UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF LOUISIANA
WESTERN DISTRICT

R[redacted]., a minor, by and through her brother [redacted] and her sister [redacted] *Plaintiff-Petitioner*,

v.

HEIDI STIRRUP, Acting Director, Office of Refugee Resettlement; WILLIAM BARR, United States Attorney General; 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; William Joyce, Acting Field Office Director New Orleans Field Office, United States Immigration and Customs Enforcement; MATTHEW T. ALBENCE, Deputy Director and Senior Official Performing the Duties of the Director, United States Immigration and Customs Enforcement; CHAD F. WOLF, Acting Secretary of Homeland Security, *in their official capacities*; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; OFFICE OF REFUGEE RESETTLEMENT

Defendants-Respondents.

Civil Action No. _____

PETITION FOR JUDICIAL REVIEW OF PLACEMENT PURSUANT TO *FLORES* SETTLEMENT AGREEMENT, COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF, AND PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Respondents' continued detention of R[redacted]. at Office of Refugee Resettlement shelter [redacted]") failed to place her in the least restrictive setting that provides for her best interest and subjected her to a significantly heightened risk of contracting COVID-19, a deadly and extremely contagious disease that has reached pandemic level. Such

actions violate the (1) William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA")—the federal statute that governs the detention and release of immigrant children; (2) the Administrative Procedure Act's ("APA") prohibition on unreasonable delays; (3) the *Flores* Settlement Agreement and the recent temporary restraining order ("TRO") issued in the case; and (4) the Constitution's Due Process Clause of the Fifth Amendment.

2. R[redacted]. thus seeks review of Respondents' delayed detention of R[redacted]. at [redacted] and failure to place her promptly in the least restrictive setting in her best interest. R[redacted]. respectfully requests that this Court order that Respondents reunify her with her sister and primary sponsor, [redacted] or alternatively, her brother and secondary sponsor, [redacted]

JURISDICTION AND VENUE

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

4. Venue is proper in the Lousiana Western District under 28 U.S.C. § 1391(b)(2) and (e)(1) because R[redacted]. is detained in this district, where a substantial part of the events giving rise to these claims occurred and continues to occur.

THE PARTIES

5. Petitioner R[redacted]. is a 16-year-old girl from Guatemala whom the Respondents have detained since March 21, 2020, at [redacted], for 53 days as of the date of this filing. Petitioner was picked up by ICE from [redacted] on May 6, 2020, to be repatriated to Guatemala and likely will be deported any day to a country in which she claims fear.

6. Respondent Heidi Stirrup is the Acting Director of ORR. ORR is the government entity directly responsible for the detention of R[redacted]. Respondent Stirrup is a legal custodian of R.[redacted]. and is sued in her official capacity.

7. William Barr is the United States Attorney General and is the head of the Department of Justice which is responsible for adjudicating certain immigration cases

8. Respondent Lynn Johnson is the Assistant Secretary for the Administration for Child and Families ("ACF") under the U.S. Department of Health and Human Services ("HHS"). ACF is an office within HHS that assumes responsibility for ORR. Respondent Johnson is a legal custodian of R.[redacted] and is sued in her official capacity.

9. Respondent Alex Azar is the Secretary of HHS, which encompasses ORR. Respondent Azar is a legal custodian of R.[redacted]. and is sued in his official capacity.

10. William Joyce is the Acting Field Office Director for the ICE New Orleans Office of Enforcement and Removal Operations and is responsible for and has authority over the detention and removal of noncitizens within his jurisdiction, including R.[redacted]. and is sued in his official capacity.

11. Respondent Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE, and he directs the nation's immigration detention system and oversees the removal of individuals and families who are detained at facilities in the United States. He is sued in his official capacity.

12. Respondent Chad F. Wolf is the Secretary of the Department of Homeland Security ("DHS") and directs each of the component agencies within DHS, including Immigration and Customs Enforcement. Respondent Wolf is responsible for implementing and enforcing U.S.

immigration laws and policies, including the detention of immigrants and orders of removal. He is sued in her official capacity.

13. The U.S. Department Of Health And Human Services oversees and operates the Office of Refugee Resettlement.

14. The U.S. Department Of Homeland Security is responsible for the detention and removal of non-citizens. U.S.

15. The U.S. Immigration And Customs Enforcement is responsible for the detention and removal of non-citizens. U.S.

16. The Office Of Refugee Resettlement is responsible for the custody and care of unaccompanied alien children.

FACTUAL ALLEGATIONS AND ACTS PERTAINING TO R[redacted].

A. R[redacted].'s life in her home country of Guatemala

1. Before coming to the United States, R[redacted]. lived with her mother in [redacted], Guatemala. She had a good relationship with her mother.

2. Gang members who were members of Gang 18 and Gang "Salvatrucha" were extorting R[redacted].'s mother and began threatening R[redacted]. in May 2019, when she was 15 years old. The same group of gang members would approach R[redacted]M. on her way to school and demand that she join them. When R[redacted] refused, the gang members told her that if she did not join them, they would kill her and burn her alive and throw her in a vacant lot the same as others who had refused to join them. Gang members of Gang 18 and Gang "Salvatrucha" threatened that if she continued to refuse, they would kill her mother, sister, and her niece. The gangs threatened

R[redacted]. frequently, ranging from a few times a day to a few times per week from May 2019 to December 2019. R[redacted]. did not report the threats to the police because a friend of her mother who was being exhorted by gangs filed a police report in 2019 and was found dead the same day. Gang members demanded that R[redacted]. get a tattoo of the "Saint of Death" on her arm and sell her life to the "Saint of Death" so that she would have the strength to kill kids who failed to pay their extortion to the gangs. *See*, Ex. A. R[redacted].'s Asylum Declaration, dated May 6, 2020 at 00001.

3. The threats intensified and became more frequent in February 2020. When R[redacted]. was leaving a home where her niece's birthday party was being held, four gang members surrounded her and put a pistol to her forehead. The gang members demanded a decision of whether she would join and threatened that R[redacted]., her mother, and her sister would be killed. When R[redacted].'s mother exited the home the gang members left. *See*, *Id.* at 00002.

4. R[redacted]. was a member of an indigenous group with darker skin that originated from San Marcos. Many members of the indigenous group, including R[redacted].'s father and both maternal and paternal grandmothers, spoke Mam, although R[redacted]. does not speak Mam. Members of the indigenous group wore a distinctive indigenous skirt called a "corte". *See*, *Id.* at 00002.

5. Most people in R[redacted].'s town were "ladina" or non-indigenous and had whiter skin. R[redacted]. was bullied in the community and told that she did not belong because of the color of her skin. Members of the community labeled her "la negra" or in English "the black". *See*, *Id.* at 00002-00003.

6. Beginning when she was six years old she was terrorized at school. At school, children threw dirt in her face and pulled buckets of water on her and tell her that she was the color

of "the black earth". She was excluded from school activities by school officials and was told it was because her dark skin did not look good to be seen at activities. Her two teachers for grades 1st grade to 6th grade participated in the bullying. Her teacher for grades 1st - 2nd grade, who had a fair skin complexion, told R[redacted]. that she didn't want her in her class because she was brown skinned. R[redacted].'s teacher for 3rd – 6th grade also bullied her. When R[redacted]. tried to register to continue school for 7th grade, the school refused to allow her to register because of her skin color and she had to discontinue her education. *See*, *Id.* at 00002.

7. Members of R[redacted].'s family who had a non-indigenous parent and whiter skin also threatened and bullied her, including her aunt, cousins, and grandparent. She was told that she was not equal to their children and did not deserve to go to school. Her aunt threatened to kill her and attacked her telling her that she was a "bitch" and a "slut from the streets". R[redacted].'s aunt punched her mother and threatened to kill them. R[redacted]. went to the police and filed a report, but the police officers who had whiter skin, did nothing. *See*, *Id.* at 00003.

B. R[redacted]'s first journey to the U.S., apprehension by immigration officials, and placement in the M.P.P. Program.

8. On or around July 2019, R[redacted]. and her mother, [redacted], traveled together to the United States through Mexico. They presented at the border and requested asylum. The immigration officers did not discuss immigration court with R[redacted]. or inform R[redacted]. that she had an immigration court hearing scheduled. R[redacted]. does not know whether the officials discussed ther subject with her mother. When the officers released R[redacted]. and her mother, they handed documents to her mother but not her. R[redacted].'s mother did not explain the documents to R[redacted]. and R[redacted]. did not ask about them because he trusted her mother to handle everything. At no point did anyone inform R[redacted]. that she was required to attend

hearings in immigration court. R[redacted]. and her mother were placed in the Migrant Protection Protocol Program and were sent to Mexico to await the immigration proceedings. While in Mexico, R[redacted]'s mother became ill and decided to return back to Guatemala and R[redacted]. returned to Guatemala with her mother on or around August of 2019. While back in Guatemala, the family unit failed to appear at an immigration court hearing and were ordered removed in absentia on October 3, 2019 by the San Antonio Immigration Court. *See* generally Ex. B, R[redacted].'s declaration dated April 2, 2020. *See*, *Id.* at 00009.

C. R[redacted].'s second journey alone to the U.S. journey alone to the United States

9. Fleeing from the threats that had intensified in February 2019, R[redacted]. left Guatemala for a second time, this time alone, in March 2020 for the United States. During her journey to the United States, R[redacted]. was sexually assaulted by a migrant in Mexico as she was taking a shower. Unbeknownst to R[redacted]., an Immigration Judge at the San Antonio Immigration Court had ordered R[redacted]. removed in absentia on October 03, 2019. R[redacted]., unaware of her removal in absentia order, entered the United States without inspection on or around March 20, 2020. After encountering immigration officials, R[redacted]. was issued a new NTA, dated March 20, 2020, designated as an unaccompanied minor, and placed in ORR shelter [redacted].

D. R[redacted]. is scheduled to be repatriated on the next available flight without being permitted a fear interview, as a consequence of her delayed reunification despite Respondents approving Ms. [redacted] and Mr. Santos[redacted] as suitable sponsors.

10. While most children in ORR custody are released and reunified with a sponsor within 66 days, ORR, Facts and Data, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data (last visited April 20, 2020) ("ORR Facts and Data"), the shelter was unwilling to reunify R[redacted]. until a decision was made by the San Antonio Immigration Court. Respondents have identified

two highly suitable sponsors—R[redacted].'s sister, [redacted], and R[redacted].'s brother, [redacted]. According to a headcount sent from [redacted] shelter on March 24th, 2020, R[redacted] was a Cat. 2, meaning she had a viable sponsor who is a family member. *See* Ex. D, [redacted] Headcount dated March 24,2020. *See*, *Id.* at 00059.

11. R[redacted]. exhibited excellent behavior in detention. In follow ups with her, she cited enjoying spending time with the other girls in the shelter and making bracelets. R[redacted] did not have any reported behavioral issues during her time at [redacted] and was respectful to shelter staff as well as the other minors in custody.

12. ORR began processing paperwork to reunify R[redacted]. with [redacted] in March 2020. Mr. [redacted], is R[redacted].'s brother and sponsor. Mr. [redacted] previously lived near R[redacted]. and their mother in Guatemala before living in the U.S. and had a close relationship with R[redacted]. Mr. [redacted] was identified as a viable sponsor within a few days of R[redacted]. arriving at [redacted], yet [redacted] failed to reunify her during the 53 days she was detained.

13. Mr. [redacted] now resides in [redacted], North Carolina, near where R[redacted].'s sister, [redacted] resides, who also resides in [redacted].

14. Both Ms. [redacted] and Mr. [redacted] are well-prepared to take R[redacted]. in and care for her. They want R[redacted]. to have the best future possible and are dedicated to caring for R[redacted]. so that R[redacted]. can study, plan for the future, and be with family. Ms. [redacted] and Mr. [redacted] have remained in contact with R[redacted]. in ORR detention and spoke with R[redacted]. regularly over the phone weekly to check in on her. R[redacted].'s mother approves of her living with her sister or brother and reunification would further provide R[redacted] the opportunity to be near both of her siblings.

15. Upon ORR reaching out to Mr. [redacted] about potential sponsorship, he immediately agreed and promptly completed the necessary paperwork by mid-March and early April. Additionally, upon ORR later reaching out to Ms. [redacted], she immediately agreed but did not have sufficient time to complete necessary paperwork because R[redacted]. was picked up by ICE to be repatriated.

16. On March 31, 2020, R[redacted].'s legal team was notified by her ORR case manager [redacted] that R[redacted]. had a removal in absentia order through the following email:

> "Good afternoon Mr. Wedemeyer,
>
> I am reaching out to you to inform you that we have received an order for removal for the child R[redacted]. [redacted], A#3-846. Case was elevated with our FFS and it was requested to provide you the information of the child's removal. The child was a previous MPP as she had attempted to travel with her mother last year in July of 2019. They were scheduled to attend a hearing in October of 2019, but they both returned to COO before then. Please let me know if you should have any questions on this case so I may proceed with scheduling Consulate interview for child and continue with removal."

See Ex. C, Consolidated Emails between R[redacted].'s Legal Counsel, ORR, and ICE at 00058.

17. On March 31, 2020, R[redacted].'s legal team responded with the following:

"Dear Ms. [redacted]:

We received authorization from the minor to share information with you. We plan to file a motion to reopen and rescind the MPP removal order so that minor may continue in removal proceedings and hopefully reunify with a sponsor. We plan to argue to the immigration court that the removal order in absentia was not the fault of the minor. We

feel that removal at this point is premature and may be unlawful under the TVPRA and Flores Settlement Agreement. Because we cannot visit the shelter and meet with the minor because of the COVID-19 precautions, we will need your assistance to help the minor in her legal proceedings. Thank you."

See Ex. C, Consolidated Emails between R[redacted].'s Legal Counsel, ORR, and ICE at 00058.

18. On April 1, 2020, R[redacted].'s legal team received a response from case manager [redacted] that the shelter intended to proceed with her removal:

"I attempted to call you to your phone to follow up on this case. Please be advised that FOJCs will be proceeding with the removal of the child. DHS is not able to hold the case and has to continue with removal."

See Ex. C, Consolidated Emails between R[redacted].'s Legal Counsel, ORR, and ICE at 00017.

19. On April 1, 2020, R[redacted].'s legal counsel responded to ORR case manager [redacted] and Federal Fields Specialist [redacted] with the following:

"Dear Ms. [redacted] and Ms. [redacted],

Thank you for the update. Please be informed that we may need to take legal action to prevent the removal."

See Ex. C, Consolidated Emails between R[redacted].'s Legal Counsel, ORR, and ICE.

20. On April 2, 2020, immigration counsel for R[redacted]. filed a motion to reopen her case for her absentia deportation order in San Antonio Immigration Court on the basis that R[redacted]. did not receive notice of her immigration court hearing date due to her mother's actions. *See* Ex. B, R[redacted].'s Declaration dated April 2, 2020. *See*, *Id.* at 00009.

21. The filing of the motion triggered an automatic stay of deportation until the immigration judge ruled on the motion. On April 6, 2020, R[redacted].'s legal counsel emailed Notice of the Automatic Stay to [redacted], Assistant Field Office Director at the United States Immigration and Customs Enforcement; [redacted], El Paso Field Office Juvenile Coordinator; [redacted], Federal Field Specialist; and [redacted], Lead Case manager at [redacted]. R[redacted].'s legal counsel and emailed the following and did not receive a reply:

> "Dear ICE Officer [redacted]:
>
> **Brief Summary of Facts:**
>
> Minor, R[redacted] A# -846, originally entered the U.S, with her mother, at or around July 2019 and was placed in the MPP program. She was ordered removed in absentia by the San Antonio Immigration Court on October 3, 2019. Minor again re-entered the U.S. alone on/or around March 2020 and was designated as an unaccompanied alien child. At which point she was placed in ORR care at [redacted].
>
> **Automatic Stay of Removal:**
>
> On April 2, 2020, a Motion to Rescind the Removal in Absentia Order and to Reopen Removal Proceedings was filed with the San Antonio Immigration Court and was served earlier today to ICE eService. As a result of this filing, detailing the minor's lack of knowledge and lack of notice of the immigration hearing that resulted in the removal in absentia order, there is now an automatic stay of removal in place.
>
> Federal law at INA § 240 (b)(5)(C) and 8 CFR § 1003.23(b)(4)(ii) and (iii)(C) state that filing of a motion to reopen for failure to receive notice where in absentia order entered stays deportation. Further, case law supports that the failure to grant a stay pending a determination on a motion to reopen may raise constitutional concerns. *Castaneda-Suarez v. INS*, 993 F.2d. 142, 145 (7th Cir. 1993) (stating that, "the execution of a deportation order before the final resolution of any (non-frivolous) challenges to the order would raise significant equitable, if not constitutional, concerns.").
>
> Additionally, failure to honor an automatic stay of removal is potentially a violation of the Flores Settlement Agreement; 8 U.S.C. § 1232(c)(2)(A) in accordance with

the Trafficking Victims Protection Reauthorization Act; and a violation of President Trump's Executive Order on Family Reunification, Executive Order #13841. Removal at this point may also violate the TVPRA at 8 U.S.C. 1232(a)(5)(D), which requires unaccompanied alien children to be placed in INA 240 removal proceedings and may also violate related due process rights.

Closing:

As of the filing of the Motion to Rescind the Removal in Absentia Order and to Reopen Removal Proceedings, on April 2, 2020, there is now an automatic stay of removal in place that prevents any deportation efforts of minor, R[redacted].

Please let me know if you have any questions regarding this matter."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00013.

22. On April 7th, 2020 Mr. [redacted] told R.[redacted]'s immigration counsel over the phone that the reunification was moving forward. He said that he was working quickly with the shelter staff and that they told him that everything was going well. He said that he was complying with everything asked of him and was waiting to receive his sister, R.[redacted]

23. On April 8, 2020, R.[redacted].'s legal counsel emailed Assistant Field Office Director [redacted], [redacted], [redacted], and [redacted] with copies of their G-28's and a request for a response regarding the automatic stay with the following and again did not receive a reply:

"Dear ICE Officer [redacted]:

Attached, please find G-28s for myself and for Jacob Wedemeyer.

We would like to gain a sense of ICE's position regarding:

1. Recognition of the automatic stay of removal
2. Deportation timeframe
3. Removal dates for [Redacted]("R[redacted]")"

Ex. C, Consolidated Emails between Counsel and ORR at 27.*See*, *Id.* at 00015.

24. On April 10, 2020, R[redacted].'s legal counsel and Assistant Field Office Director [redacted], ICE and OCC reached an agreement on the morning of April 10, 2020, to honor the automatic stay. [redacted] informed R.[redacted].'s legal counsel for the first time that she was on the manifest to be repatriated for the following Monday, April 13, 2020, but would no longer would be deported while the Motion to be Reopen was being decided by the San Antonio Immigration Court.

25. On April 28, 2020, an immigration judge at the San Antonio Immigration Court denied R[redacted].'s motion to reopen in a five page order. Ex. E. *See*, *Id.* at 00061. Immigration counsel only received the decision via mail on the afternoon of Monday, May 4, 2020.

26. On April 30, 2020, R[redacted].'s legal counsel emailed Assistant Field Office Director [redacted]; Federal Field Specialist [redacted]; Lead Case Manager at [redacted], [redacted]; and R.[redacted].'s case manager [redacted] the following and did not receive a reply:

"Good afternoon ICE Officer [redacted] and [redacted]:

> There has been a stay of deportation in place regarding the removal of minor, [redacted], A#-846, for the past 28 days. However, R[redacted] has not been reunified and is still detained in ORR care. In the Flores Federal Case, there has been a Temporary Restraining Order in place since March 28, 2020 mandating that efforts are made regarding the prompt release and reunification of class members. Additionally, On April 24, 2020 a federal court order, which is attached to this email, was issued on a Motion to Enforce the Flores Settlement Agreement. Please note that ORR and ICE are in violation of the Temporary Restraining order and of the April 24, 2020, federal Court Order because efforts have not been made to promptly reunify minor, R[redacted]
>
> **ORR and ICE are Out of Compliance With the March 28, 2020, Temporary Restraining order Filed by Flores counsel:**
>
> In accordance with the Temporary Restraining Order issued by the federal court on March 28, 2020, "In light of the emergent COVID-19 crisis, the Court issued the March 28, 2020 TRO and ordered Defendants Office of Refugee Resettlement

("ORR") and Immigration and Customs Enforcement ("ICE") to (1) make every effort to promptly and safely release Class Members in accordance with Paragraphs 14 and 18 of the Agreement and the Court's prior order".

ORR and ICE are Under Federal Court Mandate to Reunify R[redacted] Without Unnecessary Delay:

On April 24, the federal court issued a decision regarding a Motion to Enforce the Flores Settlement Agreement. In accordance with the federal court order, "ORR and ICE shall continue to make every effort to promptly and safely release Class Members who have suitable custodians in accordance with Paragraphs 14 and 18 of the FSA and the Court's prior orders, including those categorized as "MPP," participants in class litigation, "pending IJ hearing/decision" or "pending USCIS response," absentia specific and individualized determination that they are a flight risk or a danger to themselves or others, or a proper waiver of *Flores* rights".

Further, as noted in the attached April 24, 2020 federal Court Order, ORR and ICE have an obligation under the Flores Settlement Agreement to "release a minor from its custody without unnecessary delay" and "make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor."

R[redacted]'s Removal Is No Longer Imminent and Failure to Reunify her Creates Unnecessary Delay:

As noted in the attached court decision, *Jenny L. Flores, et al. v. William P. Barr, et al.,* imminent is defined as "one that is 'ready to take place' or 'happening soon.' *Imminent*, Merriam-Webster Online (last accessed on April 23, 2020)."

As of the filing of R[redacted]'s Motion to Rescind the Removal in Absentia Order and to Reopen Removal Proceedings, on April 2, 2020, there has been a stay of removal of her deportation order. On April 10, ICE and OCC agreed to honor the stay of deportation in accordance with applicable federal law, the Flores Settlement Agreement, and Trump's Executive Order on Family Reunification, Executive Order # 13841. However, despite a stay of removal being in place for the past 28 days, Reyna has not been reunified.

As noted in the attached, April 24, 2020, federal court order, "The Court sees no reason why, if removal is not "ready to take place," ORR should not release minors whose removal orders under the MPP are under appeal." Additionally, as noted in the attached April 24, 2020, federal court order, "If ORR determines that removal "appears unlikely," because the removal order will be "reopened, appealed, or otherwise delayed,"or for any other reason, the minor is evaluated for release following general ORR policies". The attached federal court order as mandates that ORR explains whether individualized assessments are being made regarding the release of minors with removal orders under MPP and the reasons for non-release.

Closing:

Failure to reunify R[redacted] is potentially a violation of the Flores TRO, the attached Flores Federal court Order, the Flores Settlement Agreement; 8 U.S.C. § 1232(c)(2)(A) in accordance with the Trafficking Victims Protection Reauthorization Act; and a violation of President Trump's Executive Order on Family Reunification, Executive Order #13841. Efforts should be made to promptly reunify Reyna and any delays in reunification are not justified as R[redacted]'s removal is not imminent.

Please let me know if you have any questions regarding this matter."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00019-00020.

27. On May 1, 2020, R[redacted].'s legal counsel sent a request for an update on the status of her reunification with her brother:

"Good Morning Ms. [redacted],

I hope that you are well. I know that you were out of the office last week, so I just wanted to check in with you on R[redacted]'s reunification process at this time. I am wondering if you have been able to receive all necessary paperwork from R[redacted]'s brother yet?"

28. On May 5, 2020, R.[redacted]'s legal team emailed ORR case manager with the following request for reunification update on R.[redacted].'s brother and did not receive a reply:

"Good Morning Ms. [redacted],

I hope that you are well. I just wanted to get an update on R[redacted]'s sponsor when you get a chance, just to ensure that her brother is still a viable and compliant sponsor at this time."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00035.

29. On May 5, 2020, in response to immigration counsel inquiring about R.[redacted].'s reunification status, ORR Case Manager [redacted] stated:

> "At the moment I am still pending to receive documents for the case. I am working with brother diligently in order for him to provide me the necessary documents. I would like to inquire any updates on your end in regards the child legal case."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00034.

30. On May 6, 2020, R[redacted].'s case manager at [redacted], [redacted], informed her legal counsel that R[redacted].'s sister, [redacted], who also lives in [redacted], North Carolina, was now being processed as her primary sponsor and R[redacted].'s brother, [redacted], was now her secondary sponsor.

31. On May 6, 2020, R[redacted].'s legal counsel completed an asylum declaration with R[redacted] to submit with an application for asylum and obtained R[redacted].'s signature on form EOIR-26A in preparation for a BIA appeal of the Immigration Judge denial of the Motion to Reopen. Later that day on May 6, 2020, R[redacted]'s legal counsel received an email from R[redacted].'s case manager at [redacted], [redacted], attaching the signed E-26A and R[redacted].'s passport photo and informing them that R[redacted]. would be picked up that day in order to be repatriated. The email stated the following: "Good Afternoon Ms. Street and Ms . Soliman,

> I was just notified that the FOJCs will be picking up the child today as they have a flight for her repatriation scheduled for Friday, May 8th. We do not have a pick up time at the moment. I just want to provide you this information as we are also pending to receive the order from the FOJCS.
>
> I have attached the requested documents as well the picture of child. Documents are encrypted with universal password."

Ex. C, Consolidated Emails between Counsel, ORR, and ICE at 27. *See*, *Id.* at 00027

32. Immigration counsel for R[redacted]. filed an appeal of the Immigration Judge denial of the Motion to Reopen and a Motion For Emergency Stay on May 7, 2020. That same day, the Motion for Emergency Stay was denied by the BIA.

33. On May 7, 2020, R[redacted].'s legal counsel requested that a fear interview is completed prior to continued efforts to repatriate R[redacted]. because she had made claims of fear of being returned to Guatemala. In addition, R[redacted].'s legal counsel requested an ICE Stay of Removal so R[redacted]. could have an opportunity to complete an asylum application. The following email was sent to Assistant Field Office Director [redacted]; Federal Filed Specialist [redacted] and Federal Field Specialist [redacted] and did not receive a reply:

> "Dear ICE Officer [redacted],
>
> We represent R[redacted]. A#-846. Attached are our G-28s. On May 6, 2020 R[redacted] completed a declaration detailing her fear of return to Guatemala. R[redacted] made a claim of fear based on her race and her membership in a particular social group as a member of an indigenous people with darker skin. Prior to being picked up by ICE on May 6, 2020, in order to be repatriated, R[redacted] was in the process of completing an application for asylum, withholding of Removal, and protection under the Convention Against Torture. We can provide the declaration after we receive authorization from R[redacted].
>
> We understand that R[redacted] is scheduled to be repatriated tomorrow May 8, 2020 on a flight to Guatemala. Because R[redacted] was ordered removed in absentia, we do not believe she had the opportunity to express her fear before the immigration court. In light of R[redacted]'s expressed fear of return to Guatemala, we respectfully request that a fear interview is completed in accordance with international and U.S. law, prior to any continued efforts to repatriate R[redacted] back to Guatemala. We also respectfully request a stay of removal from ICE to allow us to complete the asylum application. Thank you."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00039.

34. May 8, 2020, R[redacted].'s legal counsel received the following reply from Assistant Field Office Director [redacted]:

> "Hello sir,
>
> The BIA denied the STAY request. The flight did not depart yesterday however she will be scheduled on the next available removal flight."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00039.

35. On May 8, 2020, R[redacted].'s legal counsel then sent an email again requesting a

fear interview and an ICE Stay of Removal to Assistant Director [redacted]; Deputy Director [redacted] Asylum Officer [redacted] Assistant Field Office Director [redacted] Federal Field Specialist [redacted] and Federal Field Specialist [redacted] The following email was sent:

> "Dear Assistant Director [redacted] Deputy Director [redacted] and Asylum Officer [redacted]
>
> We are concerned about this minor, R[redacted]. We request a fear interview prior to her repatriation to Guatemala. Minor has expressed fear of return and intends to apply for asylum. We have significant concerns for R[redacted]'s safety and well-being if she is returned based on her claim of fear. The TVPRA requires safe repatriation. Because minor was ordered removed in absentia, we do not believe she had the opportunity to express her fear to an immigration judge, or to an asylum officer.
>
> We are concerned that she is currently detained in EPPC, which is a facility for adult detention. We are concerned that ORR's delay and failure to reunify her violated the 4/24/2020 court order in the Flores litigation and that ICE's current repatriation efforts are a result of that violation. That court order is attached to this email. We are also concerned that the minor may have consented to voluntary departure without the advice or presence of us as her attorneys of record. We request an ICE stay of removal to allow minor to complete her asylum application. Thank you."

Ex. C, Consolidated Emails between Counsel, ORR, and ICE at 27. *See*, *Id.* at 00050.

36. On May 8, 2020, R[redacted].'s legal counsel then received the following response Assistant Field Office Director [redacted]

> "Good afternoon Mr. Wedemeyer,
>
> The minor is not detained in an ICE adult detention center.
>
> As stated on a previous email, the BIA denied the Stay request and she is scheduled to be removed on the next available removal flight."

Ex. C, Consolidated Emails between Counsel, ORR, and ICE at 27. *See*, *Id.* at 00053.

37. On May 8, 2020, R.[redacted].'s legal counsel sent the following replying seeking a clarification regarding the request for a fear interview:

> "Dear Officer [redacted]

Please confirm that you are denying a fear interview for this minor."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00053.

38. On May 8, 2020, R[redacted].'s legal counsel received the following reply from Assistant Field Office Director [redacted] [redacted]

"Mr. Wedemeyer,

Your client is subject to a lawfully issued final order of removal. The immigration judge denied your motion to reopen and the BIA denied your client's request for a stay of removal. At this time, there is no legal impediment to removal of your client."

Ex. C, Consolidated Emails between Counsel and ORR at 27. *See*, *Id.* at 00049.

39. R[redacted].'s home country of Guatemala has currently suspended deportations from the U.S. after 70 individuals who were deported from the U.S. to Guatemala in the past month tested positive for COVID-19. Mary Louise Kelly & Molly O'Toole, *Guatemala Suspends Deportations From U.S. After 70 Test Positive For Coronavirus*, NPR, April 17, 2020, https://www.npr.org/2020/04/17/837511694/guatemala-suspends-deportations-from-u-s-after-70-test-positive-for-coronavirus ("*Guatemala Suspends Deportations*"); Caitlin Dickerson & Kirk Semple, *U.S. Deported Thousands Amid Covid-19 Outbreak. Some Proved to Be Sick.*, N.Y. Times, April 18, https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala ("*U.S. Deported Thousands*"). The COVID-19 cases on two of these deportation flights alone have accounted for 35 percent of the COVID-19 cases in Guatemala. *Guatemala Suspends Deportations.* According to the Guatemalan President Alejandro Giammattei, "a suspension of deportation flights that began on Thursday [April 16, 2020] would continue until the United States [is] able to assure Guatemalan officials that deportees were being returned free of the coronavirus." *U.S. Deported Thousands*.

40. Should R[redacted]. be reunified with Ms. [redacted] or Mr. [redacted], she would be placed in a loving and stable environment. While in detention, R[redacted] reported being sad much of the time in detention and that she missed her family. She desired to be released to live with her family in North Carolina and hopes to be able to present her claim of fear and stay in the United States.

41. Further, R[redacted]. has a viable asylum claim and is in the process of seeking immigration relief. R[redacted]. is terrified of returning to Guatemala based on the death threats she received from the gang members and the discriminatory treatment, threats, and attacks by members of her community due to her indigenous status and dark skin complexion. Through counsel, she continues to seek reopening of her immigration case. Due to her removal in absentia order, which was the result of her mother's failure to ensure her attendance or to provide any information to R[redacted] regarding, , R[redacted]. has never had an opportunity to present her claim of fear to an asylum officer or immigration judge nor to apply for asylum or other fear-based relief from removal.

42. R[redacted]. will be deported on the next available flight to Guatemala as indicated in multiple email communications by Assistant Field Office Director [redacted] [redacted] *See* Ex. C, at 00049-00050.

43. Because R[redacted]. has two viable sibling sponsors, R[redacted]. is not a flight risk or danger to the community, there is no reason to delay her release. R[redacted]. should be immediately released to Mr. [redacted].

BACKGROUND AND LEGAL FRAMEWORK GOVERNING CUSTODY AND RELEASE OF IMMIGRANT CHILDREN

44. Each year, thousands of unaccompanied immigrant children arrive in the United

States to escape persecution, violence, and abandonment. ORR Facts and Data. In recent years, the U.S. has experienced an influx of children from Central America fleeing egregious levels of crime and violence. In fiscal year 2019, 45% of UACs were from Guatemala, like Petitioner R[redacted]. *Id.*

45. The government's care and custody of immigrant children is governed by the *Flores* Settlement Agreement, a consent decree entered into by the federal government, and two statutes: The Homeland Security Act of 2002, 6 U.S.C. § 279, and the TVPRA, 8 U.S.C. § 1232.

A. The *Flores* Settlement Agreement and March 28, 2020, Temporary Restraining Order

46. In 1997, the United States District Court for the Central District of California approved a consent decree, known as the *Flores* Settlement Agreement, whereby the federal government and the class of "[a]ll minors who are detained in the legal custody of the INS" (and now its successor agencies) agreed to end litigation once the government implemented certain standards for the detention, treatment, and release of immigrant minors. *See Flores, et al. v. Reno*, Case No. CV 85-4544-RJK(Px) (Stipulated Settlement Agreement), https://www.aila.org/File/Related/14111359b.pdf ¶ 10 (last visited April 19, 2020) ("*Flores* Settlement Agreement").

47. The *Flores* Settlement Agreement states that, when ORR "determines that the detention of the minor is not required either to secure her or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, [ORR] shall release a minor from its custody without unnecessary delay." *Id.* ¶ 14. ORR has the authority to determine who qualifies as a suitable sponsor for an immigrant minor, but in doing so, ORR "[u]pon taking

a minor into custody, . . . shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor" and "[s]uch efforts at family reunification shall continue so long as the minor is in . . . custody." *Id.* ¶ 18.

48. The Fourth Circuit has recognized that the *Flores* Settlement Agreement "spells out a general policy favoring less restrictive placements of alien children and their release." *D.B. v. Cardall*, 826 F.3d 721, 732 (4th Cir. 2016). Therefore, "unless detention is necessary to ensure a child's safety or her appearance in immigration court, he must be released without unnecessary delay." *Id.* (citing *Flores* Settlement Agreement ¶ 14).

49. A recent *Flores* ruling has specifically ordered ORR to comply with its obligations in light of the COVID-19 pandemic. On March 28, 2020, Judge Gee of the District Court for the Central District of California, who presides over the matter, granted *Flores* plaintiffs' motion for a TRO in relevant part, ruling that:

> [b]ecause COVID-19 poses unprecedented threats to the safety of Class Members and all who come in contact with them, including ORR . . . staff, healthcare providers, and local populations, . . . any unexplained delay in releasing a child in ORR . . . custody violates . . . the [*Flores* Settlement Agreement], which require[s] [ORR] to release Class Members in their custody without unnecessary delay and make and record efforts to release the Class Members.

Ex. F, Order Granting TRO, ECF No. 740, *Flores v. Barr*, CV 85-4544-DMG (AGRx) (C.D. Cal. March 28, 2020) ("*Flores* TRO Order") at 11. Judge Gee thus ordered ORR to "make every effort to promptly and safely release Class Members in accordance with Paragraphs 14 and 18 of the [*Flores* Settlement Agreement]," *id.* at 14-15, and to show cause as to "why a preliminary injunction should not issue (1) requiring [it] to make and record continuous efforts to release class members; [and] (2) enjoining [it] from keeping minors who have suitable custodians in congregate

custody due to ORR's unexplained failure to promptly release these minors to suitable sponsors under the TVPRA,"[1] *id.* at 13-14.

50. Judge Gee further noted that "COVID-19 has reached pandemic status and, without effective intervention, the CDC projects it will infect up to 200 million people and cause as many as 1.5 million deaths in the United States alone" *id.* at 1, and that "[a]s of March 26, 2020, eight program personnel or foster parents at five ORR care-provider programs located in New York, Washington, and Texas have self-reported testing positive for COVID-19" and [t]here were four confirmed cases among minors in ORR care provider facilities, all in one facility in New York," *id.* at 3. On the issue of balance of harms, Judge Gee ruled that "having information about delays in Class Members' release from ORR . . . custody can help expedite their release from congregate settings that medical experts agree are hotbeds for contagion" and "[t]he severity of the harm to which Plaintiffs are exposed and the public's interest in preventing outbreaks of COVID-19 among families and children in . . . ORR custody that will infect . . . ORR staff, spread to others in geographic proximity, and likely overwhelm local healthcare systems tips the balance of equities sharply in Plaintiffs' favor," *id.* at 12.

51. On April 10, 2020, Judge Gee extended the TRO so that the parties could submit briefs to address newly arisen issues, including evidence indicating that ORR had a "policy of postponing release of all minors in a facility with a confirmed case of COVID-19, though minors could possibly be quarantined safely in a sponsor's home." Ex. G, Order Extending TRO, ECF No. 768, *Flores v. Barr*, CV 85-4544-DMG (AGRx) (C.D. Cal. April 10, 2020) ("*Flores* TRO Order II").

B. The Homeland Security Act

[1] The *Flores* Court will hold the preliminary injunction hearing on April 24, 2020.

52. In 2002, Congress expanded protections for UACs by passing the Homeland Security Act ("HSA"). The HSA transferred responsibility for UAC care and custody from the Immigration and Naturalization Service ("INS") to ORR, an agency within HHS. ORR is not a security agency. Instead, its mission is to "incorporat[e] child welfare values" while it aims to "promptly place an unaccompanied child in the least restrictive setting that is in the best interests of the child." ORR, Unaccompanied Alien Children, https://www.acf.hhs.gov/orr/programs/ucs (last accessed April 20, 2020).

53. Despite the reorganization of agencies mandated by the HSA, the *Flores* Settlement Agreement is binding on all successor agencies to the INS, including ORR. *See* ORR Guide: Children Entering the United States Unaccompanied § 3.3, https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied ("ORR Guide").

C. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

54. In 2008, Congress enacted the TVPRA, a statute that grants legal protections to children in ORR custody and compels ORR to "promptly place unaccompanied alien children in the least restrictive setting that is in the best interests of the child." 8 U.S.C. § 1232(c)(2)(A). "In making such placements, the Secretary may consider danger to self, danger to the community, and risk of flight." *Id.* The TVPRA was enacted primarily to "protect UACs from trafficking and exploitation." *Cardall*, 826 F.3d at 739.

55. The TVPRA defines a UAC as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in

the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).

56. The TVPRA contains several provisions that mirror the protections in the *Flores* Settlement Agreement, which focus on the welfare of the child. Specifically, the TVPRA states that ORR "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)).

57. Notably, ORR has never promulgated regulations under the TVPRA. The only public guidance on ORR's detention and release procedures is the ORR Guide: Children Entering the United States Unaccompanied, alleged to have existed upwards of a decade ago, but not made public until 2015. *See generally* ORR Guide.

58. In reviewing ORR placement practices in 2016, a subcommittee of the Senate Committee on Homeland Security and Governmental Affairs found that ORR "failed to adopt and maintain a regularized, transparent body of policies and procedures concerning the placement of UACs" and castigated the agency for "[s]etting governmental policy on the fly" in a manner "inconsistent with the accountability and transparency that should be expected of every administrative agency." *Flores,* 862, F.3d at 879 n.18.

59. Despite the lack of promulgated regulations that would provide consistency, accountability, and transparency, the ORR Guide provides procedures for the agency to follow regarding placement and release of minors in ORR custody. The ORR guide is regularly updated without notice and opportunity for comment, abruptly changing procedures that affect the lives of children in ORR care without actually promulgating regulations.

60. The ORR Guide mandates that ORR "begin the process of finding family

members and others who may be qualified to care for a [UAC] as soon as the child enters ORR's care." ORR Guide § 2.2. It further requires the timely release of UACs to qualified parents, guardians, relatives, or other adults, known as sponsors. *Id.* § 2.1. Once a potential sponsor has been identified, he must complete (1) an authorization for release of information and (2) a family reunification packet ("FRP"). *Id.* § 2.2.3. ORR must also document the identity of the child, the potential sponsor's identity and address, her relationship to the child, and "evidence verifying the identity of all adults residing with the sponsor and all adult caregivers identified in a sponsor care plan." *Id.* § 2.2.4.

61. After submitting all requisite paperwork, the ORR care provider and third party reviewer—the case coordinator and case manager—may "conclude that the release is safe and the sponsor can care for the physical and mental well-being of the child." *Id.* § 2.7. The case manager and case coordinator would then recommend the minor's release to the ORR Federal Field Specialist ("FFS"). *Id.* The FFS serves as a liaison between the care provider and ORR.

62. All too often, once ORR finally "acts" on a release recommendation, it is only to request yet even more information, services, or evaluations from care providers. The requests from ORR are unguided by any policy or fixed set of criteria and amount to constantly moving targets, which serve only to perpetuate the child's imprisonment indefinitely.[2] In many cases, the care providers, who have already completed the full panoply of release procedures, consider these further requests or requirements made by ORR as unnecessary and, in some cases, harmful. Once care providers collect and relay the additional information that ORR requires, the child again has

[2] For example, the ORR Guide is noticeably silent on what additional evaluations, if any, are required to release a child once the case manager recommends release to a sponsor.

to wait lengthy periods and go through another cycle for yet another response, which will likely not result in release.

63. ORR provides for intra-agency appeals for reunification denials, but these appeals are reserved for Category 1 sponsors (parents or legal guardians). *See id.* § 2.7.8. Additionally, an appeal can only manifest once ORR renders a final decision on reunification. *Id.* (parent or legal guardian may seek an appeal of the decision "within 30 business days of receipt of the *final decision from the ORR Director*") (emphasis added). Because ORR personnel will often request additional information after reunification recommendations are made, final decisions can be delayed past any viable point of relief for the minor. Thus, ORR has created a limited, inaccessible, and virtually meaningless right of appeal that can be postponed indefinitely by ORR personnel or government-contracted personnel at the behest of ORR leadership.

64. In 2018, the average length of stay for children in shelter-type facilities, the least restrictive level of detention, was 60 days. ORR Facts and Data. The average was up to 66 days in FY 2019. *Id.* After release, the vast majority of these children were reunited with a sponsor. Although the average stay is already lengthy for vulnerable children to endure separated from loved ones, many children are detained much longer, for months or even years.

65. For these children, the devastating effect of these delays can include depression, deterioration of mental health, and behavioral problems associated with prolonged detention. Children like R[redacted]. feel a sense of hopelessness stemming from their indefinite detention, particularly once ORR staff members or field professionals provide hope that reunification will soon happen, and yet they remain detained. Discouragement becomes despair, and in some cases, children respond by misbehaving in ways that cause them to face increased restrictions on their movement in custody, exacerbating their already significant detention fatigue. In other cases,

children who fear persecution in their home countries nonetheless opt to accept removal and return to dangerous situations back home rather than endure further detention, which resembles imprisonment in their view.[3]

CLAIMS FOR RELIEF

COUNT I

Violation of the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA")

(Against all Respondents)

66. Paragraphs 1 through 82 are incorporated herein.

67. The TVPRA defines a UAC as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).

68. R[redacted]. meets the definition of a UAC, which ORR has acknowledged by labelling her a UAC and retaining custody over her.

69. The TVPRA states that "an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). "In making such placements, the Secretary may consider danger to self, danger to the community, and risk of flight." *Id.*

[3] It is unlawful for detention to be used as a deterrent, and doing so unlawfully incentivizes children with meritorious claims to self-deport due to detention fatigue. *See Damus v. Nielsen*, No. 18-578 (JEB), 2018 WL 3232515 (D.D.C. July 2, 2018) (granting preliminary injunction prohibiting ICE Field Offices from detaining asylum-seekers absent an individualized determination that they present a flight risk or danger to the community and from denying parole categorically).

70. Here, record evidence shows that R[redacted]. presents no danger to herself or others and is not a flight risk. The TVPRA thus required Respondents to have released R.[redacted]. to one of her sponsor siblings if it identified that Ms. [redacted] or Mr. [redacted] was capable of providing for R.[redacted]. 's physical and mental well-being. Respondents failed to release R[redacted]. to a suitable sponsor through their own delay. R.[redacted].'s sponsors and siblings have been fully cooperative and are ready and willing to receive her.

71. Respondents' apparent reasons for delaying release: R.[redacted].'s prior removal order is not a legitimate basis for their delay in light of the TVPRA's clear mandate.

72. Respondents' actions, as set forth, violated R.[redacted].'s statutory right to prompt placement in the least restrictive setting that is in her best interests under the TVPRA.

COUNT II

Violation of the Administrative Procedure Act ("APA") – Prohibition on Unreasonable Delay in Agency Action

(Against All Respondents Except for Respondent Spagnola)

73. Paragraphs 1 through 89 are incorporated herein.

74. Section 555 of the APA prohibits unlawfully withheld and unreasonably delayed agency action. Within a reasonable amount of time, each agency shall proceed to conclude a matter presented to it and a reviewing court shall compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. §§ 555(b), 706(1). "A claim under § 706(1) of the APA can only proceed when a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take." *Norton v. So. Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004).

75. Respondents have violated the APA by unreasonably delaying placement of

R. [redacted]. in the least restrictive setting in her best interests by reunifying her with Ms. [redacted] and Mr. [redacted] —a discrete action they are required to take under the TVPRA.

COUNT III

Violation of the *Flores* Settlement Agreement and the March 28, 2020 Temporary Restraining Order

(Against All Respondents)

76. Paragraphs 1 through 92 are incorporated herein.

77. Petitioner R[redacted]. is a member of the *Flores* class of "[a]ll minors who are detained in the legal custody of the INS" and its successor agencies, including ORR. *Flores* Agreement ¶ 10.

78. Any member of the *Flores* class "may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards" of the *Flores* Settlement Agreement. *Id.* ¶ 24B.

79. Paragraph 11 of the Flores Settlement Agreement requires that Respondents treat children, including Petitioners, "with dignity, respect and special concern for their particular vulnerability as minors," and to place them in "the least restrictive setting appropriate to the minor's age and special needs."

80. Paragraph 14 of the *Flores* Settlement Agreement requires that when detention of a minor "is not required either to secure her or her timely appearance before [DHS] or the immigration court, or to ensure the minor's safety or that of others, [the government] shall release a minor from its custody without unnecessary delay."

81. Paragraph 18 of the *Flores* Settlement Agreement requires that the government "make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor" and that "[s]uch efforts at family reunification shall continue so long as the minor is in . . . custody."

82. Finally, the recent March 28, 2020 Order Granting TRO in the *Flores* litigation has ruled that "[b]ecause COVID-19 poses unprecedented threats to the safety of Class Members and all who come in contact with them . . . any unexplained delay in releasing a child in ORR . . . custody violates . . . the [*Flores* Settlement Agreement], which require[s] [ORR] to release Class Members in their custody without unnecessary delay and make and record efforts to release the Class Members." *Flores* TRO Order at 11.

83. Respondents did not make prompt and continuous efforts to release R[redacted]. from ORR custody without unnecessary delay to Ms. [redacted] and Mr. [redacted], despite the fact that detention was not required to secure R[redacted].'s timely appearance in immigration proceedings or to ensure her safety or that of others.

84. Respondents' failure to release R[redacted]. to her siblings, whom were willing and viable sponsors, violated Respondents' obligations under the *Flores* Settlement Agreement.

COUNT IV

Violation of the Procedural Due Process Component of the Due Process Clause of the Fifth Amendment to the U.S. Constitution

(Against All Respondents)

85. Paragraphs 1 through 101 are incorporated herein.

86. The Due Process Clause of the Fifth Amendment to the U.S. Constitution

provides that [n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

87. The "procedural component of due process imposes constraints on governmental decisions that deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause." *Cardall*, 826 F.3d at 741 (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)).

88. R[redacted].'s continued detention implicated protected liberty interests, the interest in being free from detention and her interest in family unity, the continuing denial of which obligates the government to provide R[redacted]. with notice and a meaningful opportunity to be heard in a manner that is appropriate for the nature of their case. *See id.* (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)).

89. Respondents had not afforded R[redacted]., Ms. [redacted], or Mr. [redacted] any notice or opportunity to be heard regarding their continued detention of R[redacted]. and refusal to reunify. While the ORR Policy Guide provides a right to appeal when ORR denies the reunification application of a parent or legal guardian, such right of appeal is not available here, where ORR has not issued a decision denying reunification and Ms. [redacted] nor Mr. [redacted] is not R[redacted].'s parent or legal guardian.

90. Giving Respondents additional time to provide a more fulsome process will, at the point, fail to ameliorate the harm done to R[redacted], as she was not reunified and is now scheduled to be repatriated on the next available flight to Guatemala, a country in which she claims fear.

91. Respondents have violated R[redacted].'s right to procedural due process under the Fifth Amendment through their delay in reunifying R[redacted]. with Ms. [redacted] or Mr. [redacted]. Respondents' actions will not be cured by allowing them

additional time to provide a more meaningful process as R[redacted]. has been picked up from the shelter by ICE and is scheduled to be repatriated on the next available flight to Guatemala. Therefore, this Court should intervene and order R[redacted].'s reunification with her sister, Ms. [redacted] or her brother, [redacted] so she can have an opportunity to file an asylum claim and is not repatriated to a country in which she has fear of return.

COUNT V

Habeas Corpus

(Against All Respondents)

92. Paragraphs 1 through 108 are incorporated herein.

93. As set forth above, Respondents held Petitioner R[redacted]. in federal custody in violation of federal statutes and the U.S. Constitution, and ICE is proceeding to unlawfully remove R[redacted]. to a country in which she claims fear without first permitting a fear interview, and Petitioner R[redacted]. accordingly seeks a writ of habeas corpus.

COUNT VI

Violation of Withholding of Removal Statute, 8 U.S.C. § 1231(b)(3), and Administrative Procedure Act, 5 U.S.C. § 706(2) (Arbitrary and Capricious Agency Action and Action in Excess of Authority)

94. Petitioner reallege and incorporate the allegations of all the preceding paragraphs.

95. DHS is attempting to remove Petitioner to her home country of Guatemala, where she and her family were threatened with specific death threats and attacked by the MS-13 and Mara 18 gangs and their affiliates based on race and her particular social group.

96. The 1951 Refugee Convention and the 1967 Protocol relating to the Status of

Refugees, to which the United States is party, requires that the United States not "expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." United Nations Convention Relating to the Status of Refugees, art. 33, July 28, 1951, 189 U.N.T.S. 150; *see also* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

97. The Refugee Convention prohibits the return of individuals to countries where they would face persecution on a protected ground as well as to countries that would deport them to conditions of persecution.

98. Congress has codified these prohibitions in the "withholding of removal" provision at INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), which bars the removal of an individual to a country where it is more likely than not that he or she would face persecution.

99. Pursuant to regulation, only an Immigration Judge can determine whether an individual faces such a risk of persecution and is entitled to withholding of removal after full removal proceedings in immigration court. *See* 8 C.F.R. § 1208.16(a).

100. Respondents' attempt to remove Petitioner to Guatemala, where she was subjected to persecution on account of various protected grounds including her race and status as young, female children without parental protection violate 8 U.S.C. § 1231(b)(3)(A), which states that an individual "may not" be removed to a country if that individual's "life or freedom would be threatened in that country because of the [individual's] race, religion,

nationality, membership in a particular social group, or political opinion."

101. Respondents' attempt to remove Petitioner to Guatemala in violation of 8 U.S.C. § 1231(b)(3) violates the APA in that Respondents' actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), and "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C).

PRAYER FOR RELIEF

WHEREFORE, R[redacted]. respectfully requests that the Court:

A. Assume jurisdiction over this matter;

B. Grant R[redacted]'s petition for a writ of habeas corpus;

C. Order Respondents to immediately release R[redacted]. to the custody of Ms. [redacted] or Mr. [redacted];

D. Stay the removal order against Petitioner to maintain the status quo and allow Petitioner to seek relief on the aforementioned counts from this Court;

E. Declare that the Respondents' actions, including the prolonged detention of R[redacted]. violated the TVPRA, Section 555 of the APA, the *Flores* Settlement Agreement and March 28, 2020 TRO, and the Due Process Clause of the Fifth Amendment;

F. Order that Respondents comply with 8 C.F.R. §§ 239.1 and 1239.1 by issuing and filing a Notice to Appear for Petitioner to commence removal proceedings conducted under INA § 240;

G. Order that Respondents comply with 8 U.S.C. § 1232(a)(5)(D) by placing Petitioner in full removal proceedings under INA § 240, with all protections

provided in such proceedings, including opportunity to present her asylum claim to a USCIS asylum officer in a non-adversarial setting;

H. Declare that Respondents' failure to place Petitioner in full removal proceedings under INA § 240 violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1232(a)(5)(D), and 5 U.S.C. § 706;

I. Order that the Government reimburse the attorneys' fees and expenses incurred in connection with this Petition and Complaint, under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and

J. Grant any other relief this Court deems just and proper.

Date: May 14, 2020

Respectfully submitted,

/S/ Allyson Page

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Attorney for Petitioner-Plaintiff R. [redacted].

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner R.[redacted]. because I am one of the Petitioner's attorneys. My colleagues have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: May 14, 2020

/S/ Allyson Page

Allyson Page
Louisiana Bar No. 35949
Immigartion Services and Legal Advocacy
2714 Canal St. Suite 300
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Attorney for Petitioner-Plaintiff R.[redacted].

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2020, the foregoing document was electronically filed through CM/ECF with the Clerk of Court for the United States District Court for the Western District of Louisiana.

I further certify that a copy of the foregoing was deposited with FedEx, for delivery to: John J, Gaupp, Chief of Civil Division, U.S. Attorney's Office, Western District of Louisiana, Russell B. Long Federal Courthouse U.S. Attorney's Office 777 Florida St. Suite 208 Baton Rouge, Louisiana 70801 was deposited with FedEx, for delivery to the below Respondents:

WILLIAM P. BARR, in his official capacity as United States Attorney General
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Washington, D.C. 20530

U.S. DEPARTMENT OF HOMELAND SECURITY
245 Murray Lane, SW
Washington, D.C. 20528

CHAD F. WOLF, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security
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