

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

J.E.C.M., a minor, by and through his next)
friend JOSE JIMENEZ SARAVIA, and JOSE)
JIMENEZ SARAVIA;)

)
B.G.S.S., a minor, by and through his next)
friend INGRID SIS SIS;)

)
R.A.I., a minor, by and through her next)
friend SANDRA ALVARADO, and)
SANDRA ALVARADO;)

)
K.T.M., a minor, by and through his next)
friend CINTHIA VELASQUEZ TRAIL; and)
CINTHIA VELASQUEZ TRAIL)

)
*On behalf of themselves and others similarly)
situated*)

)
Plaintiffs/Petitioners,)

)
v.)

)
JONATHAN HAYES, Acting Director,)
Office of Refugee Resettlement;)

)
JALLYN SUALOG, Deputy Director, Office)
of Refugee Resettlement;)

)
LYNN JOHNSON, Assistant Secretary for)
the Administration for Children and Families,)
U.S. Department of Health and Human)
Services;)

)
ALEX AZAR, Secretary, U.S. Department of)
Health and Human Services;)

)
NATASHA DAVID, Federal Field Specialist,)
Office of Refugee Resettlement;)

)
JOHNITHA MCNAIR, Executive Director,)
Northern Virginia Juvenile Detention Center;)

Case No.: 1:18-cv-903-LMB

**THIRD AMENDED CLASS
ACTION COMPLAINT AND
PETITION FOR A WRIT OF
HABEAS CORPUS**

TIMOTHY SMITH, Executive Director,)
 Shenandoah Valley Juvenile Detention)
 Center; and)
)
 GARY L. JONES, Chief Executive Officer,)
 Youth For Tomorrow;)
)
 Defendants/Respondents.)
)

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 J.E.C.M., B.G.S.S. R.A.I., and K.T.M.¹ (the “child Plaintiffs”) 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, only to find themselves detained by the federal Office of Refugee Resettlement (ORR) in Virginia.

2. Plaintiffs Jose Jimenez Saravia, Sandra Alvarado, and Cinthia Velasquez Trial (the “sponsor Plaintiffs”) are individuals who have agreed to open their homes to the child Plaintiffs so that they need no longer be detained at government institutions, only to find themselves subject to an arbitrary, standardless, seemingly endless vetting process that furthermore unnecessarily placed them at heightened r1sB00520003004B004450059>90048400030044>5004A1

over lengthy detention and requiring that ORR promptly reunite these children with loved ones in the United States, while their immigration cases are adjudicated. As Defendant Lynn Johnson, Assistant Secretary for the Administration for Children and Families, U.S. Department of Health and Human Services, put it: “The children should be home with their parents. The government makes lousy parents.”²

4. Yet the government’s policies and practices regarding the release of immigrant children and the reunification of immigrant families do just the opposite. ORR has implemented the sponsorship process in an opaque and arbitrary manner, lacking sufficient notice and opportunity to be heard, and designed to stymie—rather than facilitate—the release of detained immigrant children. Family members or other sponsors seeking to open their home to a child in ORR custody must submit to an opaque process with shifting goalposts; with no delineated timelines whatsoever; which includes procedural steps designed solely to facilitate immigration enforcement against the sponsor, to the detriment of the child’s interest in speedy release from detention and in family unity; where the primary decisionmaker, a case manager, has tremendous subjective discretion and unreviewable power to deny a sponsorship application; and which, unless the sponsor is the child’s parent, results in no written decision and no opportunity for appeal. Meanwhile, the children are trapped in highly restrictive facilities, as if they were prisoners serving out criminal sentences without any semblance of due process.

5. To make matters worse, in April 2018, ORR entered into a Memorandum of Agreement (MOA) with the Department of Homeland Security (DHS), whereby ORR agreed to

² John Burnett, “Several Thousand Migrant Children In U.S. Custody Could Be Released Before Christmas,” Dec. 18, 2018, National Public Radio, *available at* <https://www.npr.org/2018/12/18/677894942/several-thousand-migrant-children-in-u-s-custody-could-be-released-before-christ>.

share with ICE the information it gathered during the family reunification petition process about

Defendants' actions violate the federal statute that governs the detention and release of

12. Plaintiff B.G.S.S. is a 17-year-old boy from Guatemala who has been detained by the defendants beginning on or about May 11, 2018 until January 19, 2019. At the time the First and Second Amended Complaints [Dkts. ##4, 21] were filed, he was detained by defendants in Staunton, Virginia. He currently resides in Virginia.

19. Defendant Jonathan Hayes is the Acting Director of the Office of Refugee Resettlement (“ORR”). ORR is the government entity directly responsible for the detention of the child plaintiffs. Mr. Hayes is a legal custodian of the child Plaintiffs and is sued in his official capacity.

20. Defendant Jallyn Sualog is the Deputy Director of ORR. Ms. Sualog is a legal custodian of the child Plaintiffs and is sued in her official capacity.

21. 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 J.E.C.M. was detained, as well as the ORR contract with Youth For Tomorrow, where K.T.M. and R.A.I. were detained, and Shenandoah Valley Juvenile Detention Center, where B.G.S.S. was detained.

22. Respondent Johnitha McNair is the Executive Director of Northern Virginia Juvenile Detention Center (“NOVA”), and is the warden of that facility. J.E.C.M. was held at NOVA at the time he filed his habeas corpus petition [Dkt. #1] until his release on July 26, approximately one week after the initial filing of this suit. Ms. McNair was a legal custodian of J.E.C.M. and is sued in her official capacity.

23. Respondent Timothy Smith is the Executive Director of Shenandoah Valley Juvenile Detention Center (“SVJC”), and is the warden of that facility, where B.G.S.S. was detained at the time he filed his habeas corpus action [Dkt. #21]. Mr. Smith was a legal custodian of B.G.S.S. and is sued in his official capacity.

24. Respondent Gary L. Jones is the Chief Executive Officer of Youth For Tomorrow (“YFT”), and is the warden of that facility, where R.A.I. and K.T.M were detained at the time

they filed their habeas corpus action [Dkt. #21]. Dr. Jones was a legal custodian of R.A.I. and K.T.M. and is sued in his official capacity.

BACKGROUND AND LEGAL FRAMEWORK

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

25. 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.⁴ In recent years, the U.S. has seen an influx of children from Mexico and Central America fleeing endemic levels of crime and violence that have made those countries extremely dangerous, especially for children and young adults.⁵ In FY2017, 23% of UACs had Honduras as their country of origin, where J.E.C.M., R.A.I. and K.T.M. are from.⁶ In the same fiscal year, 45% of UACs came from Guatemala, where B.G.S.S. is from, and 27% came from El Salvador.⁷

26. Government care and custody of UACs is governed by a legal framework consisting primarily of two statutory provisions—§ 279 of Title 6 and § 1232 of Title 8—plus a settlement agreement that is binding on the pertinent federal agencies. In the 1980s and 1990s, immigrant children who arrived 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

⁴ See Office of Refugee Resettlement: Facts and Data, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data> (last accessed May 2, 2018).

⁵ See ACF Fact Sheet, https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf

34. Three facilities in Virginia have contracts with HHS to house children in ORR custody. One of these facilities is Youth For Tomorrow (YFT), a “shelter care” facility with the lowest level security, where 0 gpsNb05

household *and* an alternative caregiver who is able to provide care in the event the original sponsor is unavailable. *See* Exh. 1. at § 2.2.4.

222 F. Supp. 3d 476 (E.D. Va. 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. 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*).¹⁴ Notably, in *Santos*, ORR requested additional time in which to provide “a more fulsome process.” *Santos*, 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* soon became

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result in retaliation during the process of assessing the viability of the sponsor’s application. For detained children, this means many more weeks or months in detention, while the case manager works with the sponsor to complete a process with no definitive end and no definitive number of steps or requirements. The process does not accord the children or their sponsors a hearing or other meaningful notice or opportunity to be heard, nor is there any procedure establishing such an opportunity for them. *Contra, e.g.,* 22 Va. Admin. Code §§ 40-201-10 *et seq.* (setting out detailed criteria and strict timelines for foster care placements in Virginia).

44. The Fourth Circuit made clear in *D.B. v. Cardall*, 826 F.3d at 741-43, that 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.

45. ~~45~~ *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

47. 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.

who are also immigrants; that these family members are generally the best sponsors for the children; and that a disproportionately large number of these family members lack any legal status in the United States, like the children themselves.

54.

the potential sponsor and all adult members of the potential sponsor’s household”). ORR incorporated this information collection and sharing policy into various sections of its ORR Policy Guide.

56. 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. *Id.* 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.

57. The only rationale for collecting immigration status information provided by ORR in the ORR Guide is listed in Sec. 2.6 of that guide. *See* Exh. 1. That section of the guide states, “ORR does not disqualify potential sponsors on the basis of their immigration status. ORR does seek immigration status information, but only to determine if the sponsor is eligible to sponsor a child who is needed if the sponsor needs to leave the United States; it is not used as a reason to deny a family reunification application.” *Id.* There was no rationale provided regarding seeking or sharing information about household members’ immigration status, which has no b

obligation to act in the best interests of the children in its care: when ICE arrests a would-be sponsor of an immigrant child, that immigrant child obviously cannot be released to the sponsor, and the child's release from detention is stalled until another sponsor willing to engage in the process can be identified, if any; and when ICE arrests the sponsor of a recently released immigrant child, that sponsor is prevented from carrying out the terms of his sponsorship agreement with ORR, and the child will be plunged into instability and often poverty.¹⁸

59. Indeed, in just the first four months of the MOA's operation, ICE used the MOA and the information obtained thereby to carry out civil immigration arrests of 170 sponsors, 109

¹⁸ For example, one 17-year-old Guatemalan child named E.A.X. came to the United States on July 20, 2018 with his two younger brothers and were detained by Defendants at a 300-bed shelter in Arizona. Their father, who lived in Nebraska with his wife and their son, began the sponsorship process for his three older boys. After a disciplinary incident, E.A.X. was separated from his brothers and transferred to a staff-secure facility in northern California.

On or around September 4, 2018, E.A.X.'s father submitted his fingerprints to ORR as part of the reunification process. Just three days later, E.A.X.'s father got in his car to go to work. A few blocks from his home, he was pulled over by ICE agents, arrested, and quickly deported to Guatemala. After E.A.X. found out that his father had been deported as a result of submitting fingerprints to sponsor him, E.A.X. felt guilt-ridden and devastated.

The brothers' stepmother continued the sponsorship process in her husband's place. E.A.X.'s brothers were released to her, but because E.A.X. is in a higher security facility than his brothers, he has not been released. As a result of his prolonged detention, the restrictive nature of the staff-secure facility, the separation from his brothers, the release of his brothers, and the deportation of his father, E.A.X.'s behavior became more erratic. The number of minor incidents E.A.X. was involved in increased, further decreasing his chances of release to his stepmother.

Finally, in November of 2018, after E.A.X. had been in detention for four months, he learned that his stepmother was considering withdrawing from the sponsorship process due to the burdensome policies challenged in this lawsuit. E.A.X.'s emotional and psychological condition further deteriorated, and he attempted suicide. When the paramedics arrived, E.A.X. believed they were there to kill him. He was hospitalized for several days.

Instead of working to release E.A.X. to a sponsor as quickly as possible, or alternatively place him in a facility where his mental health needs could be adequately met, ORR transferred E.A.X. to the Yolo County Detention Facility, its most secure and jail-like detention facility in the United States, where his freedoms are even further curtailed, and he is surrounded by other children who have similar difficulties adjusting to prolonged detention.

Executive Director of the organization running the Tornillo detention facility, would later explain. “You can’t keep taking children in and not releasing them.”²⁴

63. Just as predictably, the mandatory fingerprinting and information-sharing of sponsors’ household members turned out not to be necessary or even helpful: Defendant Johnson would later state that the policy did not “add[] anything to the protection and safety of the children.”

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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. The result of ORR being unable to identify closely related sponsors for the children in its care, as a result of the sharing of sponsor information with ICE

longer accept any more child detainees—ORR revised its policy: no longer would sponsors' household members be fingerprinted in all cases. However, the new policy requiring fingerprinting of all

74. The December 18 Suallog memorandum

the same memorandum. *See also* Exh. 4 (ORR Frequently Asked Questions guide) (listing only

FACTS PERTAINING TO PLAINTIFFS

J.E.C.M. and his sponsor Jose Jimenez Saravia

77. J.E.C.M. is a 14-year-old citizen of Honduras who came to the U.S. in February 2018 accompanied by a friend. He fled Honduras to escape persecution, including threats to his own life.

78. J.E.C.M. has known and been close with his brother-in-law Jose Jimenez Saravia 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 Honduras, every week or every other week. They often sent money to support him in Honduras so that he could attend school.

79. J.E.C.M. has never been arrested for or charged with a crime. Prior to coming to the United States at the age of 13, he went to school and mostly stayed in his home with his family out of fear of violence.

80. J.E.C.M. fled Honduras in at the end of December 2017. J.E.C.M. arrived in the U.S. at the end of February 2018, and was apprehended by Customs and Border Patrol. He was placed in an unaccompanied children's shelter in San Diego, California operated by Southwest Key Programs.

81. On March 9, 2018, J.E.C.M. was transferred to Selma Carson Home in Fife, Washington, a staff secure facility near Tacoma. He was transferred to the staff secure facility because he had been labeled as an escape risk by his clinician 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.

82. J.E.C.M.'s case manager prepared an ORR Release Notification on April 5, 2018 stating "ORR has determined that the below Juvenile Respondent should be released to a sponsor," and listed J.E.C.M.'s brother-in-law, Mr. Jimenez Saravia, as the custodian. However,

J.E.C.M. was not released to Mr. Jimenez Saravia. Instead, J.E.C.M. remained in ORR custody

been denied as a sponsor or that he was not a viable sponsor without his household member's fingerprints. Nonetheless, J.E.C.M. remained locked in a juvenile jail only because of a change in ORR policy and the MOA.

86. J.E.C.M.'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 NOVA. J.E.C.M. 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.

87. J.E.C.M. was released to Mr. Jimenez Saravia on or about July 26, 2018, just days after the filing of the First Amended Complaint [Dkt. #4] and first Motion for Class Certification [Dkt. #5] in this action. He remains living with Mr. Jimenez Saravia subject to ORR's sponsorship agreement and may be re-detained and placed in ORR custody again in the future.

B.G.S.S.

88. B.G.S.S. is a 17-year-old citizen of Guatemala who came to the U.S. in May 2018. He fled Guatemala to escape persecution and because his mother had passed away. B.G.S.S. has never been arrested

program, getting along with the other children and adjusting well as the staff worked on family reunification. After approximately 10 days at BCFS Raymondville, B.G.S.S. was transferred to Casa Padre due to “emergency influx.” Unlike BCFS Raymondville, Casa Padre is a warehouse of about 1,500 children, housed in a converted Walmart.³⁰ Despite the number of children, there

91. After being transferred to Casa Padre, B.G.S.S. became depressed, irritable, and hopeless. He was overwhelmed by the sheer number of children and people around him all the

placement decisions, he was not advised of the impact his statements could have on his placement, his reunification, or potentially his immigration case.

95. Following the incident in which ORR alleges that B.G.S.S. made criminal self-disclosures, B.G.S.S. consistently denied being an adult or having committed violence in the past. His birth certificate was verified by the Guatemalan embassy and by his family in Guatemala and in the United States. B.G.S.S. and all of his family not only denied that B.G.S.S. had ever committed violence in his home country but also offered plausible, age-appropriate explanations for his admittedly misguided but certainly not criminal false reports regarding his age and past. B.G.S.S. has also consistently denied having any plan to commit violence in the future. Nonetheless, despite investigating the veracity of B.G.S.S.'s "self-disclosures" pursuant to ORR Policy 1.4.2, and finding no credible support for any of them, ORR staff recommended

while at Casa Padre, ORR staff completed a release request for B.G.S.S.'s release to Ms. Jeronimo Sis. But after B.G.S.S. was transferred to SVJC, ORR staff added onerous steps to his reunification process, such as requiring that B.G.S.S. complete a psychological evaluation and that his sponsor submit to a discretionary home study. ORR also required fingerprints from all adults in Ms. Jeronimo Sis's household, including her adult daughter and her partner, in order to approve B.G.S.S.'s placement with Ms. Jeronimo Sis. Ms. Jeronimo Sis's partner was fearful of providing his information to ORR to be shared with ICE and used for immigration enforcement, and Ms. Jeronimo Sis was told her only option to sponsor her brother was to convince him to provide the information or for the two of them not to live together anymore. These extra steps resulted in further delay to the reunification process as Ms. Jeronimo Sis' daughter awaited action by the case manager working on B.G.S.S.'s case to make her appointment to provide fingerprints to ORR.

98. As is common practice, Ms. Jeronimo Sis 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. Ms. Jeronimo Sis was repeatedly told over the telephone that her sponsorship of B.G.S.S. would likely not be approved, or if it was approved would take a long time. Eventually, in December 2018, Ms. Jeronimo Sis succumbed to a sense of hopelessness that Defendants would never release B.G.S.S. to her care, and she withdrew her sponsorship application.

99. On or about January 3, 2019, B.G.S.S.'s 27-year-old niece Ingrid Sis Sis, also a resident of Virginia, was given a sponsorship package, which she submitted to the caseworker just one day later in an effort to sponsor B.G.S.S. and finally bring him home to live with family, instead of in an institution. Some days thereafter, she was given another five pages to fill out,

which she submitted within about a week. She submitted her fingerprints on January 15, 2019. B.G.S.S. was released to her care on January 19, 2019.

R.A.I. and her sponsor Sandra Alvarado

100. R.A.I. is a 15-year-old girl from Honduras. At the age of five, she left her parents' house and went to live with her sister, Sandra Alvarado, because her parents could no longer care for her or support her.

101. R.A.I. came with her sister to the United States in April 2018. They came because there was significant violence in their community and to enable R.A.I. to study. Ms. Alvarado wanted a better future for her young sister.

102. Despite Ms. Alvarado being R.A.I.'s primary caretaker, the two were separated at the border by U.S. immigration officials. R.A.I. was placed in ORR custody in Virginia at Youth for Tomorrow ("YFT"). Ms. Alvarado was paroled to Maryland where she lived in an apartment with a friend.

103. Ms. Alvarado was initially told that she could not sponsor her younger sister

104. R.A.I. was detained at YFT in the custody of ORR on August 16, 2018, when she joined this action and filed a habeas corpus petition by means of the Second Amended Complaint [Dkt. #21]. ORR released R.A.I. into the custody of her sister Ms. Alvarado only after the filing of the Second Amended Complaint [Dkt. #21] and Supplemental Motion for Class Certification [Dkt. #28] identifying her as a Plaintiff and putative class representative in this action. She remains living with Ms. Alvarado subject to ORR's sponsorship agreement and may be re-detained and placed in ORR custody again in the future.

K.T.M. and his sponsor Cinthia Velasquez Trail

105. K.T.M. is a 15-year-old boy from Honduras. He fled Honduras with his older sister, Wendy, to escape violent and credible threats on his life after his father was murdered in front of him. He has experienced severe trauma and has relied on his older siblings to care for him and help him cope with the violence to which he has been exposed. He and his other sister Cinthia Velasquez Trail have always had an especially close relationship: after Ms. Velasquez Trail moved to the United States a few years ago, K.T.M. spoke with her every day by phone. He also spoke to her husband several times a week by phone. He has a close and loving relationship with both his older sisters and with his brother-in-law.

106. K.T.M. and his sister Wendy arrived in the U.S. in March 2018. Although Wendy was caring for K.T.M., they were separated at the border by U.S. immigration officers, despite K.T.M.'s desire to remain with his sister. K.T.M. was placed in ORR custody in Virginia at YFT. His sister Wendy was paroled to Texas where she is living with their sister, Cynthia Velasquez Trail.

107. K.T.M.'s sister, Ms. Velasquez Trail, submitted all the requisite paperwork to be K.T.M.'s sponsor. She lives with her partner and with K.T.M.'s other sister, Wendy, with whom

K.T.M. traveled to the U.S. Although K.T.M.'s sister and brother-in-law both submitted all the required documentation and passed their background checks, upon information and belief, Wendy was unable to be scheduled for her background check and fingerprint appointment

- 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 her or his full biographical information and fingerprints, or if required, those 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.

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

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

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

113. Numerosity: The proposed classes are sufficiently numerous so as to render joinder impracticable. Upon information and belief, ORR has bedspace for over 130 children in Virginia, and those beds are usually full or close to full. Additional children are joining the class on a near-constant basis as ORR's population of detained immigrant children continues to increase and new sponsors are universally subject to the MOA policies.

114. 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 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.

115. 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 blanket sharing of sponsors' biometric and biographic 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 blanket sharing of sponsors' biometric and biographic information with DHS for immigration enforcement purposes were unlawfully promulgated through an online Policy Guide and MOA between ORR and DHS in a manner not in accordance with the APA; and

information collection and from transferring information to DHS unless specifically warranted

adjudication, judicial economy, and the fair and equitable handling of all class members' common claims in a single forum.

CAUSES OF ACTION

COUNT II
VIOLATION OF PROCEDURAL DUE PROCESS

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

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

130. The child Plaintiffs and the Detained Children Classmembers have a liberty interest in remaining free of government custody, and in being unified with their families.

131. As set forth above,

139.

COUNT IV
VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT PROHIBITION ON
ARBITRARY, CAPRICIOUS, AND UNLAWFUL GOVERNMENT ACTION

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

144. Plaintiffs have 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 the various 2018 amendments to Section 2.5 and 2.6 and the various subsections thereof relating to fingerprinting and fingerprint sharing with DHS, and the decision in the December 18 Suallog Memorandum to continue the ICE fingerprint sharing policy, is final agency action that is arbitrary, capricious, and otherwise not in accordance with law. Second, this unlawful agency action led to ORR's final decisions not to release the child Plaintiffs and the Detained Children Class pending additional fingerprinting and information sharing with DHS, despite ORR staff routinely recommending that these children be released to their sponsors. This second agency action is likewise arbitrary, capricious, and not in accordance with law. Further, the MOA and associated ORR policies are arbitrary, capricious, and otherwise not in accordance with law because the primary intent and purpose of these policies was to assist ICE in enforcing civil immigration laws against sponsors and their household members—a purpose that not only has no relationship to ORR's mission, but actually runs contrary to ORR's statutory obligation to act in the best interests of the children in its care.

145. In addition, Defendants' detention of J.E.C.M., B.G.S.S., R.A.I., K.T.M., 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.

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

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

**COUNT VI
HABEAS CORPUS**

148. As set forth above, Defendants are holding the Detained Children Classmembers in federal custody, in violation of federal statutes and the U.S. Constitution, and Petitioners J.E.C.M., B.G.S.S., R.A.I., K.T.M., as class representatives for the class of children similarly situated accordingly seek a writ of habeas corpus.

PRAYER FOR RELIEF

WHEREFORE, J.E.C.M., B.G.S.S., R.A.I., and K.T.M.; and Jose Jimenez Saravia, Sandra Alvarado, and Cinthia Velasquez Trail; on behalf of themselves and others similarly situated, respectfully request that the Court:

- A. Assume jurisdiction over this matter;
- B. Certify the Detained Children Class and the Sponsor Class, as set forth above, and appoint Legal Aid Justice Center and the Southern Poverty Law Center as class counsel for both classes;
- C. Order the Respondents to promptly identify all classmembers to class counsel, and to notify all classmembers (and their attorneys of record, if any) of their status as classmembers in this action;

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Certificate of Service