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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

LUIS JAVIER PEREZ-OLANO, ET AL.,

Plaintiff,

v.

JEFFERSON BEAUREGARD SESSIONS, III, ET AL.,

Defendant.

Case No. CV 05-3604 DDP

Honorable Dean D. Pregerson

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ENFORCEMENT OF SETTLEMENT AGREEMENT

[filed concurrently with Notice of Motion and Motion; Appendix of Exhibits; Proposed Order]

Crtrm.: 9C
Hearing: July 10, 2017
Time: 10 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Four children (absent class members) respectfully submit this Memorandum of Points and Authorities in Support of Their Motion to Enforce the Settlement Agreement in *Perez-Olano v. Holder*, Cv. No 05-03604, Dkt. 159 (C.D. Cal.) ("Settlement Agreement"). The Settlement Agreement, signed in May 2010, provides for the Government to make changes to administration of the Special Immigrant Juvenile program ("SIJ").

In accordance with their rights under the Settlement Agreement, the four children seek an order from the Court that Immigration and Customs Enforcement ("ICE") join in their request to reopen their removal proceedings so that an Immigration Judge may stay their removal pending adjudication of their applications for adjustment of status to Lawful Permanent Resident ("LPR"). The Immigration Judge will also be able to order the release of the children from ICE detention – to which they have been subjected for over eighteen months. The United States Citizenship and Immigration Services ("USCIS") granted each child SIJ status in 2016. With SIJ classification, the children are deemed paroled into the United States for purpose of adjusting their status to LPR.

There are two issues for the Court to decide. First, the Court should hold that the Settlement Agreement applies to the four children even though the Agreement expired at the end of 2016. The four children notified ICE of their change to SIJ status before the "sunset" of the Agreement in 2016 and within 60 days of their obtaining SIJ status, as required by the Agreement. But ICE incorrectly contends that the Agreement has expired and the four children are not entitled to its benefits.

Second, the Court should hold that the Agreement applies to the four children. ICE claims that the Settlement does not apply to the four children because ICE had issued orders for the *expedited* removal of the children prior to their receipt of SIJ status. The Agreement makes no such distinction, and is unambiguous that

ICE is required to join motions to reopen removal proceedings once a child obtains SIJ status. There is no policy reason why children in standard removal would have the protections of the Agreement but not children subject to expedited removal. Moreover, there is no statutory or policy basis for ICE to execute on orders to remove children when another arm of the Government (the USCIS) has granted the children SIJ classification on the ground that they have been abandoned by one or both parents and it would not be in their best interests to be returned to their countries of origin. Removal of the children to Central America would de facto revoke their SIJ classification, and they would have no ability to adjust their status from outside the United States.

In short, the four children request that the Court hold that Paragraph 29 of the Agreement requires ICE to join in a request to reopen their removal proceedings, and to allow an Immigration Judge to consider their SIJ status. Because the four children are deemed paroled into the United States by virtue of their SIJ status, the Immigration Judge will be able to stay the removal of the children pending adjudication of their pending applications for adjustment of status to LPR and will be able to order the release of the children from ICE detention.

II. BACKGROUND

A. SPECIAL IMMIGRANT JUVENILE STATUS UNDER THE IMMIGRATION AND NATIONALITIES ACT

Pursuant to 8 U.S.C. § 1101(a)(27)(J), non-citizen children in the United States may petition the Government for SIJ status.[1] "The SIJ provisions created a

[1] Section 1101(a)(27)(J) states:

The term "special immigrant" means--

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification

method for abused, neglected, and abandoned immigrant children to become lawful permanent residents of the United States." *Perez-Olano v. Holder*, Cv. No 05-03604, Dkt. 121 at 2 (C.D. Cal.). Immigrant children may petition for SIJ classification where a state court makes a predicate finding that the child is dependent on a juvenile court; reunification with one or both parents is not viable due to abuse, neglect, or abandonment; and it would not be in the child's best interest to return to his or her country of origin. 8 U.S.C. § 1101(a)(27)(J).

B. THE *PEREZ-OLANO* SETTLEMENT AGREEMENT ESTABLISHED NATIONWIDE POLICY REGARDING SPECIAL IMMIGRANT JUVENILE STATUS.

On December 15, 2010, the Central District of California approved a comprehensive class-wide settlement, between the Government and class members, establishing guidelines for the SIJ application process. *Perez-Olano v. Holder*, Cv. No 05-03604, Dkt. 166 (C.D. Cal.) ("Order").

The Settlement Agreement set out "nationwide policy governing the SIJ application process," and "supersede[s] all practices, policies, procedures, and

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with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

> **(ii)** for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
>
> **(iii)** in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that--
>
> > **(I)** no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
> >
> > **(II)** no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

Federal regulations to the extent they are inconsistent." Settlement Agreement at ¶ 13. The Settlement Agreement confers specified protections upon a nationwide class comprised of "all aliens … who, on or after May 13, 2005, apply or applied for SIJ status or SIJ-based adjustment of status based upon their alleged SIJ eligibility." Settlement Agreement at ¶ 3.

Under the Settlement, ICE must join motions to reopen removal proceedings for juveniles with SIJ status where: (i) the juveniles request joinder to reopen removal proceedings within 60 days of being notified by USCIS that SIJ status has been granted; and (ii) for whom certain grounds of inadmissibility were waived or waivable, including 8 U.S.C. § 1182, INA §212. Settlement Agreement at ¶ 29. Juveniles with SIJ status are exempt from certain grounds of inadmissibility including being "present in the United States without being admitted or paroled." 8 U.S.C. § 1182(a)(6)(A)(i).

C. EXPEDITED REMOVAL

Expedited removal is a process by which low-level immigration officers can quickly remove noncitizens who are undocumented from the United States. Only aliens "who ha[ve] not been admitted or paroled into the United States" can be subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A).

III. STATEMENT OF FACTS

A. THE FOUR CHILDREN ARE MEMBERS OF THE *PEREZ-OLANO* CLASS.

Defendants acknowledge the four children are *Perez-Olano* class members. *See* Plaintiffs' Exhibit 1 at 1 ("… the referenced minors fall within the class of juveniles identified in the [*Perez-Olano*] Settlement Agreement."). The four children have persevered through difficult circumstances that are sadly typical of children with SIJ status. The children are now detained by ICE with their mothers in a facility outside Reading, Pennsylvania.

Pursuant to 8 U.S.C. § 1101(a)(27)(J), the United States Citizenship and Immigration Services ("USCIS") granted each child SIJ status in 2016. *See*

Plaintiffs' Exhibits 2-5.[2] At the time, the children were separately challenging expedited removed orders that had been previously entered.[3] With SIJ status, pursuant to 8 U.S.C. §1255(h), the children are deemed paroled into the United States for purpose of applying to adjust their status to LPR, and each child has submitted such an application to USCIS. *See* Plaintiffs' Exhibits 6-9.[4]

1. Plaintiff V.G.R.-A. is a member of the class.

V.G.R.-A. is a 16-year-old boy, born on January 24, 2001 in El Salvador, and is a citizen of El Salvador. Plaintiffs' Exhibit 10 at 1; 11 at 5, 10. He and his mother fled to the United States, seeking protection after gang members threatened his mother for reporting a robbery to police and demanded that she turn over V.G.R.-A. or they would both be killed. Plaintiffs' Exhibit 11 at 15-18. They entered the United States on October 15, 2015, in Texas via the Rio Grande, and were apprehended the same day by Customs and Border Patrol ("CBP"). Plaintiffs' Exhibit 11 at 2, 5. They were detained first at the Karnes County Residential Center in Karnes City, Texas, and then transferred to the Berks County Residential Center in Pennsylvania on November 7, 2015, where they have remained in detention ever since. Plaintiffs' Exhibit 11 at 9; 12 at 4.

At the time of their apprehension, V.G.R.-A. and his mother were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Plaintiffs' Exhibit 11

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[2] *See* Pltfs. Exh. 2 at 1; Pltfs. Exh. 3 at 1; Pltfs. Exh. 4 at 1; and Pltfs. Exh. 5 at 1.

[3] The four children and their mothers challenged the rejection of their claims for asylum in *Castro v. United States Dep't Homeland Security,* 835 F. 3d 422 (3d. Cir. 2016), *cert denied*, 2017 U.S. LEXIS 2438, 85 U.S.L.W. 3490 (U.S. Apr. 17, 2017). The court in *Castro* held that it had no subject matter jurisdiction to consider the challenge to the orders for expedited removal. The court in *Castro* did not consider Plaintiffs' SIJ status, because they had not obtained that status at the time the record in *Castro* closed. We do *not* ask for a review of the issues raised by plaintiffs in *Castro* in this filing.

[4] *See* Pltfs. Exh. 6 at 1; Pltfs. Exh. 7 at 2; Pltfs. Exh. 8 at 1; and Pltfs. Exh. 9 at 1.

at 1-2. Both requested asylum, but an asylum officer denied their request, a determination later affirmed by an immigration judge. Plaintiffs' Exhibit 11 at 7-8. The Defendants intend to remove Plaintiff and his mother based on the expedited removal orders entered prior to V.G.R.-A. receiving SIJ status. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

On August 23, 2016, V.G.R.-A. applied for classification as a Special Immigrant Juvenile, pursuant to 8 U.S.C.§ 1101(a)(27)(J), based on a predicate order from the Berks County Court of Common Pleas. Plaintiffs' Exhibit 2 at 2. On October 13, 2016, USCIS approved his petition for SIJ status. Plaintiffs' Exhibit 2 at 2. On October 27, 2016, V.G.R.-A. submitted form I-485 to USCIS for an adjustment of status to LPR. Plaintiffs' Exhibit 13 at 1. The form expressly stated that V.G.R.-A. was detained. Plaintiffs' Exhibit 13 at 7, 9. USCIS accepted the I-485 application on October 31, 2016, and USCIS has never rejected it. Plaintiffs' Exhibit 6 at 1.

2. Plaintiff D.S.R.-O. is a member of the class.

D.S.R.-O. is a three-year-old boy, born on December 16, 2013, in Honduras, and is a citizen of Honduras. Plaintiffs' Exhibit 14 at 1; 15 at 11. D.S.R.-O. and his mother fled Honduras to escape death threats from his father's wife, who was connected to the Los Cachiros drug traffickers. Plaintiffs' Exhibit 16 at 3-4. D.S.R.-O. crossed the Rio Grande and entered the United States with his mother on October 21, 2015, when he was 22-months old. Plaintiffs' Exhibit 15 at 7. They were apprehended and detained by the United States CBP the day after their entry, first at Kansas County Residential Center in Karnes City, Texas, and then at the Berks Family Residential Center in Leesport, Pennsylvania, where they remain detained. Plaintiffs' Exhibit 15 at 3; 17 at 3.

At the time of their apprehension, D.S.R.-O. and his mother were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Plaintiffs' Exhibit 15 at 5, 30. Both requested asylum, but an asylum officer denied their request, a

determination later affirmed by an immigration judge. Plaintiffs' Exhibit 15 at 3-4, 28-29. The Defendants intend to remove Plaintiff and his mother based on the expedited removal orders entered prior to D.S.R.-O. receiving SIJ status. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

On August 24, 2016, D.S.R.-O. applied for classification as a Special Immigrant Juvenile, pursuant to 8 U.S.C.§ 1101(a)(27)(J), based on a predicate order from the Berks County Court of Common Pleas. Plaintiffs' Exhibit 3 at 1. USCIS approved the petition of D.S.R.-O. for SIJ status on October 3, 2016. Plaintiffs' Exhibit 3 at 1. On October 20, 2016, D.S.R.-O. submitted form I-485 to USCIS for an adjustment of status to LPR. Plaintiffs' Exhibit 18 at 1. The forms expressly stated that D.S.R.-O. was currently subject to an unexecuted expedited removal order. Plaintiffs' Exhibit 18 at 21. USCIS accepted the application on October 21, 2016 and USCIS has never rejected it. Plaintiffs' Exhibit 7 at 2.

3. Plaintiff A.D.M.-L. is a member of the class.

A.D.M.-L. is a four-year-old boy, born September 4, 2012, in Honduras, and is a citizen of Honduras. Plaintiffs' Exhibit 19 at 5. He and his mother fled Honduras after she was threatened by a gang member whom she had reported to police. Plaintiffs' Exhibit 19 at 13-14. Seeking protection, they entered the United States on October 23, 2015, near Hidalgo, Texas, when A.D.L.-M. was only three-years-old. Plaintiffs' Exhibit 19 at 4. They were apprehended the next day by CBP. Plaintiffs' Exhibit 19 at 23. They have been detained ever since, first at the Karnes County Residential Center in Karnes City, Texas, and then at the Berks County Residential Center in Pennsylvania. Plaintiffs' Exhibit 19 at 2, 4, 25; 20 at 2, 3.

At the time of their apprehension, A.D.M.-L. and his mother were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Plaintiffs' Exhibit 19 at 23, 27. Both requested asylum, but an asylum officer denied their request, a determination later affirmed by an immigration judge. Plaintiffs' Exhibit 19 at 2-3,

25-26. The Defendants intend to remove Plaintiff and his mother based on the expedited removal orders entered prior to A.D.M.-L. receiving SIJ status. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

On October 25, 2016, A.D.M.-L. applied for classification as a Special Immigrant Juvenile, pursuant to 8 U.S.C.§ 1101(a)(27)(J), based on a predicate order from the Berks County Court of Common Pleas. Plaintiffs' Exhibit 4 at 1. USCIS approved A.D.M.-L's petition for SIJ status on November 28, 2016. *Id.* On December 29, 2016, A.D.M.-L. submitted form I-485 to USCIS for an adjustment of status to LPR. Plaintiffs' Exhibit 21 at 1. The forms expressly stated that A.D.M.-L. was currently subject to an unexecuted expedited removal order. Plaintiffs' Exhibit 21 at 22. USCIS accepted the application on December 30, 2016, and USCIS has never rejected it. Plaintiffs' Exhibit 8 at 1.

4. Plaintiff J.E.L.-M. is a member of the class.

J.E.L.-M. is an eight-year-old boy, born May 12, 2009 in El Salvador, and is a citizen of El Salvador. Plaintiffs' Exhibit 22 at 1; 23 at 1; 24 at 4. After his mother spurned the advances of an MS-13 gang member, the gang member threatened that "he would kidnap and kill [J.E.L.-M.]" if his mother would not acquiesce to a romantic relationship. Plaintiffs' Exhibit 23 at 3. J.E.L.-M. and his mother fled these threats of physical and sexual abuse, and entered the United States on September 5, 2015 in Hidalgo, Texas. Plaintiffs' Exhibit 24 at 2. They were apprehended and detained by CBP the same day, first in the South Texas Family Residential Center in Dilley, Texas, and then at the Berks County Residential Center in Pennsylvania, where they have remained in detention ever since. Plaintiffs' Exhibit 24 at 2; 25 at 2; 26 at 17, 18.

At the time of their apprehension, J.E.L.-M. and his mother were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Plaintiffs' Exhibit 24 at 4; 25 at 21. Both requested asylum, but an asylum officer denied their request, a determination later affirmed by an immigration judge. Plaintiffs' Exhibit 24 at 2-3;

25 at 2-3. The Defendants intend to remove Plaintiff and his mother based on the expedited removal orders entered prior to J.E.L.-M. receiving SIJ status. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

On May 27, 2016, J.E.L.-M. applied for classification as a Special Immigrant Juvenile, pursuant to 8 U.S.C.§ 1101(a)(27)(J), based on a predicate order from the Berks County Court of Common Pleas. Plaintiffs' Exhibit 5 at 1. USCIS approved the petition of J.E.L.-M. for SIJ status on November 9, 2016. *Id.* On October 19, 2016, J.E.L.-M. submitted form I-485 to USCIS for an adjustment of status to LPR. Plaintiffs' Exhibit 26 at 1. The forms expressly stated that J.E.L.-M. was currently subject to an unexecuted expedited removal order. Plaintiffs' Exhibit 26 at 21. USCIS accepted the application on October 21, 2016, and USCIS has never rejected it. Plaintiffs' Exhibit 9 at 1.

B. THE FOUR CHILDREN HAVE ASKED THE GOVERNMENT TO RECOGNIZE THEIR STATUS AS CLASS MEMBERS AND JOIN A MOTION TO REOPEN THEIR REMOVAL PROCEEDINGS

The four children's SIJ classification allows them to apply to adjust their status to LPR so long as they remain in the United States. 8 U.S.C. § 1255(a) and (h). Nevertheless, the Government threatens to remove the children and their mothers, in clear violation of the Settlement Agreement.

Paragraph 29 of the Settlement Agreement states:

> "Defendant ICE shall join motions to reopen removal proceedings filed by juveniles granted SIJ status when the following criteria are met: the juvenile (i) requests such joinder within 60 days of being notified by USCIS that it has granted him or her SIJ status; and (ii) is not inadmissible under INA § 212, 8 U.S.C. § 1182, or removable under INA § 237, 8 U.S.C. § 1227, on grounds that disqualify him or her from adjustment of status, or, if inadmissible, such grounds of inadmissibility have been waived or are waivable."

Pursuant to this provision, within sixty days of each being granted SIJ status, the children requested that ICE join in their respective motions to rescind and reopen their removal proceedings in a letter dated November 22, 2016. Plaintiffs' Exhibit 27. Counsel for the children explained to ICE that "Paragraph 29 does not provide an exception to compliance for children who have received removal orders under Section 235,[5] nor limit the mandate that ICE 'shall join motions to reopen removal proceedings.'" Plaintiffs' Exhibit 27 at 3. The children notified Defendants that they were violating the *Perez-Olano* Settlement Agreement and requested assurances that Defendants would not remove the children. Plaintiffs' Exhibit 27 at 1-2.

Over the course of the next five months, Defendants argued that the Settlement Agreement was inapplicable to Plaintiffs, and refused to meet and confer. First, the Government argued it was no longer bound by the Agreement because it had expired. Plaintiffs' Exhibit 28 at 3; 29 at 1. The Government also argued that even if the Agreement were still valid, the four children would need to dismiss other pending litigation in order to invoke the Settlement's mediation process. Plaintiffs' Exhibit 29 at 1-2. Second, the Government argued that the Settlement Agreement excludes children subject to *expedited* removal proceedings. Plaintiffs' Exhibit 1 at 1-2; 28 at 2-4; 30 at 3-4. But the Government pointed to nothing in the Settlement Agreement that states children in expedited removal proceedings are excluded.[6]

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[5] 8 C.F.R. § 235 governs expedited removal.

[6] The Government contended that children with orders for expedited removal were excluded from the Settlement Agreement because:

- Paragraph 29 of the Settlement Agreement did not explicitly reference expedited removal orders (Plaintiffs' Exhibit 28 at 2; 30 at 3);
- The Agreement's Preamble referenced juveniles in "removal proceedings" rather than expedited removal proceedings (Plaintiffs' Exhibit 1 at 1);

From November 22, 2016 to May 1, 2017, the children requested to meet and confer with the Government five times. Plaintiffs' Exhibits 27 at 2; 28 at 1; 31 at 1, 2; 32 at 2; and 33 at 1. The children reiterated that the Settlement Agreement neither expressly nor implicitly carved out an exception for children with expedited removal orders, an exclusion that would have been easy to insert had that intention existed. Plaintiffs' Exhibit 31 at 2. The children advised the Government that they would invoke the alternative dispute provisions in ¶43 of the Settlement Agreement, at which time removal actions must be stayed pending resolution of their case. Plaintiffs' Exhibit 31 at 2. But the Government refused.

C. THE CHILDREN'S ACTION IN THE EASTERN DISTRICT OF PENNSYLVANIA AND THIRD CIRCUIT COURT OF APPEALS.

The four children and their mothers filed an action in the Eastern District of Pennsylvania seeking relief from expedited removal based on their SIJ status. *Wendy Osorio Martinez, et al v. Attorney General United States, et al.*, Case No. 5:17-cv-01747-LS, Doc. 2. The children asserted other grounds for relief in that case, but noted their rights under the *Perez-Olano* Settlement Agreement. The Eastern District of Pennsylvania refused to stay the removal of the children on

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- The Settlement Agreement cited to government regulations 8 C.F.R. §§ 1003.2(c)(2) and 1003.23(b)(1), which provide authority to reopen cases initiated under INA § 240 proceedings by the Board of Immigration Appeals and the Immigration Court (Plaintiffs' Exhibit 1 at 1; 30 at 3);
- Expedited removal proceedings are governed by INA § 235 and its implementing regulations at 8 C.F.R. § 235.1 et seq., which do not permit such proceedings to be reopened (Plaintiffs' Exhibit 1 at 1-2; 30 at 1, 3-4); and
- Expedited removal orders are subject to 8 U.S.C. § 1225(b)(1), which provides for detention pending a credible fear determination; if found not to have fear, the sole and exclusive remedy is discretionary parole by the Secretary of Homeland Security (Plaintiffs' Exhibit 30 at 1).

jurisdictional grounds and they have appealed to the Third Circuit. Case No. 5:17-cv-01747-LS, Docs. 31 and 32. The children and their mothers were granted a stay pending the Third Circuit's decision on their emergency motion to stay their removal, and remain for now in detention in Berks County.

IV. ARGUMENT

A. THIS COURT SHOULD ENFORCE THE SETTLEMENT AGREEMENT BY DIRECTING ICE TO REOPEN THE CHILDREN'S REMOVAL PROCEEDINGS

1. This Court has jurisdiction to remedy violations of the Settlement Agreement.

A proceeding to enforce a settlement requires its own basis of jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 378; 114 S. Ct. 1673; 128 L. Ed. 2d 391 (1994). In the Ninth Circuit, "[s]uch a basis for jurisdiction may be furnished by separate provision [in the settlement] (such as a provision retaining jurisdiction over the settlement agreement) or by incorporating the terms of the settlement agreement in the order." *Flanegan v. Arizona*, 143 F.3d 540, 544 (9th Cir. 1998).

The Settlement Agreement reserves jurisdiction for this Court by providing that "complaining class member(s) may move to enforce the Agreement on a class-wide basis in the Central District of California, or on an individual basis before the Central District of California." Settlement Agreement at ¶43. The Order approving the Settlement Agreement also provides that this Court "shall retain jurisdiction over this matter." Order (Dkt. 166) at 3. "Where, as here, the Court validly retained jurisdiction to enforce the settlement agreement, the parties need not file a new complaint to enforce the terms of the settlement." *TI Bev. Group Ltd. v. S.C. Cramele Recas SA,*2014 U.S. Dist. LEXIS 64740 at *29, 2014 WL 1795042 (C.D. Cal. Apr. 1, 2014). This Court therefore has jurisdiction to enforce the Settlement Agreement.

2. The plain terms of the *Perez-Olano* Settlement Agreement apply to Plaintiffs.

"An agreement to settle a legal dispute is a contract and its enforceability is governed by familiar principles of contract law." *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989) (citing *Miller v. Fairchild Indus.*, 797 F.2d 727, 733 (9th Cir. 1986); *Village of Kaktovik v. Watt*, 223 U.S. App. D.C. 39, 689 F.2d 222, 230 and n. 62 (D.C. Cir. 1982). Accordingly, the Settlement Agreement, as a contract, must be read in whole, "with preference given to reasonable interpretations. Contract terms are to be given their ordinary meaning, and when the terms of a contract are clear, the intent of the parties must be ascertained from the contract itself." *Chaly-Garcia v. United States*, 508 F.3d 1201, 1203 (9th Cir. 2007) (quoting *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999), *amended*, 203 F.3d 1175 (9th Cir. 2000)).

Here, the plain terms of the *Perez-Olano* Settlement apply to the four children. The *Perez-Olano* Settlement provides that it "applies to *all aliens*, including, *but not limited to, SIJ applicants*, who, on or after May 13, 2005, *apply or applied for SIJ status or SIJ-based adjustment of status based upon their alleged SIJ eligibility*. Settlement Agreement at ¶ 3 (emphasis added). This definition plainly includes the four children here who received SIJ status in 2016. Moreover, Paragraph 29, which instructs ICE to join motions to reopen removal proceedings, is not limited to a particular type of removal proceeding. Of particular relevance here, Paragraph 29 does not exclude juveniles in expedited removal proceedings. Defendants cannot read into the Agreement a limitation that simply is not there.

3. The Government has refused to uphold the Settlement Agreement.

Despite "acknowledg[ing] that [the children] fall within the class of juveniles identified in the Settlement Agreement, since they applied for and were ultimately granted SIJ status on or after May 13, 2005," the Government has refused every

request to meet and confer, and join a motion to reopen proceedings in accordance with the Settlement Agreement. Plaintiffs' Exhibits 1, 28, 29, and 30. The Government's refusal to uphold the Settlement Agreement is wrong. *See* Plaintiffs' Exhibit 1. First, the Government incorrectly argues that the Settlement has expired. The Settlement Agreement extended six years following its December 16, 2010 effective date,[7] Settlement Agreement at ¶ 41, and therefore did not expire until December 15, 2016. Plaintiffs' Exhibit 28. Class counsel notified the Government of these four children's intention to invoke the Settlement Agreement before the Agreement expired, via a November 22, 2016 letter. Plaintiffs' Exhibit 27.

Second, the Settlement Agreement itself refutes the Government's position that the Agreement does not apply to those placed in expedited removal. The Government contends that there is no language authorizing reopening of an expedited removal order in the implementing regulations.[8] But the Settlement Agreement explicitly "supersede[s] all practices, policies, procedures, and Federal regulations to the extent they are inconsistent." Settlement Agreement at ¶ 13.

Third, Plaintiffs' removal from the United States would irreversibly negate their ability to seek relief provided under the Settlement Agreement. The Agreement's terms prevent this outcome. By staying removal proceedings pending the outcome of the matter, the Settlement Agreement acknowledges the exceptionally vulnerable position of these four children and others in this class. *See* Settlement Agreement at ¶ 43 ("Once a juvenile initiates this alternative dispute

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[7] Paragraph 36 of the Settlement Agreement provides that the effective date of the Agreement "shall be the date when the last of the following three conditions has been satisfied: (a) approval by the Court of this Agreement; (b) entry by the Court of an order dissolving the nationwide permanent injunction entered by the District Court on January 8, 2008, and dismissing this action with prejudice; and (c) withdrawal of both Parties' appeals that are pending before the Ninth Circuit."

[8] As explained in footnote 7 above, the government contends that neither INA § 235 or its implementing regulations at 8 C.F.R. § 235.1 et. al., which govern the expedited removal process, provide for the reopening of an expedited removal order. Plaintiffs' Exhibit 4 at 1-2.

resolution (ADR) process, the removal action shall be stayed and he or she shall not be removed from the United States unless and until the matter has been resolved in favor of Defendants."). Plaintiff children are defenseless absent this Court's intervention to compel Defendants to keep its promise under the Settlement Agreement—a promise merely to fully consider the children's request for LPR and not to deport the children while it does so. Based on Defendants' continual refusal to meet and confer or submit to mediation, the children have "exhaust[ed] the administrative procedures provided [in the Settlement Agreement]" per ¶ 43.

Accordingly, Plaintiffs ask the Court to enforce the Settlement Agreement's plain terms and require Defendants to join a motion to reopen removal proceedings.

V. CONCLUSION

For all of the reasons stated above, the four children respectfully ask this Court to order Defendants to comply with the terms of the Settlement Agreement by instructing ICE to reopen removal proceedings filed against the four children under Section 240 of the INA, 8 U.S.C. § 1229a; staying the removal action against the four children while such proceedings are pending; and prohibiting Defendants from removing the four children from the United States unless and until the matter has been resolved in Defendants' favor.

Dated: June 9, 2017

Respectfully submitted,

By: /s/ Pamela S. Palmer
Pamela S. Palmer
Anthony C. Vale
Jessica A. Rickabaugh
PEPPER HAMILTON LLP

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, hereby certify that on June 9, 2017, I electronically filed the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ENFORCEMENT OF SETTLEMENT AGREEMENT** with the United States District Court, Central District of California, by using the Court's CM/ECF system. I certify that the foregoing parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

Erez Reuveni, Esquire
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I further certify that on June 9, 2017, I served copy(ies) of the foregoing document(s) on the following parties or their counsel of record via U.S. Certified Mail as follows:

The United States Attorney General
Office of the Attorney General
950 Pennsylvania Ave., NW,
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via Certified Mail

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I declare that I am employed by the office of a member of the bar of this Court, at whose direction the service was made.

/s/ Janine Philips