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

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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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,

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.

(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

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) bil part of the events g

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.

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

31. Plaintiff C.M.M. is a 15-year-

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

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. [illegible] 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.

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 “

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.*

es 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

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.

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

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

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 opportunittunᴘ ̊ { u ҽ Mʊ .i

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. 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

-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

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

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 reunificü ή nt 5 ʻ ʻ reunȖĦ r

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 weeks more for the results to cyhtrh1196.97 Tm0 0 1 rg0 g0 G[(-)] TJ

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,

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.*

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 i

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 out2 0 612 792 p sd belief,

sharing with ICE. *Id.* To the contrary, the memorandum recommended that ORR continue

J.E.C.M. and hi

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

fingerprints. Nonetheless, J.E.C.M. remained

114. B.G.S.S. was initially placed in a small BCFS-

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 ja

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. A

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,

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. S

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.

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

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

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

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

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.

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.

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.

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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.

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

273.

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

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.
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

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 tah[(F)6(.)] TJETons thereof relating to fingerprr1 rege cclausn(int)-nuTf1 00 612 kand the c

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

Mary Bauer (VSB No.: 31388)
*Mary.Bauer@splcenter.o*rg

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

150 East Ponce de Leon Ave., Suite 340