is thus superior to other available methods for fairly and efficiently adjudicating the controversy. Even if individual class members had the resources to bring individual lawsuits (which most do not), it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties, and to the court. Respondents have engaged in a common course of conduct, and the class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all class members' common claims in a single forum.

CAUSES OF ACTION

COUNT I
VIOLATION OF TVPRA/HABEAS CORPUS
(All Child Plaintiffs and the Detained Children Class, Against All Defendants)

275. Plaintiffs/Petitioners allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

276. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires Defendants to promptly place unaccompanied minors in their custody in the least restrictive setting that is in the best interest of the child.

277. The child Plaintiffs and the Detained Children Classmembers seek to represent a class of unaccompanied minors, and their sponsors are the individuals who, in the best interests of the child, offer the least restrictive setting to the UACs whom they are attempting to sponsor.

278. Defendants' actions in establishing and carrying out opaque reunification policies with little to no due process protections, instituting the MOA and the associated ORR policies, and continuing the ICE fingerprint sharing policy by means of the December 18 Suallog Memorandum, all prevent the prompt placement of minors in the least restrictive setting and in the best interests of the child, in violation of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

COUNT II
VIOLATION OF SUBSTANTIVE DUE PROCESS [29]
(All child and sponsor Plaintiffs and the Detained Children and Sponsor Classes, Against All Defendants)

279. Plaintiffs allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

280. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to all child and sponsor Plaintiffs and the Detained Children and Sponsor Classes.

281. The government violates due process when it separates a family in order to generally deter illegal immigration. *Ms. L. v. ICE*, 310 F.Supp.3d 1133 (S.D. Cal. 2018).

[29] A substantive due process claim based on a legal theory involving the fundamental right to family unity was dismissed by the Court [Dkt. #60 at pp. 34-37]. Subsequently, the memorandum attached hereto at Exh. 5 was released to the public, making clear that the sole purpose of the MOA challenged in this lawsuit was to deter immigration. Accordingly, Plaintiffs herein plead an entirely different substantive due process claim herein, based on these newly revealed facts and under the legal theory of *Ms. L. v. ICE*, 310 F.Supp.3d 1133 (S.D. Cal. 2018) and *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015).

282. The government violates due process when it detains an individual—especially a child—in order to generally deter illegal immigration. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015).

283. As set forth above, Defendants entered into the MOA challenged in this lawsuit for the purpose of generally deterring illegal immigration, causing the prolonged detention of the child Plaintiffs and the Detained Children Class and their separation from the sponsor Plaintiffs and the Sponsor Class, in violation of their right to substantive due process.

COUNT III
VIOLATION OF PROCEDURAL DUE PROCESS
(All child and sponsor Plaintiffs and the Detained Children and Sponsor Classes, Against All Defendants)

284. Plaintiffs allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

285. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Petitioners and all classmembers.

286. The child Plaintiffs and the Detained Children Classmembers have a liberty interest in remaining free of government custody, and in being unified with their families.

287. As set forth above, ORR policies creating an opaque, highly discretionary reunification process, ORR's recent MOA and associated ORR polices, and the decision in the December 18 Suallog Memorandum to continue the ICE fingerprint sharing policy, all contribute to the prolonged, unexplained detention of the child Plaintiffs and the Detained Children Classmembers, and their separation from their sponsors and families. This violates procedural due process because they deprive these children of their liberty from government custody without notice or any opportunity to be heard, and cause injury of the children in the form of prolonged detention.

288. Likewise, these policies violate procedural due process because they deprive the Sponsor Classmembers of their right to provide care and upbringing to their loved ones, causing injury to the sponsors in the form of prolonged denial of the right to family unity.

289. In addition, the lack of due process protections, including the lack of written notice of denial or non-viability of sponsorship in the early stages of the reunification process (prior to an official denial by ORR), violates all Classmembers' due process rights because it deprives both child and sponsor of meaningful notice of denial, the reasons for denial, and an opportunity to be heard challenging the denial and/or the reasons on which it was based.

COUNT IV
VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT PROCEDURES FOR PROMULGATING AGENCY POLICIES
(All Plaintiffs Against All Defendants)

290. Plaintiffs allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

291. Plaintiffs and the classmembers have been aggrieved by Defendants' action in requiring that all sponsors, and in many cases all adult household members of all sponsors, submit biometric and biographical information to be shared with DHS for the purpose of immigration enforcement before Defendants will release any child Plaintiff to his or her sponsor. This constitutes final agency action. Yet ORR has not promulgated rules that provide procedures for challenging ORR's Policy Guide or the policies unlawfully promulgated through the MOA. The agency's action determined the rights of Plaintiffs and has the legal consequence of keeping this class of children in ORR custody, and depriving their sponsors of their right to family unity. Accordingly, Plaintiffs are entitled to judicial review of ORR's actions under 5 U.S.C. § 704.

292. The Administrative Procedure Act ("APA") requires agency rules to be promulgated through the notice and comment process.

293. The APA defines a "rule" as "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. §551(4).

294. The ORR describes its Guide for Children Entering the United States Unaccompanied ("ORR Guide") as detailing "ORR policies for the placement, release and care of unaccompanied alien children in ORR custody." Exh. 1 at Intro. The biometric information requirement is contained in Section 2.6 of the Guide. *Id.*

295. The APA requires that an agency first publish in the Federal Register the agency's proposed rules and its claim of statutory authority for those rules to provide notice to the public, then give the public an opportunity to comment on the proposed rules, and then publish the final rules in the Federal Register at least 30 days before the effective date. 5 U.S.C. §§ 552(a)(1)(C)-(D), 553(b)-(d). ORR ignored all of these APA requirements and instead posted the ORR Guide on its website and began immediate enforcement of the requirements. *See* Exh. 1. Moreover, the ORR failed to articulate any explanation, much less a rational one, as to the MOA and the various 2018 amendments to Section 2.5 and 2.6 and the various subsections thereof relating to fingerprinting and fingerprint sharing with DHS. The reviewing court judges the agency's action by the grounds invoked by the agency, and where, as here, those grounds are inadequate or improper then the court is powerless to affirm the administrative action. *Sec. & Exch. Comm'n v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

296. Accordingly, under 5 U.S.C. §§ 706(1), (2)(A), (2)(C), and (2)(D), this court should set aside the MOA and the various 2018 amendments to Section 2.5 and 2.6 and the various subsections thereof relating to fingerprinting and fingerprint sharing with DHS, and the

decision in the December 18 Suallog Memorandum to continue the ICE fingerprint sharing policy, as being arbitrary and capricious, in excess of statutory jurisdiction and for failure to observe the procedures required by the APA.

297. Plaintiffs have exhausted all administrative remedies available to them as of right.

298. Plaintiffs have no recourse to judicial review other than by this action.

COUNT V
VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT PROHIBITION ON ARBITRARY, CAPRICIOUS, AND UNLAWFUL GOVERNMENT ACTION
(All Plaintiffs Against All Defendants)

299. Plaintiffs allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

300. Plaintiffs have been aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. First, the agency's action entering into the MOA and the various 2018 amendments to Section 2.5 and 2.6 and the various subsections thereof relating to fingerprinting and fingerprint sharing with DHS, and the decision in the December 18 Suallog Memorandum to continue the ICE fingerprint sharing policy, is final agency action that is arbitrary, capricious, and otherwise not in accordance with law. Second, this unlawful agency action led to ORR's final decisions not to release the child Plaintiffs and the Detained Children Class pending additional fingerprinting and information sharing with DHS, despite ORR staff routinely recommending that these children be released to their sponsors. This second agency action is likewise arbitrary, capricious, and not in accordance with law. Further, the MOA and associated ORR policies are arbitrary, capricious, and otherwise not in accordance with law because, as demonstrated in the memorandum attached hereto as Exh. 5, the primary intent and purpose of these policies was to assist ICE in enforcing civil immigration laws against sponsors and their household members—a purpose that not only has no relationship to ORR's mission, but

actually runs contrary to ORR's statutory obligation to act in the best interests of the children in its care.

301. In addition, Defendants' detention of the child Plaintiffs and the Detained Children Class and their failure to release these children promptly into the custody of their capable and appropriate sponsors is arbitrary and capricious and otherwise not in accordance with law by, *inter alia*, either ignoring applicable provisions of the *Flores* Agreement and the TVPRA or interpreting those provisions in a manner that frustrates their underlying purpose, and by imposing unreasonable and unnecessary conditions precedent to releasing UACs to a suitable sponsor.

302. Plaintiffs have exhausted all administrative remedies available to them as of right.

303. Plaintiffs have no recourse to judicial review other than by this action.

COUNT VI
HABEAS CORPUS
(All Child Plaintiffs and the Detained Children Class Against All Defendants and All Habeas Corpus Respondents)

304. As set forth above, Defendants are holding the child Petitioners/Plaintiffs[30] and the Detained Children's Classmembers in federal custody, in violation of federal statutes and the U.S. Constitution, and Petitioners/Plaintiffs and the class of children similarly situated accordingly seek a writ of habeas corpus.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, respectfully request that the Court:

A. Assume jurisdiction over this matter;

[30] A habeas corpus cause of action is stated as to J.E.C.M., R.A.I. and K.T.M. in their capacities as class representatives only.

B. Certify the Detained Children Class and the Sponsor Class, as set forth above, and appoint Legal Aid Justice Center and the Southern Poverty Law Center as class counsel for both classes;

C. Order the Respondents to promptly identify all classmembers to class counsel, and to notify all classmembers (and their attorneys of record, if any) of their status as classmembers in this action;

E. Declare that Sections 2.2.3, 2.2.4, 2.4.1, and 2.4.2 of Defendant's ORR Guide create a reunification process that violates Plaintiffs' due process rights and require Defendants to promptly bring their reunification process, as described in Sections 2.2.3, 2.2.4, 2.4.1, and 2.4.2 of the ORR Guide, into compliance with the Due Process Clause of the Constitution providing for adequate due process protections at each stage of the reunification process.

F. Declare that the MOA and the various 2018 amendments to Section 2.5 and 2.6 and the various subsections thereof relating to fingerprinting and fingerprint sharing with DHS, and the decision in the December 18 Suallog Memorandum to continue the ICE fingerprint sharing policy, violate the TVPRA, the Administrative Procedure Act, and the Due Process Clause;

G. Issue a writ of habeas corpus to any Petitioner/Plaintiff and any member of the Detained Children Class whose continued detention by ORR is based solely on any enjoined provision;

H. Order Defendants to immediately release to their sponsor any member of the Detained Children Class whose continued detention by ORR is based solely on any enjoined provision;

I. Maintain jurisdiction to oversee implementation of the above-requested relief for a reasonable period of time;

J. Award the named plaintiffs and other members of the proposed classes reasonable attorneys' fees and costs for this action, pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and

K. Grant any further relief that the Court deems just and proper.

Dated: January 18, 2019

Respectfully submitted,

/s/ ***Simon Sandoval-Moshenberg***
Simon Sandoval-Moshenberg (VSB No.: 77110)
simon@justice4all.org
Rebecca Ruth Wolozin (VSB No.: 89690)
becky@justice4all.org
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike, Suite 520
Falls Church, VA 22041
(703) 778-3450 / fax (703) 778-3454

Counsel for child Plaintiffs, sponsor Plaintiffs, the Detained Children's Class, and the Sponsor Class

Mary Bauer (VSB No.: 31388)
*Mary.Bauer@splcenter.o*rg
SOUTHERN POVERTY LAW CENTER
1000 Preston Avenue
Charlottesville, VA 22903
470-606-9307 / fax: (404) 221-5857

Saira Draper (*pro hac vice* pending)
Saira.Draper@splcenter.org
Luz Virginia Lopez (*pro hac vice* pending)
Luz.Lopez@splcenter.org
Laura G. Rivera (*pro hac vice* pending)
Laura.Rivera@splcenter.org
SOUTHERN POVERTY LAW CENTER
150 East Ponce de Leon Ave., Suite 340

Decatur, GA 30030
404-521-6700 /Fax: (404) 221-5857

Counsel for all Plaintiffs

John Christopher Rozendaal (VSB No.: 41857)
jcrozendaal@sternekessler.com
Salvador M. Bezos (VSB No.: 75942)
sbezos@sternekessler.com
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 772-8805 / fax (202) 371-2540

Counsel for child Plaintiffs, sponsor Plaintiffs, and Plaintiffs Catholic Legal Immigration Network, Inc. and Northwest Immigrant Rights Project