

1 NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
 2 Carlos Holguin
 3 Peter A. Schey
 4 256 South Occidental Boulevard
 5 Los Angeles, California 90057
 6 Telephone: (213) 388-8693

7 NATIONAL CENTER FOR YOUTH LAW
 8 James Morales
 9 Alice Bussiere
 10 Teresa Demchak
 11 1663 Mission Street, 5th floor
 12 San Francisco, California 94103
 13 Telephone: (415) 543-3307

14 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
 15 Paul Hoffman
 16 John Hagar
 17 633 Shatto Place
 18 Los Angeles, California 90005
 19 Telephone: (213) 487-1720

20 Attorneys for Plaintiffs

21 UNITED STATES DISTRICT COURT

22 CENTRAL DISTRICT OF CALIFORNIA

23	JENNY LISETTE FLORES, a minor, :	Case No. CV 85-4544-RJK(Px)
24	by next friend MARIO HUGO :	
25	GALVEZ-MALDONADO; DOMINGA :	SECOND AMENDED COMPLAINT
26	HERNANDEZ-HERNANDEZ, a minor, :	FOR DAMAGES, INJUNCTIVE
27	by next friend JOSE SAUL MIRA; :	AND DECLARATORY RELIEF, AND
28	ALMA YANIRA CRUZ, a minor, by :	RELIEF IN THE NATURE OF
29	next friend HERMAN PETROLILO :	MANDAMUS.
30	TANCHEZ; SERGIO HERNANDEZ- :	
31	PEREZ, by next friend, :	[Class Action]
32	Fr. Richard Estrada :	

33 Plaintiffs,

34 -vs-

35 EDWIN MEESE, Attorney General :
 36 of the United States; IMMI- :
 37 GRATION AND NATURALIZATION :
 38 SERVICE, an agency of the :
 39 United States, HAROLD W. :
 40 EZELL, Western Regional Com- :
 41 missioner, Immigration and :
 42 Naturalization Service; :

43 Defendants.

1 Plaintiffs allege as follows:

2 I.

3 PRELIMINARY STATEMENT

4 1. This action presents a class-wide challenge to (a) the
5 Immigration and Naturalization Service's [hereafter "INS" or
6 "Immigration Service"] policy to condition juveniles' release on
7 bond on their parents' or legal guardians' surrendering to INS
8 agents for interrogation and possible deportation; (b) the
9 procedures employed by the INS in imposing a condition on
10 juveniles' bond that they be released only to parents or legal
11 guardians; and (c) the conditions maintained by the INS in
12 facilities where it incarcerates juveniles.

13 2. Pursuant to 8 U.S.C. 1252, INS agents regularly arrest
14 persons who are minors pursuant to the law of the state in which
15 they are arrested. Unless released on bond or recognizance, these
16 minors are incarcerated until administrative and judicial
17 proceedings to determine their deportability are completed, a
18 process that may take several years.

19 3. Like adults, minors arrested pursuant to 8 U.S.C. 1252
20 are generally entitled to release on bond while deportation
21 proceedings are conducted. Prior to September 6, 1984, INS
22 policy, custom, and usage was to release arrested minors on bond
23 to their parents, legal guardians, or other responsible adults.

24 4. On or about September 6, 1984, INS Western Regional
25 Commissioner Harold W. Ezell initiated a policy to indefinitely
26 jail juveniles arrested within the INS's Western Region until and
27 unless their parents or legal guardians personally appear before
28 INS agents for interrogation and possible initiation of

1 deportation proceedings. This policy was never published in the
2 Federal Register in accordance with the Administrative Procedure
3 Act, 5 U.S.C. 552 et seq.

4 5. The afore-alleged policy has resulted and will continue
5 to result in the indefinite detention of juveniles who have never
6 been accused or convicted of any crime. Rather, these juveniles
7 are held solely for administrative proceedings to determine
8 whether they should be deported from the United States.

9 6. Defendants' sole ostensible purposes for requiring a
10 parent's or legal guardian's personal appearance is to ensure the
11 welfare of detained minors and protect the INS from liability for
12 having released minors to adults who harm or neglect them.
13 Defendants make no effort to assess the qualifications of other
14 adult relatives or friends and uniformly refuse to release minors
15 to such adults regardless of how clearly qualified they may be to
16 ensure the welfare of the particular detained minor and that
17 minor's appearance at future INS administrative proceedings.
18 Instead, defendants incarcerate such minors in facilities where
19 there welfare is wholly neglected.

20 7. While in INS detention, plaintiffs and those similarly
21 situated have regular daily contact and are required to share
22 sleeping quarters with unrelated adult prisoners. Juveniles so
23 detained are provided no educational instruction, no access to
24 educational or other reading materials, and no appropriate
25 recreation. Plaintiffs and those similarly situated are also
26 denied reasonable visitation with family or friends and are
27 subject to being strip searched without cause.

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PARTIES

12. Plaintiff Jenny Lisette Flores is a native and citizen of El Salvador and a minor under the laws of the State of California. On or about May 16, 1985, she was arrested by INS agents near San Ysidro, California. Thereafter, INS agents issued an Order to Show Cause and Warrant of Arrest charging her with being deportable pursuant to 8 U.S.C. 1252(a)(2) because she allegedly entered the United States without submitting to inspection by an INS officer. She was subsequently incarcerated in Pasadena, California, where defendants continued to detain her until the temporary order entered by this Court on July 19, 1985. She sues through her next friend, Mario Hugo Galvez-Maldonado.

13. Plaintiff Dominga Hernandez-Hernandez is a native and citizen of El Salvador and a minor pursuant to the laws of the State of California. On or about May 4, 1985, she was arrested by INS agents near Calexico, California. Thereafter, defendants issued an Order to Show Cause and Warrant of Arrest charging her with being deportable pursuant to 8 U.S.C. 1252(a)(2) because she allegedly entered the United States without first submitting to inspection by an INS officer. She was subsequently incarcerated in Pasadena, California, where defendants continued to detain her until the temporary order entered by this Court on July 19, 1985. She sues through her next friend, Jose Saul Mira.

14. Plaintiff Alma Yanira Cruz-Aldama is a native and citizen of El Salvador and a minor pursuant to the law of the State of California. On or about June 7, 1985, she was arrested by INS agents near San Ysidro, California. Thereafter, defendants issued an Order to Show Cause and Warrant of Arrest charging her

1 with being deportable pursuant to 8 U.S.C. 1252(a)(2) because she
2 allegedly entered the United States without submitting to
3 inspection by an INS officer. She was subsequently incarcerated
4 in Pasadena, California, where defendants detained her until July
5 15, 1985, when she was released by order of an immigration judge.
6 She sues through her next friend, Herman Petrolilo Sanchez.

7 15. Plaintiff Sergio Hernandez-Perez was born on January 12,
8 1972, and is a minor pursuant to the laws of the State of
9 California. On or about February 17, 1988, he was arrested by
10 agents of the INS near San Ysidro, California. Thereafter,
11 defendants issued an Order to Show Cause and Warrant of Arrest
12 charging him with being deportable pursuant to 8 U.S.C. section
13 1252(a)(2) because he allegedly entered the United States without
14 first submitting to inspection by an INS officer. He was
15 subsequently detained by INS in Chula Vista, California, where he
16 was strip searched by INS agents. The Chula Vista facility in
17 which plaintiff Hernandez-Perez was subjected to the above-alleged
18 violations was operated and is operated by defendant Immigration
19 and Naturalization Service. Plaintiff Hernandez-Perez sues
20 through his next friend, Father Richard Estrada.

21 16. Defendant Edwin Meese, III, is the duly appointed
22 Attorney General of the United States. Pursuant to section 103(a)
23 of the Immigration and Nationality Act ["INA" or "Act"], 8 U.S.C.
24 1103(a), he is charged with the administration and enforcement of
25 all laws relating to the immigration, deportation and
26 naturalization of aliens, including terms and conditions for
27 release on bond pending deportation proceedings. All INS agents
28 and employees act pursuant to a series of delegations of authority

1 vested in the Attorney General by section 103(a) of the Act.
2 Defendant Meese is sued in his official capacity.

3 17. Defendant Immigration and Naturalization Service is a
4 federal agency within the United States Department of Justice and
5 is responsible for enforcing the INA and for developing
6 regulations and policies to implement the Act.

7 18. Defendant Harold W. Ezell is the Western Regional
8 Commissioner of the Immigration and Naturalization Service. As
9 such, defendant Ezell is responsible for the administration and
10 enforcement of the Immigration and Nationality Act, including the
11 conditions under which juveniles are confined or released on bail,
12 within the States of California, Hawaii, Nevada, and Arizona.

13 19. Deleted.

14 20. Deleted.

15 21. Defendants, their agents, and their employees
16 customarily and as a matter of practice or usage engage in the
17 acts herein complained of. Defendants, and each of them, are
18 aware of and acquiesce in or encourage their agents and employees
19 in doing the acts herein complained of.

20 IV.

21 CLASS ACTION ALLEGATIONS

22 22. Pursuant to Rules 23(a)(1)-(4) and (b)(2) of the Federal
23 Rules of Civil Procedure, plaintiffs bring this action as a class
24 action on behalf of all persons under the age of eighteen (18)
25 years who have been or will be arrested by the Immigration and
26 Naturalization Service and who have been or will be--

27 a. denied release from detention pending deportation

28 proceedings because of a condition placed on bond that their

1 parent or legal guardian personally appear before INS agents
2 for interrogation and to accept physical custody of them;
3 b. denied prompt written notice that their release from
4 detention pending deportation proceedings is contingent on
5 their parents' or legal guardians' personal appearance before
6 INS officers;

7 c. denied prompt, mandatory, neutral and detached review
8 following arrest of the specific reasons to restrict their
9 release to a parent or legal guardian;

10 d. denied prompt, mandatory, neutral and detached review
11 following arrest of the probable cause for arrest;

12 e. denied prompt, mandatory, neutral and detached review
13 following arrest of the suitability of any available adult to
14 ensure the juvenile's well-being and presence at future
15 deportation proceedings notwithstanding that such adult is
16 neither the juvenile's parent nor legal guardian;

17 f. denied adequate and appropriate recreation while
18 incarcerated by the INS;

19 g. denied adequate and appropriate reading materials or
20 education while incarcerated by the INS;

21 h. denied reasonable visitation while incarcerated by the
22 INS;

23 i. incarcerated with unrelated adults by the INS;

24 j. subjected to strip searches while incarcerated by the INS;

25 23. The proposed class-members will be identifiable from
26 defendants' records and number in the thousands. The size of the
27 class is constantly expanding and is so numerous such that joinder
28 of all members is impracticable. The claims of plaintiffs and

1 those of the proposed class members raise common questions of law
2 and fact concerning the conditions under which the INS
3 incarcerates juveniles and releases them on bond. These questions
4 are common to the named parties and to the members of the proposed
5 class as defendants have acted on grounds generally applicable to
6 both the named parties and proposed class members. Plaintiffs'
7 claims are typical of the class claims.

8 24. The prosecution of separate actions by individual
9 members of the class would create a risk of inconsistent or
10 varying adjudications establishing incompatible standards of
11 conduct for defendants with respect to the incarceration and
12 release of minors. Prosecution of separate actions would also
13 create a risk that individual class members will secure court
14 orders that would as a practical matter be dispositive of the
15 claims of other class members not named parties to this
16 litigation, thereby substantially impeding the ability of
17 unrepresented class-members to protect their interests.

18 26. Defendants, their agents, employees, and predecessors
19 and successors in office have acted or refused to act, and will
20 continue to act or refuse to act, on grounds generally applicable
21 to the class, thereby making appropriate injunctive relief or
22 corresponding declaratory relief with respect to the class as a
23 whole. Plaintiffs will vigorously represent the interests of
24 unnamed class-members. All members of the proposed class will
25 benefit by the action brought by plaintiffs. The interests of the
26 named plaintiffs and those of the proposed class members are
27 identical. Plaintiffs are represented by counsel associated with
28 non-profit public interest law firms and by counsel serving pro

1 bono publico. Counsel have other clients injured by defendants'
2 challenged practices and therefore have an independent interest in
3 ensuring the lawfulness of defendants' conduct. Plaintiffs'
4 counsel include attorneys experienced in federal class action
5 litigation involving the rights of youth and of foreign nationals
6 and refugees within the United States.

7 V.

8 STATEMENT OF FACTS

9 27. Plaintiff Jenny Lisette Flores was detained by the INS
10 from her arrest on May 16, 1985, until entry of this Court's July
11 19, 1985, temporary order. Shortly after her arrest, INS agents
12 represented that she would be released from custody pending
13 deportation proceedings on bond in the amount of \$2,000.00.
14 Defendants thereafter initiated no review of the terms and
15 conditions under which plaintiff Flores was incarcerated nor of
16 the probable cause for her arrest.

17 28. On or about June 10, 1985, an immigration judge, at
18 plaintiff Flores' request, reduced the amount of her bond to
19 \$1,500.00. INS agents then announced that they would release
20 plaintiff Flores only if her parent or legal guardian personally
21 appeared at an INS detention center for interrogation and take
22 physical custody of her. This was the first notice plaintiff
23 Flores had received that such a condition had been placed on her
24 freedom.

25 29. Plaintiff Flores' mother had previously declined to
26 personally appear before INS agents for interrogation and to
27 accept physical custody of plaintiff Flores because she feared
28

1 that she, too, would be taken into custody and deported to El
2 Salvador, where a civil war is currently taking place.

3 30. Counsel for plaintiff Flores therefore immediately
4 requested the immigration judge remove said bond condition and
5 order plaintiff Flores released to Mr. and Mrs. Mario Hugo Galvez-
6 Maldonado, adult members of plaintiff Flores' family then ready,
7 willing, and able to ensure her welfare and presence at future INS
8 administrative proceedings.

9 31. Mr. Galvez is, and was at all relevant times, a United
10 States citizen; Mrs. Galvez is, and was at all relevant times, a
11 lawful permanent resident of the United States. Neither Mr. nor
12 Mrs. Galvez had ever been accused or convicted of any crime; they
13 had resided at the same Los Angeles address for over two years.
14 Additionally, Mr. and Mrs. Galvez had been appointed by
15 plaintiff's natural mother attorneys-in-fact with full authority
16 to ensure plaintiff Flores' well-being and presence at future
17 administrative proceedings.

18 32. Although the immigration judge did not question Mr. and
19 Mrs. Galvez's desire or ability to ensure plaintiff Flores' well-
20 being, she refused to remove the bond condition. On or about June
21 26, 1985, pursuant to 8 C.F.R. 242.2(b) plaintiff Flores appealed
22 said decision to the Board of Immigration Appeals, which made no
23 decision thereon until it dismissed her appeal after having been
24 advised that plaintiff Flores had been released pursuant to this
25 Court's temporary order of July 19, 1985.

26 33. Prior to this Court's temporary order of July 19, 1985,
27 although plaintiff Flores was able to post the required bail,
28 defendants refused to release her unless and until her parent or

1 legal guardian personally appeared before an INS agent for
2 interrogation and to accept physical custody of her. Plaintiff
3 Flores was never accused or convicted of having committed any
4 crime. The sole reason for her incarceration was defendants'
5 refusal to release her to anyone other than her parent or legal
6 guardian. Plaintiff Flores would have remained detained but for
7 the temporary relief obtained through the filing of this action.

8 34. Plaintiff Dominga Hernandez-Hernandez was incarcerated
9 by defendants from on or about May 4, 1985, to on or about July
10 19, 1985, when she was released pursuant to this Court's temporary
11 order. Shortly after arrest, defendants represented that
12 plaintiff Hernandez would be released from custody pending
13 deportation proceedings on bond in the amount of \$500.00.
14 Plaintiff Hernandez' release on bond, however, was conditioned on
15 her parent's or legal guardian's personally appearing before an
16 INS agent for interrogation and to accept physical custody of her.
17 Defendants thereafter initiated no review of the terms or
18 conditions under which plaintiff Hernandez was incarcerated nor of
19 the probable cause for her arrest.

20 35. At the time of her arrest, plaintiff Hernandez was
21 accompanied by her adult brother, Deomedes Hernandez-Hernandez,
22 who had been entrusted by plaintiff Hernandez's parents with her
23 care and custody. Plaintiff Hernandez's parents have at all
24 relevant times remained in El Salvador. Defendants released
25 Deomedes Hernandez-Hernandez on bond shortly after arresting him.
26 Plaintiff Hernandez was not similarly released because of a
27 condition defendants placed on her bond that she be released only
28 if and when her parent or legal guardian personally appeared

1 before an INS agent for interrogation and to accept physical
2 custody of her.

3 36. On or about May 17, 1985, plaintiff Hernandez requested
4 an immigration judge to remove said bond condition to allow her
5 release to Deomedes Hernandez, who was then willing and able to
6 ensure plaintiff's welfare and presence at future administrative
7 proceedings. On or about May 17, 1985, said request was denied.

8 37. On or about May 21, 1985, pursuant to 8 C.F.R. 242.2(b),
9 plaintiff Hernandez appealed the decision of the immigration judge
10 to the Board of Immigration Appeals, which made no decision
11 thereon until it dismissed her appeal after having been advised
12 that plaintiff Hernandez had been released pursuant to this
13 Court's temporary order of July 19, 1985. Prior thereto,
14 defendants had refused to release plaintiff Hernandez to her older
15 brother, Deomedes, or to any adult other than her natural parent
16 or legal guardian.

17 38. Although plaintiff Hernandez was able to post the
18 required bail, defendants refused to release her unless and until
19 a parent or legal guardian personally appeared before an INS agent
20 for interrogation and to accept physical custody of her. The
21 sole reason for her continued incarceration was defendants'
22 refusal to release her to anyone other than her parent or legal
23 guardian. Plaintiff Hernandez was never accused nor convicted of
24 having committed any crime. Plaintiff Hernandez would have
25 remained detained but for the temporary relief obtained through
26 the filing of this action.

27 39. Plaintiff Alma Yanira Cruz-Aldama was detained by the
28 INS from June 7, 1985, when she was arrested near San Ysidro,

1 California, to approximately July 17, 1985. Shortly after
2 arresting her, defendants issued an Order to Show Cause and
3 Warrant of Arrest charging her with having entered the United
4 States without being inspected by an INS agent. In connection
5 with said Order to Show Cause, defendants represented that they
6 would release plaintiff Cruz on bond in the amount of \$2,000.00.
7 Plaintiff Cruz was given no notice that her bail was contingent on
8 her parent's or legal guardian's personally appearing before an
9 INS agent for interrogation and to accept physical custody of her.

10 40. On or about July 11, 1985, plaintiff Cruz attempted to
11 post the aforementioned bond. At that time, INS agents refused to
12 release her, stating that plaintiff Cruz' natural parent or legal
13 guardian must first personally appear before an INS agent for
14 interrogation and to accept physical custody of her.

15 41. Plaintiff Cruz' natural mother refused to appear before
16 INS agents because she feared she would be arrested and deported
17 to El Salvador, where civil war was and is taking place.

18 42. Mr. Herman Petrolilo Sanchez, who is, and at all
19 relevant times was, a lawful permanent resident of the United
20 States, requested defendants to release plaintiff Cruz to his
21 custody and care. Mr. Sanchez is, and at all relevant times was,
22 an adult and respected member of the community who agreed to
23 ensure plaintiff Cruz' welfare and presence at future
24 administrative proceedings. Until after the filing of this
25 action, defendants refused to release plaintiff Cruz to Mr.
26 Sanchez or to anyone other than her natural parent or legal
27 guardian. Plaintiff Cruz was never accused nor convicted of
28 having committed any crime. She was at all relevant times ready,

1 willing, and able to post the required bond; the sole reason she
2 was not released on bond was the afore-alleged condition. She is
3 subject to redetention at the discretion of the INS district
4 director. 8 C.F.R. 242.2(c).

5 43. Defendants incarcerated plaintiffs Flores, Hernandez,
6 and Cruz at the BSS facility in Pasadena, California. While there
7 detained, plaintiffs Flores, Hernandez, and Cruz, and each of
8 them, were required to share sleeping quarters and have regular
9 daily contact with unrelated adult prisoners.

10 44. While confined in Pasadena, California, plaintiffs
11 Flores, Hernandez, and Cruz were provided--

- 12 a. no educational instruction;
- 13 b. no educational or other reading materials;
- 14 c. no adequate recreational activity; and
- 15 d. no medical examination.

16 45. Plaintiffs Flores, Hernandez, and Cruz, and each of
17 them, attended school regularly before being incarcerated by
18 defendants.

19 46. While detained by the INS at the BSS Pasadena facility,
20 plaintiffs Flores, Hernandez, and Cruz, and each of them, were
21 denied any visitation with family or friends. On or about June 18
22 and June 25, 1985, plaintiff Flores' next friend, Mario Hugo
23 Galvez-Maldonado, attempted to visit plaintiff Flores in Pasadena,
24 California. He was told that visitation with family or friends
25 was not permitted and that only attorneys may visit persons
26 incarcerated at the BSS Pasadena facility.

27 47. Plaintiff Sergio Hernandez-Perez was arrested by INS
28 agents on or about February 14, 1988. He was thereafter detained

1 at a facility operated by defendant INS in or near Chula Vista,
2 California. On or about February 15, 1988, in accordance with INS
3 policy to strip search all minors upon their admission or
4 readmission to detention facilities, INS agents strip searched
5 plaintiff Hernandez-Perez. At no time did defendants have any
6 individualized cause to believe plaintiff Hernandez-Perez was
7 concealing a weapon or contraband.

8 48. Deleted.

9 VI.

10 ALLEGATIONS RE FEDERAL DEFENDANTS' CURRENT POLICY AND
11 PRACTICE.

12 49. Pursuant to 8 U.S.C. 1252, INS agents regularly place
13 under administrative arrest persons who are considered minors
14 under the laws of the state in which they are arrested. A
15 juvenile may be lawfully arrested pursuant to section 1252 only if
16 there is probable cause to believe that he or she is (a) an alien
17 and (b) unlawfully present in the United States. Unless released
18 on bond or their own recognizance pursuant to 8 U.S.C. 1252(a)(2),
19 these minors are incarcerated until administrative and judicial
20 proceedings to determine their deportability are completed, a
21 process that frequently takes several years.

22 50. Defendants have discretion to release persons arrested
23 for violation of administrative deportation laws "under bond . . .
24 containing such conditions as the Attorney General may prescribe .
25 . ." Id.; 8 C.F.R. 242.2. Defendants' discretion, however, is
26 limited to imposing only those conditions reasonably necessary to
27 ensure an individual's presence at future administrative
28 proceedings or protect national security.

1 51. Like adults, juveniles arrested pursuant to 8 U.S.C.
2 1252 are generally entitled to release on bond while deportation
3 proceedings are conducted. Until recently, INS policy, custom,
4 and usage was to release arrested minors on bond to responsible
5 adults in addition to parents and legal guardians.

6 52. On or about September 6, 1984, defendants initiated a
7 policy to indefinitely jail juveniles arrested within the INS's
8 Western Region unless and until their parents or legal guardians
9 personally appear before INS agents for interrogation and to
10 accept physical custody of them. Said policy is neither intended
11 to ensure, nor does it ensure, juveniles' appearance at future
12 administrative proceedings. Rather, said policy serves only to
13 punish juveniles for suspected violations of administrative
14 deportation laws, deter them from entering or re-entering the
15 United States without authorization, and facilitate the
16 apprehension of detained minors' parents whom INS agents suspect
17 may be deportable from the United States. Release on bond of
18 plaintiffs Flores, Hernandez, and Cruz, and each of them, was
19 restricted in accordance with said policy.

20 53. Defendants' policy to condition minors' release on bond
21 on their parents' or legal guardian's personal appearance for
22 interrogation and to accept physical custody of them was never
23 published in the Federal Register in accordance with the
24 Administrative Procedure Act, 5 U.S.C. 552 et seq.

25 54. No regulation published in the Code of Federal
26 Regulations supports defendants' restricting juveniles' release on
27 bond to the physical custody of parents and legal guardians.
28 Internal INS Operating Instructions specifically contemplate

1 release to persons other than parents or legal guardians,
2 providing in pertinent part,

3 Aliens who are defined as juveniles should only be placed in
4 a juvenile facility or with an appropriate responsible
5 agency or institution, recognized or licensed to accommodate
6 juveniles by the laws of that State. . . Children of tender
7 years who are too young to be placed in a juvenile facility
8 or youth hall should be placed with local youth/child
9 services, or with relatives or friends. In those extreme
10 cases where it is impossible to accommodate a child of tender
11 years accompanied by an adult, consideration should be given
12 to releasing [to] the accompanying adult [or] to a
13 responsible agency, relative, or friend. Extenuating
14 circumstances requiring a deviation from this policy must be
15 cleared through the appropriate Associate Regional
16 Commissioner for Enforcement.

17 O.I. 242.6(c) (2-12-81) (brackets added).

18 55. In contrast to defendants' treatment of plaintiffs and
19 other juveniles arrested pending deportation proceedings,
20 regulations governing release of minors pending exclusion
21 proceedings pursuant to 8 U.S.C. 1226 specifically authorize
22 release to adults in addition to parents and legal guardians. In
23 pertinent part these regulations provide as follows:

24 (ii) . . . When it is determined that such juvenile should be
25 paroled from detention, the following guidelines should be
26 followed:

27 (A) Juveniles may be released to a relative (brother, sister,
28 aunt, uncle) not in Service detention who is willing to

1 sponsor a minor and the minor may be released to that
2 relative notwithstanding that he has a relative who is in
3 detention.

4 (B) If a relative who is not in detention cannot be located
5 to sponsor the minor, the minor may be released with an
6 accompanying relative who is in detention.

7 (C) If the Service cannot locate a relative in or out of
8 detention to sponsor the minor, but the minor has identified
9 a nonrelative in detention who accompanied him on arrival,
10 the question of releasing the minor and the accompanying
11 nonrelative adult shall be addressed on a case-by-case basis.

12 8 C.F.R. 212.5(a)(2)(ii). Defendants have neither a rational
13 basis nor a substantial interest in discriminating between those
14 juveniles detained pending exclusion proceedings and those
15 detained pending deportation proceedings.

16 56. The condition that a parent or legal guardian personally
17 appear to accept physical custody of a juvenile detained by the
18 INS is imposed on the basis of two factual determinations: first,
19 that the individual should be placed under administrative arrest,
20 i.e., that there is probable cause to believe the person is an
21 alien deportable from the United States; and second, that the
22 arrestee is under the age of eighteen years.

23 57. Defendants routinely and as a matter of custom and usage
24 initiate no effort to determine whether an available adult other
25 than a parent or legal guardian is qualified to accept physical
26 custody of a detained minor before conditioning his or her release
27 on a parent or legal's guardian's personal appearance. Rather,
28 release on bond is automatically so conditioned regardless of the

1 availability of other responsible adults who are willing, able,
2 and qualified to ensure the juvenile's welfare and presence at
3 future administrative proceedings.

4 58. Juvenile whose release on bond defendants condition on a
5 parent's or legal guardian's personal appearance are given no
6 notice of such conditions until an attempt is made to post bond or
7 to have the amount of their bond reduced.

8 59. A juvenile whose release on bond is subject to
9 conditions may request that an immigration judge "redetermine" the
10 terms under which he or she may be released. 8 C.F.R. 242.2(b).
11 However, such review is provided only if the detained juvenile
12 affirmatively requests it. There is no time limit within which an
13 immigration judge is required to rule on the request; review of
14 bond conditions by an immigration judge can take up to several
15 weeks, during which time the juvenile must either meet any and all
16 conditions or remain in detention.

17 60. As a matter of practice, custom, or usage, immigration
18 judges refuse to release detained juveniles to anyone other than a
19 parent or legal guardian regardless of the qualifications of other
20 available adults to ensure a detained minor's welfare and presence
21 at future administrative proceedings.

22 61. When an immigration judge refuses to remove a bond
23 condition, that decision may be appealed to the Board of
24 Immigration Appeals (hereafter "Board"). 8 C.F.R. 242.2(b) and
25 3.1(b)(7). The Board will review an adverse decision of an
26 immigration judge only if affirmatively appealed by the aggrieved
27 juvenile. There is no time limit within which the Board must act,
28 and juveniles must typically wait several weeks before receiving a

1 decision affirming or overruling an immigration judge's refusal to
2 remove a bond condition. Meanwhile, the juvenile must either meet
3 any or all conditions or remain incarcerated.

4 62. The scope of administrative review by an immigration
5 judge and the Board is limited. Whether a given bond condition is
6 necessary to ensure an individual's presence at future
7 administrative proceedings may be reviewed; however, neither an
8 immigration judge, the Board, nor any other neutral and detached
9 authority will review the probable cause supporting the INS's
10 threshold decision to place a juvenile under arrest.

11 63. When a detained juvenile's parent or legal guardian
12 personally appears to accept physical custody, defendants' policy
13 and practice is to interrogate the parent or legal guardian
14 regarding his or her citizenship and immigration status. Parents
15 and guardians concerning whom INS agents thereby develop cause to
16 believe are unlawfully in the United States are taken into custody
17 and placed into deportation proceedings.

18 64. The parents of many juveniles in INS custody, such as
19 the mother of plaintiff Flores and Cruz, have come to the United
20 States seeking refuge from civil war and political persecution.
21 In 1980 alone, 12,000 persons were killed in El Salvador, a
22 country about the size of Massachusetts with a population of
23 approximately 4.8 million. 1981 Amnesty International Report at
24 145-46. The United Nations and the Organization of American
25 States continue to issue reports regarding the Guatemalan
26 government's consistent violation of human rights.

27 65. Notwithstanding continuing levels of extreme violence,
28 the United States continues to expel hundreds of refugees per

1 month to Central American countries such as El Salvador and
2 Guatemala. Because refugees from Central American countries are
3 most often denied asylum in the United States, surrender to the
4 Immigration Service means almost certain deportation to civil war.
5 For these and other reasons, the parents and guardians of detained
6 minors frequently refuse to cooperate in securing their children's
7 release.

8 66. Defendants' policy and practice to indefinitely
9 incarcerate juveniles by conditioning release on bond on a parent
10 or legal guardian's personal appearance penalizes persons
11 suspected of having violated administrative immigration laws.
12 Said policy and practice constitutes retribution for suspected
13 violations of administrative immigration laws and is intended to
14 deter future violations. Said policy and practice is excessive in
15 relation to the purpose defendants assign to it.

16 67. While in INS detention facilities, such as those
17 operated by defendants BSS and CCA, juveniles, as a matter of
18 custom, practice, or usage, are provided (a) no educational
19 instruction, (b) no access to educational or other written
20 materials, (c) no adequate and appropriate recreation, and (d) no
21 reasonable visitation with family and friends. Juveniles are also
22 subjected to strip or body cavity searches upon admission or
23 readmission to INS detention facilities, after visiting with their
24 attorneys or friends, and after appearing before administrative or
25 judicial tribunals.

26 VII.

27 FIRST CAUSE OF ACTION

1 [Unlawfully conditioning release on parent's or legal
2 guardian's personal appearance.]

3 68. Plaintiffs reallege and incorporate by reference the
4 allegations set out in paragraphs 1 through 67, inclusive, of this
5 Complaint as though fully set forth here.

6 69. Defendants' policy, practice, custom or usage to
7 condition release on bond of juveniles taken into custody pursuant
8 to 8 U.S.C. 1252 on their parents' or legal guardians' personal
9 appearance before INS agents violate (a) the Immigration and
10 Nationality Act, 8 U.S.C. 1101 et seq., including 8 U.S.C.
11 1252(a)(2), and implementing regulations and Operating
12 Instructions; (b) the Administrative Procedure Act, 5 U.S.C. 552
13 et seq., including 5 U.S.C. 553(b)-(c); (c) the Due Process Clause
14 of the Fifth Amendment to the United States Constitution; (d) the
15 Equal Protection Guarantee of the Fifth Amendment to the United
16 States Constitution; and (e) the 1967 Protocol Relating to the
17 Status of Refugees, TIAS 6577, 19 U.S. 6223 [hereafter "United
18 Nations Protocol"], and customary international law.

19 VIII.

20 SECOND CAUSE OF ACTION

21 [Imposition of bond condition without due process of law]

22 70. Plaintiffs reallege and incorporate by reference the
23 allegations set out in paragraphs 1 through 67, inclusive, of this
24 complaint as though fully set out here.

25 71. Defendants' policy, practice, custom or usage to
26 condition release on bond for juveniles taken into custody
27 pursuant to 8 U.S.C. 1252 on their parents' or legal guardians'
28 personal appearance before INS agents without providing--

1 (a) prompt written notice that such condition has been
2 imposed;

3 (b) prompt, mandatory, neutral and detached review following
4 arrest of the specific reasons to condition release on a
5 parent's or legal guardian's personal appearance to ensure
6 the juvenile's presence at future administrative proceedings;

7 (c) prompt, mandatory, neutral and detached review following
8 arrest of the probable cause for arrest; and

9 (d) prompt, mandatory, neutral and detached review following
10 arrest of the suitability of any available adult to ensure
11 the juvenile's well-being and presence at future deportation
12 proceedings notwithstanding that such adult is neither the
13 juvenile's parent nor legal guardian;

14 violate the Due Process Clause of the Fifth Amendment to the
15 United States Constitution, the Equal Protection Guarantee of the
16 Fifth Amendment to the United States Constitution, 8 U.S.C.
17 1252(b)(2), 8 C.F.R. 242, the United Nations Protocol, and
18 customary international law.

19 VIII.

20 THIRD CAUSE OF ACTION

21 [Unlawful conditions of detention: Denial of Education]

22 72. Plaintiffs reallege and incorporate by reference the
23 allegations set out in paragraphs 1 through 67, inclusive, of this
24 complaint as though here fully set out here.

25 73. It is defendants' policy and practice to deny persons
26 under the age of eighteen (18) years appropriate reading materials
27 and educational services while incarcerating them pending
28 conclusion of deportation proceedings. Said policy and practice

1 violates the First Amendment to the United States Constitution,
2 the Due Process Clause of the Fifth Amendment to the United States
3 Constitution, the Equal Protection Guarantee of the Fifth
4 Amendment to the United States Constitution, 8 U.S.C. 1252(a) &
5 (c), INS Operations Instruction 242.6(c), and the INS Operational
6 Manual on Service Processing Centers (January 1, 1983).

7 IX.

8 FOURTH CAUSE OF ACTION

9 [Unlawful conditions of detention: Denial of Recreation]

10 74. Plaintiffs reallege and incorporate by reference the
11 allegations set out in paragraphs 1 through 67, inclusive, of this
12 complaint as though here fully set out here.

13 75. It is defendants' policy and practice to deny persons
14 under the age of eighteen (18) years reasonable access to outdoor
15 activities and to facilities for physical exercise, thus
16 depriving them of adequate and appropriate recreation while
17 incarcerating them pending conclusion of deportation proceedings.
18 Said policy and practice violates the Due Process Clause of the
19 Fifth Amendment to the United States Constitution, the Equal
20 Protection Guarantee of the Fifth Amendment to the United States
21 Constitution, 8 U.S.C. 1252(a) & (c), INS Operations Instruction
22 242.6(c), and the INS Operational Manual on Service Processing
23 Centers (January 1, 1983).

24 X.

25 FIFTH CAUSE OF ACTION

26 [Unlawful conditions of detention:

27 Denial of Reasonable Visitation]

1 76. Plaintiffs reallege and incorporate by reference the
2 allegations set out in paragraphs 1 through 67, inclusive, of this
3 complaint as though here fully set out here.

4 77. It is defendants' policy and practice to deny persons
5 under the age of eighteen (18) years reasonable visitation with
6 family members and friends while incarcerating them pending
7 conclusion of deportation proceedings. Said policy and practice
8 violates the First Amendment to the United States Constitution,
9 the Due Process Clause of the Fifth Amendment to the United States
10 Constitution, the Equal Protection Guarantee of the Fifth
11 Amendment to the United States Constitution, 8 U.S.C. 1252(a) &
12 (c), INS Operations Instruction 242.6(c), and the INS Operational
13 Manual on Service Processing Centers (January 1, 1983).

14 / / /

1 XI.

2 SIXTH CAUSE OF ACTION

3 [Unlawful conditions of detention:

4 Incarceration with Unrelated Adults]

5 78. Plaintiffs reallege and incorporate by reference the
6 allegations set out in paragraphs 1 through 67, inclusive, of this
7 complaint as though here fully set out here.

8 79. It is defendants' policy and practice to incarcerate
9 persons under the age of eighteen (18) years with unrelated adults
10 pending conclusion of deportation proceedings. Said policy and
11 practice violates the Due Process Clause of the Fifth Amendment to
12 the United States Constitution, the right to privacy guaranteed by
13 the First, Fourth, Fifth, and Ninth Amendments to the United
14 States Constitution, the Equal Protection Guarantee of the Fifth
15 Amendment to the United States Constitution, 8 U.S.C. 1252(a) &
16 (c), INS Operations Instruction 242.6(c), and the INS Operational
17 Manual on Service Processing Centers (January 1, 1983).

18 XII.

19 SEVENTH CAUSE OF ACTION

20 [Unlawful conditions of detention:

21 Strip Searches]

22 80. Plaintiffs reallege and incorporate by reference the
23 allegations set out in paragraphs 1 through 67, inclusive, of this
24 complaint as though fully set out here.

25 81. It is defendants' policy and practice to strip search
26 juveniles in their custody without reasonable suspicion or
27 probable cause to believe that the individual searched is
28 concealing a weapon or contraband. Said policy and practice

1 violate the Due Process Clause of the Fifth Amendment to the
2 United States Constitution, the right to privacy guaranteed by the
3 First, Fourth, Fifth, and Ninth Amendments to the United States
4 Constitution, the Equal Protection Guarantee of the Fifth
5 Amendment to the United States Constitution, the right to freedom
6 from unreasonable searches and seizures guaranteed by the Fourth
7 Amendment to the United States Constitution, 8 U.S.C. 1252(a) &
8 (c), INS Operations Instruction 242.6(c), and the INS Operational
9 Manual on Service Processing Centers (January 1, 1983).

10 81.1. Deleted.

11 XIII.

12 IRREPARABLE INJURY

13 82. Defendants are engaged in a continuing pattern of
14 illegal and discriminatory conduct in incarcerating persons under
15 the age of eighteen (18) years. As a result, plaintiffs and the
16 class they seek to represent have suffered and will continue to
17 suffer irreparable injury for which they have no adequate remedy
18 at law. If the relief prayed for is not granted, plaintiffs and
19 the class they seek to represent will suffer, among other things,
20 absolute deprivation of education and release on bond pending
21 conclusion of deportation proceedings. Defendants will continue
22 their challenged practices unless and until this Court enjoins
23 them from doing so.

24 XIV.

25 PRAYER FOR RELIEF

26 WHEREFORE, plaintiffs pray this Court:

27 1. Assume jurisdiction over this action;
28

1 2. Order that plaintiffs may maintain this action as a class
2 action pursuant to Rule 23, Federal Rules of Civil Procedure;

3 3. Declare the herein challenged practices unlawful and
4 unconstitutional as applied to both the named plaintiffs and
5 unnamed class-members;

6 4. Issue an order in the nature of mandamus or preliminary
7 and permanent injunctions requiring defendants to release persons
8 under the age of eighteen (18) years on bond without first
9 requiring their parents or legal guardians to personally appear
10 before INS agents for interrogation or to take physical custody of
11 them.

12 5. Issue preliminary and permanent injunctions restraining
13 defendants, their agents, employees, and successors in office
14 from:

15 (a) Incarcerating persons under the age of eighteen (18)
16 years while denying adequate and appropriate reading material
17 and education;

18 (b) Incarcerating persons under the age of eighteen (18)
19 years while denying them adequate and appropriate recreation;

20 (c) Incarcerating persons under the age of eighteen (18)
21 years while denying them reasonable visitation with family and
22 friends;

23 (d) Subjecting detained juveniles to strip searches without
24 adequate reason to believe that such juveniles are concealing
25 weapons or contraband.

26 6. Issue a writ of habeas corpus, injunctive, mandatory or
27 declaratory relief releasing plaintiffs and other incarcerated
28 plaintiff class members on bond without requirement that their

1 parents or legal guardians appear before INS agents for
2 interrogation concerning their immigration status in the United
3 States.

4 7. Deleted

5 8. Award plaintiffs' attorneys all costs and attorneys' fees
6 incurred as a result of this lawsuit;

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9. Grant such further relief as the Court deems just.

Dated: February 26, 1988.

NATIONAL CENTER FOR IMMIGRANTS'
RIGHTS, INC.
Carlos Holguin
Peter A. Schey

NATIONAL CENTER FOR YOUTH LAW
James B. Morales
Alice Bussiere
Teresa Demchak

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA
Paul Hoffman
John Hagar

By: 
Attorneys for Plaintiffs

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PROOF OF PERSONAL SERVICE

I, MIGUEL E. BOURNAIN, declare and say as follows:

1. I am over the age of eighteen years and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1415 GAYLEY AVE # 1023
LOS ANGELES CA 90024, in said county and state.

2. On March 1, 1988, I served the within proposed THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, ETC., on defendant Immigration and Naturalization Service by personally delivering a true copy thereof to the United States Attorney, 1100 U.S. Courthouse Building, 312 N. Spring Street, Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of March, 1988, at Los Angeles, California.

Miguel E. Bourdain

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