

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

M.M.M., on behalf of his minor child, J.M.A.,
et al.,

Plaintiffs,

v.

Jefferson Beauregard Sessions, III, Attorney
General of the United States, et al.,

Defendant.

Case No. 3:18-cv-1832-DMS

Ms. L, et al.,

Plaintiff,

v.

U.S. Immigration and Customs Enforcement,
et al.,

Defendant.

Case No. 3:18-cv-428-DMS

**ORDER GRANTING PRELIMINARY
APPROVAL OF PROPOSED
SETTLEMENT; PRELIMINARILY
CERTIFYING THE SETTLEMENT
CLASSES; AND APPROVING CLASS
NOTICE**

Upon consideration of the Parties' Unopposed Motion for Preliminary Approval of
Proposed Settlement; Preliminary Certification of Settlement Classes; and Approval of Class
Notice;

WHEREAS, the *M.M.M.* and *Ms. L.* named Plaintiffs allege that they and members of the

1 Settlement Classes were injured as a result of Defendants' actions;

2 WHEREAS, the Court granted the *M.M.M.* Plaintiffs' request for a Temporary Restraining
3 Order temporarily restraining Defendants "from removing [specified persons] from the United
4 States, until the merits of Plaintiffs' motion for a preliminary injunction is resolved," Order, ECF
5 No. 55 at 15 (Aug. 16, 2018);

6 WHEREAS the Court ordered the parties to consider "how they wish to proceed on the
7 issues of class certification and Plaintiffs' entitlement to asylum proceedings" and to "meet and
8 confer and propose a solution—one which follows the law, and is equitable and reflective of
9 ordered governance," *id.* at 16; and

10 WHEREAS, the Court has considered the Agreement, the proposed plan and form of notice,
11 and the other documents submitted in connection with the parties' request for preliminary approval
12 of the Agreement, certification of the Settlement Classes set forth in the Agreement for the purposes
13 of settlement only, and appointment of class representatives and counsel for the Settlement Classes,
14 and good cause appearing therefore;

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

- 16 1. The Motion is **GRANTED**.

17 **Preliminary Approval of the Settlement**

18 2. The Court finds that: (a) the proposed Settlement, as set forth in the Agreement, is
19 sufficiently fair, reasonable, and adequate to authorize the dissemination of notice of the Settlement
20 to potential members of the Settlement Classes and to schedule a fairness hearing to determine
21 whether to grant final approval of the proposed Settlement under Fed. R. Civ. P. 23(e); (b) the
22 Agreement was negotiated at arm's length by experienced counsel acting in good faith; and
23 (c) there has been adequate opportunity for discovery for experienced counsel to evaluate the claims
24 and risks at this stage of the litigation.

25 3. The Court finds that preliminary approval is appropriate and hereby grants
26 preliminary approval of the Settlement subject to final determination following notice and hearing.

27 **Certification of the Settlement Classes, Appointment of Settlement Class Representatives,**
28

and Appointment of Co-Lead Counsel

4. For purposes of the Settlement, and only for that purpose, and without an adjudication on the merits and without any impact upon the issues between Plaintiffs and Defendants in the event that final approval of the Settlement does not occur, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, the Court finds that the requirements for a class action are met, and hereby defines the following settlement classes.

The class of parents is defined as follows:

All adult alien parents who entered the United States at or between designated ports of entry with their child(ren), and who, on or before the effective date of this agreement: (1) were detained in immigration custody by the DHS; (2) have a child who was or is separated from them by DHS and, on or after June 26, 2018, was housed in ORR custody, ORR foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child; and (3) have been (and whose child(ren) have been) continuously physically present within the United States since June 26, 2018, whether in detention or released. The class does not include alien parents with criminal histories or a communicable disease, or those encountered in the interior of the United States.¹

The class of children is defined as follows:

All alien children who are under the age of 18 on the effective date of this agreement who: (1) entered the United States at or between designated ports of entry with an alien parent, and who were separated from their parents, on or before the effective date of this settlement agreement; (2) have been or will be reunified with that parent pursuant to the preliminary injunction issued by the Court in *Ms. L v. U.S. Immigration and Customs Enforcement*, No. 18-428 (S.D. Cal. June 26, 2018); and (3) have been continuously physically present in the United States since June 26, 2018.

The Settlement Classes are accordingly preliminarily certified for settlement purposes.

5. For purposes of preliminary approval, the Court finds that provisional certification of the Settlement Classes is warranted in light of the proposed Settlement under the prerequisites of Federal Rule of Civil Procedure 23(a) because: (1) the members of the Settlement Classes are so numerous that joinder is impracticable; (2) there are issues of law and fact common to the Settlement Classes; (3) the claims of the named Plaintiffs in *M.M.M.* and *Ms. L.* are typical of the

¹ References to a “class” or “class member” in the Agreement refer to the classes described in the text, as well as alien parents who are not part of the *Ms. L.* class due to criminal history or communicable disease, but who the Court has ordered must be reunified. The Agreement also addresses parents who are covered by the above description, but who have been removed from the United States.

1 claims of the Settlement Class Members; and (4) Plaintiffs and the proposed Class Counsel will
2 fairly and adequately represent the interests of the Settlement Class Members.

3 6. For purposes of preliminary approval, the Court finds that provisional certification
4 of the Settlement Classes is warranted in light of the proposed Settlement under the requirements
5 of Federal Rule of Civil Procedure 23(b)(2) because Defendants are alleged to have acted or refused
6 to act on grounds that apply generally to the Settlement Classes, so that final injunctive relief or
7 corresponding declaratory relief is appropriate respecting the Settlement Classes as a whole.

8 7. The Court hereby appoints the named Plaintiffs in *M.M.M.* and *Ms. L.* as Settlement
9 Class Representatives. The Court preliminarily finds that the Settlement Class Representatives will
10 fairly and adequately protect the interests of the Settlement Classes because: (1) the interests of the
11 Settlement Class Representatives are consistent with those of Settlement Class Members; (2) there
12 appear to be no conflicts between or among the Settlement Class Representatives and the other
13 Settlement Class Members; (3) the Settlement Class Representatives have been and appear to be
14 capable of continuing to be active participants in both the prosecution and the settlement of this
15 litigation; and (4) the Settlement Class Representatives and Settlement Class Members are
16 represented by qualified, reputable counsel who are experienced in preparing and prosecuting large,
17 complicated class action cases, including those concerning alleged violations of the relevant laws.

18 8. The requirements of Rule 23(g) of the Federal Rules of Civil Procedure are met, and
19 the Court hereby confirms the appointment of the law firm Eversheds Sutherland, Muslim
20 Advocates, and the Legal Aid Justice Center as counsel for the parent class for parents continuously
21 physically present in the United States since June 26, 2018, the ACLU as counsel for parents who
22 have been removed, and Hogan Lovells US LLP as counsel for the child class.

Notice to Potential Settlement Class Members

9. The Court finds that the proposed Settlement, as set forth in the Agreement, subject to final determination following proper notice and a fairness hearing, is sufficiently fair, reasonable, and adequate to authorize dissemination of notice to the Settlement Classes.

10. The Court approves the form and content of the draft Notice, as well as the plan for distribution of the Notice, which complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process. The parties shall cause the Notice to be provided to potential members of the Settlement Classes in accordance with the Notice Plan and the Agreement.

11. Any Settlement Class Member who objects to the proposed Settlement must do so in writing, postmarked no later than November 2, 2018, and shall otherwise comply with the requirements set forth in the Notice.

12. By November 9, 2018, the parties shall file with the Court their motion for final approval of the Settlement.

13. The parties shall file with the Court their responses to any objection(s) to the Settlement on or before November 9, 2018.

14. The Court will hold a fairness hearing on November 15, 2018, at 10:30 AM at Courtroom 13A, 13th Floor, Suite 1310, 333 West Broadway, San Diego, CA 92101, to determine the fairness, reasonableness, and adequacy of the proposed Settlement. Any Settlement Class Member who follows the procedure set forth in the Notice may appear and be heard. The fairness hearing may be rescheduled, adjourned, or continued without further notice to the Settlement Class Members.

Other Provisions

15. In the event that the Settlement does not become final and effective for any reason, nothing in the Agreement, this Order, or proceedings or orders regarding the Settlement shall be construed to prejudice any position that the Plaintiffs, Defendants, and Settlement Class Members may assert in any aspect of this litigation.

