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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; 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. _____

COMPLAINT—CLASS ACTION

I. PRELIMINARY STATEMENT

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

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

3. Neither the Constitution nor the immigration laws permit this state of affairs. More than four

¹ Center for Gender and Refugee Studies & Kids in Need of Defense, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* at iii-iv (Feb. 2014) [hereinafter “*A Treacherous Journey*”] available at http://www.uchastings.edu/centers/cgrs-ocs/treacherous_journey_cgks_kind_report.pdf.

² *A Treacherous Journey* at 2.

1 decades ago, the Supreme Court recognized that when the Government initiates proceedings against
2 children facing juvenile delinquency charges, the Due Process Clause requires the Government to
3 provide those children with legal representation to ensure that the proceedings are fundamentally fair. *In*
4 *re Gault*, 387 U.S. 1, 41 (1967). The Court held that “[t]he juvenile needs the assistance of counsel to
5 cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the
6 proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires
7 the guiding hand of counsel at every step in the proceedings against him.” *Id.* at 36 (citation and
8 quotation marks omitted).. The Constitution guarantees children this safeguard notwithstanding the civil,
9 rather than criminal, character of juvenile delinquency proceedings.

10 4. Immigrants, including immigrant children, are also entitled to Due Process when facing
11 deportation. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Both the Constitution and the immigration laws
12 guarantee all children the right to a full and fair removal hearing, including the opportunity to defend
13 against deportation and seek any forms of relief that would enable them to remain in the United States.
14 And just as in juvenile delinquency proceedings, children cannot receive that fair hearing without legal
15 representation. As the Supreme Court stated in discussing proceedings of similarly “tremendous
16 consequences,” for children in immigration proceedings “[t]he right to representation by counsel is not a
17 formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.” *Kent v.*
18 *United States*, 383 U.S. 541, 554, 561 (1966) (addressing child’s right to appointed counsel in
19 proceedings to determine whether juvenile court should waive its jurisdiction in favor of criminal court).

20 5. Yet every day in courts throughout the country, children represent themselves in deportation
21 cases that are often more complex and more serious than most juvenile delinquency cases.³ The resulting
22 adjudications are fundamentally unfair. Children are forced to admit or deny allegations against them,

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

1 compile evidence in support of their claims to remain in the United States, and articulate legal
2 arguments on their own behalf, when in reality they “are unlikely to understand the complex procedures
3 they face and the options and remedies that may be available to them under the law.”⁴

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

6
7 **II. JURISDICTION AND VENUE**

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

10 8. This court has subject matter jurisdiction pursuant to the general federal question statute, 28
11 U.S.C. § 1331, the federal habeas statute, 28 U.S.C. § 2241, et seq., and the All Writs Act, 28 U.S.C. §
12 1651.

13 9. This court has personal jurisdiction over the Defendants because of, *inter alia*, the nationwide
14 reach of Defendants’ conduct and the presence of courts operated by Defendants within the Western
15 District of Washington where immigration proceedings involving members of the Plaintiff Class are
16 held.

17 10. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(e)(1) because a
18 substantial part of the events or omissions giving rise to this action occurred in this district. Plaintiffs
19 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
20 have immigration proceedings scheduled to occur in this district. In addition, venue is proper under
21 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
22 constructive custody of immigration authorities by virtue of immigration proceedings in this district.

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25 ⁴ *A Treacherous Journey* at iii.

26 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 **III. PARTIES**

2 **A. Plaintiffs**

3 11. Plaintiff J.E.F.M. is a 10-year-old native and citizen of El Salvador.⁶ He now resides in
4 Washington State. He has a removal hearing scheduled for September 2014 in Seattle, Washington, and
5 does not have an attorney to represent him in his immigration case. J.E.F.M. appears by his next friend
6 Bob Ekblad, a minister who has worked closely with J.E.F.M. and his family.

7 12. Plaintiff J.F.M. is a 13-year-old native and citizen of El Salvador. He is the older brother of
8 J.E.F.M. He now resides in Washington State. He has a removal hearing scheduled for September 2014,
9 in Seattle, Washington, and does not have an attorney to represent him in his immigration case. J.F.M.
10 appears by his next friend Bob Ekblad, a minister who has worked closely with J.F.M. and his family.

11 13. Plaintiff D.G.F.M. is a 15-year-old native and citizen of El Salvador. She is the older sister of
12 J.F.M. and J.E.F.M. She now resides in Washington State. She has a removal hearing scheduled for
13 September 2014, in Seattle, Washington, and does not have an attorney to represent her in her
14 immigration case. D.G.F.M. appears by her next friend Bob Ekblad, a minister who has worked closely
15 with D.G.F.M. and her family.

16 14. Plaintiff F.L.B. is a 15-year-old native and citizen of Guatemala. He now resides in Seattle,
17 Washington. He has a removal hearing scheduled for September 2014, and does not have an attorney to
18 represent him in his immigration case. F.L.B. appears by his next friend Casey Trupin. Mr. Trupin is the
19 Project Coordinator for the Children and Youth Project at Columbia Legal Services in Seattle,
20 Washington.

21 15. Plaintiff G.D.S. is a 15-year-old native and citizen of Mexico. He has resided in the United States
22 since approximately the age of one. He does not have an attorney to represent him in his immigration
23 case. G.D.S. appears by his next friend and mother, Ana Maria Ruvalcaba.

24 16. Plaintiff M.A.M. is a 16-year-old native and citizen of Honduras. M.A.M. has resided in the
25

26 ⁶ To protect the privacy of the child Plaintiffs in this case, this complaint refers to them using their
27 initials. *See* Fed. R. Civ. P. 5.2(a)(3). For the same reason, this complaint also does not provide as much
28 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 United States since he was eight years old. M.A.M. resides in Oxnard, California. M.A.M. has a removal
2 hearing scheduled for August 2014, and does not have an attorney to represent him in his immigration
3 case. M.A.M. appears by his next friend and mother, Rosa Pedro.

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

8 18. Plaintiff G.M.G.C. 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 Los Angeles, California. G.M.G.C. has a removal hearing
10 scheduled for September 2014, and does not have an attorney to represent her in her immigration case.
11 G.M.G.C. appears by her next friend and father, Juan Guerrero Diaz.

12 **B. Defendants**

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

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

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

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

28 23. Defendant Sylvia M. Burwell is the Secretary of Health and Human Services (“HHS”) and is the

1 highest-ranking member of HHS, which is the arm of the federal Government responsible for the care
 2 and custody of unaccompanied immigrant minors under the Trafficking Victims Protection
 3 Reauthorization Act. Ms. Burwell is sued in her official capacity.

4 24. Defendant Eskinder Negash is the Director of the Office of Refugee Resettlement (“ORR”),
 5 which is the division of HHS directly responsible for the care and custody of unaccompanied immigrant
 6 minors. Mr. Negash is sued in his official capacity.

7 25. Defendant Nathalie R. Asher is the Field Office Director for the Seattle Field Office of ICE,
 8 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
 9 proceedings in this district. Ms. Asher is sued in her official capacity.

10 26. Defendant Kenneth Hamilton is the Acting Assistant Field Office Director for the Seattle Field
 11 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 virtue
 12 of immigration proceedings in this district. Mr. Hamilton is sued in his official capacity.

13 14 **IV. FACTUAL BACKGROUND**

15 **A. Children Facing Deportation**

16 27. Every year, the Government initiates immigration proceedings to deport thousands of children,
 17 ranging from toddlers to teenagers.⁷ Children enter the immigration enforcement system in several ways.
 18 Thousands are arrested at or shortly after crossing the United States-Mexico border, often after having
 19 survived treacherous and difficult journeys from their countries of origin. Many of them have fled
 20 persecution by their governments or their own families, rising rates of extreme violence (much of it
 21 caused by the escalating influence of powerful gangs), or economic conditions that make life
 22 unsustainable in their countries of origin.⁸ Some of these children have experienced trauma in the form

23 ⁷ See *supra* note 3 (news articles reporting cases of children as young as five or six years old in removal
 24 proceedings); *Matter of Gomez-Gomez*, 23 I. & N. Dec. 522 (BIA 2002) (en banc) (addressing case of
 25 eight-year-old child ordered removed in absentia based on report of arresting officer); *Matter of Ponce-*
 26 *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).

27 ⁸ Women’s Refugee Commission, *Forced from Home: The Lost Boys and Girls of Central America* 7
 28 (2012). This report found that more than 77% of a sample of 151 children cited violence as their primary

1 of rape, kidnapping, abandonment, or physical abuse inflicted in their home countries or by smugglers
2 and traffickers during their journey to the United States.⁹

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

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

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

16 30. Immigration proceedings pit the Government against the child in an adversarial process where
17 each side is presumed to have the ability to represent its own interests. An attorney trained in substantive
18 immigration law and immigration court procedures represents the Government. This attorney acts as a
19 prosecutor, and seeks to establish the child's removability. Each side is expected to present facts and
20 legal arguments to an Immigration Judge, after which the Judge ultimately makes a determination in
21 favor of the Government or the child. Either side can then appeal the decision to the BIA.

22 31. The facts and legal arguments at issue in immigration cases are often complex. The federal

23 reason for fleeing their countries of origin. *See also* United Nations High Commissioner for Refugees,
24 *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for*
25 *International Protection* 6 (2014) [hereinafter UNHCR Report] (finding that no less than 58% of the
26 children interviewed for the report "were forcibly displaced because they suffered or faced harms that
indicated a potential or actual need for international protection").

27 ⁹ The United States Conference of Catholic Bishops Migration and Refugee Services, *The Changing*
28 *Face of the Unaccompanied Alien Child* 8 (2012).

1 courts have repeatedly observed that “the immigration laws have been termed second only to the
2 Internal Revenue Code in complexity.” *Baltazar-Alcanzar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004)
3 (citation and quotation marks omitted); *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (“Immigration
4 law can be complex, and it is a legal specialty of its own.”).

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

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

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28 ¹⁰ *A Treacherous Journey* at 20.

1 The child must not only demonstrate substantive eligibility for relief, but also be able to follow
2 procedures for submitting the appropriate applications to different agencies of the Government, along
3 with the required supporting evidence.

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

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

22 36. For example, children possess a reduced capacity to comprehend the consequences of their
23 actions and decisions, and they are often more receptive to adult influence, in part because many of them
24 have been taught not to challenge authority and to please the adults around them. *See* Dustin Albert &
25 Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. Research on Adolescence
26 211, 220 (2011) (noting that "adults tend to make more adaptive decisions than adolescents," in part
27 because "they have a more mature capacity to resist the pull of social and emotional influences and
28 remain focused on long-term goals"). As a result, they are frequently more susceptible to suggestion and

1 leading questions, and at times have difficulty distinguishing between people who are seeking to protect
2 their interests and those who are not. What is more, children in the immigration enforcement system are
3 often even more vulnerable than other children, since many of them arrive in the United States after
4 having experienced serious trauma in their countries of origin or during their journeys to the United
5 States.¹¹

6 37. The interests at stake in these complex proceedings could scarcely be higher: children face
7 expulsion from this country to a land where they often lack family or other support. Many of them fled
8 their home countries in order to escape persecution, torture, or death; deportation to the country from
9 which the child fled is often not in their best interest.

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

14 39. Forcing children to appear in immigration court without representation ensures that thousands of
15 children are deprived of a full and fair opportunity to identify defenses or seek relief for which they
16 qualify. A recent report by the United Nations High Commissioner for Refugees, for example, suggests
17 that over half of all unaccompanied children fleeing to the United States from Central America raised
18 potential international protection needs, while a slightly older report found that as many as 40% of
19 unaccompanied children in removal proceedings were eligible for some form of immigration relief.¹²
20 Despite such estimates, only a small number of children actually receive such relief.¹³ This gap is likely
21 due in large part to the absence of counsel. The presence of counsel makes a real difference for the
22 children fortunate enough to receive legal representation. Data from the adult removal hearing context

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

26 ¹² UNHCR Report at 6; Olga Byrne & Elyse Miller, *The Flow of Unaccompanied Children Through the
Immigration System*, Vera Institute of Justice 4 (Mar. 2012).

27 ¹³ See, e.g., *A Treacherous Journey* at 19 n.94, 38, 48.
28

1 confirms what common sense and experience strongly suggest: immigrants with lawyers are far more
2 likely to identify and prevail on defenses to removal that the law makes available to them.¹⁴

3
4 **C. The Federal Government's Response to the Legal Needs of Children Facing
Deportation**

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

16 41. The Government has taken limited steps to afford legal representation to some children facing
17 deportation, but its efforts have fallen well short of ensuring representation for every child it seeks to
18 deport. For the past couple of years, the Government has funded legal representation for a fraction of the
19 children in ORR detention facilities, and more recently has initiated programs in Houston, Texas, and
20 Los Angeles, California to afford legal representation to certain children released from ORR custody.
21 But these programs fail to provide all children even in those two regions with representation.

22 42. In October 2013, Plaintiffs' counsel sent a letter to Defendants urging them to take additional

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

28 ¹⁵ Ms. Myers Wood was the Assistant Secretary of Homeland Security for Immigration and Customs
Enforcement under President George W. Bush.

1 steps to ensure that all children in immigration proceedings are provided legal representation. Ex. A,
2 Letter regarding Counsel for Immigrants in Removal Proceedings. In January 2014, Plaintiffs' counsel
3 met with officials from DHS, DOJ, and ORR to discuss the concerns expressed in the letter.

4 43. Several weeks ago, the Government announced a new "strategic partnership" to "facilitat[e] the
5 effective and efficient adjudication of immigration proceedings involving certain children who have
6 crossed the border without a parent or legal guardian." justice AmeriCorps Legal Services for
7 Unaccompanied Children, Corporation for Nat'l & Comm. Serv., *available at*
8 [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)
9 [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
10 \$2 million to partner with legal services providers in order to support living allowances for 100 legal
11 fellows who will represent children under 16 in removal proceedings in selected areas of the country.
12 *See* Announcement of Federal Funding Opportunity, Corporation for National and Community Service,
13 2014 justice AmeriCorps Legal Services for Unaccompanied Children (June 6, 2014), *available at*
14 <http://www.nationalservice.gov/sites/default/files/upload/JusticeAmeriCorpsNOFO.pdf>.

15 44. Assuming that the Government's plan is implemented as announced, it would still fall far short
16 of meeting the need created by the Government's policy of deporting children without representation,
17 for several reasons. First, the geographic reach of the Government's new program appears to exclude
18 certain critical locations, such as Los Angeles, and does not ensure representation for every child even
19 for those populations it explicitly targets. *Id.* at 6-7.¹⁶ Second, the Government's new program will fund
20 representation only for children younger than 16, thereby excluding a substantial number of children
21 who face removal, including several of the Plaintiffs. *Id.* at 31 (defining "[u]naccompanied children" as
22 "children under the age of 16"). And finally, this initiative devotes only limited resources to the
23 problem. Advocates already have noted that the Government's program "at best [] would only touch a
24 fraction of all the unaccompanied minors expected to appear in court in the coming months." Kirk
25 Sample, *Youths Facing Deportation to Be Given Legal Counsel*, *N.Y. Times*, June 6, 2014, A11

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

1 *available at* [http://www.nytimes.com/2014/06/07/us/us-to-provide-lawyers-for-children-facing-](http://www.nytimes.com/2014/06/07/us/us-to-provide-lawyers-for-children-facing-deportation.html?_r=0)
2 [deportation.html?_r=0](http://www.nytimes.com/2014/06/07/us/us-to-provide-lawyers-for-children-facing-deportation.html?_r=0).

3 45. Several important actors within the Government have also indicated more generally that they
4 would support a system that provided representation for all children. In a recent House Committee on
5 Appropriations Report, the Committee commented on the existence of pilot programs created “to
6 explore ways to better serve vulnerable populations such as children and improve court efficiency
7 through pilot efforts aimed at improving their legal representation,” but specified “that such pilots shall
8 not require the U.S. Government to bear any expense for legal representation for any alien in removal
9 proceedings, except to the extent required by Federal court order.” *See* H.R. Rep. 113-448, at 42
10 (2014).¹⁷

11 46. Defendant Eric Holder, Attorney General of the United States, has also indicated support for the
12 relief sought in this case, stating that “[i]t is inexcusable that young kids – . . . six-, seven-year-olds,
13 fourteen-year-olds – have immigration decisions made on their behalf, against them, . . . and they’re not
14 represented by counsel. That’s simply not who we are as a nation. It’s not the way in which we do
15 things.” Senate Judiciary Committee Hearing on Oversight of the Justice Department (Mar. 6, 2013)
16 (video available at [http://www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice-](http://www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice-2013-03-06)
17 [2013-03-06](http://www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice-2013-03-06)).¹⁸

18 47. The Administration has also asked Congress, as part of an emergency appropriations request, to
19 fund \$15 million for “direct legal representation services to children in immigration proceedings.” Letter
20 from President Barack Obama to the Hon. John Boehner, Speaker of the House of Representatives at 6
21 (July 8, 2014), http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/

22
23 ¹⁷ The Administration had previously requested an allocation of \$5,824,000 for EOIR to “develop,
24 implement and evaluate a pilot program to provide counsel for unaccompanied alien children.” *See*
25 White House Proposed Budget for FY 2015, Department of Justice, General Administration, Federal
26 Funds, *available at* <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/jus.html>.

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

1 emergency-supplemental-request-to-congress-07082014.pdf.¹⁹ It is far from clear that Congress intends
2 to act on this request, in whole or in part. Even assuming it does, the Administration has not specified
3 how this money will be distributed, or whether these funds will come with the same limitations as the
4 Government's recently-announced "strategic partnership" to provide counsel for unaccompanied
5 children. Moreover, it is highly unlikely that any approved funds would be sufficient to meet the need.

6 48. In the meantime, the Government continues to send children like the Plaintiffs in this case
7 without lawyers to face off against ICE trial attorneys who argue for their deportation before
8 Immigration Judges.

9 **D. The Plaintiffs**

10 **J.E.F.M.**

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

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

24 51. J.E.F.M. and his two siblings entered the United States around July 2013, were apprehended by
25

26 ¹⁹ See also White House Office of the Press Secretary, *FACT SHEET: Emergency Supplemental Request*
27 *to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley*
28 *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>.

1 U.S. Customs and Border Protection (“CBP”), and then placed in the custody of ORR. They were
2 released to a family member fifteen days later. They have been residing in Washington State since their
3 release.

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

10 **J.F.M.**

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

14 54. J.F.M. has a removal hearing in September 2014, but has no legal representation in his
15 immigration case because he has no resources to hire private counsel and the legal service providers in
16 the Seattle area are stretched well beyond capacity to take on the cases of children in removal
17 proceedings. J.F.M. appears by his next friend, Bob Ekblad. Mr. Ekblad is a minister who has worked
18 closely with J.F.M. and his family; he is familiar with J.F.M.’s immigration case and is truly dedicated
19 to his best interests in this case.

20 **D.G.F.M.**

21 55. D.G.F.M. is a 15-year-old girl and a native and citizen of El Salvador. She presently resides in
22 Washington. She is the older sister of J.F.E.M. and J.F.M. She also saw her father killed, was threatened
23 by gang members, and left El Salvador with her two younger brothers at the same time and for the same
24 reasons.

25 56. D.G.F.M. has a removal hearing in September 2014, but has no legal representation in her
26 immigration case because she has no resources to hire private counsel, and the legal service providers in
27 the Seattle area are stretched well beyond capacity to take on the cases of children in removal
28 proceedings. D.G.F.M. appears by her next friend, Bob Ekblad. Mr. Ekblad is a minister who has

1 worked closely with D.G.F.M. and her family; he is familiar with D.G.F.M.'s immigration case and is
2 truly dedicated to her best interests in this case.

3 **F.L.B.**

4 57. F.L.B. is a 15-year-old boy, and a native and citizen of Guatemala. He presently resides in
5 Seattle, Washington. He is the fourth of six children born to his parents. Throughout F.L.B.'s childhood,
6 his father, an alcoholic who abused F.L.B. and his siblings, resided in a different city and only visited
7 occasionally. Moreover, F.L.B.'s father did not make any financial contributions to the home.

8 58. When he was ten years old, F.L.B. dropped out of school to work with his father in order to
9 provide for himself, his mother, and his two younger siblings. After two years of living and working
10 with his father, F.L.B. returned to his mother's home because he was no longer able to bear his father's
11 abuse and excessive drinking. However, after six months at home he had to leave again due to the
12 family's poor financial situation. F.L.B. moved back to the town where he had worked with his father,
13 but this time lived with acquaintances. He only ever saw his father by chance, and seldom saw his
14 mother.

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

22 60. F.L.B. has a removal hearing in September 2014. However, F.L.B. has no resources to retain
23 counsel and the legal service providers in the Seattle area are stretched well beyond capacity to take on
24 the cases of children in removal proceedings. F.L.B. appears by his next friend, Casey Trupin. Mr.
25 Trupin is the Project Coordinator for the Children and Youth Project at Columbia Legal Services in
26 Seattle, Washington; he is familiar with F.L.B.'s ongoing immigration proceedings and is truly
27 dedicated to F.L.B.'s best interests in this case.

G.D.S.

61. Plaintiff G.D.S. is a 15-year old boy and a native and citizen of Mexico who has lived in the United States since he was approximately one year old. He is the second youngest in a family of five children, all of whom reside in this country. He, his mother, and an older brother all possess U nonimmigrant visa status and are now seeking to adjust their status to become lawful permanent residents.

62. G.D.S. was in ninth grade when he was placed in a juvenile rehabilitation facility after pleading guilty to charges in juvenile court. ICE then filed a detainer against him, which advised that he faces removal proceedings where the Government will seek to take away his lawful status and deport him from his home. He thus faces the threat of permanent separation from his mother and siblings. He and his mother cannot afford an attorney to represent him in immigration court, and the legal service providers in the Seattle area are stretched well beyond capacity to take on the cases of children in removal proceedings.

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

M.A.M.

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

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

66. Eventually, M.A.M.'s grandmother grew elderly and ill. His father was not involved in his life, and no one else could care for him. As a result, M.A.M. came to the United States at the age of eight.

1 Since 2006, he has resided with his mother in California. Although she has TPS, the law does not permit
2 her to extend that status to her son.

3 67. Despite the lack of an adult conviction, M.A.M. was swept into the net of interior immigration
4 enforcement. ICE arrested M.A.M. and took him into custody in September 2011, when he was only 13
5 years old and placed him into removal proceedings. Rather than transfer M.A.M. to ORR custody,
6 however, ICE retained custody over him until his mother came forward, after which ICE released him
7 into her care.

8 68. The Los Angeles Immigration Court already has held multiple hearings where M.A.M. was
9 unrepresented by counsel. M.A.M.'s next removal hearing is scheduled for August 2014. He and his
10 mother are indigent. They cannot afford to hire private counsel for his upcoming hearing. The Los
11 Angeles-based, Government-funded legal representation program rejected M.A.M.'s immigration court
12 case because he fell outside their scope of service (because M.A.M. was never in ORR custody).
13 M.A.M. appears by his next friend and mother, Rosa Pedro. Ms. Pedro maintains a close personal
14 relationship with M.A.M., is familiar with his ongoing immigration proceedings, and is truly dedicated
15 to his best interests in this case.

16 **S.R.I.C.**

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

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

28 71. Fearing for his life and for the well-being of his family, S.R.I.C. came to the United States to

1 reunite with his father. Several days later, S.R.I.C. left Guatemala for the United States. In February
2 2014, CBP apprehended S.R.I.C. and held him in custody near the United States-Mexico border. The
3 Government thereafter initiated removal proceedings against him, and he has a removal hearing date in
4 January 2015.

5 72. After several days in detention along the border, S.R.I.C. was sent to a shelter in Houston, Texas,
6 where he remained until he was sent to Los Angeles, California to reunite with his father in March.
7 S.R.I.C. now resides in Los Angeles, where he is currently enrolled in school.

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

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

16 **G.M.G.C.**

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

22 76. G.M.G.C. was forced to leave her home of El Salvador after gang members began threatening
23 the young women in her family. Her uncle in El Salvador, who is a police officer, refused to provide
24 supplies to gang members in their town. In retaliation, the gang members made threats to the young
25 women in the family, surveilled the family home, and harassed the young women. On one occasion,
26 gang members attacked G.M.G.C. and her older sister while they were out buying dinner. After these
27 incidents, the young girls were too scared to leave the family home.

28 77. Fearing for their lives, G.M.G.C., her two sisters, and her young aunt, fled El Salvador and came

1 to the United States. Border Patrol agents apprehended G.M.G.C., her sisters, and her aunt in January
2 2014. After spending approximately one day at holding facilities near the border, G.M.G.C. was
3 transferred to ORR custody. She remained in ORR custody until February 2014, when she was taken to
4 Los Angeles, California, to reunite with her father. G.M.G.C. has a removal hearing date in September
5 2014.

6 78. After arriving in Los Angeles, G.M.G.C. and her father met with legal services providers and
7 inquired about the possibility of obtaining legal representation for her in her immigration case. However,
8 they never heard back from the legal services providers, and when they inquired further, were told that
9 the legal services providers could not take on G.M.G.C.'s case. G.M.G.C. and her father have also
10 reached out to private immigration attorneys, but cannot afford to pay the fees charged by such attorneys
11 to take on her immigration case. Therefore, G.M.G.C. remains unrepresented in her immigration case.

12 79. G.M.G.C. appears by her next friend and father, Mr. Guerrero Diaz. Mr. Guerrero Diaz
13 maintains a close personal relationship with G.M.G.C., is familiar with her immigration matters, and is
14 truly dedicated to her best interests in this case.

15 16 **V. LEGAL BACKGROUND**

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

22 81. The INA and immigration regulations require that all persons in removal proceedings have "a
23 reasonable opportunity" to present, examine, and object to evidence. 8 U.S.C. § 1229a(b)(4)(B); 8
24 C.F.R. § 1240.10(a)(4). In addition, all persons in removal proceedings, whatever their age, have the
25 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
26 privilege of being represented, at no expense to the Government, by counsel of the alien's choosing." 8

1 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. §§ 238.1(b)(2), 1240.10(a)(1).²⁰

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

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

19 84. These statutory rules implement a constitutional command. The Supreme Court held over a
20 century ago that the Fifth Amendment guarantees a noncitizen the right to due process in any proceeding
21 where the Government seeks his deportation. *See Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903) [“The
22 Japanese Immigrant Case”]. And as applied to children, both prior Supreme Court precedent from the

23 ²⁰ The immigration statutes also contain certain protections specific to “unaccompanied alien children,”
24 defined as individuals under the age of 18 without lawful immigration status in the United States “with
25 respect to whom: (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal
26 guardian in the United States is available to provide care and physical custody.” 6 U.S.C. § 279(g)(2).
27 “Unaccompanied alien children” who are not from “contiguous countries” are entitled to additional legal
28 protections. *See, e.g.*, 8 U.S.C. § 1232(b)-(c) (custody provisions); 8 U.S.C. § 1232(a)(5)(D)(iii)
(regarding counsel); 8 U.S.C. § 1232(c)(5) (directing HHS to ensure unaccompanied children are
represented “to the greatest extent practicable”); 8 U.S.C. § 1232(c)(6) (regarding child advocates).

1 juvenile delinquency context and more recent Ninth Circuit precedent involving a child facing
2 deportation demonstrate that all children, with their limited capacity to present complex factual and legal
3 arguments, are entitled to legal representation in immigration proceedings. *In re Gault*, 387 U.S. at 36;
4 *Lin v. Ashcroft*, 377 F.3d 1014, 1030, 1032-34 (9th Cir. 2004). This is all the more true given the
5 adversarial nature of the proceedings and the grave interests at stake. *See generally Turner v. Rogers*,
6 131 S. Ct. 2507, 2517 (2011).

8 VI. CLASS ACTION ALLEGATIONS

9 85. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action on behalf of
10 themselves and all other similarly situated individuals. Plaintiffs seek injunctive relief that applies
11 generally to the Plaintiff Class, as described below.

12 86. The Plaintiff Class consists of:

- 13 • All individuals under the age of eighteen (18) who are or will be in immigration
14 proceedings on or after July 9, 2014, without legal representation in their immigration
15 proceedings.²¹

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

19 88. Common questions of law and fact bind the members of the Plaintiff Class. These questions
20 include, but are not limited to, the following:

21
22
23
24 ²¹ As 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 • Whether the Due Process Clause of the U.S. Constitution and/or federal statutory law
2 requires the Government to provide legal representation for the members of the Plaintiff
3 Class;
- 4 • Whether existing procedures suffice to protect the Plaintiff Class members' right to a full
5 and fair hearing as required by the Due Process Clause of the U.S. Constitution and/or
6 federal statutory law.

7 89. The claims of the named Plaintiffs are typical of the claims of the Plaintiff Class as a whole.
8 Plaintiffs know of no conflict between their interests and those of the Plaintiff Class. The members of
9 the Plaintiff Class are ascertainable and can be identified through notice and discovery. In defending
10 their own rights, the individual Plaintiffs and their next friends will defend the rights of all proposed
11 Plaintiff Class members fairly and adequately.

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

16 91. Defendants have acted or refused to act on grounds generally applicable to each member of the
17 Plaintiff Class by refusing to recognize that the members of the Plaintiff Class have a statutory and
18 constitutional right to legal representation in their immigration proceedings, and by refusing to provide
19 that representation for such individuals.

20 92. A class action is superior to other methods available for the fair and efficient adjudication of this
21 controversy because joinder of all members of the Plaintiff Class is impracticable. Moreover, members
22 of the Plaintiff Class remain unrepresented in immigration proceedings and lack the ability to assert the
23 claims made here. Absent the relief they seek here, there would be no other way for the Plaintiff Class to
24 individually redress the wrongs they have suffered and continue to suffer.

1 **VII. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

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

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

5 93. Plaintiffs reallege and incorporate by reference each and every allegation contained in the
6 preceding paragraphs.

7 94. The Immigration and Nationality Act requires that all individuals in removal proceedings be
8 afforded a reasonable opportunity to, *inter alia*, examine and present evidence and witnesses. *See* 8
9 U.S.C. § 1229a(b). These provisions require that unrepresented children be provided a fair hearing in
10 their immigration proceedings. The only way to ensure that these children receive a fair hearing is by
11 providing them with legal representation.

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

15 **SECOND CAUSE OF ACTION**

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

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

18 96. Plaintiffs reallege and incorporate by reference each and every allegation contained in the
19 preceding paragraphs.

20 97. The Due Process Clause requires that unrepresented children in immigration proceedings be
21 provided legal representation.

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

1 **VIII. PRAYER FOR RELIEF**

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

- 3 a. Certify a class pursuant to Federal Rule of Civil Procedure 23 in accordance with this
4 Complaint's allegations and the accompanying Motion for Class Certification;
- 5 b. Declare that the Defendants' failure to ensure legal representation for Plaintiffs and the
6 Plaintiff Class violates constitutional and statutory law, pursuant to the Court's equitable
7 powers and the Declaratory Judgment Act, 28 U.S.C. § 2201;
- 8 c. Issue an injunction directing Defendants to ensure that Plaintiffs and other members of
9 the Plaintiff Class receive legal representation in their immigration proceedings;
- 10 d. Grant any other relief the Court deems just, equitable, and appropriate, including, but not
11 limited to, fees under the Equal Access to Justice Act, and any other applicable statute or
12 regulation.

13 Dated this 9th day of July, 2014.

14 Respectfully submitted,

15 s/ Matt Adams

16 Matt Adams, WSBA No. 28287
17 Glenda M. Aldana Madrid, WSBA 46987
18 NORTHWEST IMMIGRANT
19 RIGHTS PROJECT
20 615 2nd Avenue, Suite 400
Seattle, WA 98104
(206) 957-8611
(206) 587-4025 (fax)

21 Ahilan Arulanantham, Cal. State Bar. No. 237841 (*pro hac vice* motion pending)
22 ACLU IMMIGRANTS' RIGHTS PROJECT
23 ACLU OF SOUTHERN CALIFORNIA
24 1313 West 8th Street
Los Angeles, CA 90017
25 (213) 977-5211
(213) 417-2211 (fax)

1 Cecillia Wang, Cal. State Bar. No. 187782 (*pro hac vice* motion pending)
2 Stephen Kang, Cal. State Bar No. 292280 (*pro hac vice* motion pending)
3 ACLU IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
4 (415) 343-0770
5 (415) 343-0950 (fax)

6 Carmen Iguina, Cal. State Bar No. 277369 (*pro hac vice* motion pending)
7 ACLU OF SOUTHERN CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
8 (213) 977-5211
9 (213) 417-2211 (fax)

10 Kristen Jackson, Cal. State Bar. No. 226255 (*pro hac vice* motion pending)
11 Talia Inlender, Cal. State Bar No. 253796 (*pro hac vice* motion pending)
12 PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, CA 90005
13 (213) 385-2977
(213) 385-9089 (fax)

14 Beth Werlin, D.C. Bar No. 1006954 (*pro hac vice* motion pending)
15 Melissa Crow, D.C. Bar No. 453487 (*pro hac vice* motion pending)
16 AMERICAN IMMIGRATION COUNCIL
1331 G Street NW, Suite 200
Washington, DC 20005
17 (202) 507-7500
18 (202) 742-5619 (fax)

19 Theodore Angelis, WSBA No. 30300
20 Todd Nunn, WSBA No. 23267
K&L GATES
925 Fourth Avenue, Suite 2900
21 Seattle, WA 98104
22 (206) 623-7580
23 (206) 623-7022 (fax)

24 Sarah Dunne, WSBA No. 34869
ACLU OF WASHINGTON FOUNDATION
901 Fifth Avenue, Suite 630
25 Seattle, WA 98164
26 (206) 624-2184

27 *Counsel for Plaintiffs-Petitioners*

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
Office of the Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
CALIFORNIA OFFICE
39 DRUMM STREET
SAN FRANCISCO, CA 94111
T/415.343.0775
F/415.395.0950
CWANG@ACLU.ORG

NEW YORK OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
WWW.ACLU.ORG

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

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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.

AMERICAN CIVIL LIBERTIES
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*)