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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 LUCAS R., et al.,

13 Plaintiffs,

14 v.

15 ALEX AZAR, et al.,

16 Defendants.
17

Case No. 2:18-CV-05741 DMG PLA

**[PROPOSED] TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
RE: PRELIMINARY INJUNCTION**

Hearing: None Set
Judge: Hon. Dolly M. Gee

1 **IT IS ORDERED** that Plaintiffs’ ex parte application for a temporary restraining
2 order (ECF No. __) is GRANTED.

3 **IT IS ACCORDINGLY ORDERED** as follows:

4 1. Absent good cause based on articulable facts to believe that available
5 custodian(s) would harm or neglect a class member, or that an individual class member
6 presents an articulable danger to the public, the Office of Refugee Resettlement
7 (“ORR”) shall immediately release all members of the “unfit custodian class” as defined
8 in the Court’s order of December 27, 2018 (ECF No. 141) (“Unfit Custodian Class
9 Members”) to available custodians, place such class members in non-congregate care
10 that satisfies Centers for Disease Control and Prevention guidelines set forth in
11 paragraph 4 below, or provide all such class members with evidence supporting ORR’s
12 decision not to release them and an opportunity to be heard regarding the grounds for
13 continued congregate detention as provided in Paragraph 2 of this Order.

14 2. Each Unfit Custodian Class Member whom ORR fails to release to an available
15 custodian, or else place in non-congregate care, shall be permitted to appeal continued
16 ORR custody pursuant to the procedure set out in ORR Policy Guide § 2.7.8, *available*
17 *at* [www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-](http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.7)
18 [section-2#2.7](http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.7) (last visited March 24, 2020), effective immediately, modified as follows:

19 a. All Unfit Custodian Class Members shall have the right of administrative
20 appeal without regard to the degree of family affinity of their available custodians.

21 b. The Assistant Secretary for Children and Families, or his or her designee, shall
22 afford each administratively appealing Unfit Custodian Class Member —

- 23 i. a reasonable opportunity to examine in advance of hearing ORR’s
24 evidence for continued detention;
25 ii. the right to be represented by counsel;
26 iii. a reasonable opportunity to submit documentary evidence and testimony
27 in support of release;
28 iv. an opportunity to be heard via teleconference or video conference within

- 1 five business days of filing an administrative appeal;
- 2 v. a hearing in which the government bears the burden of proof; and
- 3 vi. a written decision issued no later than three business days following
- 4 hearing directing the Unfit Custodian Class Member's immediate release,
- 5 transfer to non-congregate care, or else setting out the reasons for
- 6 continued custody and placement in congregate care.¹

7 3. ORR shall advise all Unfit Custodian Class Members of this Order, either

8 individually or by posting this Order in English and Spanish prominently in all

9 congregate care facilities.

10 4. For purposes of this Order, "non-congregate care" refers to settings in which

11 a class member is permitted to maintain physical distance from others, avoid contact

12 with ten or more individuals, and observe such other measures to avoid contracting

13 COVID-19 as the Centers for Disease Control and Prevention may prescribe as public

14 health policy for the general public during the COVID-19 emergency.

15 **IT IS FURTHER ORDERED** that Defendants show cause on or before

16 _____, 2020, why they should not be preliminarily enjoined as set out in

17 Paragraphs 1-4 of this Order.

18

19 Dated: _____, 2020

20 _____

21 United States District Judge

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28 ¹ Plaintiffs assert that due process requires greater protections than currently sought in this Temporary Restraining Order. *See* First Amended Complaint ¶ 111. Plaintiffs reserve their right to seek such protections through a preliminary injunction.