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

[MINOR'S NAME-1], a minor, by and through his next friend [SPONSOR'S NAME-1], and [SPONSOR'S NAME-1]; [MINOR'S NAME-2], a minor, by and through his next friend [SPONSOR'S NAME-2], and [SPONSOR'S NAME-2]; [MINOR'S NAME-3], a minor, by and through her next friend [SPONSOR'S NAME-3], and [SPONSOR'S NAME-3]; [MINOR'S NAME-4], a minor, by and through his next friend [SPONSOR'S NAME-4]; and [SPONSOR'S NAME-4] *On behalf of themselves and others similarly situated* Plaintiffs/Petitioners, v. SCOTT LLOYD, Director, Office of Refugee Resettlement; JONATHAN WHITE, Deputy Director, Office of Refugee Resettlement; STEVEN WAGNER, Acting 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; 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 Defendants/Respondents.	Case No.[] **SECOND AMENDED CLASS ACTION COMPLAINT AND PETITION FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This class action lawsuit challenges and seeks redress from the government's prolonged detention of immigrant children across the state of Virginia. Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2] [MINOR'S NAME-3], and [MINOR'S NAME-4][1] are four of many thousands of children who have made the long and perilous journey to the United States surviving trauma and fleeing violence and persecution in their home countries. In recognition of both the plight and vulnerability of this population, Congress enacted a series of laws and Federal policies that have been put in place specifically to offer important protection to these children. These laws and policies establish a preference for release over lengthy detention, and require, *inter alia*, that these children promptly be reunited with loved ones in the United States while their immigration cases are adjudicated.

2. Defendants, representing the very the government agency responsible for safeguarding the child plaintiffs' well-being and that of other vulnerable children like them by carrying out laws and procedures established by Congress, have committed egregious violations of the law by choosing to ignore them. Defendants' actions reflect the current administration's vilification and targeting of these children. President Trump has said that large numbers of immigrant children are gang members and "animals;"[2] Attorney General Sessions has described

[1] In compliance with Local Civil Rule 7(C) and Fed.R.Civ.P. 5.2, [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4], minors, are identified only by their initials. Their names and other personal identifiers such as date of birth, home address and phone number are also redacted from the exhibits attached hereto. An unredacted copy of all exhibits will be served upon Defendants/Respondents.

[2] Remarks by President Trump to Law Enforcement Officials on MS-13, Issued on July 28, 2017. *See* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-law-enforcement-officials-ms-13/ (last accessed May 2, 2018).

them as "wolves in sheep clothing;"[3] and both men have denounced the laws—which they are constitutionally bound to carry out—that protect these children by, for example, denigrating the Federal statute that protects immigrant children as "loopholes."[4] Sadly, the Office of Refugee Resettlement ("ORR") has adopted this position as well, referring to the release of children in their care to sponsors as a "dangerous loophole[] in U.S. law."[5]

3. As might be expected, when a high-level government official considers a child protection statute passed by Congress to be a "dangerous loophole in U.S. law," that official will take steps to undermine the protections offered by the statute. Indeed, under Defendant Scott Lloyd, whom President Trump appointed to head ORR, the agency responsible for the care of immigrant children like the child plaintiffs in this case, the process of reunifying the immigrant children as required by statute has ground to a virtual halt, trapping these children in highly restrictive government-controlled facilities as if they were prisoners serving out criminal sentences without any semblance of due process.[6]

4. That problem could not be more apparent than in the cases of [MINOR'S NAME-1] and [MINOR'S NAME-2] Recently, the Federal District Court of the Southern District of

---

[3] Remarks by Attorney General Sessions to Federal Law Enforcement in Boston, Delivered September 21, 2017. *See* https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about (last accessed May 2, 2018).

[4] President Donald J. Trump's Letter to House and Senate Leaders & Immigration Principles and Policies, Issued October 8, 2017. *See* https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/ (last accessed May 2, 2018); Attorney General Sessions' Remarks on Immigration Enforcement, April 11, 2018. *See* https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-immigration-enforcement (last accessed May 2, 2018).

[5] Unaccompanied Alien Children State and Community Placement Monthly Report Update, April 2, 2018. *See* https://www.acf.hhs.gov/media/press/2018/unaccompanied-alien-children-state-and-community-placement-monthly-report-update (last accessed May 2, 2018).

[6] *See, e.g.*, *L.V.M. v. Lloyd*, 18 CIV. 1453 (PAC), 2018 WL 3133965 (S.D.N.Y. June 27, 2018).

New York ordered ORR to halt the policy of requiring Mr. Lloyd to personally review and approve release and reunification for any child who was or had ever been in staff secure or secure ORR custody.[7] In the first six months of implementing this new, now overruled procedure (June to December 2017), Defendant Lloyd slowed the release of detained children to a trickle.[8] Defendant Lloyd has and continues to implement policy changes under the guise of protecting children and communities, designed to turn ORR into a law enforcement agency rather than a child protective agency.[9]

5. Child plaintiffs [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4] are only four of the dozens of children in Virginia who have been victimized by the Trump administration and Defendant Lloyd, whose policies have caused them and other children like them to be held in ORR custody for excessive amounts of time, and have been illegally and improperly denied reunification with their families.

---

[7] *Id.;* Statement of Defendant Lloyd before the Senate Judiciary Committee of June 21, 2017. *See* https://www.acf.hhs.gov/olab/resource/testimony-of-scott-lloyd-ms-13 (last accessed July 16, 2018).

[8] *See L.V.M. v. Lloyd, et al.*, 1:18-cv-01453, Complaint (S.D.N.Y.), regarding the effects of these policies on children imprisoned in New York.

[9] For example, Defendant Lloyd testified before the Senate Judiciary Committee a year ago, saying in part,

> "This year we have begun work in the area of community safety, which is one of the Administration's top priorities. . . This prompted the creation of the ORR Community Safety Initiative. . . Local DHS staffs are training ORR post-release services providers on how to identify MS-13 and other gang colors and signs and who to notify if they become aware of MS-13 and other gang activity. Some of our Federal field specialists, who act as local ORR liaisons with care providers and stakeholders, have begun attending local MS-13 task force meetings to strengthen partnerships with local law enforcement and stay informed about MS-13 and other gang activity in their areas. ORR plans to expand this effort."

Statement of Defendant Lloyd before the Senate Judiciary Committee of June 21, 2017. *See* https://www.acf.hhs.gov/olab/resource/testimony-of-scott-lloyd-ms-13 (last accessed July 16, 2018).

- [MINOR'S NAME-1] spent five months in ORR custody, primarily in medium or high security detention. He had been held in these restrictive settings despite having a fit, loving, and capable potential sponsor, his brother-in-law [SPONSOR'S NAME-1] ("[SPONSOR'S NAME-1]") ready and willing to bring him home, in direct contravention to these laws and policies.[10]
- [MINOR'S NAME-2] has spent over three months in ORR custody and over a month in high security detention. He has been held in these restrictive settings despite having a fit, loving, and capable potential sponsor in his sister, [SPONSOR'S NAME-2] ("[SPONSOR'S NAME-2]").
- [MINOR'S NAME-3] has spent over three months in ORR custody, in shelter-level detention. She has been held despite having a fit, loving, and capable sponsor, her sister, [SPONSOR'S NAME-3], from whom she was separated when they arrived together at the border despite having lived with and been raised by [SPONSOR'S NAME-3] since the age of 5.
- [MINOR'S NAME-4] has been in ORR custody, in shelter-level detention, for over four months. He likewise has a fit, loving, and capable sponsor, his sister, [SPONSOR'S NAME-4], ready and willing to bring him home.

6. Plaintiffs [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4] are typical of many children in the United States, and specifically in Virginia, who are being victimized by Defendant Lloyd's new regime for handling immigrant children. They deserve the opportunity to live in a healthy, nurturing, and healing environment

[10] Although [MINOR'S NAME-1] was released to [SPONSOR'S NAME-1] after this suit was filed, he remains a plaintiff in the case.

that their families are prepared to provide while awaiting adjudication of their immigration claims. Each child has been close with his or her sponsor since they were young. Placing each child Plaintiff with his or her family is in each child's best interests, and Defendants should not be permitted to delay this reunification any further.

7. Like many of the children held by ORR in Virginia, [MINOR'S NAME-1] and [MINOR'S NAME-2] have been in a "staff secure" or "secure" detention center for months. [MINOR'S NAME-1] was held in these settings for five months from []. **Ex. 5**, [] Discharge Notification. While held in these centers, [MINOR'S NAME-1] fought episodes of depression, despair, and fear. The conditions of this unnecessary confinement, the high level of security of these facilities, and Defendants' dilatory approach to reunification combined into a psychological assault that repeatedly tested an already traumatized child and only further complicated [MINOR'S NAME-1]'s release. And unfortunately, [MINOR'S NAME-1]'s experience is not unique.

8. [MINOR'S NAME-2] has been held in a secure setting at [] since [] and has been detained by ORR for over three months, with no end in sight. **Ex. 12**, [] Discharge Notification. Since being placed at [], [MINOR'S NAME-2] has fought episodes of depression, despair, and fear. He feels sad and hopeless, and sequesters himself in his room to avoid problems with other detained children and as a coping mechanism for his despair.

9. Like a large number of UACs in Virginia, plaintiffs [MINOR'S NAME-3], [MINOR'S NAME-4] has been in ORR "shelter care" for months. [MINOR'S NAME-3] and [MINOR'S NAME-4] both came to the U.S. with their sisters, and were separated from their sisters and placed in ORR custody at the border. [MINOR'S NAME-3] had lived with her older sister, [SPONSOR'S NAME-3], apart from her parents, since the age of 5. [SPONSOR'S

NAME-3] had raised her and was her primary caregiver until they were separated at the U.S. border. [MINOR'S NAME-4] came with his older sister to join his other older sister, [SPONSOR'S NAME-4]. He has a close relationship with both sisters. [MINOR'S NAME-4]'s sister from whom he was separated at the border has been paroled into the country and is currently living with [SPONSOR'S NAME-4]. [MINOR'S NAME-4] spoke to his other sister (and current sponsor), [SPONSOR'S NAME-4], nearly every day after she left for the United States a few years ago. He also spoke to [SPONSOR'S NAME-4]'s husband two to four times a week by phone.

10. Also like many children in ORR custody, each child plaintiff has a potential sponsor ready and eager to bring him or her home. [MINOR'S NAME-1]'s brother-in-law, [SPONSOR'S NAME-1], who resides and works in New Jersey sought to sponsor [MINOR'S NAME-1] and take custody of him. [SPONSOR'S NAME-1] formally applied with ORR to be [MINOR'S NAME-1]'s sponsor and submitted his biographical and biometric information. On [], ORR prepared a notification to ICE Chief Counsel stating that "ORR has determined that [[MINOR'S NAME-1]] should be released to a sponsor" and listing [SPONSOR'S NAME-1] as that sponsor. **Ex. 6**, ORR Notification to ICE Chief Counsel.

11. [SPONSOR'S NAME-2] also submitted her paperwork and fingerprints and is ready and eager to bring [MINOR'S NAME-2] home. She lives and works in [], and has a close relationship with [MINOR'S NAME-2] Indeed, she is the only sibling on whom he felt he could rely, and who he felt cared about him, after his mother died over two years ago. Although [SPONSOR'S NAME-2] has submitted all required paperwork and documents, [MINOR'S NAME-2]'s reunification is stalled because other household members were hesitant to provide fingerprints. The only options presented to [SPONSOR'S NAME-2] were to have all household

members get fingerprinted, for the household members who did not want to be fingerprinted to move out, or to find another sponsor. **Ex. 11**, [] Case Management Notes. [MINOR'S NAME-2] came to the U.S. to reunite with [SPONSOR'S NAME-2], and his only goal is to be released from ORR custody and go live with his family.

12. [MINOR'S NAME-3]'s sister, [SPONSOR'S NAME-3], has been in contact with ORR since [MINOR'S NAME-3]'s placement in ORR custody. Upon information and belief, she was initially told she could not sponsor her younger sister, whom she had raised, because the adult roommates living in her apartment refused to send any biographical or biometric information to ORR. Only after finding a new place to live with her other adult siblings, approximately three months after arriving and after [MINOR'S NAME-3] was taken from her and placed in ORR custody, was she able to officially begin the sponsorship process.

13. [MINOR'S NAME-4]'s sister, [SPONSOR'S NAME-4], has submitted all the requisite paperwork to be [MINOR'S NAME-4]'s sponsor. She lives with her partner and [MINOR'S NAME-4]'s other sister, [SISTER], with whom he traveled to the U.S. and from whom he was separated at the border and placed in ORR custody. Although [SPONSOR'S NAME-4] and her husband both submitted all required documentation and passed their background checks, upon information and belief, [SISTER] was unable to be scheduled for her background check and fingerprint appointment because ICE had confiscated her identification upon apprehension and she did not have another form of valid photo ID. Upon information and belief, [SISTER] was only recently able to get a new ID and submitted her fingerprints this past week. Upon information and belief, her fingerprints, as a household member of the sponsor's household, were the only "requirement" delaying [MINOR'S NAME-4]'s reunification with his family.

14. ORR's reunification process is riddled with due process violations. Government contractors are the primary gate keepers for a sponsor's ability to even complete a reunification application, before a sponsor receives any official ORR decision. They have nearly unfettered power to permit sponsorship applications to go forward, to deny sponsorship as not being viable before the application has been completed (or even begun), and to forward the application for final decision to supervisors. **Ex. 3**, ORR Policy Guide at §§ 2.3.3, 2.3.4. In wielding this power, upon information and belief, they are subjected to pressures from the current administration and directives, not necessarily existing in the ORR Policy Guide, from ORR administrators including Defendant Scott Lloyd. At the same time, they are charged with directly assisting sponsors in completing the application in the first place. **Ex. 3** at §2.2.3.

15. 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 analysis 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* **Ex. 3** 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.

16. Furthermore, on April 13, 2018, Defendants Wagner and Lloyd signed a Memorandum of Agreement (MOA) with Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE) agreeing to vastly expand the information collected from

sponsors *and* household members and to share that information between the agencies. **Ex. 4**, Memorandum of Agreement. Upon information and belief, ORR began requiring biographical and biometric information from all adults in [SPONSOR'S NAME-1]'s household, to be shared with DHS to be used for enforcement purposes, in order to approve [MINOR'S NAME-1]'s placement with [SPONSOR'S NAME-1]. Because of the new policies and agreements implementing expansive collection of information and information sharing with ICE, the other adults in [SPONSOR'S NAME-1]'s house were afraid to submit their biographical and biometric information.[11] Upon information and belief, the MOA is likewise the reason ORR has now required biographical and biometric information from all adults in the households of each child plaintiff's sponsor, many of whom are afraid or unwilling to submit the required documents and biometric information. Even children whose sponsors have been able to convince all household members to submit biographical information and fingerprints face a prolonged detention by ORR because significantly more time is need not only to collect the information and coordinate biometric appointments, but also to process all the biometric data given the drastic increase in demand stemming from this policy.

17. Upon information and belief, the processing of fingerprints alone is now taking twice as long as a result of this policy (a month instead of one to two weeks). Upon information and belief, beyond processing time, significantly more time is required for collecting the information and documents necessary to even schedule biometric appointments for those household members willing to submit them, and those appointments are being scheduled as far as one to two months out, further prolonging children's time in government custody. As a result

[11] [MINOR'S NAME-1] was released to [SPONSOR'S NAME-1]'s custody one week after the initial filing of this action, without his household members having submitted their biomentric or biographical information.

of ORR's overly expansive, intrusive information collection and its new agreement with DHS to transfer all information to ICE for immigration enforcement purposes, [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and dozens of children in Virginia remained or remain in government custody rather than in the home of their capable and loving families.

18. Given the specter of indefinite detention, the child plaintiffs now seek the Court's intervention on behalf of themselves and a class of minors similarly situated to him so that they can be released from ORR detention to their families' care, and so that immigrant children in custody in Virginia will no longer be subjected to endless unjustified government detention and to the grievous harms that children suffer when separated from their families. The 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 [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the other children in the plaintiff class, and [SPONSOR'S NAME-1], [SPONSOR'S NAME-2], Ms. [SPONSOR'S NAME-3], [SPONSOR'S NAME-4], 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

19. 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).

20. 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) because Plaintiffs [MINOR'S NAME-1], [MINOR'S NAME-3], and [MINOR'S NAME-4] are detained within this district.

THE PARTIES

21. Plaintiff [MINOR'S NAME-1] is a []-year-old boy from [] who was detained by the defendants beginning on or about [] until [].

22. Plaintiff [SPONSOR'S NAME-1] is [MINOR'S NAME-1]'s brother-in-law. He lives in New Jersey. Prior to [MINOR'S NAME-1]'s detention by defendants, [SPONSOR'S NAME-1] has had a long history of contact and a close relationship with him from an early age.

23. Plaintiff [MINOR'S NAME-2] is a []-year-old boy from [] who has been detained by the defendants beginning on or about [].

24. Plaintiff [SPONSOR'S NAME-2] is [MINOR'S NAME-2]'s sister and ORR sponsor. She lives in []. Prior to [MINOR'S NAME-2]'s detention by defendants, [SPONSOR'S NAME-2] has had a long history of contact and a close relationship with [MINOR'S NAME-2] from an early age.

25. Plaintiff [MINOR'S NAME-3] is a []-year-old girl from [] who has been detained by the defendants beginning on or about [].

26. Plaintiff [SPONSOR'S NAME-3] is [MINOR'S NAME-3]'s sister and has been her primary caregiver since she was 5 years old. She lives in [].

27. Plaintiff [MINOR'S NAME-4] is a []-year-old boy from [] who has been detained by defendants beginning on or about [].

28. Plaintiff [SPONSOR'S NAME-4] is [MINOR'S NAME-4]'s sister and ORR sponsor. She lives in []. Prior to [MINOR'S NAME-4]'s detention by defendants, [SPONSOR'S NAME-4] had a long history of contact and a close relationship with him from an early age.

29. 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.

30. Defendant Steven Wagner is the Acting 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. Mr. Wagner is a legal custodian of the child plaintiffs and is sued in his official capacity.

31. Defendant Scott Lloyd is the Director of the Office of Refugee Resettlement ("ORR"). ORR is the government entity directly responsible for the detention of the child plaintiffs. Mr. Lloyd is a legal custodian of the child plaintiffs and is sued in his official capacity.

32. Defendant Jonathan White is the Deputy Director of ORR. Mr. White is a legal custodian of the child plaintiffs and is sued in his official capacity.

33. Defendant Natasha David is a Federal Field Specialist at ORR. Ms. David is a legal custodian of the child plaintiffs and is sued in her official capacity. She is the federal official who oversees the ORR contract with Northern Virginia Juvenile Detention Center, where

[MINOR'S NAME-1] was detained, as well as the ORR contract with Youth For Tomorrow, where [MINOR'S NAME-4] and [MINOR'S NAME-3] are detained, and Shenandoah Valley Juvenile Detention Center, where [MINOR'S NAME-2] is detained.

34. Defendant Johnitha McNair is the Executive Director of Northern Virginia Juvenile Detention Center ("NOVA"), and is the warden of that facility. [MINOR'S NAME-1] was held at NOVA until [], approximately one week after the initial filing of this suit. Ms. McNair was a legal custodian of [MINOR'S NAME-1] and is sued in her official capacity.

35. Defendant Timothy Smith is the Executive Director of Shenandoah Valley Juvenile Detention Center ("SVJC"), and is the warden of that facility, where [MINOR'S NAME-2] is currently detained. Mr. Smith is a legal custodian of [MINOR'S NAME-2] and is sued in his official capacity.

36. Defendant Gary L. Jones is the Chief Executive Officer of Youth For Tomorrow ("YFT"), and is the warden of that facility, where [MINOR'S NAME-3] and [MINOR'S NAME-4] are currently being held. Dr. Jones is a legal custodian of [MINOR'S NAME-3] and [MINOR'S NAME-4] and is sued in his official capacity.

BACKGROUND AND LEGAL FRAMEWORK

A. Legal Framework and Policies Governing Custody and Release of Immigrant Children

37. Each year, thousands of unaccompanied alien children ("UAC") arrive in the United States to escape persecution in foreign countries, some with relatives and some alone.[12] In recent years, the U.S. has seen an influx of children from Mexico and Central America fleeing

[12] *See* Office of Refugee Resettlement: Facts and Data, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data (last accessed May 2, 2018).

endemic levels of crime and violence that have made those countries extremely dangerous, especially for children and young adults.[13] In FY2017, 23% of UACs had [] as their country of origin ("COO"), where [MINOR'S NAME-1], [MINOR'S NAME-3] and [MINOR'S NAME-4] are from.[14] In the same fiscal year, 45% of UACs came from [], where [MINOR'S NAME-2] is from, and 27% came from El Salvador.[15]

38. The care and custody of UACs by the government 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 to 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"), still effective today, and binding on DHS and ORR, that sets national standards for the detention, release, and treatment of immigrant children in government custody.

39. In addition to setting certain minimal detention standards, *Flores* guarantees that children shall be released "**without unnecessary delay**" while they await their immigration status and requires the Government to undertake "prompt and continuous efforts" towards family reunification. As the Fourth Circuit Court of Appeals explained, "[t]he *Flores* Agreement spells out a general policy favoring less restrictive placements of alien children (rather than more restrictive ones) and their release (rather than detention)." *D.B. v. Cardall*, 826 F.3d 721,

---

[13] *See* ACF Fact Sheet, https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf (last accessed May 2, 2018).

[14] *See* Office of Refugee Resettlement: Facts and Data, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data (last accessed July 20, 2018).

[15] *Id.*

732 (4th Cir. 2016). Under the Agreement, "[U]nless detention is necessary to ensure a child's safety or his appearance in immigration court, he *must* be released without unnecessary delay, preferably to a parent or legal guardian." *Id.* (citing *Flores* Agreement ¶ 14) (emphasis added) (internal citations omitted). The *Flores* consent decree also gives these children the right to a bond hearing before an immigration judge.[16] Moreover "[t]he child may be detained in a secure facility [i.e., the most restrictive] only under specified limited circumstances, and then only when no less restrictive alternative is available and appropriate." *Id.*

40. In 2002, Congress took further action to protect this vulnerable population when it passed the Homeland Security Act ("HSA") and transferred the care and custody of unaccompanied immigrant children from the Immigration and Naturalization Service ("INS") to the Office of Refugee Resettlement, housed within the Department of Health and Human Services. ORR is not a security agency; its mission is to "incorporate[e] child welfare values" into the care and placement of unaccompanied immigrant children. Despite the reorganization mandated by the HSA, the *Flores* Agreement is binding on all successor agencies to the INS,[17] including ORR.[18]

[16] The *Flores* bond hearing does not empower an immigration judge to order a child's release from ORR custody or even to review the reunification process. It merely permits the immigration judge to determine whether a child is a danger to the community, thus substantiating or contradicting ORR's claims that it continues to have authority to detain a child. *See Flores v. Sessions*, 862 F.3d 863, 867-69 (9th Cir. 2017).

[17] The HSA transferred functions of INS to several agencies within the newly created Department of Homeland Security.

[18] The ORR recognizes its continuing obligations under the *Flores* Agreement. *See* **Ex. 3**, Office of Refugee Resettlement, ORR Guide: Children Entering the United States Unaccompanied ("ORR Guide"), Sec. 3.3 (p. 46) (last accessed July 17, 2017) (outlining obligations imposed by *Flores* Agreement on ORR care provider facilities).

41. 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.

42. Again, 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.*

B. ORR's Policy-making Background

43. ORR has never promulgated regulations under the TVPRA. 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. **Ex. 3**, ORR Policy Guide**.** ORR edits and amends this guide as often as once a week and does so without any explanation or announcement

of the changes. ORR also regularly advises its staff and service providers of nonpublic changes to this guide by email or phone.

44. Reviewing ORR's placement practices in 2016, a subcommittee of the Senate Committee on Homeland Security and Governmental Affairs found that ORR had "failed to adopt and maintain a regularized, transparent body of policies and procedures concerning the placement of UACs" and castigated the agency for what it called "[s]etting governmental policy on the fly" in a manner "inconsistent with the accountability and transparency that should be expected of every administrative agency." And although it is crafted without the required public accountability and transparency over ORR's activities, the online guide does provide a set of procedures for the agency to follow when determining the placement and release of children in its care.

45. These procedures are applicable to over 11,000 children in ORR custody nationwide. Four facilities in Virginia have contracts with HHS to house children in ORR custody. One of these facilities is [], a "shelter care" facility, which has the lowest level security. [MINOR'S NAME-3], and [MINOR'S NAME-4] are currently held at []. Two are "secure" facilities housed in juvenile detention centers: the [] facility where [MINOR'S NAME-1] was held and [] where [MINOR'S NAME-2] is currently being held. One additional facility is a long-term foster care facility for UACs whom ORR considers (whether correctly or incorrectly) to have no sponsor.

46. Beginning when a child comes into ORR custody, the agency's online guide provides that ORR may place him or her in one of three levels of care based on an assessment of the level of security risk and harm to self or others that the child poses: (i) "shelter care" is the least restrictive custodial setting; (ii) "staff secure" is the intermediate level; and (iii) "secure"

care is the most restrictive level.[19] Secure facilities are like juvenile jails; there are only three such facilities in use nationwide, one in California and two in Virginia: [] in [] where [MINOR'S NAME-2] is detained, and [] in [], where [MINOR'S NAME-1] was detained. Staff-secure facilities, while not using locked pods or cells, are still very restrictive in that children's movement inside the unit is controlled; children are not permitted to leave the facility except to attend court; outdoor recreation is limited to one hour a day in a fenced in area; and there is a higher staff-to-child ratio than in shelter units. Shelter-level placements, while less restrictive than staff-secure or secure custody, are nonetheless much more restrictive than a home environment. Children are not permitted to move between rooms or up and down the stairs without staff permission; external doors are locked; children are deprived of human touch and even prevented from hugging a sibling, and time outdoors is limited. For example, upon information and belief, children at YFT are typically permitted only one outgoing call a week for 20 minutes to their respective sponsors.

47. ORR places children in secure or staff-secure settings (either initially upon entry into the ORR system or as the result of a "step up" once the child is already in ORR custody) for a variety of reasons, including disruptive behaviors, even those tied to mental health;[20] an expression of a desire to leave ORR custody, which can be construed as making the child an "escape risk"; and other disclosures of behaviors or thoughts deemed to raise safety concerns, including feelings expressed in confidence to mental health professionals or social workers

[19] Children can also be placed in Residential Treatment Centers, given psychiatric or psychological issues, or in long-term or transitional foster care.

[20] ORR's ability to address mental-health linked behavioral issues in more therapeutic Residential Treatment Centers (*see* **Ex. 3**, at § 1.4.6) is limited because there are only two nationwide.

contracted by ORR to care for children. Being placed in higher security detention significantly prolongs a child's overall time in ORR custody. *See, e.g., L.V.M. v. Lloyd*, No. 18 CIV. 1453 (PAC), 2018 WL 3133965 (S.D.N.Y. June 27, 2018). ORR's online guide also contains procedures governing the release of children in its care. The guide provides for ORR to "begin[] the process of finding family members and others who may be qualified to care for an unaccompanied alien child as soon as the child enters ORR's care." For children without a viable sponsor in the U.S., ORR has a long-term foster-care program through which children who have demonstrated "safe behavior in a non-secure setting" can be placed with families in the community, rather than a shelter.

48. ORR also has policies and procedures that "require the timely release of children and youth to qualified parents, guardians, relatives or other adults, referred to as 'sponsors.'" ORR prioritizes placement with sponsors as follows: Category 1 sponsors are parents or legal guardians; Category 2 sponsors are immediate relatives, including brothers, sisters, aunts, uncles, grandparents, and first cousins; Category 3 sponsors are all other adults, including relatives or unrelated adults like family friends. [ORR Guide § 2.2.1.]. ORR allows itself to deny release to a parent or legal guardian where ORR itself determines that "there is substantial evidence that the child would be at risk of harm if released to the parent or legal guardian" without requiring termination of parental rights or even a petition before a juvenile or family court. *Id.* 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* **Ex. 3** at §2.2.4; *see also, Ms. L. et al., v. U.S. Immigration and Customs Enforcement, et al.*, 302 F.Supp.3d 1149 (S.D. Cal. 2018), White Decl. ¶ 39, July 5, 2018, ECF No. 86.

49. 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. Historically, the FFS then either approved or denied release or requested more information. Prior to 2017, children placed in staff-secure custody were typically released to a sponsor within 30 to 90 days.[21] For children in shelter care, the average length of time in custody was 34 days, after which time the vast majority were reunited with a sponsor. But as described below, Defendant ORR Director Lloyd instituted new changes to longstanding ORR reunification policies without explanation, resulting in the reunification process having come to a virtual halt for vast numbers of UACs.

50. Director Scott Lloyd's policies are simply an extension of the broader attack by the Trump administration on immigrant children and families. The Trump administration has repeatedly engaged in rhetoric and policies that demonize these vulnerable immigrant children

[21] Some reports show that in 2012-13, the average days until release was 67 days for male children. *See* Report of the National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth on the Northern Virginia Detention Center, https://neglected-delinquent.ed.gov/sites/default/files/docs/NDTAC_1-pager-NVJDC_508.pdf (last accessed May 2, 2018).

and aim to subvert the laws intended to protect them. Recent policy changes enacted by ORR reflect the Trump administration's rhetoric vilifying immigrant children as dangerous criminals or gang members—unsupported generalizations that have been routinely debunked by judicial findings. The administration has deployed this rhetoric despite the fact that ORR's own internal review has found that, even by its own flawed identification process, fewer than two percent of children in its custody have gang ties.[22]

51. The Administration has taken particular aim at laws that protect immigrant children. In his most recent State of the Union Address, President Trump described immigrant children as violent gang members who "took advantage of glaring loopholes in our laws to enter the country as unaccompanied alien minors."[23]

52. In a rally held in Long Island in July 2017, President Trump declared that the "laws are so horrendously stacked against us" and called out "alien minors" as responsible for gang-related killings in the United States, referring to immigrant children accused of being gang members as "animals." "They're going to jails," he yelled, "and then they're going back to their country."[24]

---

[22] *See* Testimony from Scott Lloyd of June 21, 2017 to the Senate Judiciary Committee, https://www.hhs.gov/about/agencies/asl/testimony/2017-06/statement-scott-lloyd-ms-13-problem.html (last accessed May 2, 2018).

[23] President Donald J. Trump's State of the Union Address, Issued on January 30, 2018, https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address/ (last accessed May 2, 2018).

[24] Remarks by President Trump to Law Enforcement Officials on MS-13, Issued on July 28, 2017, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-law-enforcement-officials-ms-13/ (last accessed May 2, 2018).

53. Attorney General Sessions has also furthered this narrative, alleging that certain immigrant children who come to this country are "wolves in sheep clothing."[25] In an interview with Fox News broadcast on August 3, 2017, Sessions said: "[W]e need to be able to deport people rapidly who enter the country illegally, and we have to end this policy of taking unaccompanied minors . . . and turning them over to the Department of Health and Human Services [the agency within which ORR is located], and then they take them to their 'destination city' . . . So this is a very bad and dangerous policy and it can be ended and it must be ended." On February 15, 2017, the Department of Homeland Security released a statement describing the *Flores* settlement and the TVPRA as "loopholes" that invite illegal immigration and fuel gangs.

54. Beyond publicly denouncing the existing and binding laws that protect these immigrant children, the Trump administration has called on Congress to amend the TVPRA and to strip children of many of the protections they are afforded under this legislation. Yet, until those laws are amended or repealed, the Constitution requires that the Executive Branch follow the laws, not try to unilaterally rewrite them through unlawful action (or inaction). Though the TVPRA remains fully in place, the Trump Administration has actively worked to subvert its requirements in furtherance of its rhetoric portraying immigrant children as dangerous criminals and gang members. One such new policy ORR instituted under Defendant Lloyd's leadership was to place all children with gang allegations in "secure"—the most restrictive of detention centers—care, under the guise that they have "gang ties."[26] But the gang allegations upon which

[25] Remarks by Attorney General Sessions to Federal Law Enforcement in Boston, Delivered September 21, 2017, https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about (last accessed May 2, 2018).

[26] *See* Testimony from Scott Lloyd of June 21, 2017 to the Senate Judiciary Committee, https://www.hhs.gov/about/agencies/asl/testimony/2017-06/statement-scott-lloyd-ms-13-problem.html (last accessed May 2, 2018).

the agency relies on in making these placements have been debunked by virtually everyone who has reviewed them, both inside and outside ORR.

55. In another example, in late 2017, a federal court in San Francisco ordered that immigrant children previously released from ORR custody as unaccompanied minors, subsequently detained for alleged gang involvement and placed back in ORR custody receive hearings before immigration judges to determine if they truly pose a danger. In nearly every hearing (27 of 29), immigration judges found the government's claim of dangerousness unfounded and ordered the child's release. But children like [MINOR'S NAME-1] and [MINOR'S NAME-2], who are not class members in the San Francisco case, still do not have any mechanism available to challenge their detention, even after they are stepped down from secure custody.

56. Yet another example, recently overruled by a federal court in New York, was a spring 2017 policy that indefinitely stalled the reunification of children like [MINOR'S NAME-1] and [MINOR'S NAME-2] with qualified sponsors, like [MINOR'S NAME-1]'s brother-in-law and [MINOR'S NAME-2]'s sister. That policy—reflected in a revision to the online ORR Guide on June 12, 2017—imposed a new and unprecedented requirement for the release of children who are currently or have ever been held in secure or staff-secure facilities within ORR: personal approval by Defendant Lloyd, or his designee, Defendant White. On June 27, 2018, the U.S. District Court for the Southern District of New York granted a preliminary injunction directing ORR to vacate the director review policy instituted by Mr. Lloyd. *L.V.M. v. Lloyd*, No. 18 CIV. 1453 (PAC), 2018 WL 3133965, at *12 (S.D.N.Y. June 27, 2018).

57. Defendant Lloyd is not a social worker, psychologist, or educator. He has no experience or credentials that render him capable of making determinations for release or for

evaluating matters affecting the mental and physical well-being of these children. Before being appointed as ORR director in March 2017—a political appointment that does not require Senate approval or any particular expertise or qualifications—Defendant Lloyd was an attorney for the Knights of Columbus and served on the board of a crisis pregnancy center in Virginia. Yet he continues to develop and implement policies in the name of child protection and child welfare that introduce significant barriers into the reunification process, significantly prolong all children's detention by ORR, and further the administration's policy of mass immigrant detention and deportation rather than the mission he is tasked with upholding as the Director of the Office of Refugee Resettlement to promote child welfare.[27]

C. **ORR's Lack of Due Process in Placement and Release Decisions**

58. Despite the admonitions by both U.S. District Courts for both the Eastern and Western Districts of Virginia that ORR's reunification process was in violation of the Due Process Clause, ORR has not reformed its policy and in fact has made it worse. *See*, *Beltran v. Cardall*, 222 F.Supp.3d 476 (E.D. Va. Nov. 22, 2016) (holding that ORR's family reunification procedures did not provide the child petitioner or his mother due process of law); *Santos v. Smith*, 260 F.Supp.3d 598 (W.D. Va. June 1, 2017) (holding that ORR's family reunification procedures caused even more egregious violations of the child petitioner's and his mother's due process rights than had occurred in *Beltran*).[28] Notably, in *Santos*, ORR requested additional

[27] Under the leadership of Defendant Lloyd, ORR has made over 35 such changes to the ORR Guide in a little over a year, including a swath of unexplained, sweeping updates in June 2017 and June 2018. *See* **Ex. 4**, ORR Record of Posting and Revision Dates. Many of these changes have contributed to prolonged detention of the children in ORR custody and to many children's detention at high levels of security.

[28] Although the sponsors in *Beltran* and *Santos* were both the mothers of the petitioners, the liberty interest in family unity is not limited to the nuclear or even biological family. *See*

time in which to provide "a more fulsome process." *Santos v. Smith*, 260 F.Supp.3d at 615. Over a year later, ORR *still* has failed to develop sufficient processes to protect its child wards or their sponsor's interests, and instead has made the reunification process more opaque, cumbersome, and lengthy. Indeed, the constitutionally dubious two-month delay in reunification in *Beltran* has now become the average length of time in ORR custody for children in shelter-level care[29], with the lengths of detention in staff-secure and secure detention lasting significantly longer.[30] *See id.* at 613 (citing the two month delay between filing of the reunification request and the denial having "raise[d] due process concerns" in *Beltran*).

59. Specifically, four of ORR's written policies, taken together, form an opaque, impenetrable process in which sponsors and children have little sense of what will be required of them to achieve reunification, let alone any way to challenge those requirements or early

---

Smith v. Org of Foster Families for Equal. & Reform, 431 U.S. 816, 843 (1977) ("biological relationships are not [the] exclusive determina[nt] of the existence of a family"). Indeed, courts have given great weight to the family unity interests between more distantly related relatives, including siblings, grandparents, and aunts and sisters. *See Moore v. City of East Cleveland*, 431 U.S. at 496-506 (affirming the constitutional conception of family between a grandmother and her grandsons); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (affirming a constitutionally recognized family relationship between an aunt and her niece); *Rivera v. Marcus*, 696 F.2d 1016 (2d Cir. 1982) (upholding the family unity interests of a half-sister).

[29] The average length of time in shelter-care in June 2018 was 57 days. ACF, Fact Sheet, June 15, 2018, *available at*, https://www.acf.hhs.gov/sites/default/files/orr/orr_fact_sheet_on_unaccompanied_alien_childrens_services_0.pdf.

[30] ORR policy changes that have resulted in children spending nearly twice as long in ORR custody at the shelter level, and nearly three times as long in ORR custody in secure or staff-secure facilities. *See*, *L.V.M. v. Lloyd*, No. 18 CIV. 1453 (PAC), 2018 WL 3133965, at *3 (S.D.N.Y. June 27, 2018). Prior to 2017, children in staff-secure custody typically remained detained for 30 to 90 days. Yet over the past year, as a direct result of the Defendants' policies, children spend an average of seven to eight months in a staff secure or secure facility in ORR custody; in many cases, children are not released at all and are simply transferred directly to ICE custody on their 18th birthdays. *Id.*

peremptory decisions about sponsor viability. The policies establish a level of discretion with front-line government contractors allowing them to cut the reunification process short or 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 the sponsors understand them to be their advocates. The established policy lacks any constitutionally sufficient process and enshrines a process nearly identical to (or worse than) the process that the court in *Santos* rejected:

- 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 itself unfettered discretion to require additional information and other steps in the reunification process with no indication as to why or when additional requirements may be added.
- 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 criteria. It also establishes some highly subjective criteria and raises serious concerns of burden-shifting that were present in both *Beltran* and *Santos*, and if anything have only placed *additional* burden on the potential sponsors here. *See Beltran*, 222 F.Supp. 3d at 485; *Santos*, 260 F.Supp. 3d at 613).

- Section 2.4.2 sets out requirements for mandatory home studies, and also grant 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, the 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.

60. Taken together, these policies establish an opaque reunification process, relying on the discretion of government-contracted case managers and subject to manipulation by whims and directives of ORR administrators before any "official" reunification decisions are made. This means that for many would-be and current sponsors, there are no requirements for notice as to why they are not viable or why additional requirements exist for them and no ability to challenge a case manager's determination of viability or the need for discretionary additional requirements. Because the case manager is also charged with helping the sponsor complete the application, attempting to raise a challenge to any additional requirement or non-viability decision would risk adding yet another reason why a sponsor is not viable in the case manager's analysis. For detained children, this means many more weeks or months of being told to be patient while the

case manager works with the sponsor to complete a process with no definitive end and no definitive number of steps or requirements.

61. The Fourth Circuit made clear in *D.B. v. Cardall*, 826 F.3d at 741-43, the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), controls this Court's determination of how much process ORR owes to a UAC in the ORR reunification process and in denying a UAC's request to be free from civil detention. Here, all three Mathews factors show that ORR's process, as outlined in its Policy Guide and, upon information and belief, as carried out under internal directives to case managers, is unconstitutionally insufficient.

62. In *Beltran* and in *Santos*, ORR detained minors pursuant to "child welfare" custody despite requests by each child's mother for release of her son into her custody, and without affording her any hearing. Both courts found that the detention violated the Fifth Amendment due process rights of the mother and son, granted the petition for habeas corpus, and ordered the release of the minor back to his mother's care and custody. *Id.*

63. As in *Santos*, the private interest implicated here includes both the right to family unification and the child plaintiffs and classmembers' right to liberty. *See Santos*, 260 F.Supp.3d at 611. In *Santos*, this Court found deprivation of a substantial private interest under analogous facts. Here, the Government is using the same and *additional* stall tactics to avoid even reaching a final decision regarding reunification in any timely manner.

64. To remedy these risks, both the *Beltran* and *Santos* courts found the need for an adversarial process, including "a substantial hearing." *Beltran*, 222 F. Supp. 3da at 486; *Santos*, 260 F. Supp. 3d. at 613-14. Both Supreme Court and Fourth Circuit precedent hold that, once the government decides to withhold a child from a parent's care, "the state has the burden to initiate" proceedings to justify its action. *Weller*, 901 F.2d at 396; *see also Stanley*, 405 U.S. at 468. The

Beltran and *Santos* courts' conclusions are also reinforced by Fourth Circuit precedent that adversarial hearings are regularly required where "subjective judgments that are peculiarly susceptible to error" are at issue. *Jordan*, 15 F.3d at 347. As in *Beltran* and *Santos*, no hearing or other meaningful notice or opportunity to be heard has been accorded to child plaintiffs or their sponsors, nor is there any procedure establishing such an opportunity for them.

65. In the plaintiffs' cases and under the above-mentioned policies ORR does not sufficiently make the Petitioners "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 opportunity to contest ORR's findings, and thus any meaningful opportunity to alter its conclusions." *Beltran*, 222 F. Supp. 3d at 485.

66. Both the *Beltran* court and the *Santos* courts found that ORR's procedures "created a significant risk that [the mother and son] would be erroneously deprived of their right to family integrity" and that additional procedural safeguards of the nature routinely employed with government interference with fundamental rights could have mitigated the risk. *Beltran*, 222 F. Supp. 3d at 488; *see also Santos* 260 F.Supp. 3d at 614 ("had better or more process been given especially as to the delay and the burden being on Ms. Santos to initiate and justify reunification, rather than the default rule being otherwise, the outcome could have been different"). The likely risk of erroneous deprivation of the most fundamental liberty interests is thus significantly higher, and unacceptable, under these circumstances.

67. Further, ORR's actions continue to improperly place the burden onto potential sponsors to change ORR's mind and, if unable, to initiate court proceedings. "At no point [is] the onus on ORR to justify its deprivation of Petitioner's fundamental [familial] rights." *Id. Beltran* and *Santos* both concluded that "having determined that it would deprive [mother] and [child] of

their fundamental right to family integrity, ORR could not adopt for itself an attitude of '**if you don't like it, sue**.'" *Beltran*, 222 F.Supp. 3d at 485 (*citing* Weller v. Dep't of Soc. Servs. for City of Baltimore, 901 F.2d 387, 395 (4th Cir. 1990)) (emphasis added); *see also, Santos*, 260 F.Supp. 3d at 613; *see also Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (procedures that "insist[] on presuming rather than proving" are insufficient under the Due Process Clause). But that is precisely what ORR policies and practices require plaintiffs to do.

68. These same factors led both the *Beltran* and *Santos* courts to order reunification. Moreover, in the *Beltran* case, ORR recommended against reunification noting that the UAC sought to reunify with his mother from whom he had had run away and subsequently became involved with drugs and other dangerous activity. Here there are no such facts with respect to the child plaintiffs and their sponsors. To the contrary, [MINOR'S NAME-4] and [MINOR'S NAME-3] were separated from their caregivers *by the government* at the border. [MINOR'S NAME-4]'s caregiver is a household member of his current sponsor, their sister, and is being required to provide fingerprints. [MINOR'S NAME-3]'s caregiver is now seeking to sponsor her. Surely if the court did not credit ORR's negative reunification recommendation for a mother whose child had run away, then the tenuous reasons given by ORR to delay reunification of the child plaintiffs with their sponsors (*e.g.*, [MINOR'S NAME-2] now requires a psychological evaluation, and his case manager has not yet scheduled an appointment for his adult niece living with his sister to be fingerprinted) cannot legitimately sustain ORR's continued imprisonment of these children and refusal to reunify them with their loving families.

69. In sum, the facts and the law applied in *Beltran* and *Santos* compel the same relief here as the court ordered in those cases, a grant of the writ of habeas corpus and requiring ORR

to release the child plaintiffs to their sponsors and requiring ORR to revise their policies to bring them into compliance with the Due Process Clause of the constitution.

D. ORR's Unlawful Promulgation of Agency Rules

70. ORR has never promulgated regulations under the TVPRA. 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. **Ex. 3.** ORR edits and amends this guide as often as once a week and does so without any explanation or announcement of the changes. ORR also regularly advises its staff and service providers of nonpublic changes to this guide by email or phone.

71. Reviewing ORR's placement practices in 2016, a subcommittee of the Senate Committee on Homeland Security and Governmental Affairs found that ORR had "failed to adopt and maintain a regularized, transparent body of policies and procedures concerning the placement of UACs" and castigated the agency for what it called "[s]etting governmental policy on the fly" in a manner "inconsistent with the accountability and transparency that should be expected of every administrative agency."

72. These procedures are applicable to some 11,000 children in ORR custody nationwide. Three facilities in Virginia have contracts with HHS to house children in ORR custody: the [] facility where [MINOR'S NAME-2] is currently held; the [] facility where [MINOR'S NAME-3], and [MINOR'S NAME-4] are currently held; and the [] facility where [MINOR'S NAME-1] was held.

73. On April 13, 2018, Defendants Lloyd and Wagner signed a Memorandum of Agreement (MOA) with DHS furthering their detention and deportation agenda at the expense of the children they are tasked with protecting, including [MINOR'S NAME-1], [MINOR'S

NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4]. The MOA addresses the collection and sharing of sponsor, household member, and caregiver information through the sponsorship application process. **Ex. 4**. Under the guise of protecting child welfare, the MOA outlined vastly expanded information collection not just from potential sponsors, but from every adult household member *and* a required alternate caregiver. *Id*. at Sec. 5(B) ("ORR will provide ICE with the name, date of birth, address, fingerprints . . . and any available identification documents or biographic information regarding the potential sponsor and all adult members of the potential sponsor's household"); *see also*, Women's Refugee Commission and National Immigrant Justice Center, *ORR and DHS Information-Sharing Emphasizes Enforcement Over Child Safety, available at* https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-ICE-MOA.pdf.

74. The MOA significantly impacts the rights and legal status of thousands of children in ORR custody and even more potential sponsors, household members, and caregivers of those children. **Ex. 4.** Like the ORR Guide, this Memorandum of Agreement (MOA) was entered into and its policies carried out without providing any public notice or opportunity to comment on the new rules.

75. ORR has already incorporated this information collection and sharing policy into its ORR Policy Guide. Section 2.2.4 of the ORR Guide, "Required Documents for Submission with the Application for Release", states that sponsors must sign the Authorization for Release of Information granting permission to ORR to collect and share sensitive biographic and biometric information from sponsors and adults listed in the sponsorship application with DHS or any other government agency for any authorized use, namely, immigration enforcement. *See* **Ex. 2**, Selected Sponsor Reunification Packet Documents, at 2-3, 15-16.

76. The only rationale for collecting immigration information provided by ORR in the ORR Guide is listed in Sec. 2.6 of that guide. **Ex. 3.** 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." **Ex. 3.** There is 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.

77. DHS and HHS subsequently published notices in the Federal Register. HHS announced in its notice, however, that the agency had already changed their policies, but nonetheless invited public comment. In a noticed published on May 11, 2018, 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 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 indented "the instruments used in this submission to be available for use by mid-May 2018," the date the notice was published. *Id.*

78. DHS also published a notice on May 8, 2018, to update its System of Records to implement the MOA, stating that one purpose of the system is "[t]o screen individuals to verify 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.

79. ORR made vast and drastic changes to the information it collects, and more importantly, the manner in which it uses and shares that information. It did so unilaterally, without any public input or any apparent thought or consideration to the way these new rules would impact its own mission to protect children and promptly reunify them with sponsors in order to place them in the least restrictive placement in their best interests.

80. Several public groups nonetheless submitted comments to both DHS and HHS denouncing the new "proposed" regulations as contrary to law and to the mission of ORR.[31]

81. Upon information and belief, based upon internal stakeholder meetings, DHS has no plan or intention of providing information to ORR. The MOA and accompanying procedures are designed purely as an extension of DHS's law enforcement authority in order to use children in ORR custody as bait to vastly expand the reach of ICE enforcement.

82. ORR is unable to show that the MOA and ORR's new policy of expanded information collection and sharing does anything to ensure a child's safety or his appearance in immigration court per the *Flores* agreement. Instead, it serves the Trump administration's goals of denying justice to children who ORR was specifically charged with protecting. Upon

[31] *See*, *e.g.*, Legal Aid Justice Center, Memo Re: HHS ACF Sponsorship Review Procedures, *available at*, https://www.justice4all.org/wp-content/uploads/2018/07/LAJC_Comments-on-OMB-No-0970-0278-Sponsorship-Review-Procedures-002.pdf; National Immigrant Justice Center, Memo Re: HHS ACF Notice of Sponsorship Review Procedures, *available at* http://www.immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2018-07/NIJC%20Comment%20on%20HHS%20revisions%20to%20UC%20sponsor%20forms.pdf; National Immigrant Justice Center, Memo Re: DHS Notice of Modified System of Records, *available at*, https://www.immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2018-06/NIJC%20Comments%20on%20DHS-2018-0013%20System%20of%20Records%20Notice.pdf; American Civil Liberties Union, Memo Re: DHS Notice of Modified System of Records, *available at* https://www.aclu.org/sites/default/files/field_document/2018.06.07_aclu_comments_dhs_system_of_records_notice_dkt._2018-0013-0001.pdf.

information and belief, this policy on its own is causing delays of reunification for children at every level of ORR custody of a month or more, and is causing chronic stress for children trying to patiently await reunification with their families. ORR's approach is rife with imperilments for due process, especially in view of the *Mathews* factors. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The child Plaintiffs' right to reunification under the enabling statutes that govern ORR is affected by the actions of Defendants Lloyd and White, and the risk of deprivation of this right is inconceivably high given the dilatory tactics employed by ORR and the Trump administration. And the government lacks any competing interest: ORR's mandate under the statute and under the *Flores* agreement is *prompt* family reunification.

83. For children, the devastating effect of the delays caused by the new information collecting and sharing policies can include depression, deterioration in mental health, and behavioral problems associated with prolonged detention. Children like the child Plaintiffs 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 his 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.

84. The indefinite wait times for release approvals also render release plans and post-release services put in place by shelter staff obsolete, as the availability of those resources is often time-limited.

85. The potential detention and deportation of sponsors, family members, and friends as a direct result of new ORR policies and the MOA also results in arbitrary and capricious government action in direct contrast with the legal obligations of ORR with respect to unaccompanied minors. The new information collecting and sharing procedures prevent children like [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4] from being released to family members or relatives who may be best suited to care for them. Caregivers with other family and/or household members at risk of detention or deportation may be forced to choose between getting their child released from ORR custody or their family's ability to remain together.

86. No rationale has been provided by ORR regarding the need to collect household member or alternate caregiver information regarding immigration status or the need to share biometric or biographical information for non-sponsors with DHS. Household members or alternative caregivers, who are required to submit to the same background checks as a potential sponsor per ORR policy, may be unwilling to provide the requested information despite a sponsor's willingness and ability to care for a child. The procedures functionally give any member of the household veto power over a sponsor's desire to proceed with reunification and welcome their child into their home. Because of this policy, sponsors will face even steeper barriers when trying to be reunited with their children.[32]

[32] *See* Eli Hager, The Marshall Project, *Trump's Quiet War on Migrant Kids: How the administration is turning child protection into law enforcement* (May 1, 2018), https://www.themarshallproject.org/2018/05/01/trump-s-quiet-war-on-migrant-kids; *see also*,

87. The result of ORR being unable to identify closely related sponsors for the children in its care, and any subsequent enforcement action by DHS against a child's sponsor or the other adults in that sponsor's home, will place children at significantly *greater* risk of being trafficked, smuggled, or otherwise abused.[33]

E. Lack of Reasoned Explanation or Justification for Change in Procedures and Resulting Unlawful Delay in Violation of Statute

88. 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 that all household adults and alternate caregivers submit to DHS background checks. Upon information and belief, the additional criminal background checks provided for in the Procedures merely duplicate those that ORR currently performs. **Ex. 4.** According to the MOA, ORR will continue to be responsible for criminal history checks on the national, state, and local level, some of which would alert ORR about a sponsor's or household member's immigration status. *Id.* Duplicative background checks serve only to waste time and resources of two already over-burdened agencies. By definition, this practice is both arbitrary and capricious, and on information and belief, motivated solely by factors divorced from carrying out the mandate of the statute and case law governing detention and release of UACs by ORR.

89. In May 2017, likely as a result of litigation ordering ORR to release a child because it had failed to reunify the child with his mother as a result of unreasonable ORR

KIND, *Targeting Families* (Dec. 2017), https://supportkind.org/wp-content/uploads/2017/12/Targeting-Families_-December-2017_Final-v.2.pdf.

[33] *See, e.g.*, FBI, *New Fraud Schemes Targeting Families of Unaccompanied Children* (July 19, 2014), https://www.fbi.gov/contact-us/field-offices/sanantonio/news/pres-releases/new-fraud-schemes-targeting-families-of-unaccompanied-children.

Policies concerning the reunification process, *see Santos v. Smith*, 260 F. Supp. 3d 598 (W.D. Va. 2017), ORR's online policy guide was amended to provide for the possibility of an "appeal" to the Assistant Secretary of ORR if a reunification request is denied. But this process—at which sponsors have no right to call witnesses, includes no requirement of a reasoned decision, and uses a politically appointed official as an adjudicator—is available only once a final decision is rendered on a reunification request. Setting aside the other fatal procedural flaws, this appeal process also fails because, given current ORR procedures and practices, very few cases will be ripe given the indefinite delays in identifying a potential sponsor willing and able to provide all information required by ORR, including convincing all household members and alternate caregivers to provide their personal information to ORR to be used not just for the reunification process but for DHS's immigration enforcement authority.

FACTS PERTAINING TO [MINOR'S NAME-1]

A. [MINOR'S NAME-1]'s Persecution in His Home Country of [], Arrival in the United States, and Subsequent Imprisonment

90. [MINOR'S NAME-1] is a []-year-old citizen of [] who came to the U.S. in [] accompanied by a friend. He fled [] to escape persecution, including threats to his own life.

91. [MINOR'S NAME-1] has known and been close with his brother-in-law since he was a toddler. He spoke with his sister and brother-in-law by phone on a regular basis when he was living in [], every week or every other week. They often sent money to support him in [] so that he could attend school.

92. [MINOR'S NAME-1] has never been arrested for or charged with a crime. Prior to coming to the United States at the age of [], he went to school and mostly stayed in his home with his family out of fear of violence.

B. [MINOR'S NAME-1]s Prolonged and Unexplained Imprisonment by ORR

93. [MINOR'S NAME-1] fled [] in at the end of []. [MINOR'S NAME-1] arrived in the U.S. at the end of [], and was apprehended by Customs and Border Patrol. He was placed in an unaccompanied children's shelter in [], California operated by Southwest Key Programs ([]). *See* **Ex. 1.**

94. On [], [MINOR'S NAME-1] was transferred to [] in [], a staff secure facility near []. **Ex. 1.** [MINOR'S NAME-1] was transferred to the staff secure facility because he had been labeled as an escape risk. He was labeled as an escape risk by his clinician and ORR staff at Southwest Key based on his confiding in his clinician that he did not want to be in the shelter and wanted to be with his family instead, combined with a false report that [MINOR'S NAME-1] had indicated that he wanted to run away and had an escape plan.

95. [MINOR'S NAME-1]'s case manager [], prepared an ORR Release Notification on [] stating "ORR has determined that the below Juvenile Respondent should be released to a sponsor," and listed [MINOR'S NAME-1]'s brother-in-law, [SPONSOR'S NAME-1], as the custodian. **Ex. 3.** However, [MINOR'S NAME-1] was not released to [SPONSOR'S NAME-1]. Instead, [MINOR'S NAME-1] remained in ORR Custody at [] in [] until about [], when he was transferred to secure detention at [] in [], Virginia. *See* **Ex. 7**, [] Discharge Notification**.**

96. []

97. [] [34]

98. [MINOR'S NAME-1] was officially transferred to [] on [] and remained there until [], a week after this action was initially filed with this court. **Ex. 7.** For the last three months

[34] Notably, the ORR Guide indicates that "ORR only places an unaccompanied alien child in a secure facility if the child 1) poses a danger to self or others; or 2) has been charged with having committed a criminal offense." **Ex. 3** at § 1.2.4.

of his detention, he was detained in this *high* security facility (i.e., most restrictive) in [] Virginia. Upon information and belief, his detention in staff secure and secure facilities was not the result of any concern that [MINOR'S NAME-1] was dangerous, or would harm himself or others. Nonetheless, the conditions of the high security [] facility severely limited [MINOR'S NAME-1]'s movement within the facility, and his time to socially interact, play, and learn with his peers or on his own. And given that [MINOR'S NAME-1] was placed with other, older children who had been deemed at-risk, all of these factors would be expected to mentally break down any individual, let alone a []-year-old boy who had already suffered greatly.

99. [] He felt he would never get used to being held in a jail. He wanted only to be with his family, and did not understand why he was still being held by ORR.

100. Upon information and belief, despite ORR staff recommendations that [MINOR'S NAME-1] be reunified with [SPONSOR'S NAME-1], ORR began requiring [SPONSOR'S NAME-1]'s partner, [MINOR'S NAME-1]'s sister, and other adult members of the household to submit biographical and biometric information as a pre-condition to [MINOR'S NAME-1]'s release. The adults in [SPONSOR'S NAME-1]'s household feared, correctly, that this information would be used for immigration enforcement purposes. As is common practice, [SPONSOR'S NAME-1] never received written notice that he had been denied as a sponsor or that he was not a viable sponsor without his household member's fingerprints. Nonetheless, [MINOR'S NAME-1] remained locked in a juvenile jail only because of a change in ORR policy and the MOA.

101. [MINOR'S NAME-1]'s prolonged imprisonment at a very young age, and his inability to be with his family caused him significant anxiety and sadness. He often cried when speaking to family members on the phone and struggled to cope with the daily bullying he

experienced at []. [MINOR'S NAME-1] sought to leave this environment where he felt depressed, sad, and alone, and to be placed with his brother-in-law and family who he knew would provide him the care and attention he needed.

102. [MINOR'S NAME-1] was released to [SPONSOR'S NAME-1] on or about []. He remains living with [SPONSOR'S NAME-1] subject to ORR's sponsorship agreement and may be redetained and placed in ORR custody again in the future.

FACTS PERTAININT TO [MINOR'S NAME-2]

A. [MINOR'S NAME-2]'s Persecution in His Home Country of [], Arrival in the United States, and Subsequent Imprisonment

103. [MINOR'S NAME-2] is a []-year-old citizen of [] who came to the U.S. in []. He fled [] to escape persecution and because his mother had passed away.

104. [MINOR'S NAME-2] has known and been close with his sister since he was a toddler. He spoke with his sister by phone and video on a regular basis when he was living in [], every week or every other week.

105. [MINOR'S NAME-2] has never been arrested for or charged with a crime. Prior to coming to the United States, he went to school, worked, and mostly stayed in his home with his family.

B. [MINOR'S NAME-2]'s Prolonged and Unexplained Imprisonment by ORR

106. [MINOR'S NAME-2] was initially placed in a small []-operated ORR shelter in [], Texas. **Ex. 8**, [SHELTER 1] Placement Authorization. Upon information and belief, [SHELTER 1] houses approximately 50 children. [MINOR'S NAME-2] did well in the small program, getting along with the other children and adjusting well as the staff worked on family reunification. After approximately 10 days at [SHELTER 1], [MINOR'S NAME-2] was transferred to [SHELTER 2] due to "emergency influx." **Ex. 9**, [] Transfer Request. Unlike

[SHELTER 1], [SHELTER 2] is a warehouse of about 1,500 children, housed in a converted Walmart.[35] Despite the number of children, there are only 313 "door-less rooms" for children to sleep in.[36] The shelter is noisy, and the rooms are merely walls that do not reach all the way to the ceiling, creating a cacophonous echo chamber of 1,500 children day and night.[37] [SHELTER 2] has a poor reputation for caring for children. Children are highly monitored and controlled, and have reported that staff have been at best unkind and at worst abusive.[38] Despite being

---

[35] Dan Barry et al., "Cleaning Toilets, Following Rules: A Migrant Child's Days in Detention" July 14, 2018, The New York Times, *available at* https://www.nytimes.com/2018/07/14/us/migrant-children-shelters.html; *see also,* Michael Miller, Emma Brown and Aaron C. Davis, "Inside Casa Padre, the converted Walmart where the U.S. is holding nearly 1,500 immigrant children;" June 14, 2018, The Washington Post, *available at* https://www.washingtonpost.com/local/inside-casa-padre-the-converted-walmart-where-the-us-is-holding-nearly-1500-immigrant-children/2018/06/14/0cd65ce4-6eba-11e8-bd50-b80389a4e569_story.html?utm_term=.a04e5b7ab55d; Mehreen Kasana, "A 'Casa Padre' In Texas Is Reportedly Housing 1,500 Migrant Boys & The Details Are Chilling," Bustle, *available at* https://www.bustle.com/p/a-casa-padre-in-texas-is-reportedly-housing-1500-migrant-boys-the-details-are-chilling-9412088; "Casa Padre: Inside the Texas shelter holding immigrant children," June 18, 2018 ("An influx of immigrants has brought the facility to the brink of capacity with the shelter receiving a waiver to house nearly 300 more children than it is licensed for."), *available at*, https://www.reuters.com/news/picture/casa-padre-inside-the-texas-shelter-hold-idUSRTX69KSC;

[36] *See* Tara Francis Chan, "There are so many migrant children in one shelter a prison-style headcount is taking hours," Business Insider, Jun. 25, 2018, available at https://www.businessinsider.com/headcount-of-migrant-children-in-casa-padre-shelter-takes-hours-2018-6.

[37] Dan Barry et al., "Cleaning Toilets, Following Rules: A Migrant Child's Days in Detention" July 14, 2018, The New York Times, *available at* https://www.nytimes.com/2018/07/14/us/migrant-children-shelters.html*; see also,* Michael Miller, Emma Brown and Aaron C. Davis, "Inside Casa Padre, the converted Walmart where the U.S. is holding nearly 1,500 immigrant children;" June 14, 2018, The Washington Post, *available at* https://www.washingtonpost.com/local/inside-casa-padre-the-converted-walmart-where-the-us-is-holding-nearly-1500-immigrant-children/2018/06/14/0cd65ce4-6eba-11e8-bd50-b80389a4e569_story.html?utm_term=.a04e5b7ab55d

[38] *See*, Mary Tuma, "Allegations of Mistreatment at Southwest Key Shelter: The deportation complex," The Austin Chronicle, August 3, 2018, *available at* https://www.austinchronicle.com/news/2018-08-03/allegations-of-mistreatment-at-a-southwest-key-shelter/; *see also*, Alan Pyke, " 'This is it for you. You're fu**ed.': Inside Trump's abuse of migrant kids at an old Walmart," ThinkProgress, July 19, 2018, *available at*

ordered by a judge to permit an Ad Litem investigator to inspect the facility and interview the children there, ORR refused access and delayed inspection by removing the matter to federal court.[39]

107. After being transferred to [SHELTER 2], [MINOR'S NAME-2] became depressed, irritable, and hopeless. He was overwhelmed by the sheer number of children and people around him all the time. He could not sleep at night because of the noise, and shared a room with four other children. Unlike at [SHELTER 1], each child only had 8 minutes to shower each day, and staff zealously wrote behavior reports about children for even the smallest transgression. With so many children together, it was inevitable that they would not all get along, so bullying and disagreements with other children were common. *See e.g.*, **Ex. 10**, Significant Incident Report (SIR)

108. Under the constant stress of being in the [SHELTER 2] environment, [MINOR'S NAME-2]'s mental and behavioral health deteriorated. He received several significant incident reports (SIRs) for things ORR staff alleged he said either to them or to other residents, or for not following program rules, mostly in response to the conditions at [SHELTER 2]. He never received an SIR for any violent behavior.

109. []

https://thinkprogress.org/inside-the-icebox-hielera-kids-own-words-trump-border-af33e9e0a7fb/; Rebekah Entralgo, "Employee at immigrant shelter in Arizona arrested for allegedly sexually abusing teen girl," ThinkProgress, August 1, 2018, *available at* https://thinkprogress.org/employee-at-immigrant-shelter-in-arizona-arrested-for-allegedly-sexually-abusing-teen-girl-7c73f67e2ac3/.

[39] Mark Reagan, "County appoints investigator to look into Casa Padre," The Brownsville Herald, July 16, 2018.

110. Prior to his arrival at [], [MINOR'S NAME-2] 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 potential his immigration case.

111. [] Nonetheless, despite investigating the veracity of [MINOR'S NAME-2]'s "self-disclosures" pursuant to ORR Policy 1.4.2, and finding no credible support for any of them, ORR staff recommended that [MINOR'S NAME-2] be placed in a staff secure facility following these uncorroborated "admissions". *See* **Ex. 11**.

112. [MINOR'S NAME-2]'s case manager recommended that he be transferred to a staff secure, or medium-level security program. **Ex. 9.** Instead, and without explanation, [MINOR'S NAME-2] was sent directly to the most secure program available at [], which serves both as an ORR facility and as a juvenile jail for minors in Virginia who have been adjudicated delinquent in state court. **Ex. 12**, [SHELTER 2] Discharge Notification. [MINOR'S NAME-2] has been held in a secure, jail-like setting since June 26, 2018.

113. [MINOR'S NAME-2]'s sister, [SPONSOR'S NAME-2], who resides and works in [] seeks to sponsor [MINOR'S NAME-2] and take custody of him. [SPONSOR'S NAME-2] formally applied with ORR to be [MINOR'S NAME-2]'s sponsor and submitted his biographical and biometric information. On [], while at [SHELTER 2], ORR staff completed a release request for [MINOR'S NAME-2]'s release to his sponsor. **Ex. 15**, ORR Release Request. Upon information and belief, after [MINOR'S NAME-2] was transferred to [], ORR staff added onerous steps to his reunification process. Upon information and belief, ORR is now requiring

that [MINOR'S NAME-2] complete a psychological evaluation and that his sponsor submit to a discretionary home study, which has not yet been scheduled.

114. On April 13, 2018, Defendants Wagner and Lloyd signed a Memorandum of Agreement (MOA) with Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE) agreeing to vastly expand the information collected from sponsors *and* household members and to share that information between the agencies. **Ex. 1**. Pursuant to this agreement and policy, ORR is requiring biographical *and* biometric information from all adults in [SPONSOR'S NAME-2]'s household, including her adult daughter and her partner, in order to approve [MINOR'S NAME-2]'s placement with [SPONSOR'S NAME-2]. [SPONSOR'S NAME-2]'s partner is fearful of providing his information to ORR to be shared with ICE and used for immigration enforcement. [SPONSOR'S NAME-2] has been told her only option if she would like to sponsor her brother is to convince him to provide the information or for the two of them not to live together anymore. **Ex. 13**. These extra steps have resulted in further delay to the reunification process as [SPONSOR'S NAME-2]' daughter awaits action by the case manager working on [MINOR'S NAME-2]'s case to make her appointment to provide fingerprints to ORR, and as she and her family consider their options. As is common practice, [SPONSOR'S NAME-2] never received written notice that she had been denied as a sponsor or that she was not a viable sponsor without her household member's fingerprints.

115. Given the specter of indefinite detention, [MINOR'S NAME-2] now seeks the Court's intervention so that he can be released from secure detention to his sister's care. He requests that the court order him released so that he will no longer be subjected to the grievous harms that he is suffering from living in isolation away from loving family and left to languish, imprisoned in government custody. The defendants' actions violate the federal statute that

governs the detention and release of immigrant children, the Constitution's Due Process Clause, the Administrative Procedure Act's (APA) requirements for promulgating rules, and the APA's prohibition on unreasonable delays and arbitrary and capricious agency conduct. Defendants' actions are causing serious and irreparable harm to Plaintiff [MINOR'S NAME-2] Plaintiff therefore seeks declaratory and injunctive relief from this Court to end these violations and harms.

116. [MINOR'S NAME-2]'s prolonged imprisonment at a young age, and his inability to be with his family has caused him significant anxiety and sadness. [MINOR'S NAME-2] seeks to leave this environment where he feels depressed, sad, and alone, and to be placed with his sister and family who will provide him the care and attention he needs.

FACTS PERTAINING TO [MINOR'S NAME-3]

117. [MINOR'S NAME-3] is a []-year-old girl from []. At the age of five, she left her parents' house and went to live with her sister, [SPONSOR'S NAME-3], because her parents could no longer care for her or support her.

118. [MINOR'S NAME-3] came with her sister to the United States in []. They came because there was significant violence in their community and to enable [MINOR'S NAME-3] to study. [SPONSOR'S NAME-3] wanted a better future for her young sister.

119. Despite [SPONSOR'S NAME-3] being [MINOR'S NAME-3]'s primary caretaker, the two were separated at the border. [MINOR'S NAME-3] was placed in ORR custody in Virginia at []. [SPONSOR'S NAME-3] was paroled to [] where she lived in an apartment with a friend.

120. [MINOR'S NAME-3]'s sister has been in contact with ORR since [MINOR'S NAME-3]'s placement in ORR custody. Upon information and belief, she was initially told she

could not sponsor her younger sister, whom she had raised, because the adult roommates living in her apartment refused to send any biographical or biometric information to ORR. As is common practice, [SPONSOR'S NAME-3] never received written notice that she had been denied as a sponsor or that she was not a viable sponsor without her household member's fingerprints.

121. It took [SPONSOR'S NAME-3] several months to contact her other siblings in [] because she did not initially have their contact information. She was ultimately successful and approximately three months after arriving in [], she moved out of her apartment and into a home with her siblings. Her siblings and the friend who lives in the home are willing to provide their biographical and biometric information for the sponsorship application. Only after moving in with her siblings and communicating their willingness to participate in the reunification process was she able to officially begin the sponsorship process.

122. Upon information and belief, [MINOR'S NAME-3]'s reunification process is still in its early stages. Some identification required by ORR has not yet arrived, and ORR typically waits until it has all required documents before beginning the fingerprint scheduling process. Upon information and belief, the scheduling process itself can take weeks or longer, and once fingerprints are submitted, it takes approximately one month to receive the results.

123. [MINOR'S NAME-3]'s prolonged detention in ORR custody has been difficult and stressful for her. She misses her sister dearly. [MINOR'S NAME-3] is sad without her sister, who raised her, and wants only to leave ORR custody and be reunited with her again.

FACTS PERTAINING TO [MINOR'S NAME-4]

124. [MINOR'S NAME-4] is a []-year-old boy from []. He fled [] with his older sister, [SISTER], to escape violent and credible threats on his life []. He has experienced severe trauma

and has relied on his older siblings to care for him and help him cope with the violence he has been exposed to. He and [SISTER] have always had a close relationship. He and [SPONSOR'S NAME-4] have had an especially close relationship. After [SPONSOR'S NAME-4] moved to the United States a few years ago, [MINOR'S NAME-4] 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.

125. [MINOR'S NAME-4] and his sister, [SISTER], arrived in the U.S. in []. Although [SISTER] was caring for [MINOR'S NAME-4], they were separated at the border, despite [MINOR'S NAME-4]'s desire to remain with his sister. [MINOR'S NAME-4] was placed in ORR custody in Virginia at []. His sister, [SISTER], was paroled to [] where she is living with their sister, [SPONSOR'S NAME-4].

126. [MINOR'S NAME-4]'s sister, [SPONSOR'S NAME-4], has submitted all the requisite paperwork to be [MINOR'S NAME-4]'s sponsor. She lives with her partner and with [MINOR'S NAME-4]'s other sister, [SISTER], with whom he traveled to the U.S. Although [MINOR'S NAME-4]'s sister and brother-in-law both submitted all required documentation and passed their background checks, upon information and belief, [SISTER] was unable to be scheduled for her background check and fingerprint appointment because ICE had confiscated her identification upon apprehension and she did not have another form of valid photo ID. [SISTER] was only recently able to get a new ID, and she submitted her fingerprints this past week. Upon information and belief, her fingerprints, as a household member of the sponsor's household, were the only "requirement" delaying [MINOR'S NAME-4]'s reunification with his family. As is common practice, [SPONSOR'S NAME-4] never received written notice that she

had been denied as a sponsor or that she was not a viable sponsor without her household member's fingerprints.

127. [MINOR'S NAME-4] feels sad being apart from his sisters. Being in ORR custody, he has more sad days than happy days, and struggles with being separated from his family. He has also been unable to talk to his mother in [] since arriving at []. While he feels the majority of the staff at [] treat him well, he has experienced rude and racist behavior from one or two staff members which has made being in ORR custody even more difficult for him. The only reason for his continued detention is ORR's new policy requiring biographical and biometric data from all household members.

128. [MINOR'S NAME-4] has had a difficult life in [] and wants only to reunite with his siblings where he can continue to heal and feel safe, loved, and cared for.

CLASS ACTION ALLEGATIONS

129. 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 in the state of Virginia;

b. at any date on or after July 20, 2018; and

c. who have been in ORR custody for 60 days or more; and

(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. as a Category 1 or Category 2 sponsor;

c. 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

d. to whom the Detained Children classmember has not been released, at least in part because

i. the sponsor applicant has not provided full biographical information and fingerprints of all other adults living in her or his household, or

ii. who has been informed by ORR or an ORR-contracted caseworker that their sponsorship application is rejected or not viable, but who has not been given a formal letter of denial.

130. Plaintiffs reserve the right to amend the class definitions if discovery or further investigation reveals that the classes should be expanded or otherwise modified.

131. Plaintiffs reserve the right to establish sub-classes as appropriate.

132. This action is brought and properly may be maintained as a class action under Fed. R. Civ. P. 23(a)(1)-(4).

133. Numerosity: The proposed classes are sufficiently numerous so as to render joinder impracticable. 21 children are currently detained by ORR in secure detention in Virginia – one at NOVA and 20 at SVJC. Upon information and belief, SVJC has bedspace to hold up to 30 UACs for ORR. 105 children are currently held by ORR at YFT, which upon information and belief has bedspace for 110 UACs.[40] Upon information and belief, of these children, the Detained Children Class consists of at least 40 children of whom approximately 20 are in secure

[40] Jill Palermo, "Warner praises Youth For Tomorrow, calls separation of migrant families 'horrific'," *Prince William Times*, June 28, 2018, *available at* https://www.princewilliamtimes.com/news/warner-praises-youth-for-tomorrow-calls-separation-of-migrant-families/article_92ff18c0-7ad5-11e8-a54b-07bf2c577847.html (last visited July 20, 2018).

ORR detention.[41] Upon information and belief, approximately 37 children have been held at YFT for over sixty days, of whom the majority have been held at least in part by a lack of due process protections in the reunification process and by the new MOA policy. Upon information and belief, all or nearly all of the children held at SVJC have been subject to prolonged detention caused by both a lack of due process protections through the reunification process and as a result of the new MOA policy. Upon information and belief, notwithstanding ORR's assertion that only five children have been impacted by the new MOA policy, a majority of children remain in ORR custody at least in part because the new policy either deterred Category 1 or Category 2 sponsors from initiating sponsorship applications, the new policy caused case managers to reject sponsors who would otherwise have qualified as sponsors, or the application of such policies has significantly lengthened the time it takes to approve a sponsor's reunification application. Moreover, additional children will continue to enter the class in the future on a regular basis as ORR's population of detained immigrant children continues to increase and new sponsors are universally subject to the MOA policies.

134. Joinder is also impractical because the proposed Detained Children Class consists of children who are separated from their families and other adult caretakers, many of whom are indigent, have limited English proficiency, and/or have a limited understanding of the U.S. judicial system. The proposed Sponsor Class consists of adults across the country who are attempting to sponsor UACs in ORR custody in Virginia, many of whom are indigent, have

[41] The Government informs Petitioners that only five children of the 126 children currently held by ORR in Virginia are in custody because ORR is awaiting full biographical information and fingerprints for household members, either because this information is pending or household members have refused to provide it because of the MOA and associated policies. However, upon information and belief, Petitioners believe that number to be significantly higher, and reflected what Petitioners believe to be a more accurate count here.

limited English proficiency, and/or have a limited understanding of the U.S. judicial system. The guarantee of future unidentified class members renders joinder impractical.

135. Commonality: Common questions of law and fact affect class members, including:

(a) whether the Government is in compliance with its obligations under the TVPRA to promptly place children in the least restrictive setting possible;

(b) whether the government's reunification policies, establishing the discretionary and opaque decision-making system described in §§ 2.2.3, 2.2.4, 2.4.1, and 2.4.2, which impact all children in ORR custody and all potential sponsors, violate UACs and their sponsors' due process rights by creating a system in which case managers make the majority of reunification decisions without any notice or opportunity for UACs or sponsors to be heard regarding either additional discretionary requirements imposed by case managers or non-viability decisions made by case managers;

(c) whether the specific policy of blanket collection of biometric and biographic information from all sponsors, household members, and alternate caregivers combined with the policy to share all of this information with DHS for immigration enforcement purposes is in compliance with ORR's obligations under the TVPRA to promptly place children in the least restrictive setting possible;

(d) whether the specific policy of blanket collection of biometric and biographic information from all sponsors, household members, and alternate caregivers combined with the policy to share all of this information with DHS for immigration enforcement purposes, which impact all Detained Children class members, were unlawfully

promulgated through an online Policy Guide and MOA between ORR and DHS in a manner not in accordance with the APA; and

(e) whether the specific policy of blanket collection of biometric and biographic information from all sponsors, household members, and alternate caregivers combined with the policy to share all of this information with DHS for immigration purposes, as issued through the MOA and associated policies in the ORR Policy Guide is arbitrary, capricious, or otherwise contrary to law under the APA.

136. Both the Detained Children Class and the Sponsor Class are negatively impacted by the same ORR policies, either now or in the imminent future. A finding that these policies were promulgated in violation of the APA, the TVPRA, or operate in violation of the Due Process Clause would remove the same barriers from all members of both classes in a single stroke.

137. Typicality: Plaintiffs' claims are typical of the claims of the proposed class, as all members of the Detained Children Class are subject to prolonged detention because of ORR's unlawful policies, violating the TVPRA and their due process rights, and issued in violation of the APA as set forth herein; and all members of the Sponsor Class are denied their ability to sponsor their loved ones because of ORR's unlawful policies violating their due process rights and issued in violation of the APA as set forth herein.

138. While named child Petitioners 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. However, this does not defeat typicality, 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 requirements will serve to protect the due process rights of members of both classes. Enjoining ORR and ICE's MOA, including enjoining ORR from implementing expanded information collection and from transferring information to DHS unless specifically warranted by an individual case will significantly speed up the reunification process for all class members and will allow the most appropriate caregivers to proceed with the reunification process.

139. Adequacy: Plaintiffs will fairly and adequately protect the interests of the proposed classes. Plaintiffs' claims are identical to the members of the proposed classes, they have no relevant conflicts of interest with other members of the proposed classes, and they have retained competent counsel experienced in class-action and immigration law.

140. This action is brought and properly may be maintained as a class action under Federal Rule 23(b)(1), (b)(2), or (b)(3).

141. Separate actions by or against individual class members would create a risk of inconsistent or varying adjudications regarding the legality of ORR's policies as set forth herein.

142. The U.S. government presently takes the position that its policies as set forth herein are lawfully promulgated, and to the extent that this causes the prolonged detention of immigrant children, such detention is a regrettable necessity. Thus, Respondents have acted or refused to act on grounds that apply generally to the proposed class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the proposed class as a whole.

143. Common questions of law or fact predominate over questions affecting only individual members, and a class action is thus superior to other available methods for fairly and efficiently adjudicating the controversy. Even if individual class members had the resources to bring individual lawsuits (which most do not), it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties, and to the court. Respondents have engaged in a common course of conduct, and the class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all class members' common claims in a single forum.

CAUSES OF ACTION

COUNT I
VIOLATION OF TVPRA
(All Child Plaintiffs Against All Defendants)

144. Petitioners allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

145. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires Defendants to promptly place unaccompanied minors in its custody in the least restrictive setting that is in the best interest of the child.

146. Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Classmembers are unaccompanied minors, and their sponsors are the individuals who offer the least restrictive setting to the UACs they are attempting to sponsor in the children's best interests.

147. Defendants' actions in establishing and carrying out opaque reunification policies with little to no due process protections, and instituting the MOA and the associated ORR

policies, both 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
(All Child Plaintiffs Against All Defendants)

148. Petitioners allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

149. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Petitioners and the Detained Children Classmembers.

150. Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Class have a liberty interest in remaining free of government custody, and in being unified with their families or adult caregivers.

151. The prolonged, unexplained detention of Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Class, and their separation from their sponsors and families as a result of ORR policies creating an opaque, highly discretionary reunification process and as a result of its recent MOA and associated ORR polices violates substantive due process because it furthers no legitimate purpose and no compelling government interest.

COUNT III
VIOLATION OF PROCEDURAL DUE PROCESS
(All Plaintiffs Against All Defendants)

152. Petitioners allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

153. The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Petitioners and all classmembers.

154. Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Classmembers have a liberty interest in remaining free of government custody, and in being unified with their families.

155. The prolonged, unexplained detention of [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Classmembers, and their separation from their sponsors and families as a result of ORR policies creating an opaque, highly discretionary reunification process and as a result of its recent MOA and associated ORR polices, violates procedural due process because it deprives these children of their liberty from government custody without notice or any opportunity to be heard, to the injury of the children in the form of prolonged detention.

156. Likewise, the prolonged, unexplained detention of [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Classmembers, and their separation from their sponsors and families as a result of ORR policies creating an opaque, highly discretionary reunification process and as a result of its recent MOA and associated ORR polices, violates procedural due process because it deprives the Sponsor Classmembers of their right to provide care and upbringing to their loved ones, to the injury of the sponsors in the form of prolonged denial of the right to family unity.

157. 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)

158. Petitioners allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

159. Petitioners and the classmembers have been aggrieved by Defendants' action in detaining [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Class in government custody and demanding that the adult household members of each child's sponsor submit biometric and biographical information to be shared with DHS before Defendants release any child Plaintiff to his or her sponsor. Defendants' detainment of and failure to release [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Class constitutes final agency action. ORR's Policy Guide and MOA establish final agency action resulting in the prolonged detention and refusal to release [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the class of children similarly situated. 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 Petitioners and has the legal consequence of maintaining this class of children in ORR custody, and depriving their sponsors of their right to family unity. Accordingly, Petitioners are entitled to judicial review of ORR's actions under 5 U.S.C. § 704.

160. The Administrative Procedure Act ("APA") requires agency rules to be promulgated through the notice and comment process.

161. 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).

162. 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." **Ex. 3**. The biometric information requirement is contained in Section 2.6 of the Guide. *Id.*

163. 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* **Ex. 4**. Moreover, the ORR failed to articulate any explanation–much less a rational one–as to why it requires that "All individuals seeking to sponsor a UAC and adults in their household are subject to fingerprinting requirements" and that that "biometric and biographical information, including fingerprints, is shared with . . . DHS to determine immigration status." ORR Guide Sections 2.6 and 2.6.2. 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. *Sec. & Exch. Comm'n v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

164. Accordingly, under 5 U.S.C. §§ 706(1), (2)(A), (2)(C), and (2)(D), this court should set aside various ORR policies enacted through the ORR Guide as being arbitrary and

capricious, in excess of statutory jurisdiction and for failure to observe the procedures required by the APA, and compel the release of [MINOR'S NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4] to the custody of their current sponsors; and compel the release to their sponsor of any other member of the Detained Children Class whose detention has been prolonged based solely on one or more of the enjoined provisions.

165. Petitioners have exhausted all administrative remedies available to them as of right.

166. Petitioners have no recourse to judicial review other than by this action.

COUNT V
VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT PROHIBITION ON ARBITRARY, CAPRICIOUS, AND UNLAWFUL GOVERNMENT ACTION
(All Plaintiffs Against All Defendants)

167. Petitioners allege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

168. Petitioners have been aggrieved been aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. First, the agency's action entering into the MOA and enacting revised policies in furtherance of the MOA is final agency action that is arbitrary, capricious, and otherwise not in accordance with law. Second, this unlawful agency action leads to ORR's final decisions not to release [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the class of children similarly situated pending additional fingerprinting and information sharing for all members of the sponsors' households, despite ORR staff routinely recommending to release these children to their sponsors. This second agency action is likewise arbitrary, capricious, and not in accordance with law.

169. In addition, Defendants' detention of [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the class of children similarly situated and their failure to release these children promptly into the custody of their capable and appropriate sponsors is arbitrary and capricious and otherwise not in accordance with law by, *inter alia*, either ignoring applicable provisions of the *Flores* Agreement and the TVPRA or interpreting those provisions in a manner that frustrates their underlying purpose, and by imposing unreasonable and unnecessary conditions precedent to releasing UACs to a suitable sponsor.

170. Petitioners have exhausted all administrative remedies available to them as of right.

171. Petitioners have no recourse to judicial review other than by this action.

COUNT VI
HABEAS CORPUS
(All Child Plaintiffs Against All Defendants)

172. As set forth above, Defendants are holding Petitioner [MINOR'S NAME-1][42], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the Detained Children Classmembers in federal custody, in violation of federal statutes and the U.S. Constitution, and Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and the class of children similarly situated accordingly seek a writ of habeas corpus.

PRAYER FOR RELIEF

WHEREFORE, [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4]; and [SPONSOR'S NAME-1], [SPONSOR'S NAME-2],

[42] A habeas corpus cause of action is stated as to [MINOR'S NAME-1] only to preserve the cause of action should he be redetained and again placed in ORR custody.

[SPONSOR'S NAME-3], and [SPONSOR'S NAME-4]; on behalf of themselves and others similarly situated, respectfully request that the Court:

A. Assume jurisdiction over this matter;

B. Certify the Detained Children's Class and the Sponsor Class, as set forth above, and appoint Legal Aid Justice 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 Defendants' uniform practice of denying release where an immigrant child's sponsor cohabits with other adults who are unwilling to provide their fingerprints and biographic information to be shared with ICE to be used to out immigration enforcement, violates violate the TVPRA, the Administrative Procedure Act, and the Due Process Clause;

G. Issue a writ of habeas corpus to Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-3], [MINOR'S NAME-4], and to any member of the Detained Children Class whose continued detention by ORR is based solely on any enjoined provision;

H. Order Defendants to immediately release [MINOR'S NAME-2], [MINOR'S NAME-3], and [MINOR'S NAME-4], to the custody of their current sponsors, [SPONSOR'S NAME-3], [SPONSOR'S NAME-2], and [SPONSOR'S NAME-4] respectively, and release to

their sponsor any member of the Detained Children Class whose continued detention by ORR is based solely on any enjoined provision;

I. Award the named plaintiffs and other members of the proposed classes reasonable attorney's 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

J. Grant any further relief that the Court deems just and proper.

Dated: August 16, 2018

Respectfully submitted,

/s/ ***Rebecca Ruth Wolozin***
Rebecca Ruth Wolozin (VSB No.: 89690)
becky@justice4all.org
Simon Sandoval-Moshenberg (VSB No.: 77110)
simon@justice4all.org
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike, Suite 520
Falls Church, VA 22041
(703) 778-3450 / fax (703) 778-3454

Attorneys for Plaintiffs/Petitioners [MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-4] [MINOR'S NAME-3] [SPONSOR'S NAME-1], [SPONSOR'S NAME-2], [SPONSOR'S NAME-4], [SPONSOR'S NAME-3], and all others similarly situated

John Christopher Rozendaal (VSB No. 41857)
jcrozendaal@sternekessler.com
Salvador M. Bezos (VSB No. 75942)
sbezos@sternekessler.com
Jorge A. Goldstein (*pro hac vice* motion forthcoming)
jgold@sternekessler.com

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 772-8805 / fax (202) 371-2540

[MINOR'S NAME-1], [MINOR'S NAME-2], [MINOR'S NAME-4] [MINOR'S NAME-3] [SPONSOR'S NAME-1], [SPONSOR'S

NAME-2], [SPONSOR'S NAME-4], and [SPONSOR'S NAME-3]

Certificate of Service

I, the undersigned, hereby certify that on this date, electronically filed the foregoing Second Amended Class Action Complaint and Petition for Writ of Habeas Corpus with the Clerk of Court using the CM/ECF System, which will send a Notice of Electronic Filing (NEF) to all counsel of record:

Catherine M. Yang
Assistant U.S. Attorney
Dennis C. Barghaan Jr.
Deputy Chief, Civil Division
U.S. Attorney's Office for the Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
Tel: (703) 299-3891 / Fax: (703) 299-3983
Catherine.yang@usdoj.gov
Dennis.barghaan@usdoj.gov
Counsel for Defendants

In addition, a true and correct copy will be served by Certified Mail on August 17, 2018, upon the newly added defendants as follows:

TIMOTHY SMITH, Executive Director
Shenandoah Valley Juvenile Detention Center
300 Technology Dr.
Staunton, VA 24401

GARY L. JONES, Chief Executive Officer
Youth For Tomorrow
11835 Hazel Circle Dr.
Bristow, VA 20136

Respectfully submitted,

_____//s//_____ Date: _08/16/2018
Rebecca R. Wolozin
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike, Suite 520
Falls Church, VA 22041