

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NORMA DUCHITANGA, individually and as next friend for M.M.D., a minor; BLANCA ORTIZ, individually and as next friend for O.S.O. and E.S.O., minors; DIEGO GARCIA AGUILAR, individually and as next friend for Y.G.R. and F.G.R., minors; THALIA ESCAREGA RUBIO, individually and as next friend for F.E.R., a minor; CLEDIA HERNANDEZ MEZA, individually and as next friend for B.L.M, a minor, on their own behalf and on behalf of others similarly situated,

Plaintiffs/Petitioners,

v.

SCOTT LLOYD, Director, Office of Refugee Resettlement; ELCY VALDEZ, Federal Field Specialist, Office of Refugee Resettlement; LATISSE BENN, Federal Field Specialist, Office of Refugee Resettlement; ALEX AZAR, Secretary for the U.S. Department of Health and Human Services; DEPT. OF HEALTH AND HUMAN SERVICES.

Defendants/Respondents.

Case No.

**CLASS COMPLAINT  
AND PETITION FOR  
HABEAS CORPUS**

**INTRODUCTION**

1. This class-action, civil-rights suit challenges egregious delays in the release of detained immigrant children to their families resulting from new policies and practices that subject parents and others to unwarranted fingerprint checks. Fingerprint-based background checks now add months to children’s detention, first as family members wait weeks for appointments to have their fingerprints taken and then weeks and even months longer for the results. These delays have caused the length of time that children spend in government custody to spike dramatically—in many cases, to more than double the previous average—and the total number of children in government custody to balloon to its highest in history. To accommodate the

swelling population of children whose releases are pending the results of fingerprint checks, the agency has transferred hundreds of such children to an unlicensed tent city in the Texas desert in the middle of the night. Other children are suffering in overly restrictive placements, such as secure facilities and residential treatment centers, due to fingerprinting delays.

2. Detention and separation from family are deeply traumatic for a child, and the harm only increases as detention and separation go on. A decade ago, Congress sought to mitigate that harm by requiring that the Office of Refugee Resettlement (ORR), the agency responsible for caring for immigrant children in government custody, promptly place children with adult sponsors during the pendency of their immigration proceedings. Yet that same agency has now dramatically expanded the scope of its fingerprinting requirements without increasing system capacity. The predictable and catastrophic result has been that children who arrive at the U.S. border either alone or with family members from whom they are forcibly separated or who are detained by immigration authorities inside the U.S. are remaining in government detention for many more months, despite the availability of loving sponsors to care for them. Adding to this harm, ORR is now forwarding fingerprints and other information to Immigration and Customs Enforcement (ICE), which in turn is using that information to detain parents or other adults who were possible placements for children in immigration custody.
3. This new fingerprint regime violates the Trafficking Victims Protection Reauthorization Act, a federal statute that mandates prompt release of children from immigration detention; violates the Due Process Clause of the United States Constitution; and violates the Administrative Procedure Act. These violations are irreparably harming the named plaintiffs and thousands of similarly situated children across the country. The plaintiffs therefore seek relief that assures

that the reunification of children with their parents and other loved ones is not unreasonably delayed.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 2241 (habeas corpus); 5 U.S.C. 702 (waiver of sovereign immunity); 28 U.S.C. § 1361 (mandamus); 28 U.S.C. § 1651 (All Writs Act); the Suspension Clause of Article I of the U.S. Constitution; and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
5. Venue is proper under 28 U.S.C. § 2241(d) because O.S.O., E.S.O., F.G.R. and Y.G.R. are detained within this district. Venue is also proper in the Southern District of New York under 28 U.S.C. § 1391(b) and (e)(1) because two defendants in this action reside in this district, a substantial part of the events giving rise to these claims occurred in this district, and plaintiffs reside in this district.

### **PARTIES**

6. M.M.D. is a 17-year-old immigrant child in the custody the Office of Refugee Resettlement and detained by ORR at Nueva Esperanza Southwest Keys in Brownsville, Texas. She has been detained since early October 2018.
7. Norma Duchitanga is M.M.D.'s mother and sponsor. She lives in Spring Valley, New York. She provided ORR fingerprints on October 24, 2018.
8. O.S.O. and E.S.O. are 11- and 16-year-old immigrant children brothers in the custody of the Office of Refugee Resettlement and detained by ORR at Cayuga Center in New York, New York. They have been detained since July 2018.

9. Blanca Ortiz is O.S.O. and E.S.O.'s mother and sponsor. She lives in Oxon, Maryland. She provided ORR fingerprints on July 24, 2018.
10. F.G.R. and Y.G.R. are 16- and 14-year-old immigrant children and sisters in the custody of the Office of Refugee Resettlement and detained by ORR at Children's Village in Dobbs Ferry, New York. They have been detained since May 2018.
11. Diego Garcia Ramirez is F.G.R. and Y.G.R.'s father and sponsor. He lives in the Miami area in Florida. He provided ORR fingerprints on July 28, 2018.
12. F.E.R. is a 15-year-old immigrant child in the custody of the Office of Refugee Resettlement and detained by ORR at Crittenton in Fairfield, California. He has been detained since June 22, 2018.
13. Thalia Escarega Rubio is F.E.R.'s sister and sponsor. She lives in Cortez, Colorado. She provided ORR fingerprints in August and again on October 29, 2018.
14. B.L.M. is a 17-year-old immigrant child in the custody of the Office of Refugee Resettlement and detained by ORR at Crittenton in Fairfield, California. He has been detained since July 2018.
15. Cledia Hernandez Meza is B.L.M.'s cousin and sponsor. She lives in New York City. She provided ORR fingerprints on August 23, 2018.
16. Defendant Scott Lloyd is the Director of the Office of Refugee Resettlement ("ORR"). ORR is the government entity directly responsible for the detention of M.M.D., O.S.O., E.S.O., F.G.R., Y.G.R., F.E.R., and B.L.M. Mr. Lloyd is sued in his official capacity.
17. Defendant Ely Valdez is a Federal Field Specialist for the Office of Refugee Resettlement ("ORR"). Federal Field Specialists are ORR officials who act as regional approval authorities for the transfer and release of most children in facilities under their supervision. Valdez is

responsible for the Children's Village facility in Dobbs Ferry, New York and is a legal custodian of F.G.R. and Y.G.R. Her place of business is in the Southern District of New York. She is sued in her official capacity.

18. Defendant Latise Benn is a Federal Field Specialist for the Office of Refugee Resettlement ("ORR"). Benn is responsible for the Cayuga Center facility in New York, New York and is a legal custodian of O.S.O. and E.S.O. Her place of business is in the Southern District of New York. She is sued in her official capacity.

19. Defendant Alex Azar is the Secretary of the U.S. Department of Health and Human Services, of which ORR is a component. Mr. Azar is sued in his official capacity.

20. The Department of Health and Human Services is the federal government entity of which ORR is a component.

### **FACTS AND LEGAL FRAMEWORK**

#### **Legal Framework and Policies Governing Custody and Release of Immigrant Children**

21. Immigrant children detained by immigration authorities without their parents are transferred to the care of the Office of Refugee Resettlement (ORR), an agency within the Department of Health and Human Services (HHS) charged with acting in their best interest and releasing them to adult caregivers.

22. In the 1980s and 1990s, immigrant children who arrived to the U.S. routinely were locked up for months in unsafe and unsanitary jail cells. These conditions prompted a federal lawsuit, *Flores v. Reno*, which resulted in a 1997 consent decree still effective today that sets national standards for the detention, release, and treatment of immigrant children in government custody. 85-cv-4555 (C.D. Cal. Jan. 17, 1997) ("*Flores* Settlement"). In 2002, Congress took further action to protect this vulnerable population when it passed the Homeland Security Act and transferred the care and custody of unaccompanied immigrant children from the

Immigration and Nationality Service to ORR. ORR is not a security or immigration enforcement agency; its mission is to “incorporate[e] child welfare values” into the care and placement of unaccompanied immigrant children.

23. ORR contracts with private organizations throughout the United States to operate approximately one hundred care-provider facilities that house or contract with foster families to house immigrant children. These facilities are normally licensed by state authorities to care for children. They often also house children detained or removed from their families by state or local authorities, whose confinement is not immigration-related. Since June, ORR has also begun housing over a thousand immigrant children at an unlicensed facility in Tornillo, Texas.
24. ORR’s treatment and release of unaccompanied children in its care are governed by federal statute and the *Flores* Settlement. That settlement requires that unaccompanied children shall be released to adult sponsors “without unnecessary delay” and that the Government undertake “prompt and continuous efforts” towards the release of children during the pendency of their removal proceedings.
25. Since 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”) also has tasked ORR with ensuring children are “promptly placed in the least restrictive setting that is in the best interest of the child.” The TVPRA mandates that release decisions consider only the child’s danger to self or the community, the child’s risk of flight, and the suitability of the sponsor. The text and legislative history of the TVPRA make clear that Congress enacted the statute to facilitate the speedy release and minimally restrictive placement of immigrant children during the pendency of their removal proceedings.
26. Like the TVPRA and the *Flores* Settlement, ORR’s policies “require the timely release of children and youth to qualified parents, guardians, relatives or other adults, referred to as

‘sponsors.’” That process begins with identification of potential sponsors. Once a sponsor has been identified, he or she must complete an authorization for release of information and a family reunification application. The proposed sponsor also must provide documentation of the identity of the child, the sponsor’s identity and address, his or her relationship to the child, and “evidence verifying the identity of all adults residing with the sponsor and all adult care givers identified in a sponsor care plan.”

27. Sponsors, their household members, and any backup care providers then need to undergo background checks. Historically, the type of background check depended, first, on the sponsor’s family relationship to the child (or lack thereof) and, second, on whether any risk to the child’s safety or unique vulnerability of the child is documented. ORR requires all sponsors and their household members to submit to public criminal-records checks and sex-offender registry checks, neither of which are fingerprint-based. But until recently, parents and legal guardians and all sponsors’ household members did not have to provide fingerprints to sponsor children unless there was a documented risk to the safety of the child, the child was considered “especially vulnerable,” or the case was referred for a home study. In 2017, before Defendants’ enactment of its recent fingerprinting policies, fewer than ten percent of children in ORR care had home studies prior to release. In those cases, the sponsor and other members of the household had to undergo fingerprinting.

28. ORR also asked all sponsors to self-report immigration status as part of the reunification process and conducted immigration status checks through databases operated by the Executive Office of Immigration Review (EOIR) and U.S. Citizenship and Immigration Services. Neither of those are fingerprint-based. Moreover, the results of the status inquiries were not shared with DHS.

29. Once the necessary documentation and background checks of a potential sponsor are complete, care-provider staff “makes a recommendation for release” to a third-party case coordinator, who then forwards the recommendation to the ORR Federal Field Specialist (FFS). The FFS is an ORR employee assigned to liaise with care-provider facilities and is responsible for approving release, denying release, or requesting additional information.
30. ORR’s internal operations manual sets target times for how long it should take care providers to complete evaluations of a sponsor—including the completion of that sponsor’s background checks—and refer the case for release. The September 2018 version of the manual directs that, from the time care providers identify a potential sponsor, it should take 10 days to complete the evaluation process for parents, 14 days for other relatives, and 21 days for non-relatives.

*Changes to ORR’s Policies and Resulting Delays*

31. On June 7, 2018, ORR dramatically changed its release policy and the requirements for all adults, including parents, to sponsor children for release from ORR custody.
32. First, ORR imposed expanded fingerprinting requirements to cover all sponsors and their household members. All parents and legal guardians are now required to undergo fingerprinting to obtain release of children. All household members of all proposed sponsors—regardless of those sponsors’ relationship to the child—also must consent to and undergo fingerprinting. ORR contracts with the Program Support Center, a separate division within HHS, to use these fingerprints to complete an FBI criminal background check and a DHS immigration and criminal background check. The Program Support Center then returns the results to ORR.
33. Because over forty percent of children in ORR custody are released to a parent and all sponsors are likely to have other adult household members, none of whom were previously required to



be fingerprinted except in limited circumstances, this change has dramatically increased the number of people who must be fingerprinted as part of the release process.

34. Second, ORR now shares fingerprints and other information about putative sponsors and their adult household members with Immigration and Customs Enforcement (ICE), ostensibly for the purpose of obtaining the results of a DHS criminal and immigration records check. This change was accomplished in two parts. In April 2018, ORR, ICE and Customs and Border Protection (CBP) signed a Memorandum of Agreement under which ORR would share sponsor information and DHS would provide ORR with immigration status and criminal background information within 72 hours. Then, in May, ICE promulgated regulations permitting it to use the information ORR provides to it for immigration enforcement—a regulation that took effect the same day that ORR expanded the scope of who must be fingerprinted.<sup>1</sup>

35. Information obtained in response to this DHS immigration check is not used by ORR in considering whether to approve a sponsor.

36. The recent changes in fingerprint policies have dramatically increased how long children must wait for release. The delay currently begins with a wait of several weeks or in some places over a month for sponsors and their household members to obtain an appointment at an ORR-contracted fingerprint vendor.

37. The agency's primary contractor to provide fingerprint services, Lutheran Immigrant Refugee Services (LIRS), operates or subcontracts to operate only a limited number of facilities nationwide at which families can be fingerprinted. Despite hugely increasing the number of people required to obtain fingerprints in June, ORR did not announce its intention to fund an

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<sup>1</sup> See Notice of Modified System of Records, 83 Fed Reg. 20844 (May 8, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-08/2018-09902>, attached as Exhibit F to Austin Decl.

expansion of LIRS's capacity until August 2018—and, on information and belief, the grant will not be finalized until at least late November. As a result of ORR not having adequately expanded capacity, sponsors and their household members now routinely have to wait lengthy periods after a child is initially detained for a fingerprinting appointment. In early October, Ms. Duchitanga—the next friend for plaintiff M.M.D.—was told the wait time for a fingerprint appointment in New York was one and one-half to two months.

38. Once fingerprints are taken, it should take at most a few days to obtain results of these background checks. Prior to the June changes, ORR completed FBI background checks in three to five days. The agency's operations manual states that the *entire* sponsor evaluation process, including background checks, should take 10 to 21 days. Even under the Memorandum of Agreement signed in April, DHS must return any responsive information to ORR within 72 hours. The TVPRA also requires that DHS provide any information that ORR requests in no more than two weeks. 8 U.S.C. § 1232(c)(3)(C)

39. Yet these criminal and immigration checks are now taking weeks and in some cases months to complete. At least four plaintiffs remain detained despite their sponsors being fingerprinted in late July; a fifth remains detained despite his mother and her partner being fingerprinted, for the second time, over a month ago. There is no legitimate reason for these egregious delays. On information and belief, the backlog is the result of ORR's failure to prepare for the increased volume of fingerprint-based background checks, to set any time limits on background checks, to adequately monitor and correct delays in each step of the process, to provide for adequate staffing at the entities responsible for background checks, and to otherwise ensure that background checks are completed on a timely basis.

40. These failures have proven disastrous for immigrant children and the loved ones attempting to get them out of government custody. ORR officials readily acknowledge that fingerprint-based background checks now add months to children's time in custody.<sup>2</sup> The average length of stay for children in ORR custody, already at its highest in years in the first part of 2018, has jumped sharply since the policy change. At the largest care provider in New York, which houses over 700 children and where plaintiffs O.S.O. and E.S.O. are detained, the average length of time in custody has more than doubled.

41. Delays associated with the June policy changes detailed above have led the total population of children in ORR custody to balloon to its highest level in history—even though the number of children arriving at the U.S. border remains comparable to years past.<sup>3</sup> So many children are now languishing in ORR custody that the agency has begun transferring children from care providers elsewhere in the U.S. to a “tent city” in Tornillo, Texas.<sup>4</sup> That facility, which opened

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<sup>2</sup> Aileen Flores, *1,500 Unaccompanied Immigrant Children at Shelter in Tornillo; FBI Checks Delay Release*, El Paso Times, Oct. 12, 2018, <https://www.elpasotimes.com/story/news/immigration/2018/10/12/backlog-fbi-background-checks-sponsors-delays-immigrants-release/1616374002/>, attached as Exhibit E to Austin Decl.; James Barragan & Dianne Solis, *Feds Admit It's Slow-Going Reuniting Immigrant Children at Tent City with Families*, Dallas News, Oct. 12, 2018, <https://www.dallasnews.com/news/immigration/2018/10/12/feds-admit-slow-going-reuniting-immigrant-children-tent-city-families>; Amber Jamieson, *Immigrant Teens Are Stuck in an Expanding Tent City in Texas*, Buzz Feed, Oct. 14, 2018, <https://www.buzzfeednews.com/article/amberjamieson/tornillo-tent-city>; Manny Fernandez & Caitlin Dickerson, *Inside the Vast Tent City Housing Migrant Children in a Texas Desert*, N.Y. Times, October 12, 2018, <https://www.nytimes.com/2018/10/12/us/migrant-children-tent-camp-texas.html>.

<sup>3</sup> Caitlin Dickerson, *Detention of Migrant Children Has Skyrocketed to Highest Levels Ever*, N.Y. Times, Sep. 12, 2018, <https://www.nytimes.com/2018/09/12/us/migrant-children-detention.html?action=click&module=Top%20Stories&pctype=Homepage>, attached as Exhibit I to Austin Decl.

<sup>4</sup> See, e.g., Caitlin Dickerson, *Migrant Children Moved Under Cover of Darkness to a Texas Tent City*, N.Y. Times, Sep. 30, 2018, <https://www.nytimes.com/2018/09/30/us/migrant-children-tent-city-texas.html>, attached as Exhibit K to Austin Decl.

in June, now houses over a thousand of children, many hundreds of whom are still in custody only because their relatives' fingerprint-based background checks remain pending months after the children were initially detained. Contrary to the *Flores* Settlement and unlike ORR facilities elsewhere in the country, the Tornillo "tent city" is unlicensed by state child-welfare authorities.<sup>5</sup>

42. In implementing its significant policy changes in June 2018, ORR wholly failed to consider or plan for the capacity and delay problems that would result and to ensure that the policy would comply with the TVPRA's requirement of prompt release. In August 2018, a Senate subcommittee investigating ORR's procedures noted numerous advocates' concern that the June change in policy—particularly the sharing of information with ICE—would dramatically increase the population of children in ORR custody and stated, "based on ORR briefings, it is not apparent that HHS has sufficient capacity or has made comprehensive contingency plans to house significantly more UACs."<sup>6</sup>

43. In addition to causing unlawful delay, ORR's new policy of sharing sponsors' information with DHS—memorialized in the April Memorandum of Agreement and subsequent amendments to ORR's online guide and operations manual—serves no legitimate purpose. The immigration-status checks ostensibly returned to ORR by DHS<sup>7</sup> have no bearing on ORR's

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<sup>5</sup> Manny Fernandez & Caitlin Dickerson, *Inside the Vast Tent City Housing Migrant Children in a Texas Desert*, N.Y. Times, October 12, 2018, <https://www.nytimes.com/2018/10/12/us/migrant-children-tent-camp-texas.html>.

<sup>6</sup> Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate, *Oversight of the Care of Unaccompanied Alien Children* at 32, August 15, 2018, [https://www.carper.senate.gov/public/\\_cache/files/7/2/7232c331-45f3-4104-b36e-b55615b46358/308DA02C47C82D269BB5510C4E2E8763.2018.08.15-psi-report---oversight-of-the-care-of-uacs.pdf](https://www.carper.senate.gov/public/_cache/files/7/2/7232c331-45f3-4104-b36e-b55615b46358/308DA02C47C82D269BB5510C4E2E8763.2018.08.15-psi-report---oversight-of-the-care-of-uacs.pdf).

<sup>7</sup> A lawsuit currently pending against ORR in Virginia alleges that DHS is not returning any information to ORR but is instead only using sponsor information—shared under the pretense of

release process or requirements for sponsors. Upon information and belief, DHS criminal record checks do not yield any information not also obtainable through FBI criminal records checks.

44. ORR functions as a child welfare agency for immigrant children. Indeed, Congress tasked it with facilitating the prompt release of children in its care to appropriate sponsors because it recognized that immigration enforcement agencies were ill-equipped to perform those functions. Rather than ensuring child safety, however, ORR's policy change to share sponsor information with DHS serves primarily to facilitate immigration enforcement and deter families from sponsoring and obtaining the release of children—whether their own children, siblings, nieces, nephews, grandchildren, or other relatives—from custody.
45. In mid-September, an ICE official testified to Congress that at least 41 putative sponsors or their family or household members have been detained by ICE as a result of attempting to sponsor children in ORR custody since ORR began sharing information with ICE in June.<sup>8</sup> Advocates and elected officials consistently have expressed concern that subjecting sponsors and their families to immigration enforcement deters them from sponsoring children and increases the number of children detained and the length of their detention.
46. ORR's expansion and implementation of its fingerprinting requirement in June has caused unreasonable delays in the release of children and serves no legitimate purpose.

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assessing suitability—for enforcement purposes. Second Amended Class Complaint, *JECM v. Lloyd*, 18-cv-00903 ¶ 81 (E.D.Va. Aug. 16, 2018), ECF No. 21.

<sup>8</sup> Testimony of Matthew Albence, Executive Associate Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, Sep. 18, 2018, attached as Exhibit G to Austin Decl.

*Trump Administration Efforts to Obstruct Immigrant Children's Release and Resulting Harm*

47. The changes imposed on June 7 are only the latest in a series of attempts since 2017 to slow or prevent the release of immigrant children from ORR custody and to vilify and target immigrant children and their family members for deportation. Administration officials have also repeatedly denounced the laws that protect immigrant children and ensure their prompt release from custody as “loopholes” and called on Congress to amend or repeal them.
48. At the same time, the administration has worked to undermine these protections—particularly children’s right to prompt release during the pendency of their removal proceedings. In March 2017 ORR’s director imposed a requirement that he personally review and approve the release of any child who had ever been placed in a heightened supervision setting within ORR, slowing the release of hundreds of children. Two courts have since struck down that requirement as unlawful.
49. For children, the effects of this increasingly prolonged detention are devastating. These effects include psychological and physiological damage, the likelihood of which increases with any extension of time in custody. Children in custody suffer anxiety; a sense of helplessness; self-harm, suicidal ideation and even suicide attempts; depression; and resulting behavioral issues. Uncertainty about their future and the inability of any adult around them to say with certainty why or how much longer they will be detained results in deep anxiety and exacerbates the mental health toll that detention inflicts.
50. These mental-health effects are worsened by the fact most children ORR detains have survived trauma—such as persecution, assault, or torture—in their home countries, and prolonged incarceration exacerbates those injuries. The resulting symptoms can continue long after children are released.

51. Children also suffer educational harms in custody. ORR facilities are not equipped for long-term care. Children are often placed in unaccredited school programs with peers of varying educational levels and linguistic backgrounds and with no special-education services available. Instead of progressing as children learn, the curriculum typically loops to accommodate new children coming into custody. On information and belief, despite imposing changes in June that have more than doubled many children's length of stay, ORR has made no change in its educational offerings or policy.
52. Transfer to the "tent city" in Tornillo, Texas and detention there is an additional cause of harm for children whose release from custody is delayed by the fingerprinting process. Hundreds of children have been transferred to Tornillo from elsewhere in the U.S., often without any advanced notice and in the middle of the night.
53. Many of the children currently detained at Tornillo were told they were being transferred because their cases were "advanced" and their release was imminent. Yet months have passed and they remain detained in tents in the desert with no potable water or utilities, no privacy, and no contact with the outside world. They sleep in tents with twenty or more beds and attend "school" in a massive tent with many hundreds of children.<sup>9</sup> As of late October, more than six hundred children detained at Tornillo were still there solely because of fingerprinting delays. Children detained at Tornillo report feeling anxious and desperate due to these delays, and worry that they will never be reunited with their families.

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<sup>9</sup> Notably, school at Tornillo only started in early October as a result of intense media scrutiny. On information and belief, providing education is not a requirement of the Tornillo contractor's agreement with ORR despite the fact that the Flores Settlement plainly requires that children in ORR custody receive educational services.

54. ORR also detains children in overly restrictive settings for prolonged periods of time due to fingerprint delays. Children in secure facilities and residential treatment centers are among those who are awaiting release to their sponsors pending fingerprinting results. Similar to the children warehoused at Tornillo, these children face extreme loss of liberty and live in confined settings where they often get no more than an hour of outside recreation per day.
55. Finally, lengthening children's time in custody increases the chances they will turn 18 and be transferred to ICE custody—which is indistinguishable from criminal incarceration—or that they will abandon hope of obtaining relief in the United States and accept removal or voluntary departure, despite a fear for their safety if they do so.

**FACTS PERTAINING TO NAMED PLAINTIFFS**

56. M.M.D. is a 17-year-old immigrant child who has been in the custody of immigration and detained at Nueva Esperanza Southwest Keys in Brownsville, Texas since early October 2018. M.M.D.'s mother, Norma Duchitanga, resides in Spring Valley, New York. M.M.D. will turn 18 in late December. When M.M.D. arrived at the U.S. border, immigration officials threatened to deport her mother and to slow M.M.D.'s release from ORR custody until her 18th birthday nearly three months later. Since M.M.D. was transferred to ORR custody, her mother Ms. Duchitanga has done everything practicable to obtain her release from custody. She provided all documentation requested of her to her daughter's case manager by October 5, 2018.
57. When told she needed to be fingerprinted as part of the release process, Ms. Duchitanga advised her daughter's case worker at Nueva Esperanza that she was fingerprinted by the Department of Homeland Security last year in conjunction with her renewal of her work permit. M.M.D.'s case worker said she would nonetheless need to be fingerprinted again. At several times in early October, the case worker advised Ms. Duchitanga that the wait time for



a fingerprinting appointment in New York was 1.5 to 2 months. Ms. Duchitanga expressed her willingness to travel any distance necessary to attend an earlier appointment.

58. On October 12, M.M.D.'s case worker informed Ms. Duchitanga she could attend a fingerprinting appointment in Philadelphia on October 24. Ms. Duchitanga traveled several hours by car to Philadelphia and attended the appointment, but the results of her fingerprinting remain pending.

59. O.S.O. and E.S.O are 11- and 16-year-old immigrant children brothers who have been in ORR custody and detained at Cayuga Center in New York, New York since July 2018. Their mother, Blanca Ortiz, resides in Oxon, Maryland and has done everything practicable to obtain their release. Ms. Ortiz provided all documentation requested of her to obtain the release of her children by July 15, 2018.

60. Ms. Ortiz and her adult sister, with whom she lived at the time, were fingerprinted at Lutheran Social Services of National Capital in Hyattsville, Maryland on July 24, 2018. The results of Ms. Ortiz's fingerprinting remain pending. Her children's case worker has consistently told Ms. Ortiz that fingerprint results are the only remaining impediment to their release and that the wait time to obtain those results is out of her hands.

61. Ms. Ortiz is extremely concerned for her children's well-being in custody. Her younger son, O.S.O., who is 11 years old, called her in tears in mid-October to tell her he was touched inappropriately by an older child. Her older son, E.S.O., has learning disabilities and is not receiving any special-education services in custody. Ms. Ortiz states she is so worried about her sons that she cannot sleep at night.

62. F.G.R. and Y.G.R. are 14- and 16-year-old immigrant children sisters who have been in ORR custody and detained at Children's Village in Dobbs Ferry, New York since May 2018. Their

father, Diego Garcia Aguilar, resides in Florida and has done everything practicable to obtain his daughters' release. Mr. Garcia Aguilar has quickly provided all documentation requested of him by ORR to obtain his daughters' release.

63. In June 2018, Mr. Garcia Aguilar was advised by his daughters' case worker that he and other adult members of his household would need to be fingerprinted. He waited over a month for the soonest available fingerprint appointment at an ORR fingerprint site in Miami.

64. Mr. Garcia Aguilar and his household members were all fingerprinted by July 28, 2018. Yet their fingerprint-based background checks remain pending. His daughters' case worker has advised Mr. Garcia Aguilar that the fingerprints are the only uncompleted step in his daughters' release process.

65. F.G.R. and Y.G.R. are both desperate to get out of custody and frequently cry on the phone with their father.

66. F.E.R. is a 15-year-old immigrant child who has been in ORR custody and detained at Crittenton in Fairfield, California since June 22, 2018. His sister, Thalia Escarcega Rubio, resides in Colorado and has done everything practicable to obtain his release. F.E.R. and Ms. Escarcega Rubio arrived in the U.S. together and were separated. Ms. Escarcega Rubio has provided all the documents her brother's care provider has requested of her.

67. In July, F.E.R.'s case worker informed Ms. Escarcega Rubio and the sister with whom she lives that they both would need to be fingerprinted. The case worker informed the family that she could provide fingerprint cards, as Ms. Escarcega Rubio and her sister live far from a fingerprint location, but took nearly a month to send them. Upon receipt of the cards in late August, Ms. Escarcega Rubio and her sister immediately got fingerprinted and returned the cards by mail.

68. On October 22, F.E.R.'s case worker informed Ms. Escarcega Rubio that the fingerprint cards were illegible and she would need to be fingerprinted at a digital fingerprint site. On October 29, Ms. Escarcega Rubio drove seven hours each way to Denver, Colorado to attend their fingerprint appointment. The results of their fingerprint check remain pending and, on information and belief, are the last remaining barrier to F.E.R.'s release.

69. F.E.R. has grown desperate to be released. In their twice weekly phone calls, his sister says he sounds defeated.

70. B.L.M. is a 17-year-old immigrant child who has been in ORR custody and detained at Crittenton in Fairfield, California since July 2018. His cousin, Cledia Hernandez Meza, resides in New York City and has done everything practicable to obtain his release. Ms. Hernandez has provided all documents requested of her.

71. B.L.M.'s case provider did not mail Ms. Hernandez Meza fingerprint cards for her to use in obtaining fingerprints at a local police precinct until B.L.M. had been detained for approximately a month. On August 23, Ms. Hernandez and her sole other adult household member were fingerprinted at a local police precinct using those cards. She immediately returned the completed fingerprint cards to the care provider by mail. Since then, B.L.M.'s case worker has repeatedly told Ms. Hernandez that the results of the fingerprinting check remain pending.

### **CLASS ACTION ALLEGATIONS**

72. The case is brought as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of

all children in or who will be in ORR custody whose release is contingent on a fingerprint-based background check of their sponsor, sponsors' household member, or an alternative care giver.

73. The proposed class is sufficiently numerous so as to render joinder impracticable. Upon information and belief, the class consists of over one thousand children. Moreover, additional children will enter the class in the future.
74. Joinder is also impracticable because the proposed class consists of children who are separated from their families and other adult caretakers. Many are unrepresented by counsel and have limited English proficiency, limited understanding of the U.S. judicial system, and limited financial means.
75. Common questions of fact and law affect class members, including (a) whether ORR fingerprint policies and practices are substantially delaying the release of the plaintiffs from government custody; (b) whether ORR fingerprint policies and practices violate the TVPRA; (c) whether ORR fingerprint policies and practices violate the Due Process Clause; (d) whether ORR fingerprint policies and practices violate the Administrative Procedure Act.
76. The claims of M.M.D., O.S.O., E.S.O., F.G.R., Y.G.R., F.E.R., and B.L.M. are typical of those of the class with respect to the legality of the Government's policies and practices at issue. They will fairly and adequately protect the interests of the class and are unaware of any conflicts that would preclude fair and adequate representation.
77. If children in ORR custody are required to prosecute individual actions against the defendants, defendants' practices will evade judicial review.
78. Proposed class counsel have experience litigating similar matters and are class counsel in multiple class action lawsuits concerning children's treatment and right to prompt release from ORR custody.

79. The defendants' violations of the TVPRA, the Due Process Clause, and the Administrative Procedure Act apply to the entire class, making class-wide injunctive and declaratory relief appropriate.

**CAUSES OF ACTION**

**FIRST CLAIM  
VIOLATION OF TVPRA**

80. The defendants' actions violate the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

**SECOND CLAIM  
VIOLATION OF THE DUE PROCESS CLAUSE**

81. The defendants' actions violated the Due Process Clause of the Fifth Amendment to the United States Constitution.

**THIRD CLAIM  
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

82. The defendants' actions violate the Administrative Procedure Act.

**PRAYER FOR RELIEF**

WHEREFORE Iris Cruz Paz respectfully requests that the Court:

1. Assume jurisdiction over this matter;
2. Order the defendants to release M.M.D., O.S.O., E.S.O., F.G.R., Y.G.R., F.E.R. and B.L.M. immediately;
3. Certify the proposed class;
4. Declare that the defendants' actions violate the TVPRA, the Due Process Clause, and the Administrative Procedure Act;
5. Vacate the changes in ORR release policy and practice implemented in June 2018;

6. Order the defendants to complete fingerprint-based background checks in a timely fashion as required by the TVPRA, Due Process Clause, and APA;
7. Award the plaintiffs reasonable attorneys' fees and costs for this action; and
8. Grant any further relief that the Court deems just and proper.

Respectfully Submitted,

/s/ Paige Austin

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*\*application for pro hac vice admission  
forthcoming*

Dated: November 6, 2018  
New York, N.Y.