

EXHIBIT A

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

J.E.F.M., a minor, by and through his Next Friend, Bob Ekblad; J.F.M., a minor, by and through his Next Friend, Bob Ekblad; D.G.F.M., a minor, by and through her Next Friend, Bob Ekblad; F.L.B., a minor, by and through his Next Friend, Casey Trupin; G.D.S., a minor, by and through his mother and Next Friend, Ana Maria Ruvalcaba; M.A.M., a minor, by and through his mother and Next Friend, Rosa Pedro; S.R.I.C., a minor, by and through his father and Next Friend, Hector Rolando Ixcoy; G.M.G.C., a minor, by and through her father and Next Friend, Juan Guerrero Diaz; A.E.G.E., a minor, by and through his Next Friend, Ana Deutsch; G.J.C.P., a minor, by and through her grandmother and Next Friend, Blanca Griselda Zelaya; J.E.V.G., a minor, by and through his sister and Next Friend, Santos Angela Vasquez, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs-Petitioners,

v.

Eric H. HOLDER, Attorney General, United States; Juan P. OSUNA, Director, Executive Office for Immigration Review; Jeh C. JOHNSON, Secretary, Homeland Security; Thomas S. WINKOWSKI, Principal Deputy Assistant Secretary, U.S. Immigration and Customs Enforcement; Nathalie R. ASHER, Field Office Director, ICE ERO; Kenneth HAMILTON, AAFOD, ERO; Sylvia M. BURWELL, Secretary, Health and Human Services; Eskinder NEGASH, Director, Office of Refugee Resettlement,

Defendants-Respondents.

Case No. 2:14-cv-01026-TSZ

[PROPOSED] SECOND AMENDED COMPLAINT—CLASS ACTION

1 **I. PRELIMINARY STATEMENT**

2 1. Plaintiffs are ~~eight~~eleven immigrant children, ranging in age from ~~ten~~three to ~~seventeen~~17. The
3 Government has begun proceedings to deport each of them; they have been or will soon be called to
4 appear before an Immigration Judge. In court, the Department of Homeland Security (“DHS”) ~~will be~~
5 represented by a trained lawyer who ~~will argue~~argues for the child’s deportation. But no lawyer ~~will~~
6 ~~stand~~stands with the child. ~~Each will be~~Every child is required to respond to the charges against him or
7 her, and, in theory, ~~will be~~ afforded an opportunity to make legal arguments and present evidence on his
8 or her own behalf. But in reality those rights ~~will be~~are meaningless because children are not competent
9 to exercise them. Each child has attempted to find representation, including through pro bono legal
10 service providers, but none of them have found anyone with the resources to take on their cases. Absent
11 this Court’s intervention, these children will be forced to defend themselves pro se under the
12 immigration laws—a legal regime that, as the courts have recognized, rivals the Internal Revenue
13 Code in its complexity.

14 2. The plight of these ~~eight~~eleven children is not unique. Plaintiffs seek to represent a class of
15 unrepresented children, all of whom face deportation. Each year the Government initiates immigration
16 proceedings against thousands of such children, and in each case the purpose of the proceedings is to
17 determine whether the child may remain in the United States. Although a remarkable network of pro
18 bono service providers, working in concert with (and in some cases funded directly by) the Government,
19 has endeavored to represent as many of these children as possible, the majority of children appearing in
20 immigration court still do so without an attorney.¹ At the present time, legal service organizations
21 representing immigrant children throughout the country have nowhere near the capacity to meet the
22 demand. The rising number of children fleeing to this country and the Government’s recent decision to
23

24 ¹ Center for Gender and Refugee Studies & Kids in Need of Defense, *A Treacherous Journey: Child*
25 *Migrants Navigating the U.S. Immigration System* at iii-iv (Feb. 2014) [hereinafter “*A Treacherous*
26 *Journey*”] available at [http://www.uchastings.edu/centers/egrs-oescgrs-](http://www.uchastings.edu/centers/egrs-oescgrs-docs/treacherous_journey_cgrs_kind_report.pdf)
27 <http://trac.syr.edu/immigration/reports/359/> [hereinafter “TRAC Data on Unaccompanied Children”]
28 (stating that over two thirds of children with pending immigration cases are unrepresented).
report.pdf

1 prioritize children's cases will likely worsen that shortfall.² The Government, in contrast, is represented
2 in every case.

3 3. Neither the Constitution nor the immigration laws permit this state of affairs. More than four
4 decades ago, the Supreme Court recognized that when the Government initiates proceedings against
5 children facing juvenile delinquency charges, the Due Process Clause requires the Government to
6 provide those children with legal representation to ensure that the proceedings are fundamentally fair. *In*
7 *re Gault*, 387 U.S. 1, 41 (1967). The Court held that “[t]he juvenile needs the assistance of counsel to
8 cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the
9 proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires
10 the guiding hand of counsel at every step in the proceedings against him.” *Id.* at 36 (citation and
11 quotation marks omitted).- The Constitution guarantees children this safeguard notwithstanding the civil,
12 rather than criminal, character of juvenile delinquency proceedings.

13 4. Immigrants, including immigrant children, are also entitled to Due Process when facing
14 deportation. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Both the Constitution and the immigration laws
15 guarantee all children the right to a full and fair removal hearing, including the opportunity to defend
16 against deportation and seek any forms of relief that would enable them to remain in the United States.
17 And just as in juvenile delinquency proceedings, children cannot receive that fair hearing without legal
18 representation. As the Supreme Court stated in discussing proceedings of similarly “tremendous
19 consequences,” for children in immigration proceedings “[t]he right to representation by counsel is not a
20 formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.” *Kent v.*

21 _____
22 ² *A Treacherous Journey* at 2. For a description of the government's decision to expedite adjudication of
23 children's cases, see Press Release, Dep't of Justice Office of Public Affairs, Department of Justice
24 Announces New Priorities to Address Surge of Migrants Crossing into the U.S. (Jul. 9, 2014), available
25 at [http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-](http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us)
26 [crossing-us](http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us) (linking to factsheet describing Government prioritization of recently-arrived
27 unaccompanied children and families with children). Regarding the worsening shortfall, see Mara Gay,
28 *As Child Immigrants Await Fate, A Race for Counsel*, Wall St. J. (Oct. 1, 2014), available at
[http://online.wsj.com/articles/immigrant-children-in-new-york-city-face-a-shortage-of-attorneys-](http://online.wsj.com/articles/immigrant-children-in-new-york-city-face-a-shortage-of-attorneys-1412100510)
[1412100510](http://online.wsj.com/articles/immigrant-children-in-new-york-city-face-a-shortage-of-attorneys-1412100510) (“Just under half of the children appearing before the New York City Immigration Court
have no attorney, according to The Legal Aid Society. The children are far more likely to be deported
without an attorney, and advocates say the situation is desperate.”).

1 *United States*, 383 U.S. 541, 554, 561 (1966) (addressing child’s right to appointed counsel in
2 proceedings to determine whether juvenile court should waive its jurisdiction in favor of criminal court).

3 5. Yet every day in courts throughout the country, children represent themselves in deportation
4 cases that are often more complex and more serious than most juvenile delinquency cases.³ The resulting
5 adjudications are fundamentally unfair. Children are forced to admit or deny allegations against them,
6 compile evidence in support of their claims to remain in the United States, and articulate legal
7 arguments on their own behalf, when in reality they “are unlikely to understand the complex procedures
8 they face and the options and remedies that may be available to them under the law.”⁴

9 6. To fulfill its statutory and constitutional obligations, the Government must ensure that no child
10 faces the life-altering prospect of deportation without legal representation.

11 12 II. JURISDICTION AND VENUE

13 7. Plaintiffs challenge the federal Government’s failure to provide appointed legal representation
14 for children in immigration proceedings on federal statutory and constitutional grounds.⁵

15 8. This court has subject matter jurisdiction pursuant to the general federal question statute, 28
16 U.S.C. § 1331, the federal habeas statute, 28 U.S.C. § 2241, et seq., the All Writs Act, 28 U.S.C. § 1651,
17 and 5 U.S.C. § 702 (waiver of sovereign immunity).

18 9. This court has personal jurisdiction over the Defendants because of, *inter alia*, the nationwide
19 reach of Defendants’ conduct and the presence of courts operated by Defendants within the Western

20
21 ³ Julia Preston, *Young and Alone, Facing Court and Deportation*, N.Y. Times, Aug. 25, 2012, at A1,
22 *available at* [http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-](http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-deportation.html?pagewanted=all)
23 *deportation.html?pagewanted=all* (describing six-year-old child in removal proceedings without
24 counsel); *see also* Julie Myers Wood & Wendy Young, *Children Alone and Lawyerless in a Strange*
25 *Land*, The Wall Street Journal, Sept. 22, 2013, *available at*
26 <http://online.wsj.com/news/articles/SB10001424127887324492604579083400349940432> (“We’ve seen
27 children as young as 5 facing an immigration judge with no representation.”).

28 ⁴ *A Treacherous Journey* at iii.

⁵ Plaintiffs define “immigration proceedings” as any proceeding that occurs before an Immigration
27 Judge or the Board of Immigration Appeals (“BIA”). Where the reference is ambiguous, the term
28 “Immigration Judges” should be understood to refer to both individual Immigration Judges and
members of the BIA.

1 District of Washington where immigration proceedings involving members of the Plaintiff Class are
2 held.

3 10. Sovereign immunity does not prevent this Court from exercising jurisdiction over these claims.
4 Plaintiffs have brought suit against various federal officials, and it is well established that sovereign
5 immunity does not bar claims against federal officials seeking solely to prevent future violations of
6 federal law (rather than monetary relief). *See, e.g., Larson v. Domestic & Foreign Commerce Corp.*, 337
7 U.S. 682, 697-99 & nn.18-19 (1949); *Shields v. Utah Idaho Cent. R.R. Co.*, 305 U.S. 177, 183-84 (1938)
8 (holding that the court had jurisdiction to consider a claim seeking to enjoin government officials'
9 actions); Erwin Chemerinsky, *Federal Jurisdiction* § 9.1, at 588 (4th ed. 2003) (“[T]he Supreme Court
10 long has held that federal officers may be sued for injunctive relief.”); James E. Pfander, *The Limits of*
11 *Habeas Jurisdiction and the Global War on Terror*, 91 Cornell L. Rev. 497, 528-29 (2006) (“[H]igh
12 government officials in Washington, D.C. cannot invoke the doctrine of official immunity against
13 constitutional challenges to government action” even outside the habeas context.) (footnotes omitted).

14 11. In addition, in 1976, the United States broadly and explicitly waived all immunity from suit in
15 any action requesting non-monetary relief (including injunctive and declaratory relief) in 5 U.S.C. § 702,
16 90 Stat. 2721 (1976) (“An action in a court of the United States seeking relief other than money
17 damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an
18 official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on
19 the ground that it is against the United States or that the United States is an indispensable party.”); *see*
20 *also Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 525 (9th Cir. 1989) (“[T]he time [has]
21 now come to eliminate the sovereign immunity defense in *all* equitable actions for specific relief against
22 a Federal agency or officer in an official capacity.”) (alternations and emphasis in original) (quoting
23 H.Rep. No. 1656, 94th Cong., 2d Sess. 9, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6121,
24 6129).

25 12. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(e)(1) because a
26 substantial part of the events or omissions giving rise to this action occurred in this district. Plaintiffs
27 F.L.B. and G.D.S. reside in this district, and Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S. all
28 have immigration proceedings scheduled to occur in this district. In addition, venue is proper under 28

1 U.S.C. §§ 2242-43 because Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S. are in the
 2 constructive custody of immigration authorities by virtue of immigration proceedings in this district.

3 4 **III. PARTIES**

5 **A. Plaintiffs**

6 13. Plaintiff J.E.F.M. is a 10-year-old native and citizen of El Salvador.⁶ He now resides in
 7 Washington State. ~~He has~~J.E.F.M. had a removal hearing scheduled for September 2014 at the time
 8 Plaintiffs filed the original complaint in this case. The day after the Court heard Plaintiffs' motion for
 9 preliminary injunction on his behalf, the Immigration Judge presiding over his case rescheduled his
 10 removal hearing for May 2015. J.E.F.M.'s hearings are set in Seattle, Washington, and he does not have
 11 an attorney to represent him in his immigration case. J.E.F.M. appears by his next friend Bob Ekblad, a
 12 minister who has worked closely with J.E.F.M. and his family.

13 14. Plaintiff J.F.M. is a 13-year-old native and citizen of El Salvador. He is the older brother of
 14 J.E.F.M. He now resides in Washington State. ~~He has~~J.F.M. had a removal hearing scheduled for
 15 September 2014; at the time Plaintiffs filed the original complaint in this case. The day after the Court
 16 heard Plaintiffs' motion for preliminary injunction on his behalf, the Immigration Judge presiding over
 17 his case rescheduled his removal hearing for May 2015. J.F.M.'s hearings are set in Seattle, Washington,
 18 and he does not have an attorney to represent him in his immigration case. J.F.M. appears by his next
 19 friend Bob Ekblad, a minister who has worked closely with J.F.M. and his family.

20 15. Plaintiff D.G.F.M. is a ~~15~~16-year-old native and citizen of El Salvador. She is the older sister of
 21 J.F.M. and J.E.F.M. She now resides in Washington State. She ~~has had~~had a removal hearing scheduled for
 22 September 2014; at the time Plaintiffs filed the original complaint in this case. The day after the Court
 23 heard Plaintiffs' motion for preliminary injunction on her behalf, the Immigration Judge presiding over
 24 her case rescheduled her removal hearing for May 2015. D.G.F.M.'s hearings are set in Seattle,
 25 Washington, and she does not have an attorney to represent her in her immigration case. D.G.F.M.

26 _____
 27 ⁶ To protect the privacy of the child Plaintiffs in this case, this complaint refers to them using their
 28 initials. See Fed. R. Civ. P. 5.2(a)(3). For the same reason, this complaint also does not provide as much
 detail as is available concerning the harms they have suffered in their home countries, during their
 journeys here, and since their arrivals in the United States.

1 appears by her next friend Bob Ekblad, a minister who has worked closely with D.G.F.M. and her
2 family.

3 16. Plaintiff F.L.B. is a 15-year-old native and citizen of Guatemala. He now resides in Seattle,
4 Washington. He ~~has had~~ a removal hearing scheduled for September 2014 at the time Plaintiffs filed the
5 original complaint in this case. Two weeks after the Court heard Plaintiffs' motion for preliminary
6 injunction on his behalf, the Immigration Judge presiding over his case rescheduled his removal hearing
7 for May 2015. F.L.B.'s hearings are set in Seattle, Washington, and he does not have an attorney to
8 represent him in his immigration case. F.L.B. appears by his next friend Casey Trupin. Mr. Trupin is the
9 Project Coordinator for the Children and Youth Project at Columbia Legal Services in Seattle,
10 Washington.

11 17. Plaintiff G.D.S. is a ~~45~~16-year-old native and citizen of Mexico. He has resided in the United
12 States since approximately the age of one. He does not have an attorney to represent him in his
13 immigration case. G.D.S. appears by his next friend and mother, Ana Maria Ruvalcaba.

14 18. Plaintiff M.A.M. is a 16-year-old native and citizen of Honduras. M.A.M. has resided in the
15 United States since he was eight years old. M.A.M. resides in Oxnard, California. M.A.M. ~~has had~~ a
16 removal hearing scheduled for August 2014, ~~and~~ at the time Plaintiffs filed the original complaint in this
17 case. In August 2014, the Immigration Judge presiding over his case rescheduled his removal hearing
18 for November 2014, and M.A.M. does not have an attorney to represent him in his immigration case.
19 M.A.M. appears by his next friend and mother, Rosa Pedro.

20 19. Plaintiff S.R.I.C. is a 17-year-old native and citizen of Guatemala. S.R.I.C. came to the United
21 States earlier this year and now resides in Los Angeles, California. S.R.I.C. has a removal hearing
22 scheduled for January 2015, and does not have an attorney to represent him in his immigration case.
23 S.R.I.C. appears by his next friend and father, Hector Rolando Ixcoy Ixcoy.

24 20. Plaintiff G.M.G.C. is a ~~44~~15-year old native and citizen of El Salvador. She came to the United
25 States earlier this year and now resides in Los Angeles, California. G.M.G.C. ~~has had~~ a removal hearing
26 scheduled for September 2014, ~~and~~ in Texas at the time Plaintiffs filed the original complaint in this
27 case. Shortly after Plaintiffs filed their motion for preliminary injunction on her behalf, the Immigration
28 Judge presiding over her case changed its venue to Los Angeles. The Los Angeles Immigration Court

1 has yet to reschedule her removal hearing to a specific date. She does not have an attorney to represent
2 her in her immigration case. G.M.G.C. appears by her next friend and father, Juan Guerrero Diaz.

3 21. Plaintiff A.E.G.E. is three-year-old native and citizen of El Salvador. He came to the United
4 States earlier this year and now resides in Los Angeles, California. A.E.G.E. is awaiting his first court
5 date in Los Angeles, California, and does not have an attorney to represent him in his immigration case.
6 A.E.G.E. appears by his next friend, Ana Deutsch. Ms. Deutsch is a Co-Founder and Clinical Director at
7 the Program for Torture Victims in Los Angeles, California.

8 22. Plaintiff G.J.C.P. is a 14-year-old native and citizen of El Salvador. She came to the United
9 States earlier this year and now resides in Van Nuys, California. An Immigration Judge in Los Angeles,
10 California ordered G.J.C.P. removed in absentia in August 2014. She does not have an attorney to
11 represent her in her immigration case. G.J.C.P. appears by her next friend and grandmother, Blanca
12 Griselda Zelaya.

13 23. Plaintiff J.E.V.G. is a 17-year-old native and citizen of El Salvador. He came to the United States
14 earlier this year and now resides in Houston, Texas. In September 2014, an Immigration Judge in
15 Houston, Texas ordered J.E.V.G. removed in absentia. He does not have an attorney to represent him in
16 his immigration case. J.E.V.G. appears by his next friend and sister, Santos Angela Vasquez.

17 **B. Defendants**

18 24. ~~21-~~Defendant Eric H. Holder, Jr., is the Attorney General of the United States and the head of
19 the U.S. Department of Justice (“DOJ”). Mr. Holder shares responsibility for implementing and
20 enforcing the immigration laws. Mr. Holder is sued in his official capacity.

21 25. ~~22-~~Defendant Juan P. Osuna is the Director of the Executive Office for Immigration Review
22 (“EOIR”), which is the federal agency within DOJ that operates the immigration courts. Mr. Osuna is
23 responsible for the supervision of the Deputy Director, the Chairman of the Board of Immigration
24 Appeals (“BIA”), the Chief Immigration Judge, the Chief Administrative Hearing Officer, and all EOIR
25 agency personnel in the execution of their duties. Mr. Osuna is sued in his official capacity.

26 26. ~~23-~~Defendant Jeh C. Johnson is the Secretary of DHS and is the highest-ranking member of
27 DHS, which is the arm of the federal government responsible for enforcing the immigration laws. Mr.
28 Johnson is sued in his official capacity.

1 27. ~~24.~~ Defendant Thomas S. Winkowski is the Principal Deputy Assistant Secretary of DHS, and is
 2 the head of U.S. Immigration and Customs Enforcement (“ICE”), which is the principal investigative,
 3 enforcement, and prosecutorial arm of DHS. ICE attorneys represent the Government in immigration
 4 proceedings. Mr. Winkowski is sued in his official capacity.

5 28. ~~25.~~ Defendant Sylvia M. Burwell is the Secretary of Health and Human Services (“HHS”) and is
 6 the highest-ranking member of HHS, which is the arm of the federal Government responsible for the
 7 care and custody of unaccompanied immigrant minors under the Trafficking Victims Protection
 8 Reauthorization Act. Ms. Burwell is sued in her official capacity.

9 29. ~~26.~~ Defendant Eskinder Negash is the Director of the Office of Refugee Resettlement (“ORR”),
 10 which is the division of HHS directly responsible for the care and custody of unaccompanied immigrant
 11 minors. Mr. Negash is sued in his official capacity.

12 30. ~~27.~~ Defendant Nathalie R. Asher is the Field Office Director for the Seattle Field Office of ICE,
 13 which has custody of Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S., by virtue of immigration
 14 proceedings in this district. Ms. Asher is sued in her official capacity.

15 31. ~~28.~~ Defendant Kenneth Hamilton is the Acting Assistant Field Office Director for the Seattle
 16 Field Office of ICE, which has custody of Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S., by
 17 virtue of immigration proceedings in this district. Mr. Hamilton is sued in his official capacity.

18 19 **IV. FACTUAL BACKGROUND**

20 **A. Children Facing Deportation**

21 32. ~~29.~~ Every year, the Government initiates immigration proceedings to deport thousands of
 22 children, ranging from toddlers to teenagers.⁷ Children enter the immigration enforcement system in
 23 several ways. Thousands are arrested at or shortly after crossing the United States-Mexico border, often

24 _____
 25 ⁷ See *supra* note ~~34~~ (news articles reporting cases of children as young as five or six years old in
 26 removal proceedings); *Matter of Gomez-Gomez*, 23 I. & N. Dec. 522 (BIA 2002) (en banc) (addressing
 27 case of eight-year-old child ordered removed in absentia based on report of arresting officer); *Matter of*
 28 *Ponce-Hernandez*, 22 I. & N. Dec. 784, 785 (BIA 1999) (en banc) (describing 15-year-old child charged
 with removability); *A Treacherous Journey* at 11-12 (noting case stories of girls aged 12 and 14 who
 appeared before Immigration Judges).

1 after having survived treacherous and difficult journeys from their countries of origin. Many of them
 2 have fled persecution by their governments or their own families, rising rates of extreme violence (much
 3 of it caused by the escalating influence of powerful gangs), or economic conditions that make life
 4 unsustainable in their countries of origin.⁸ Some of these children have experienced trauma in the form
 5 of rape, kidnapping, abandonment, or physical abuse inflicted in their home countries or by smugglers
 6 and traffickers during their journey to the United States.⁹

7 33. ~~30.~~ Other children are apprehended after spending years in the United States, some having grown
 8 up almost entirely in this country. Many of them attend school alongside other children in this country,
 9 speak fluent English, and are fully integrated into their communities. Others are not so lucky, suffering
 10 abuse, neglect, or abandonment within the United States itself. Some of these children are turned over to
 11 DHS after contact with the juvenile justice system, while DHS arrests others during general immigration
 12 enforcement activities.

13 34. ~~31.~~ Although they have entered the immigration system in different ways, Plaintiffs and the
 14 putative class they seek to represent share two fundamental characteristics. First, the Government has
 15 initiated immigration proceedings in order to remove them from the United States and, despite their
 16 inability to secure counsel, will force them to appear unrepresented in complex, adversarial court
 17 proceedings against trained ICE attorneys. Second, all of them are under the age of 18, and therefore
 18 lack the intellectual and emotional capacity of adults.

19 _____
 20 ⁸ Women's Refugee Commission, *Forced from Home: The Lost Boys and Girls of Central America* 7
 21 (2012), [http://womensrefugeecommission.org/resources/migrant-rights-and-justice/844-forced-from-](http://womensrefugeecommission.org/resources/migrant-rights-and-justice/844-forced-from-home-the-lost-boys-and-girls-of-central-america/file)
 22 [home-the-lost-boys-and-girls-of-central-america/file](http://womensrefugeecommission.org/resources/migrant-rights-and-justice/844-forced-from-home-the-lost-boys-and-girls-of-central-america/file). This report found that more than 77% of a sample
 23 of 151 children cited violence as their primary reason for fleeing their countries of origin. *See also*
 24 United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children*
 25 *Leaving Central America and Mexico and the Need for International Protection* 6 (2014),
 26 [http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20R](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf)
 27 [eport.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf) [hereinafter UNHCR Report] (finding that no less than 58% of the children interviewed for the
 28 report “were forcibly displaced because they suffered or faced harms that indicated a potential or actual
 need for international protection”).

⁹ The United States Conference of Catholic Bishops Migration and Refugee Services, *The Changing*
 26 *Face of the Unaccompanied Alien Child* 8 (2012), [http://www.usccb.org/about/children-and-](http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf)
 27 [migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-](http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf)
 28 [Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf](http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf).

1 **B. The Structure of Immigration Proceedings for Children**

2 35. 32- Immigration proceedings pit the Government against the child in an adversarial process
 3 where each side is presumed to have the ability to represent its own interests. An attorney trained in
 4 substantive immigration law and immigration court procedures represents the Government. This
 5 attorney acts as a prosecutor, and seeks to establish the child's removability. Each side is expected to
 6 present facts and legal arguments to an Immigration Judge, after which the Judge ultimately makes a
 7 determination in favor of the Government or the child. In most cases, either side can then appeal the
 8 decision to the BIA. A litigant may obtain judicial review of removal orders issued by the BIA by filing
 9 a "petition for review" in the federal court of appeals governing the place of the removal hearing. As
 10 explained below (and as should be obvious), unrepresented children are not capable of filing such
 11 petitions.

12 36. 33- The facts and legal arguments at issue in immigration cases are often complex. The federal
 13 courts have repeatedly observed that "the immigration laws have been termed second only to the
 14 Internal Revenue Code in complexity." *Baltazar-Alcanzar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004)
 15 (citation and quotation marks omitted); *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) ("Immigration
 16 law can be complex, and it is a legal specialty of its own."). The same substantive immigration law
 17 generally governs the cases of both adults and children. Decl. of David O. Thronson, Dkt. 59, ¶11.

18 37. A child's lack of legal representation in immigration proceedings dramatically undermines her
 19 ability to present defenses to and seek relief from removal, even at the earliest stages. At initial hearings,
 20 an Immigration Judge may ask the child to accept or deny the Government's charges and may accept
 21 factual testimony or evidence that allows the Government to meet its burden of establishing the child's
 22 removability, such as the record of deportability. Id. ¶13; Decl. of Eve Stotland, Dkt. 33, ¶¶5-8.

23 38. In addition, without the assistance of an attorney, children are unlikely to be aware of procedural
 24 defenses against removal that must be raised in these initial hearings. For example, some children have
 25 arguments that the immigration proceedings must be terminated because of constitutional or regulatory
 26 violations. See, e.g., Matter of Mejia-Andino, 23 I. & N. Dec. 533, 536 (BIA 2002) (en banc)
 27 (concluding that proceedings against seven-year-old child were properly terminated due to failure to
 28 properly serve the charging document). Even if a child is aware of such a defense, moving an

1 Immigration Judge to terminate the proceedings on such grounds requires the ability to gather and
 2 understand facts surrounding one's arrest, the interaction between different state and federal agencies,
 3 and complex regulatory and constitutional law. The child bears the burden of establishing that the
 4 Government obtained its evidence in a manner that requires suppression. *See Matter of Barcenas*, 19 I.
 5 & N. Dec. 609, 611 (BIA 1988).

6 39. 34. Eventually, children are also asked to state what forms of relief from removal they wish to
 7 seek and how long they will need to complete the applications for relief. Dkt. 59, ¶14. Even identifying
 8 defenses or other avenues to relief from removal, let alone prevailing on them, often requires substantial
 9 factual investigation and legal research. For example, a number of children facing removal have fled
 10 persecution in their home countries. However, the immigration laws put the burden on the child to prove
 11 eligibility for asylum. *See* 8 U.S.C. § 1158(b)(1)(B)(i). Establishing such eligibility requires the child to
 12 present significant amounts of evidence and sophisticated legal arguments. As a result, asylum claims
 13 brought by pro se children “frequently fail due to burdensome legal standards and incorrect application
 14 of legal principles . . . even when it has been determined that the child suffered egregious harm rising
 15 to the level of persecution and is likely to suffer persecution in the future.”¹⁰

16 40. 35. As with asylum, children bear the burden of demonstrating eligibility for other forms of relief
 17 from deportation. *See* 8 U.S.C. § 1229a(c)(4) (stating that applicant for relief from removal in
 18 immigration proceedings bears burden to demonstrate both eligibility requirements of the particular
 19 form of relief, and, if applicable, merits relief as a matter of discretion). These other forms of relief
 20 include Special Immigrant Juvenile Status (“SIJS”), which is available to a child when a state juvenile
 21 court declares that the child’s reunification with one or both parents is not viable due to abuse, neglect,
 22 abandonment, or a similar basis under state law, *see* 8 U.S.C. § 1101(a)(27)(J)(i); U-visas, which are
 23 available to children who have been the victims of certain serious crimes if they would be helpful to the
 24 authorities in an investigation or prosecution, *see id.* §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); T-visas,
 25 which protect victims of “severe” forms of human trafficking, *see id.* § 1101(a)(15)(T)(i)(I); family
 26 visas, where a parent who is a U.S. citizen or lawful permanent resident is able to file a visa petition on
 27 their child’s behalf, *see id.* §§ 1151-1154, as well as other forms of relief. Meeting the eligibility

28 ¹⁰ *A Treacherous Journey* at 20.

1 requirements for all of these forms of relief requires the child to carefully marshal both facts and law.
 2 The child must not only demonstrate substantive eligibility for relief, but also be able to follow
 3 procedures for submitting the appropriate applications to different agencies of the Government, along
 4 with the required supporting evidence.

5 ~~36. In addition, some children have procedural defenses against removal, including arguments that the~~
 6 ~~immigration proceedings must be terminated because of constitutional or regulatory violations. See, e.g.,~~
 7 ~~Matter of Mejia Andino, 23 I. & N. Dec. 533, 536 (BIA 2002) (en banc) (concluding that proceedings~~
 8 ~~against seven-year-old child were properly terminated due to failure to properly serve the charging~~
 9 ~~document). However, moving an Immigration Judge to terminate the proceedings on such grounds is no~~
 10 ~~small feat. In particular, a suppression motion requires the ability to gather and understand facts~~
 11 ~~surrounding one's arrest, the interaction between different state and federal agencies, and complex~~
 12 ~~regulatory and constitutional law. Here too, the child bears the burden of establishing that the~~
 13 ~~Government obtained its evidence in a manner that requires suppression. See Matter of Barcenas, 19 I.~~
 14 ~~& N. Dec. 609, 611 (BIA 1988).~~

15 41. ~~37.~~ Because of their age, children lack the ability to assert ~~these and other~~ defenses and claims to
 16 relief by themselves. “A child’s age is far more than a chronological fact. It is a fact that generates
 17 commonsense conclusions about behavior and perception . . . [that] apply broadly to children as a
 18 class.” *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (internal quotation marks and citations
 19 omitted). These commonsense conclusions are grounded not only in “what any person knows [] about
 20 children generally,” *id.*, but also in scientific studies that “continue to show fundamental differences
 21 between juvenile and adult minds.” *Graham v. Florida*, 560 U.S. 48, 68 (2010) (citing amicus briefs
 22 from medical and psychological professional associations).

23 42. ~~38.~~ For example, children possess a reduced capacity to comprehend the consequences of their
 24 actions and decisions, and they are often more receptive to adult influence, in part because many of them
 25 have been taught not to challenge authority and to please the adults around them. *See* Dustin Albert &
 26 Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 *J. Research on Adolescence*
 27 211, 220 (2011), available at
 28 <http://behaviorchangeresearchnetwork.pbworks.com/w/file/etch/49649607/Albert%20%26%20Steinber>

1 [g%20\(2011\).pdf](#) (noting that “adults tend to make more adaptive decisions than adolescents,” in part
 2 because “they have a more mature capacity to resist the pull of social and emotional influences and
 3 remain focused on long-term goals”). As a result, they are frequently more susceptible to suggestion and
 4 leading questions, and at times have difficulty distinguishing between people who are seeking to protect
 5 their interests and those who are not. ~~What is more,~~ Children in the immigration enforcement system are
 6 often even more vulnerable than other children, since many of them arrive in the United States after
 7 ~~39-~~having experienced serious trauma in their countries of origin or during their journeys to the United
 8 States.¹¹

9 43. ~~40-~~The interests at stake in these complex proceedings could scarcely be higher: children face
 10 expulsion from this country to a land where they often lack family or other support. Many of them fled
 11 their home countries in order to escape persecution, torture, or death; deportation to the country from
 12 which the child fled is often not in their best interest. See Cindy Carcamo, *In Honduras, U.S. Deportees*
 13 *Seek to Journey North Again*, L.A. Times, Aug. 16, 2014, available at
 14 <http://www.latimes.com/world/mexico-americas/la-fg-honduras-deported-youths-20140816-story.html>
 15 (“There are many youngsters who only three days after they have been deported are killed, shot by a
 16 firearm,” said Hector Hernandez, who runs the morgue in San Pedro Sula. “They return just to die.”);
 17 see also Wendy Young & Megan McKenna, *The Measure of a Society: The Treatment of*
 18 *Unaccompanied Refugee and Immigrant Children in the United States*, 45 Harv. C.R.-C.L. L. Rev. 247,
 19 254 (2010) (describing case of Edgar Chocoy, a child whose asylum claim was denied and who was then
 20 murdered 17 days after he was sent back to Guatemala); Jacqueline Bhabha, “*Not a Sack of Potatoes*”:
 21 *Moving and Removing Children Across Borders*, 15 B.U. Pub. Int. L.J. 197, 203 (2006) (noting that
 22 Chocoy was unrepresented in his immigration proceedings).¹²

23
 24 ¹¹ UNHCR Report at 6 (finding that 48% of children interviewed for study had been “personally affected
 25 by the augmented violence” in their countries of origin and that 21% had “survived abuse and violence
 26 in their homes by their caretakers”).

27 ¹² See also Human Rights Watch, “*You Don’t Have Rights Here*”: *U.S. Border Screening and Returns*
 28 *of Central Americans to Risk of Serious Harm* (Oct. 2014), available at
http://www.hrw.org/sites/default/files/reports/us1014_web.pdf (observing that in Honduras, young boys
and girls are frequently targets for gang recruitment and sexual violence).

1 ~~44.~~ 41. Moreover, the civil removal orders issued against children in immigration proceedings bear
 2 the same consequences as those issued against adults. Those consequences include not only bars to
 3 future admission to the United States (if the child would otherwise have been eligible for a visa), but
 4 also the prospect of criminal prosecution should they attempt to reenter the United States.

5 ~~45.~~ 42. Forcing children to appear in immigration court without representation ensures that
 6 thousands of children are deprived of a full and fair opportunity to identify defenses or seek relief for
 7 which they qualify. A recent report by the United Nations High Commissioner for Refugees, for
 8 example, suggests that over half of all unaccompanied children fleeing to the United States from Central
 9 America ~~raised~~have potential ~~international protection needs~~claims under the asylum laws, while a
 10 slightly older report found that as many as 40% of unaccompanied children in removal proceedings were
 11 eligible for some form of immigration relief.¹²¹³—Despite such estimates, only a small number of
 12 children actually receive such relief.¹³¹⁴—This gap is likely due in large part to the absence of counsel.
 13 The presence of counsel makes a real difference for the children fortunate enough to receive legal
 14 representation. Data ~~from the adult removal hearing context~~ confirms what common sense and
 15 experience strongly suggest: ~~immigrants~~children with lawyers are far more likely to identify and prevail
 16 on defenses to removal that the law makes available to them. ¹⁴.See TRAC Data on Unaccompanied
 17 Children, Table 5 (describing disparity in outcomes between unrepresented and represented children).

18 ~~46.~~ A child's inability to perform the basic functions of self-representation not only adversely affects
 19 her chances of succeeding in her immigration case, but also imposes insurmountable impediments on
 20 her ability to seek administrative and judicial review of a final removal order. Just like an adult, a child

21 _____
 22 ¹²¹³ UNHCR Report at 6; Olga Byrne & Elyse Miller, *The Flow of Unaccompanied Children Through*
 23 *the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers*, Vera Institute
 24 of Justice 4 (Mar. 2012), <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>

24 ¹³¹⁴ *See, e.g., A Treacherous Journey* at 19 n.94, 38, 48.

25 ¹⁴ ~~One recent study that focused on adults in removal proceedings concluded that they fared~~
 26 ~~substantially better when represented by counsel. See *Assessing Justice: The Availability and Adequacy*~~
 27 ~~*of Counsel in Immigration Proceedings*, Study Group on Immigrant Representation 4 (Dec. 2011)~~
 28 ~~(finding that 74% of represented non-detained noncitizens received favorable outcomes, as opposed to~~
 29 ~~13% of unrepresented non-detained noncitizens).~~

1 who wishes to appeal a removal order issued by an Immigration Judge must file an administrative appeal
2 with the BIA within thirty days. See 8 C.F.R. § 1003.3(a). Regulations require the child to “identify the
3 reasons for the appeal . . . in order to avoid summary dismissal.” Id. § 1003.3(b). The child must also,
4 among other things, “specifically identify the findings of fact, the conclusions of law, or both that are
5 being challenged,” express a preference as to oral argument, and state an intention either to file or not
6 file a separate written brief in support of the appeal. Id.; see also Matter of R-S-H-, 23 I. & N. Dec. 629,
7 638 (BIA 2003) (“Moreover, the record does not reflect that the respondent raised any objections to the
8 attorneys’ presence at the hearing. Therefore, the respondent waived his opportunity to pursue this issue
9 on appeal.”). In addition, appeals are conducted based on the record developed before the Immigration
10 Judge. A pro se child who cannot develop a robust record would have very little chance of prevailing on
11 appeal, even if she could somehow manage to file the papers necessary to begin the appellate process.

12 47. If the BIA affirms the child’s removal order, the child has the theoretical right to seek judicial
13 review of that order in the federal court of appeals via a petition for review filed within thirty days. See
14 generally 8 U.S.C. § 1252; INS v. St. Cyr, 533 U.S. 289, 313-14 (2001). But as a prerequisite to
15 obtaining federal court review, the child must first exhaust administrative remedies before the
16 Immigration Judge and the BIA. See 8 U.S.C. § 1252(d) (stating that petition for review can be filed
17 only after administratively final removal order). Absent exceptional circumstances, a reviewing federal
18 court will not address arguments not raised before the agency. See Barron v. Ashcroft, 358 F.3d 674, 678
19 (9th Cir. 2004) (finding that petitioners who were pro se at BIA were required to exhaust arguments
20 there before raising them to court of appeal). None of the child Plaintiffs, including three-year-old
21 A.E.G.E., 10-year-old J.E.F.M., 16-year-old D.G.F.M., and 17-year-old S.R.I.C., can even comprehend
22 this process, much less avail themselves of it.

23 48. Past experience confirms that virtually all (if not all) children in immigration proceedings are
24 unable to perform these appellate tasks. Experts in the field who have represented hundreds of children
25 for years cannot recall ever seeing a pro se child appeal any issue even to the BIA, let alone to the
26 federal courts. Decl. of David B. Thronson, Dkt. 59, ¶20; see also Decl. of Jojo Annobil, Dkt. 61, ¶18;
27 Decl. of William O. Holston, Jr., Dkt. 57, ¶13.

49. These limitations pose particular barriers to raising the claims that Plaintiffs have asserted in this case. Plaintiffs and the putative class members raise claims for appointed legal representation in their immigration proceedings, pursuant to the Immigration and Nationality Act (“INA”) and the Due Process Clause. See *infra*, Section VII. By definition, such claims can be raised before an Immigration Judge only by children who lack legal representation. But as described above, children without legal representation are unable to assert or preserve even basic claims on their own behalf, much less make complex arguments about their entitlement to counsel in their immigration proceedings.

50. Indeed, the undersigned have searched extensively for any case in which a pro se child filed a petition for review to a court of appeals asserting a right to counsel in immigration proceedings, but have found none. In light of the thousands of children’s immigration cases that are decided every year, this absence is strong evidence that the normal channels of judicial review are simply not available for children seeking to litigate the claims raised in this case. Even if a pro se child could somehow file an appeal of her counsel claim to the BIA and then to the court of appeals, this would not result in a meaningful review of a claim for appointed counsel. For a child to obtain such review, she would have to not only navigate the formal complexities of a petition for review, but would also have to develop a record containing adequate evidence relevant to the statutory and constitutional issues before the Immigration Judge and preserve all of the relevant issues for review. Children, by reason of their lack of capacity, cannot carry out these functions.¹⁵

51. For children like Plaintiffs G.J.C.P. and J.E.V.G. who have been ordered removed in absentia—due, in nearly all cases, to circumstances beyond their control—judicial review is even further out of reach. An in absentia removal order, which can be immediately executed, *cannot be appealed*. See *Matter of Guzman*, 22 I. & N. Dec. 722, 723 (BIA 1999) (holding BIA lacks jurisdiction over appeal filed by respondent ordered removed in absentia). Thus, any claim, including a counsel claim, preserved

¹⁵ EOIR’s recently-issued “Friend of Court Guidance” makes clear that legal service providers cannot file and litigate appeals for children in their Friend of Court role. Because of their “advisory role,” such individuals “can file no pleadings or motions of any kind,” “can reserve no exception to any ruling of the court, and of course cannot prosecute an appeal.” The Office of the Chief Immigration Judge, “Friend of the Court Guidance,” U.S. Dep’t of Justice, Executive Office for Immigration Review 2 (Sept. 10, 2014), available at <http://www.ilw.com/immigrationdaily/news/2014,0911-DOJ.pdf> (quoting *In re Perry*, 148 N.E. 163, 165 (Ind. App. 1925)).

1 prior to the order's issuance is of no immediate consequence, as the BIA and the federal courts cannot
 2 directly review it. Instead, in order to obtain any redress, these children must first file a motion to
 3 rescind the removal order and reopen their removal proceedings before the Immigration Judge. In most
 4 cases, these motions are subject to strict time, numerical, and substantive limitations and must comport
 5 with strict procedural requirements. *See* 8 U.S.C. § 1229a(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii)-(iii); 8
 6 C.F.R. § 1003.23(b)(1)(i)-(ii). Under the immigration statute, there are two primary situations where
 7 individuals who were ordered deported in absentia can reopen their cases: (1) where they did not receive
 8 proper notice of the hearing, and (2) where they did not appear at their hearing because of exceptional
 9 circumstances. *See id.* Establishing that either situation exists involves complex legal and factual
 10 inquiries.¹⁶ For example, in order to prove that notice was improper, a person must consider whether the
 11 notice complied with the statutory standards regarding content and service, *see* 8 U.S.C. § 1229(a), and
 12 where it appears that service was proper, submit substantial evidence to overcome a presumption of
 13 proper delivery. *See, e.g., Matter of M-R-A-*, 24 I. & N. Dec. 665 (BIA 2008). Likewise, in order to
 14 prove exceptional circumstances—which the statute says “refers to exceptional circumstances (such as
 15 battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or
 16 serious illness or death of the spouse, child, or parent of the alien, but not including less compelling
 17 circumstances) beyond the control of the alien”, 8 U.S.C. § 1229a(e)(1)—a person must submit evidence
 18 to document the claim and often must establish diligence in avoiding the in absentia order. *See, e.g.,*
 19 *Matter of J-P-*, 22 I. & N. Dec. 33, 34-36 (BIA 1998). Children like G.J.C.P. and J.E.V.G. have no hope
 20 of understanding or accessing the administrative mechanisms for reopening their cases without legal
 21 representation. If they fail to move for reopening, they will have no avenue for appellate review (either
 22 administrative or judicial). Because the removal order is already effective, they can be deported at any
 23 time. And even if they somehow were to succeed in reopening, all they would win is another
 24 opportunity to litigate their cases in the same lopsided fashion as all of the other unrepresented children
 25 the Government is trying to deport.

26 **C.- C. The Federal Government's Response to the Legal Needs of Children Facing**

27
 28 ¹⁶ *See generally* Beth Werlin, *Practice Advisory: Rescinding an In Absentia Order of Removal* (Mar. 2010), available at http://www.legalactioncenter.org/sites/default/files/lac_pa_092104.pdf

Deportation

52. ~~43.~~ Although the Government initiates deportation cases against thousands of children each year, it does not ensure legal representation for the vast majority of them. Numerous advocates have pointed out the injustice of this practice, and called for the Government to provide representation for children facing deportation. *See, e.g.*, Wendy Young & Megan McKenna, *The Measure of a Society: The Treatment of Unaccompanied Refugee and Immigrant Children in the United States*, 45 *Harv. C.R. C.L. L. Rev.* 247 (Winter 2010) *supra* ¶ 43; M. Aryah Somers, *Zealous Advocacy for the Right to Be Heard for Children and Youth in Deportation Proceedings*, 15 *CUNY L. Rev.* 189 (Winter 2011); Julie Myers Wood & Wendy Young, *Children Alone and Lawyerless in a Strange Land*, *The Wall Street Journal*, Sept. 22, 2013, available at <http://online.wsj.com/news/articles/SB10001424127887324492604579083400349940432>; ¹⁵¹⁷ Sonia Nazario, *Child Migrants, Alone in Court*, *N.Y. Times*, Apr. 10, 2013, A23, available at http://www.nytimes.com/2013/04/11/opinion/give-lawyers-to-immigrant-children.html?_r=0.

53. This representation gap has become even more severe since Plaintiffs filed the original complaint. Shortly after the filing, the Government began to “prioritize” the immigration proceedings of recently-arrived children by placing their cases on expedited dockets, otherwise known as “rocket dockets.” *See supra* n.2. News reports from across the country have documented the hearings taking place on these “rocket” dockets. *See, e.g.*, Meredith Hobbs, *Lawyers Say ‘Rocket Dockets’ Risk Due Process*, *The Daily Report* (Aug. 29, 2014), <http://www.dailyreportonline.com/id=1202668537443/Lawyers-Say-Rocket-Dockets-Risk-Due-Process?sreturn=20140921161115> (reporting that, in the Atlanta Immigration Court, “unaccompanied children on the fast-track dockets are being given only 30 days or less from their first appearance until their second hearing, when they are generally required to plea to the charging documents”); Dianne Solis, *Rocket Dockets May Be Jettisoning Justice for Immigrant Children*, *The Dallas Morning News* (Aug. 27, 2014), <http://www.dallasnews.com/news/metro/20140827-rocket-dockets-may-be-jettisoning-justice-for-immigrant-children.ece> (reporting on Dallas children’s rocket dockets); John Fritze,

¹⁵¹⁷ Ms. Myers Wood was the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement under President George W. Bush.

1 *Immigration Court Speeds Review of Cases Involving Children*, Baltimore Sun (Aug. 20, 2014),
2 [http://articles.baltimoresun.com/2014-08-20/news/bs-md-immigration-rocket-docket-](http://articles.baltimoresun.com/2014-08-20/news/bs-md-immigration-rocket-docket-20140820)
3 [20140820](http://articles.baltimoresun.com/2014-08-20/news/bs-md-immigration-rocket-docket-20140820) 1 immigration-cases-u-s-immigration-catholic-charities (“Baltimore Immigration Court,
4 facing an increase in the number of cases involving immigrant children who crossed the border illegally,
5 is expediting reviews to more quickly decide whether the children should be deported, according to
6 attorneys with clients before the court.”); Kirk Semple, *Advocates in New York Scramble as Child*
7 *Deportation Cases Are Accelerated*, N.Y. Times (Aug. 4, 2014),
8 [http://www.nytimes.com/2014/08/05/nyregion/advocates-scramble-as-new-york-accelerates-child-](http://www.nytimes.com/2014/08/05/nyregion/advocates-scramble-as-new-york-accelerates-child-deportation-cases.html)
9 [deportation-cases.html](http://www.nytimes.com/2014/08/05/nyregion/advocates-scramble-as-new-york-accelerates-child-deportation-cases.html); Julie Kay, *Miami Immigration Court Adopts ‘Rocket Docket’ to Handle*
10 *Unaccompanied Minor Cases*, Daily Bus. Rev. (Aug. 4, 2014)
11 [http://www.dailybusinessreview.com/id=1202665758127/Miami-Immigration-Court-Adopts-Rocket-](http://www.dailybusinessreview.com/id=1202665758127/Miami-Immigration-Court-Adopts-Rocket-Docket-to-Handle-Unaccompanied-Minor-Cases?slreturn=20140916180220)
12 [Docket-to-Handle-Unaccompanied-Minor-Cases?slreturn=20140916180220](http://www.dailybusinessreview.com/id=1202665758127/Miami-Immigration-Court-Adopts-Rocket-Docket-to-Handle-Unaccompanied-Minor-Cases?slreturn=20140916180220) (stating that three
13 Immigration Judges “appealed to local immigrant advocacy groups . . . for pro bono help for the
14 children. They said they would be rushing 150 kids a day through the immigration process”); Molly
15 Hennessy-Fiske, *Young Immigrants Must Risk Deportation for Chance to Gain Legal Status*, L.A. Times
16 (Aug. 3, 2014), [http://www.latimes.com/nation/immigration/la-na-immigration-law-20140803-](http://www.latimes.com/nation/immigration/la-na-immigration-law-20140803-story.html#page=1)
17 [story.html#page=1](http://www.latimes.com/nation/immigration/la-na-immigration-law-20140803-story.html#page=1) (describing “fast-tracked unaccompanied youths’ initial hearings” in Los Angeles).¹⁸

18 54. After the hearing on the motion for preliminary injunction in this case, the Government issued
19 guidance stating that Immigration Judges are not *required* to expedite cases by limiting the number or
20 length of continuances available to children who are seeking legal representation. Brian M. O’Leary,
21 *Docketing Practices Relating to Unaccompanied Children Cases in Light of the New Priorities* (Sep. 9,
22 2010), at 2. Yet, in addition to news reports, evidence from legal services providers and observers shows
23 that in practice, many Immigration Judges throughout the country are giving children far less time than

24 ¹⁸ See also Decl. of William O. Holston Jr., Dkt. 57, ¶¶6-10 (Immigration Judge stated that the court has
25 received guidance requiring them to expedite children’s cases; court previously provided unrepresented
26 children two to three months after their first hearing to find an attorney, but since August has provided
27 as little as one week); Decl. of Scott Bratton, Dkt. 60, ¶4 (describing rocket docket in Cleveland); Decl.
28 of Jojo Annobil, Dkt. 61, ¶¶9-15 (describing rocket docket in New York City); Decl. of Erin Apte, Dkt.
62, ¶¶ 3-5 (Immigration Judge provided pro se children in Seattle with three weeks to find attorneys);
Decl. of Sonia Gutierrez, Dkt. 64, ¶7 (Immigration Judge provided pro se children in Los Angeles with
about five weeks to find attorneys).

1 they did previously to find lawyers or prepare their cases. Judges are also forcing children to proceed
 2 without representation, including by ordering them removed in absentia, and ordering them to fill out
 3 asylum applications or take voluntary departure when they do appear.

4 55. Numerous children, like G.J.C.P. and J.E.V.G., have already experienced the consequences of
 5 these rocket dockets. One news article reported that between July 18 and September 30, 2014, of the
 6 approximately 7,000 children who were scheduled for their first hearing, Immigration Judges issued
 7 over 1,000 in absentia removal orders against children who failed to appear in court. See Miriam Jordan,
 8 *Most Migrants Make Their Court Date*, Wall St. J. (Oct. 7, 2014), [http://online.wsj.com/articles/most-](http://online.wsj.com/articles/most-migrants-make-their-court-date-1412715818)
 9 [migrants-make-their-court-date-1412715818](http://online.wsj.com/articles/most-migrants-make-their-court-date-1412715818). But as the experiences of G.J.C.P. and J.E.V.G. illustrate,
 10 and as the testimony of legal services providers shows, many such children likely failed to appear in
 11 court for reasons beyond their control, such as hearing notices being issued to incorrect addresses,
 12 hearing notices that were received days *after* the hearing actually took place, or hearing notices that
 13 were never received at all. See Decl. of Tin Thanh Nguyen, Dkt. 63, ¶¶12-13 (to the best of declarant's
 14 recollection, Immigration Judge at the Charlotte Immigration Court ordered removed in absentia all
 15 children who did not appear to hearings on July 31, 2014 and August 12, 2014; one child who appeared
 16 in court had received fewer than four days' notice); Decl. of Simon Sandoval-Moshenberg, Dkt. 34, ¶¶9-
 17 12 (describing children living in Virginia who received notice only two days prior to a hearing in Los
 18 Angeles Immigration Court); Decl. of Stacy Tolchin, Dkt. 31, ¶¶3-5; (same). See also Odette Yousef,
 19 *Lawyers Fear Speedy Deportations Harm Minors*, WBEZ 91.5 (Aug. 27, 2014),
 20 <http://www.wbez.org/news/lawyers-fear-speedy-deportations-harm-minors-110715> (reporting that legal
 21 service providers filed 200 change of venue motions on one day for children who were scheduled for
 22 hearings at the Chicago Immigration Court but no longer lived in the area).

23 56. For these and other reasons, children like G.J.C.P. and J.E.V.G. are far more likely to appear in
 24 court when they have legal representation. As a statistical matter, it is very likely that they would not
 25 have been ordered removed had they had legal representation. Children with representation appear in
 26 court at vastly higher rates than do children without legal representation. See Decl. of Stephen Kang,
 27 Dkt. 25, Exh. P ((collecting data establishing that over 93% of represented children appear for all court
 28 proceedings, whereas only 42% of unrepresented children appear for all proceedings)).

1 57. ~~44.~~ While the Government has taken limited steps to afford legal representation to some children
 2 facing deportation, ~~but~~ its efforts have fallen well short of ensuring representation for every child it
 3 seeks to deport with this new-found vigor and speed. For the past couple of years, the Government has
 4 funded legal representation for a fraction of the children in ORR detention facilities, and ~~more recently~~
 5 has then initiated programs in Houston, Texas, and Los Angeles, California to afford legal representation
 6 to certain children released from ORR custody. But these programs ~~fail~~ failed to provide all children
 7 even in those two regions with representation, and more recent and broader-based efforts will also fall
 8 far short of providing comprehensive coverage.

9 58. ~~45.~~ In October 2013, Plaintiffs' counsel sent a letter to Defendants urging them to take additional
 10 steps to ensure that all children in immigration proceedings are provided legal representation. Ex. A,
 11 Letter regarding Counsel for Immigrants in Removal Proceedings. In January 2014, Plaintiffs' counsel
 12 met with officials from DHS, DOJ, and ORR to discuss the concerns expressed in the letter.

13 59. ~~46. Several weeks ago~~ In June 2014, the Government announced a new "strategic partnership" to
 14 "facilitat[e] the effective and efficient adjudication of immigration proceedings involving certain
 15 children who have crossed the border without a parent or legal guardian." See justice AmeriCorps Legal
 16 Services for Unaccompanied Children, Corporation for Nat'l & Comm. Serv., *available at*
 17 [http://www.nationalservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-](http://www.nationalservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-ameri-corps-legal-services)
 18 [americorps-legal-services](http://www.nationalservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-ameri-corps-legal-services) (last visited June 9, 2014). Under this program, the Government has ~~set aside~~
 19 \$2 awarded \$1.8 million to ~~partner with~~ legal services providers in order to support living allowances for
 20 100 legal fellows who will represent children under 16 in removal proceedings in selected areas of the
 21 country. ~~See Announcement of Federal Funding Opportunity, Corporation for National and Community~~
 22 ~~Service, 2014 justice AmeriCorps Legal Services for Dep't of Justice Office of Public Affairs, Justice~~
 23 ~~Department and CNCS Announce \$1.8 Million in Grants to Enhance Immigration Court Proceedings~~
 24 ~~and Provide Legal Assistance to Unaccompanied Children (June 6, (Sept. 12, 2014), available at~~
 25 <http://www.nationalservicejustice.gov/sites/default/files/upload/JusticeAmeriCorpsNOFO.pdf> opa/pr/jus
 26 tice-department-and-cnsc-announce-18-million-grants-enhance-immigration-court-proceedings. Some of
 27 the justice AmeriCorps funding will be used, in connection with Equal Justice Works, to run an initiative

1 known as the Immigrant Children's Defense Corps. See justice AmeriCorps, *Immigrant Children's*
 2 *Defense Corps: Who Are We?*, available at <http://joinjusticeamericorps.org/>.

3 60. 47. Assuming that the Government's plan is implemented as announced, it would justice
 4 AmeriCorps, even if it continues to be funded in future years, will still fall far short of meeting the need
 5 created by the Government's policy of deporting children without representation, for several reasons.
 6 First, the geographic reach of the Government's new¹⁶ this program appears to¹⁷ will exclude certain¹⁸
 7 critical¹⁹ many locations, such as Los Angeles, San Francisco, and Newark, and does not ensure
 8 representation for every child even for those populations it explicitly targets. Id. at 6-7. 16-
 9 Announcement of Federal Funding Opportunity, Corp. for Nat'l and Comy. Serv., 2014 justice
 10 AmeriCorps Legal Services for Unaccompanied Children 6-7 (June 6, 2014), available at
 11 <http://www.nationalservice.gov/sites/default/files/upload/JusticeAmeriCorpsNOFO.pdf> .¹⁹ Second, the
 12 Government's new program will fund representation only for children younger than 16, thereby
 13 excluding a substantial number of children who face removal, including several of the Plaintiffs. Id. at
 14 31 (defining "[u]naccompanied children" as "children under the age of 16"). And finally, this initiative
 15 devotes only limited resources to the problem. Advocates already have noted that the Government's
 16 program "at best []... would only touch a fraction of all the unaccompanied minors expected to appear
 17 in court in the coming months." Kirk Semple, *Youths Facing Deportation to Be Given Legal Counsel*,
 18 N.Y. Times, June 6, 2014, A11, available at [http://www.nytimes.com/2014/06/07/us/us-to-provide-](http://www.nytimes.com/2014/06/07/us/us-to-provide-lawyers-for-children-facing-deportation.html?_r=0)
 19 lawyers-for-children-facing-deportation.html?_r=0.

20 61. Earlier this month, the Government announced plans to award the U.S. Conference of Catholic
 21 Bishops and the U.S. Committee for Refugees and Immigrants an additional \$9 million over a 12-month
 22 period (September 30, 2014 to September 29, 2015) to provide legal representation to some
 23 unaccompanied children through a program overseen by ORR. See *Announcement of the Award of Two*
 24

25 _____
 26 ¹⁶ The Government's announcement indicates that "[p]riority shall be given to programs" in certain
 27 immigration court locations. See *Announcement of Federal Funding Opportunity* at 6-7. But the
 28 announcement does not pledge that a provider in each of those locations is certain to receive funding.
 29 ¹⁹ The Government's announcement indicates that "[p]riority shall be given to programs" in certain
 30 immigration court locations. See *Announcement of Federal Funding Opportunity* at 6-7. But the
 31 announcement does not pledge that a provider in each of those locations is certain to receive funding.

1 Single-Source Program Expansion Supplement Grants To Support Legal Services to Refugees Under the
 2 Unaccompanied Alien Children's Program, 79 Fed. Reg. 62,159-01 (Oct. 16, 2014).

3 62. Yet even if implemented as announced, this additional time-limited program will still leave
 4 thousands of children without representation in immigration proceedings. The program will only cover
 5 nine immigration courts and, by its own estimates, will provide representation only to about 2,600
 6 children. *Id.* Yet, as of June 2014, children in more than 28,000 pending immigration cases remained
 7 unrepresented. Transactional Records Access Clearinghouse, *Juveniles — Immigration Court*
 8 *Deportation Proceedings*, <http://trac.syr.edu/phptools/immigration/juvenile/> (last visited Oct. 21, 2014).
 9 ORR itself acknowledges that this program will not cover all children released to sponsors in its target
 10 cities, and that steps will have to be taken to “prioritize” which children will be served.

11 63. 48. Several important actors within the Government have also indicated more generally that they
 12 would support a system that provided representation for all children. In a recent House Committee on
 13 Appropriations Report, the Committee commented on the existence of pilot programs created “to
 14 explore ways to better serve vulnerable populations such as children and improve court efficiency
 15 through pilot efforts aimed at improving their legal representation,” but specified “that such pilots shall
 16 not require the U.S. Government to bear any expense for legal representation for any alien in removal
 17 proceedings, except to the extent required by Federal court order.” See H.R. Rep. 113-448, at 42
 18 (2014).¹⁷²⁰

19 64. 49. Defendant Eric Holder, Attorney General of the United States, has also indicated support for
 20 the relief sought in this case, stating that “[i]t is inexcusable that young kids— . . . six-, seven-year-
 21 olds, fourteen-year-olds— have immigration decisions made on their behalf, against them, . . . and
 22 they’re not represented by counsel. That’s simply not who we are as a nation. It’s not the way in which
 23 we do things.” Senate Judiciary Committee Hearing on Oversight of the Justice Department at 1:30:00-
 24 1:30:17 (Mar. 6, 2013) (video available at <http://www.judiciary.senate.gov/meetings/oversight-of-the->

25 _____
 26 ¹⁷²⁰ The Administration had previously requested an allocation of \$5,824,000 for EOIR to “develop,
 27 implement and evaluate a pilot program to provide counsel for unaccompanied alien children.” See
 28 White House Proposed Budget for FY 2015, Department of Justice, General Administration, Federal
 Funds, available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/jus.html>.

1 us-department-of-justice-2013-03-06). ~~18~~More recently, he stated that although children “may not” have
 2 a constitutional right to legal representation, “we have policy reasons and a moral obligation to insure
 3 [sic] the presence of counsel” in children’s immigration proceedings. Attorney General Eric Holder,
 4 *Remarks at the Hispanic National Bar Association 39th Annual Convention* (Sep. 12, 2014) (transcript
 5 available at [http://www.justice.gov/opa/speech/remarks-attorney-general-eric-holder-hispanic-national-
 bar-association-39th-annual](http://www.justice.gov/opa/speech/remarks-attorney-general-eric-holder-hispanic-national-

 6 bar-association-39th-annual)).²¹

7 ~~50. The Administration has also asked Congress, as part of an emergency appropriations request, to fund
 8 \$15 million for “direct legal representation services to children in immigration proceedings.” Letter from
 9 President Barack Obama to the Hon. John Boehner, Speaker of the House of Representatives at 6 (July
 10 8, 2014), [http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/
 12 51. emergency-supplemental-request-to-congress-07082014.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/

 11 51. emergency-supplemental-request-to-congress-07082014.pdf).¹⁹ It is far from clear that Congress
 13 intends to act on this request, in whole or in part. Even assuming it does, the Administration has not
 14 specified how this money will be distributed, or whether these funds will come with the same limitations
 15 as the Government’s recently announced “strategic partnership” to provide counsel for unaccompanied
 16 children. Moreover, it is highly unlikely that any approved funds would be sufficient to meet the need.~~

17 65. ~~52.~~In the meantime, the Government continues to send unrepresented children like the Plaintiffs
 18 in this case without lawyers to face off against ICE trial attorneys who argue for their deportation before
 19 Immigration Judges.

20 **D.D. The Plaintiffs**

21 ~~¹⁸The Administration also previously supported Senate Bill S. 744, the bipartisan comprehensive
 22 immigration reform legislation. That bill includes a provision requiring appointed counsel for a large
 23 subset of children in the putative class at issue here—all “unaccompanied alien children.” See S. 744,
 13th Cong. § 3502 (2013).~~

24 ²¹ The Administration also previously supported Senate Bill S. 744, the bipartisan comprehensive
 25 immigration reform legislation. That bill includes a provision requiring appointed counsel for a large
 26 subset of children in the putative class at issue here—all “unaccompanied alien children.” See S. 744,
 13th Cong. § 3502 (2013).

27 ~~¹⁹See also White House Office of the Press Secretary, *FACT SHEET: Emergency Supplemental Request
 28 to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley
 Areas of the Southwest Border* (July 8, 2014), available at [http://www.whitehouse.gov/the-press-
 office/2014/07/08/fact-sheet-emergency-supplemental-request-address-increase-child-and-adu-
 SECOND AMENDED COMPLAINT - 25 of 3042](http://www.whitehouse.gov/the-press-

 office/2014/07/08/fact-sheet-emergency-supplemental-request-address-increase-child-and-adu-

 SECOND AMENDED COMPLAINT - 25 of 3042)~~

J.E.F.M.

66. ~~53.~~ J.E.F.M. is a 10-year-old boy, and a native and citizen of El Salvador. He presently resides in Washington State. He is the youngest of four children born to his parents. His father was a former gang member, who then converted to Christianity and later became a pastor. J.E.F.M.'s mother was also a pastor. His parents met at church and together they started a rehabilitation center for people leaving gangs. Gang members retaliated against the center for housing young people trying to leave the gangs. First, they warned J.E.F.M.'s parents to stop assisting former gang members. Then they killed J.E.F.M.'s cousin. Two weeks later, gang members murdered J.E.F.M.'s father in the street in front of their house, while J.E.F.M. and his siblings watched. J.E.F.M.'s mother continued to be threatened after this incident, so she fled the country, leaving her children with their grandmother.

67. ~~54.~~ Approximately seven years later, the children also became targets of gang members in El Salvador. Gang members demanded that the children join and threatened them with harm if they did not. Rather than enter the gang, J.E.F.M. fled with his two older siblings. At the time he was only nine years old.

68. ~~55.~~ J.E.F.M. and his two siblings entered the United States around July 2013, were apprehended by U.S. Customs and Border Protection ("CBP"), and then placed in the custody of ORR. They were released to a family member fifteen days later. They have been residing in Washington State since their release.

69. ~~56.~~ J.E.F.M. has a removal hearing in September 2014, but has no legal representation in his immigration case because he has no resources to hire private counsel and the legal service providers in the Seattle area are stretched well beyond capacity to take on the cases of children in removal proceedings. He, his brother J.F.M., and his sister D.G.F.M., had their first removal hearing in September 2014, on the day after the Court heard their motion for preliminary injunction. The judge in their cases sua sponte granted each of them a continuance until May 2015. J.E.F.M. appears by his next friend, Bob Ekblad. Mr. Ekblad is a minister who has worked closely with J.E.F.M. and his family; he is familiar with J.E.F.M.'s immigration case and is truly dedicated to his best interests in this case.

J.F.M.

1 70. ~~57.~~ J.F.M. is a 13-year-old boy and a native and citizen of El Salvador. He presently resides in
 2 Washington. He is the older brother of J.E.F.M. He also saw his father killed, was later threatened by
 3 gang members, and left El Salvador at the same time and for the same reasons as his younger brother.

4 71. ~~58.~~ J.F.M. ~~has a's next~~ removal hearing ~~in September 2014~~ is set for May 2015, as noted above,
 5 but he has no legal representation in his immigration case because he has no resources to hire private
 6 counsel and the legal service providers in the Seattle area are stretched well beyond capacity to take on
 7 the cases of children in removal proceedings. J.F.M. appears by his next friend, Bob Ekblad. Mr. Ekblad
 8 is a minister who has worked closely with J.F.M. and his family; he is familiar with J.F.M.'s
 9 immigration case and is truly dedicated to his best interests in this case.

10 **D.G.F.M.**

11 72. ~~59.~~ D.G.F.M. is a ~~15~~16-year-old girl and a native and citizen of El Salvador. She presently
 12 resides in Washington. She is the older sister of J.~~F.~~E.F.M. and J.F.M. She also saw her father killed,
 13 was threatened by gang members, and left El Salvador with her two younger brothers at the same time
 14 and for the same reasons.

15 73. ~~60.~~ D.G.F.M. ~~has a's next~~ removal hearing ~~in September 2014~~ is set for May 2015, as noted
 16 above, but she has no legal representation in her immigration case because she has no resources to hire
 17 private counsel, and the legal service providers in the Seattle area are stretched well beyond capacity to
 18 take on the cases of children in removal proceedings. D.G.F.M. appears by her next friend, Bob Ekblad.
 19 Mr. Ekblad is a minister who has worked closely with D.G.F.M. and her family; he is familiar with
 20 D.G.F.M.'s immigration case and is truly dedicated to her best interests in this case.

21 **F.L.B.**

22 74. ~~61.~~ F.L.B. is a 15-year-old boy, and a native and citizen of Guatemala. He presently resides in
 23 Seattle, Washington. He is the ~~fourth of six~~fifth of eight children born to his parents. Throughout
 24 F.L.B.'s childhood, his father, an alcoholic who abused F.L.B. and his siblings, resided in a different
 25 city and only visited occasionally. Moreover, F.L.B.'s father did not make any financial contributions to
 26 the home.

27 75. ~~62.~~ When he was ~~ten~~10 years old, F.L.B. dropped out of school to work with his father in order
 28 to provide for himself, his mother, and his two younger siblings. After two years of living and working

1 with his father, F.L.B. returned to his mother's home because he was no longer able to bear his father's
2 abuse and excessive drinking. However, after six months at home he had to leave again due to the
3 family's poor financial situation. F.L.B. moved back to the town where he had worked with his father,
4 but this time lived with acquaintances. He only ever saw his father by chance, and seldom saw his
5 mother.

6 76. ~~63.~~ After more than a year of working and living outside the family's home, F.L.B. set out for
7 the United States, hoping to be able to support himself and have the opportunity to enroll in school. He
8 spent approximately one month traveling through Mexico and crossed the United States border in
9 August 2013, at the age of 14. United States Border Patrol agents apprehended him in the desert and
10 placed him in the custody of ORR. With no family in the United States, F.L.B. was released to the
11 custody of a family acquaintance in October 2013. He has been residing in Seattle, Washington, since
12 his release from ORR custody.

13 77. ~~64.~~ F.L.B. has ahad his first removal hearing since his release from ORR custody in September
14 2014, 14 days after the preliminary injunction hearing in this case. The judge sua sponte granted him a
15 continuance until May 2015. However, F.L.B. has no resources to retain counsel and the legal service
16 providers in the Seattle area are stretched well beyond capacity to take on the cases of children in
17 removal proceedings. F.L.B. appears by his next friend, Casey Trupin. Mr. Trupin is the Project
18 Coordinator for the Children and Youth Project at Columbia Legal Services in Seattle, Washington; he
19 is familiar with F.L.B.'s ongoing immigration proceedings and is truly dedicated to F.L.B.'s best
20 interests in this case.

21 **G.D.S.**

22 78. ~~65.~~ Plaintiff G.D.S. is a ~~45~~16-year old boy and a native and citizen of Mexico who has lived in
23 the United States since he was approximately one year old. He is the second youngest in a family of five
24 children, all of whom reside in this country. He, his mother, and an older brother all possess U
25 nonimmigrant visa status and are now seeking to adjust their status to become lawful permanent
26 residents.

27 79. ~~66.~~ G.D.S. was in ninth grade when he was placed in a juvenile rehabilitation facility after
28 pleading guilty to charges in juvenile court. ICE then filed a detainer against him, which advised that he

1 faces removal proceedings where the Government will seek to take away his lawful status and deport
2 him from his home. He thus faces the threat of permanent separation from his mother and siblings. He
3 and his mother cannot afford an attorney to represent him in immigration court, and the legal service
4 providers in the Seattle area are stretched well beyond capacity to take on the cases of children in
5 removal proceedings.

6 80. ~~67.~~ G.D.S. appears by his next friend and mother, Ana Maria Ruvalcaba. Ms. Ruvalcaba
7 maintains a close personal relationship with G.D.S., is familiar with his immigration matters, and is truly
8 dedicated to his best interests in this case.

9 **M.A.M.**

10 81. ~~68.~~ Plaintiff M.A.M. is a 16-year-old boy, and a native and citizen of Honduras. He presently
11 resides in Oxnard, California. M.A.M. has limited communication skills and special education issues, as
12 a result of which he has limited ability to recount the suffering that he and his family endured in
13 Honduras.

14 82. ~~69.~~ M.A.M. spent his first eight years in Honduras, raised primarily by his maternal
15 grandmother. During that time, M.A.M.'s mother left him and came to the United States, where she
16 received Temporary Protected Status ("TPS"). Although M.A.M.'s grandmother cared for him, she
17 could not shield him from life's brutality there. At some point prior to his eighth birthday, someone
18 attacked M.A.M.'s father with a machete, leaving him profoundly disabled. M.A.M.'s half-brothers'
19 father was kidnapped and murdered during those years as well.

20 83. ~~70.~~ Eventually, M.A.M.'s grandmother grew elderly and ill. His father was not involved in his
21 life, and no one else could care for him. As a result, M.A.M. came to the United States at the age of
22 eight. Since 2006, he has resided with his mother in California. Although she has TPS, the law does not
23 permit her to extend that status to her son.

24 84. ~~71.~~ Despite the lack of an adult conviction, M.A.M. was swept into the net of interior
25 immigration enforcement. ICE arrested M.A.M. and took him into custody in September 2011, when he
26 was only 13 years old, and placed him into removal proceedings. Rather than transfer M.A.M. to ORR
27 custody, however, ICE retained custody over him until his mother came forward, after which ICE
28 released him into her care.

1 85. ~~72.~~ The Los Angeles Immigration Court already has held multiple hearings where M.A.M. was
2 unrepresented by counsel. M.A.M.'s next removal hearing is scheduled for ~~August~~November 2014. He
3 and his mother are indigent. They cannot afford to hire private counsel for his upcoming hearing. The
4 Los Angeles-based, Government-funded legal representation program rejected M.A.M.'s immigration
5 court case because he fell outside their scope of service (because M.A.M. was never in ORR custody).

6 86. M.A.M. appears by his next friend and mother, Rosa Pedro. Ms. Pedro maintains a close
7 personal relationship with M.A.M., is familiar with his ongoing immigration proceedings, and is truly
8 dedicated to his best interests in this case.

9 **S.R.I.C.**

10 87. ~~73.~~ S.R.I.C. is a 17-year-old boy, and a native and citizen of Guatemala. He presently resides in
11 Los Angeles, California. His father, Hector Rolando Ixcoy Ixcoy, left Guatemala for the United States
12 when S.R.I.C. was a young boy. S.R.I.C. lived in Guatemala with his mother and three siblings.
13 Although Mr. Ixcoy was in the United States during S.R.I.C.'s childhood, he called the family
14 frequently and sent money to support S.R.I.C. and the rest of the family. Mr. Ixcoy became a lawful
15 permanent resident of the United States in 2009.

16 88. ~~74.~~ S.R.I.C. was forced to flee from Guatemala when gang members began attempting to recruit
17 him. The gang members would wait outside of his school and threaten S.R.I.C. During one such
18 confrontation, one of the gang members cut S.R.I.C.'s leg with a knife. He still has the scars from that
19 confrontation. When S.R.I.C. continued to resist their recruitment efforts, the gang threatened to kill
20 S.R.I.C. and his family unless S.R.I.C. agreed to join the gang.

21 89. ~~75.~~ Fearing for his life and for the well-being of his family, S.R.I.C. came to the United States to
22 reunite with his father. Several days later, S.R.I.C. left Guatemala for the United States. In February
23 2014, CBP apprehended S.R.I.C. and held him in custody near the United States-Mexico border. The
24 Government thereafter initiated removal proceedings against him, and he has a removal hearing date in
25 January 2015.

26 90. ~~76.~~ After several days in detention along the border, S.R.I.C. was sent to a shelter in Houston,
27 Texas, where he remained until he was sent to Los Angeles, California to reunite with his father in
28 March. S.R.I.C. now resides in Los Angeles, where he is currently enrolled in school.

1 91. ~~77.~~ Since arriving in Los Angeles, S.R.I.C. met with legal services providers and inquired about
2 the possibility of obtaining legal representation in his immigration case. However, he was turned away
3 because the legal services provider did not have the capacity to take on his case and could not locate pro
4 bono representation for him. S.R.I.C. and his father also have reached out to private immigration
5 attorneys, but cannot afford to pay the fees charged by such attorneys to take on his immigration case.
6 S.R.I.C. therefore remains unrepresented in his immigration case.

7 92. ~~78.~~ S.R.I.C. appears by his next friend and father, Mr. Ixcoy. Mr. Ixcoy maintains a close
8 personal relationship with S.R.I.C. and is truly dedicated to S.R.I.C.'s best interests in this case.

9 **G.M.G.C.**

10 93. ~~79.~~ G.M.G.C. is a ~~415~~-year-old girl, and a native and citizen of El Salvador. She presently
11 resides in Los Angeles, California. Her parents left El Salvador when she was a young girl, and she grew
12 up living with her grandparents, sisters, and aunts. Although her parents were living in the United States,
13 they called frequently and sent money to support the family. Around 2001, her father, Juan Guerrero
14 Diaz, received TPS in the United States.

15 94. ~~80.~~ G.M.G.C. was forced to leave her home of El Salvador after gang members began
16 threatening the young women in her family. Her uncle in El Salvador, who is a police officer, refused to
17 provide supplies to gang members in their town. In retaliation, the gang members made threats to the
18 young women in the family, surveilled the family home, and harassed the young women. On one
19 occasion, gang members attacked G.M.G.C. and her older sister while they were out buying dinner.
20 After these incidents, the young girls were too scared to leave the family home.

21 95. ~~81.~~ Fearing for their lives, G.M.G.C., her two sisters, and her young aunt, fled El Salvador and
22 came to the United States. Border Patrol agents apprehended G.M.G.C., her sisters, and her aunt in
23 January 2014. After spending approximately one day at holding facilities near the border, G.M.G.C. was
24 transferred to ORR custody. She remained in ORR custody until February 2014, when she was taken to
25 Los Angeles, California, to reunite with her father. ~~G.M.G.C. has a removal hearing date in September-~~
26 ~~2014.~~

27 96. ~~82.~~ After arriving in Los Angeles, G.M.G.C. and her father met with legal services providers and
28 inquired about the possibility of obtaining legal representation for her in her immigration case. However,

1 they never heard back from the legal services providers, and when they inquired further, were told that
2 the legal services providers could not take on G.M.G.C.'s case. G.M.G.C. and her father have also
3 reached out to private immigration attorneys, but cannot afford to pay the fees charged by such attorneys
4 to take on her immigration case. Therefore, G.M.G.C. remains unrepresented in her immigration case.

5 97. G.M.G.C. had a removal hearing scheduled for September 2014 in Texas at the time Plaintiffs
6 filed the original complaint in this case. Shortly after Plaintiffs filed their motion for preliminary
7 injunction on her behalf, the Immigration Judge presiding over her case changed its venue to Los
8 Angeles. The Los Angeles Immigration Court has yet to reschedule her removal hearing to a specific
9 date.

10 98. ~~83~~-G.M.G.C. appears by her next friend and father, Mr. Guerrero Diaz. Mr. Guerrero Diaz
11 maintains a close personal relationship with G.M.G.C., is familiar with her immigration matters, and is
12 truly dedicated to her best interests in this case.

13 **A.E.G.E.**

14 99. Plaintiff A.E.G.E. is a three-year-old boy and a native and citizen of El Salvador. He presently
15 resides in Los Angeles, California. A.E.G.E. was conceived as the result of a rape his mother suffered
16 when she was only 15 years old. The rapists threatened to harm her again if she reported the crime. After
17 A.E.G.E.'s birth, his young mother struggled to care for him. She eventually fled to the United States
18 before his first birthday. She left her son in the care of an aunt, but he was not safe. A.E.G.E.'s other
19 family members feared for his life in El Salvador.

20 100. A.E.G.E. was left at the border by a relative in Eagle Pass, Texas in April 2014. He was detained
21 and then transferred to ORR custody, where he remained for several weeks. His "Foster Father" during
22 that time reported that A.E.G.E. "[s]till takes milk in bottle. Teaching him to brush his teeth." On May 9,
23 2014, A.E.G.E. was released to the care of his mother in Los Angeles, California. She is a Lawful
24 Permanent Resident. Although A.E.G.E. may be eligible for that same status, or for asylum based on the
25 threats to himself and his family, he obviously cannot pursue that relief without legal assistance.

26 101. A.E.G.E. is awaiting an immigration court date in Los Angeles, California. He has no attorney to
27 represent him at that hearing, despite his mother's attempt to find one. A.E.G.E. appears by his next
28 friend, Ana Deutsch. Ms. Deutsch is a licensed therapist who has worked extensively with victims of

1 violence. She is a Co-Founder and Clinical Director at the Program for Torture Victims in Los Angeles,
2 California. Ms. Deutsch is familiar with A.E.G.E.'s immigration case and is truly dedicated to his best
3 interests in this case.

4 **G.J.C.P.**

5 102. Plaintiff G.J.C.P. is a 14-year-old girl, and a native and citizen of El Salvador. She presently
6 resides in Van Nuys, California. In El Salvador, she lived with her mother, stepfather, two half-sisters,
7 and two cousins. G.J.C.P. has not had a relationship with her father since she was approximately two
8 years old.

9 103. G.J.C.P. was forced to leave her home in El Salvador after gang members began harassing her
10 and her 13-year-old cousin. These gang members offered the young girls drugs, pressured the girls to
11 become romantically involved with them, and asked them to join the gang. G.J.C.P. refused, even
12 though she had previously witnessed gang members similarly harassing one of her school friends. This
13 friend refused the gang members and later turned up dead. G.J.C.P. was thus afraid the same thing
14 would happen to her and that she would be harmed for refusing the gang members' advances. Moreover,
15 she had witnessed two of these same gang members brutally beating a young man on the street while she
16 was out with her mother. G.J.C.P. became so fearful for her safety that she rarely left her house alone;
17 her mother dropped her at school every morning, and another adult picked her up from school in the
18 afternoon.

19 104. Fearing for her safety and her life, G.J.C.P. and her two cousins left El Salvador to travel to the
20 United States. U.S. Border Patrol agents apprehended G.J.C.P. and her cousins near Hidalgo, Texas
21 shortly after they entered the United States in May 2014. G.J.C.P. was first transferred to a holding
22 facility, and then to an ORR shelter. She remained there until approximately June 2014, when ORR
23 released her to the custody of her grandmother, Blanca Griselda Zelaya. Ms. Zelaya has legal status in
24 the United States through the grant of a U-visa.

25 105. As instructed by ORR shelter staff, Ms. Zelaya submitted paperwork on G.J.C.P.'s behalf to
26 transfer her immigration case from Texas to the Los Angeles Immigration Court, the closest to where
27 Ms. Zelaya and G.J.C.P. currently reside. When Ms. Zelaya and G.J.C.P. moved to a new address, she
28 contacted the court about her new address, but court personnel told her that she needed to wait to hear

1 from the court.

2 106. Ms. Zelaya and G.J.C.P., however, never received any information from the court. Instead, when
3 Ms. Zelaya called the EOIR hotline to find out more information about G.J.C.P.'s case, she discovered
4 that the Immigration Judge had already ordered G.J.C.P. removed in absentia in August 2014.

5 107. G.J.C.P. does not have an attorney to represent her in her immigration case and to help her file a
6 motion to rescind her in absentia order and reopen her case. G.J.C.P. lacks both the knowledge and the
7 capacity to file those papers on her own. Nor does she know how to present her claims for relief, even if
8 her case were reopened. The legal services providers and pro bono resources in the Los Angeles area are
9 already operating at capacity, and Ms. Zelaya does not have the resources to hire a private attorney to
10 represent G.J.C.P.

11 108. G.J.C.P. appears by her next friend and grandmother, Ms. Zelaya. Ms. Zelaya maintains a close
12 personal relationship with G.J.C.P., is familiar with her immigration matters, and is truly dedicated to
13 her best interests in this case.

14 **J.E.V.G.**

15 109. Plaintiff J.E.V.G. is a 17-year-old boy, and a native and citizen of El Salvador. He presently
16 resides in Houston, Texas. His father died when J.E.V.G. was about six years old. After his father's
17 death, J.E.V.G. was left with his mother and an older sister. The family struggled to survive without
18 their primary breadwinner. Gang members were active in J.E.V.G.'s town. They threatened young
19 people like J.E.V.G., telling them they could not wear certain types of shoes or walk in certain parts of
20 town. It was common knowledge that those who ignored those threats were beaten or killed by the
21 gangs, and J.E.V.G. knew of a few individuals in his town who were beaten for not abiding by the gang
22 members' instructions and threats.

23 110. Shortly after his seventeenth birthday, J.E.V.G. set out to seek a better and safe life in the United
24 States. He entered the United States near McAllen, Texas in July 2014. U.S. Border Patrol agents
25 apprehended him and placed him in ORR custody. He was eventually transferred to a shelter in Phoenix,
26 Arizona. In August 2014, J.E.V.G. was released to the care of his half-sister, Santos Angela Vasquez,
27 who is a Lawful Permanent Resident. Ms. Vasquez provided authorities with her address in Houston,
28 Texas, where J.E.V.G. currently resides. J.E.V.G. was instructed to await notice of a future court date,

1 but notice never came.

2 111. In September 2014, an Immigration Judge held a hearing in J.E.V.G.'s case and ordered him
 3 removed in absentia. J.E.V.G., who did not receive notice of the hearing, was not present in court. Nor
 4 was an attorney present to represent J.E.V.G. at that hearing. J.E.V.G. is now subject to a final removal
 5 order that can be executed at any time. Despite his efforts to obtain a lawyer, J.E.V.G. does not currently
 6 have a legal representative to help him file the motion that would be required to rescind his removal
 7 order and reopen his case. J.E.V.G. lacks both the knowledge and the capacity to file such a motion on
 8 his own.

9 112. J.E.V.G. appears by his next friend and sister, Santos Angela Vasquez. Ms. Vasquez maintains a
 10 close personal relationship with J.E.V.G., is familiar with his immigration matter, and is truly dedicated
 11 to his best interests in this case.

12
 13 **V. LEGAL BACKGROUND**

14 113. 84-Plaintiffs and the putative class raise statutory and constitutional claims challenging the
 15 Government's failure to ensure legal representation for them in their immigration proceedings.
 16 Specifically, Plaintiffs contend that the Immigration and Nationality Act ("INA") and the Due Process
 17 Clause of the Fifth Amendment mandate that the Government ensure that all children in immigration
 18 proceedings have legal representation.

19 114. 85-The INA and immigration regulations require that all persons in removal proceedings have "a
 20 reasonable opportunity" to present, examine, and object to evidence. 8 U.S.C. § 1229a(b)(4)(B); 8
 21 C.F.R. § 1240.10(a)(4). In addition, all persons in removal proceedings, whatever their age, have the
 22 right to be advised of the charges against them, 8 U.S.C. § 1229(a)(1)(D); 8 C.F.R. § 239.1, and "the
 23 privilege of being represented, at no expense to the Government, by counsel of the alien's choosing." 8
 24 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. §§ 238.1(b)(2), 1240.10(a)(1).~~2022~~

25 ²⁰²²The immigration statutes also contain certain protections specific to "unaccompanied alien
 26 children," defined as individuals under the age of 18 without lawful immigration status in the United
 27 States "with respect to whom: (i) there is no parent or legal guardian in the United States; or (ii) no
 28 parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C.
§ 279(g)(2). "Unaccompanied alien children" who are not from "contiguous countries" are entitled to
additional legal protections. See, e.g., 8 U.S.C. § 1232(b)-(c) (custody provisions); 8 U.S.C. §

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1 115. ~~86.~~ Existing regulations address the rights of children in some respects, but do not come close to
2 ensuring fair hearings. One regulation precludes Immigration Judges from accepting admissions of
3 removability from “an unrepresented respondent who is . . . under the age of 18,” but permits such
4 admissions if the child is accompanied by a relative or friend. 8 C.F.R. § 1240.10(c). The BIA has
5 undermined even the minimal protection this regulation provides by holding that Immigration Judges
6 can accept factual admissions from children that, taken together, are sufficient to prove the child’s
7 removability. *See Matter of Amaya*, 21 I. & N. Dec. 583, 587 (BIA 1996). Similarly, another regulation
8 requires DHS to serve charging documents for a minor under 14 years of age upon the person with
9 whom the minor resides, and “whenever possible,” the minor’s “near relative, guardian, committee, or
10 friend.” 8 C.F.R. § 103.8(c)(2)(ii). But this regulation does not impose any obligations on such
11 individuals, and the BIA has concluded that these regulations even permit service upon the director of
12 the facility where the minor is currently detained. *See Amaya*, 21 I. & N. Dec. at 585.

13 116. ~~87.~~ At a more general level, the BIA has long interpreted the statutory rights provided in 8
14 U.S.C. §§ 1229, 1229a₂ as creating a general right to a fair hearing in the deportation context. *Matter of*
15 *Exilus*, 18 I. & N. Dec. 276, 278-79 (BIA 1982). Similarly, the Ninth Circuit has made clear that “every
16 individual in removal proceedings is entitled to a full and fair hearing” of his claims. *Oshodi v. Holder*,
17 729 F.3d 883, 889 (9th Cir. 2013) (en banc).

18 117. ~~88.~~ These statutory rules implement a constitutional command. The Supreme Court held over a
19 century ago that the Fifth Amendment guarantees a noncitizen the right to due process in any proceeding
20 where the Government seeks his deportation. *See Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903) [“The
21 Japanese Immigrant Case”]. And as applied to children, both prior Supreme Court precedent from the
22 juvenile delinquency context and more recent Ninth Circuit precedent involving a child facing
23 deportation demonstrate that all children, with their limited capacity to present complex factual and legal
24 arguments, are entitled to legal representation in immigration proceedings. *In re Gault*, 387 U.S. at 36;
25 *Lin v. Ashcroft*, 377 F.3d 1014, 1030, 1032-34 (9th Cir. 2004). This is all the more true given the

26
27 1232(a)(5)(D)(iii) (regarding counsel); 8 U.S.C. § 1232(c)(5) (directing HHS to ensure unaccompanied
28 children are represented “to the greatest extent practicable”); 8 U.S.C. § 1232(c)(6) (regarding child
advocates).

1 adversarial nature of the proceedings and the grave interests at stake. *See generally Turner v. Rogers*,
2 131 S. Ct. 2507, 2517 (2011).

3
4 **VI. CLASS ACTION ALLEGATIONS**

5 118. ~~89.~~ Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action on behalf of
6 themselves and all other similarly situated individuals. Plaintiffs seek injunctive relief that applies
7 generally to the Plaintiff Class, as described below.

8 119. ~~90.~~ The Plaintiff Class consists of:

- 9 • All individuals under the age of eighteen (18) who are or will be in immigration
10 proceedings on or after July 9, 2014, without legal representation in their immigration
11 proceedings.²⁺²³

12 120. ~~91.~~ The Plaintiff Class is so numerous that joinder of all members is impracticable. Although the
13 number of individuals under the age of 18 who are pro se in immigration proceedings is not known with
14 precision, most reports indicate that there are thousands of such children. *See supra* Part IV.A.

15 121. ~~92.~~ Common questions of law and fact bind the members of the Plaintiff Class. These questions
16 include, but are not limited to, the following:

- 17 • Whether the Due Process Clause of the U.S. Constitution and/or federal statutory law
18 requires the Government to provide legal representation for the members of the Plaintiff
19 Class;
- 20 • Whether existing procedures suffice to protect the Plaintiff Class members' right to a full
21 and fair hearing as required by the Due Process Clause of the U.S. Constitution and/or
22 federal statutory law.

23
24 ²⁺²³As noted *supra* note 5, Plaintiffs define "immigration proceedings" as any proceeding that occurs
25 before an Immigration Judge or the Board of Immigration Appeals. Plaintiffs define "legal
26 representation" as representation by a lawyer, a law student or graduate supervised by a lawyer, or a
27 BIA-accredited representative. *See Franco-Gonzalez, et al. v. Holder*, 828 F. Supp. 2d 1133, 1147 (C.D.
28 Cal. 2011) (defining Qualified Representative for purposes of providing legal representation to mentally
incompetent individuals in immigration proceedings as including "(1) an attorney, (2) a law student or
law graduate directly supervised by a retained attorney, or (3) an accredited representative, all as defined
in 8 C.F.R. § 1292.1").

1 122. ~~93.~~ The claims of the named Plaintiffs are typical of the claims of the Plaintiff Class as a whole.
2 Plaintiffs know of no conflict between their interests and those of the Plaintiff Class. The members of
3 the Plaintiff Class are ascertainable and can be identified through notice and discovery. In defending
4 their own rights, the individual Plaintiffs and their next friends will defend the rights of all proposed
5 Plaintiff Class members fairly and adequately.

6 123. ~~94.~~ Plaintiffs are represented in this case by counsel with deep knowledge of immigration law
7 and extensive experience litigating class actions and complex cases, including the only class action that
8 has secured appointed legal representation for a class of immigrants. Plaintiffs' attorneys have the
9 requisite level of expertise to adequately prosecute this case on their behalf and on behalf of the Class.

10 124. ~~95.~~ Defendants have acted or refused to act on grounds generally applicable to each member of
11 the Plaintiff Class by refusing to recognize that the members of the Plaintiff Class have a statutory and
12 constitutional right to legal representation in their immigration proceedings, and by refusing to provide
13 that representation for such individuals.

14 125. ~~96.~~ A class action is superior to other methods available for the fair and efficient adjudication of
15 this controversy because joinder of all members of the Plaintiff Class is impracticable. Moreover,
16 members of the Plaintiff Class remain unrepresented in immigration proceedings and lack the ability to
17 assert the claims made here. Absent the relief they seek here, there would be no other way for the
18 Plaintiff Class to individually redress the wrongs they have suffered and continue to suffer.

19
20 **VII. CLAIMS FOR RELIEF**

21 **FIRST CAUSE OF ACTION**

22 **Violation of the Immigration and Nationality Act**

23 **(Against All Defendants by All Plaintiffs)**

24 126. ~~97.~~ Plaintiffs reallege and incorporate by reference each and every allegation contained in the
25 preceding paragraphs.

26 127. ~~98.~~ The ~~Immigration and Nationality Act~~INA requires that all individuals in removal
27 proceedings be afforded a reasonable opportunity to, inter alia, examine and present evidence and
28 witnesses. See 8 U.S.C. § 1229a(b). These provisions require that unrepresented children be provided a

1 fair hearing in their immigration proceedings. The only way to ensure that these children receive a fair
2 hearing is by providing them with legal representation.

3 128. ~~99.~~ Plaintiffs and the Plaintiff Class have suffered and will imminently suffer irreparable injury
4 as a proximate cause of the Government's failure to provide them with legal representation in their
5 immigration proceedings, and are therefore entitled to injunctive relief to avoid any injury.

6 **SECOND CAUSE OF ACTION**

7 **Violation of the Due Process Clause of the Fifth Amendment**

8 **(Against All Defendants by All Plaintiffs)**

9 129. ~~100.~~ Plaintiffs reallege and incorporate by reference each and every allegation contained in the
10 preceding paragraphs.

11 130. ~~101.~~ The Due Process Clause requires that unrepresented children in immigration proceedings be
12 provided legal representation.

13 131. ~~102.~~ Plaintiffs and the Plaintiff Class have suffered and will imminently suffer irreparable injury
14 as a proximate cause of the Government's failure to provide them with legal representation in their
15 immigration proceedings, and are therefore entitled to injunctive relief to avoid any injury.

16
17 **VIII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- 19 a. Certify a class pursuant to Federal Rule of Civil Procedure 23 in accordance with this
20 Complaint's allegations and the accompanying Motion for Class Certification;
- 21 b. Declare that the Defendants' failure to ensure legal representation for Plaintiffs and the
22 Plaintiff Class violates constitutional and statutory law, pursuant to the Court's equitable
23 powers and the Declaratory Judgment Act, 28 U.S.C. § 2201;
- 24 c. Issue an injunction directing Defendants to ensure that Plaintiffs and other members of
25 the Plaintiff Class receive legal representation in their immigration proceedings;
- 26 d. Alternatively, appoint counsel to represent Plaintiffs and other members of the Plaintiff
27 Class in their immigration proceedings, pursuant to the Criminal Justice Act, 18 U.S.C. §
28 3006A(a)(1);

1 e. ~~d~~-Grant any other relief the Court deems just, equitable, and appropriate, including, but
2 not limited to, fees under the Equal Access to Justice Act, and any other applicable
3 statute or regulation.

4
5 Dated this 3rd ~~21st~~ day of ~~September~~ October, 2014.

6 Respectfully submitted,

7 /s/Theodore J. Angelis

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Changes:	
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Table moves to	0
Table moves from	0
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Embedded Excel	0
Format changes	0
Total Changes:	484

CECILLIA D. WANG
DIRECTOR
IMMIGRANTS'
RIGHTS PROJECT



October 11, 2013

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
Office of Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Robert Rand Beers
Acting Secretary of Homeland Security
Office of the Secretary
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
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Re: Counsel for Immigrants in Removal Proceedings

Dear Attorney General Holder, Secretary Beers, and Secretary Sebelius:

We write to urge that the U.S. Departments of Justice, Homeland Security, and Health and Human Services take immediate steps to ensure that two classes of indigent unrepresented individuals in removal proceedings be afforded legal representation, either *pro bono* or at government expense: (1) all children and (2) all individuals with serious mental disabilities that render them incompetent to represent themselves (whether or not such individuals are in ICE detention at the time of their immigration proceedings). Federal statutory and constitutional law require that these two groups of individuals receive legal representation, whether paid or *pro bono*, and no statute prohibits the government from affording such representation where the individuals facing deportation are indigent.

We hope that, as the federal officials responsible for the administration of the federal immigration court system, the prosecution of removal cases, and health and welfare in the United States, you will work with us to establish a system that ensures that the administration of the immigration laws comports with constitutional norms and statutory requirements. If necessary, we are prepared to bring litigation to ensure that these groups are afforded representation. But we

would strongly prefer to work cooperatively and expeditiously to avoid the need for protracted and expensive litigation.

If we are forced to litigate these issues, we believe that we would prevail. The Supreme Court has recognized that the Due Process Clause requires that children be appointed counsel in proceedings that could result in a substantial deprivation of their liberty, even if those proceedings are civil. *See In re Gault*, 387 U.S. 1 (1966). At least one federal court has already recognized that counsel is required for minors to ensure that their removal proceedings comport with due process requirements. *Lin v. Ashcroft*, 377 F.3d 1014, 1033 (9th Cir. 2004) (reversing removal order where counsel failed to provide adequate representation to minor, because “minors are ‘entitled to trained legal assistance so their rights may be fully protected’”).

Similarly, a federal district court has already held that individuals with serious mental disabilities who are not competent to represent themselves are entitled to legal representation under federal law. *See Franco-Gonzalez v. Holder*, 767 F. Supp. 2d 1034, 1051 (C.D. Cal. 2010). While that ruling directly pertained to individuals in immigration detention facilities, the court’s reasoning based upon the Rehabilitation Act cannot be limited to that particular context. Moreover, the *Franco* court recognized that nothing in the Immigration and Nationality Act affirmatively prohibits the Attorney General from appointing counsel for individuals in immigration proceedings.

We note that the reforms we propose here have bipartisan and broad support. Section 3502 of the comprehensive immigration reform legislation passed by the Senate in June 2013 (S. 744) contains a provision stating:

[The] Attorney General shall appoint counsel, at the expense of the Government if necessary, to represent an alien in a removal proceeding who has been determined by the Secretary to be an unaccompanied alien child, is incompetent to represent himself or herself due to a serious mental disability that would be included in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1)), or is considered particularly vulnerable when compared to other aliens in removal proceedings, such that the appointment of counsel is necessary to help ensure fair resolution and efficient adjudication of the proceedings.

This provision was supported by a wide range of stakeholders, not limited to immigrant communities. Disability rights and children’s advocacy organizations supported the appointed counsel provision in S. 744. It has also garnered strong approval from those in the federal government with responsibility for these matters. A former director of ICE, for example, has publicly supported the provision, stating that “government appointed counsel is necessary” for

October 11, 2013

Page 3

unaccompanied minors and that due process is “gravely violat[ed]” by the current absence of such counsel. *See* Julie Myers Wood & Wendy Young, Op-Ed, *Children Alone and Lawyerless in a Strange Land*, Wall St. J., Sept. 23, 2013, at A15. Moreover, the provision builds on existing law with respect to children, as the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) already requires the government to “ensure, to the greatest extent practicable . . . that all unaccompanied alien children who are or have been in the custody of the [federal government] . . . have counsel to represent them in legal proceedings or matters” 8 U.S.C. § 1232(c)(5).

In short, there are strong legal arguments and broad popular and expert support for appointed counsel for all children and people with serious mental disabilities that render them incompetent to represent themselves in immigration proceedings. Such reforms are necessary to help ensure the integrity of the U.S. immigration court system and fair outcomes for particularly vulnerable populations facing potential deportation.

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UNION FOUNDATION

We request a meeting to discuss these issues with you at your earliest convenience. Please contact me with any questions or concerns.

Sincerely,



Cecillia D. Wang

Director

ACLU Immigrants' Rights Project

cc: Felicia Escobar, Senior Policy Director for Immigration, Domestic Policy Council, Executive Office of the President (*via email*)

Esther Olavarria, Senior Advisor, Office of Immigration and Border Security, Office of Policy, U.S. Department of Homeland Security (*via email*)

Juan Osuna, Director, Executive Office for Immigration Review, U.S. Department of Justice (*via email*)

Seth Grossman, Deputy General Counsel, Office of General Counsel, U.S. Department of Homeland Security (*via email*)

George Sheldon, Acting Assistant Secretary, Administration for Children and Families, U.S. Department of Health and Human Services (*via email*)