UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

L.G.M.L., address omitted per LCvR 5.1;

L.M.R.S., address omitted per LCvR 5.1;

M.O.C.G., address omitted per LCvR 5.1;

H.L.E.C, address omitted per LCvR 5.1;

T.A.C.P., address omitted per LCvR 5.1;

M.F.A.P.V., address omitted per LCvR 5.1;

L.F.M.M., address omitted per LCvR 5.1;

G.A.B.B., address omitted per LCvR 5.1;

A.R.M.D., address omitted per LCvR 5.1; and

M.Y.A.T.C. [1], address omitted per LCvR 5.1, on behalf of themselves and all others similarly situated by and through their next friend,

YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS, 228 S Wabash Ave, Chicago, IL 60604

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security, 245 Murray Lane SW, Washington, DC 20528;

U.S. DEPARTMENT OF HOMELAND SECURITY, 245 Murray Lane SW, Washington,

Case No. ____________

CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

[1] Motion for these Plaintiffs to proceed under pseudonym forthcoming.

DC 20528;

TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, 500 12th Street SW, Washington, DC 20536

ROBERT F. KENNEDY, JR. in his official capacity as Secretary of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201;

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, 200 Independence Avenue SW, Washington, DC 20201;

ANGIE SALAZAR, in her official capacity as Acting Director of the Office for Refugee Resettlement, 330 C Street SW, Room 5123 Washington, DC 20201

OFFICE OF REFUGEE RESETTLEMENT, 300 C Street SW, Washington, DC 20201;

PAMELA BONDI, in her official capacity as Attorney General, 950 Pennsylvania Avenue NW, Washington, DC 20530;

U.S. DEPARTMENT OF JUSTICE, 950 Pennsylvania Avenue NW, Washington, DC 20530

MARCO RUBIO, in his official capacity as Secretary of State, 1600 Pennsylvania Avenue NW, Washington, DC 20500; and

U.S. STATE DEPARTMENT, 2201 C Street NW, Washington, DC 20520

Defendants.

INTRODUCTION

1. This is an emergency complaint accompanied by a request for a temporary restraining order on behalf of hundreds of Guatemalan children at imminent risk of unlawful removal from the United States.

2. Plaintiffs are ten (10) unaccompanied minors from Guatemala between the ages of 10 and 17 whom Defendants are seeking to remove from the United States in clear violation of the unambiguous protections that Congress has provided them as vulnerable children. Plaintiffs have active proceedings before immigration courts across the country, yet Defendants plan to remove them in violation of the Trafficking Victims Protection Reauthorization Act of 2008, the Immigration and Nationality Act, and the Constitution.

3. Recognizing their unique vulnerability, Congress has created a special statutory scheme to ensure that unaccompanied minors receive enhanced protection and care whenever the government seeks to remove them from the United States. Summary removal plainly violates this statutory scheme. Under U.S. law, an unaccompanied minor is defined as a child who "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom— (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2). Once a child is designated as an unaccompanied minor, numerous legal protections guarantee that they are not removed without due process and are able to pursue forms of relief from deportation for which they may be eligible.

4. On August 29, 2025, several media outlets reported that Defendants are planning to imminently remove hundreds of Guatemalan unaccompanied minors to Guatemala. Although Congress requires that unaccompanied minors be in the care and custody of the Office of

Refugee Resettlement ("ORR") and permits their removal only in specific circumstances provided by statute, Defendants are imminently planning to illegally transfer Plaintiffs to Immigration and Customs Enforcement ("ICE") custody to put them on flights to Guatemala, where they may face abuse, neglect, persecution, or even torture, against their best interests.

5. Plaintiffs and putative class members seek emergency relief from this Court in order to prevent grave and irreparable harms to these children resulting from Defendants' unlawful and reckless attempts to summarily remove them from the United States.[2]

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the claims in this case arise under the laws of the United States, including but not limited to the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA"), Pub. L. No. 110-457, 122 Stat. 5044 (2008), the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.* and its implementing regulations; the Convention Against Torture ("CAT"), Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), and the Fifth Amendment to the U.S. Constitution.

7. Venue is proper under 28 U.S.C. § 1391(e) because Defendants are agencies and officers of the United States sued in their official capacity, the action does not involve real property, and/or the majority of Defendants reside in this district, and/or a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

A. Plaintiffs

[2] One other court has already issued a TRO enjoining Defendants from removing named petitioners in a habeas action from the United States. *See* Emergency Order Concerning Stay of Transfer or Removal, *J.J.T.S. v. Francis*, No.1:25-cv-10428 (N.D. Ill. Aug. 30, 2025), ECF No. 4.

8. Plaintiff L.G.M.L. is a 10-year-old Guatemalan child. She is indigenous and speaks a rare language. She is detained at Urban Strategies San Benito children's Shelter in San Benito, Texas. Her mother is deceased and she suffered abuse and neglect from other caregivers.

9. Plaintiff L.M.R.S. is a sixteen-year-old Guatemalan girl with a 10-month daughter in ORR Custody detained at Kidspeace facility in Bethlehem, Pennsylvania. She is in ongoing removal proceedings and wishes to remain in the United States. She was recently interviewed by Homeland Security Investigations and the Guatemalan Consulate.

10. Plaintiff M.O.C.G. is a sixteen-year-old Guatemalan boy. He is currently in the custody of Defendant ORR detained at Crittenton Long Term Foster Care in Fullerton, California. He is in removal proceedings before the immigration court, and even though his proceedings were administratively closed, the Immigration Court has not decided his case. He has expressed fear of returning to Guatemala.

11. Plaintiff H.L.E.C. is a sixteen-year-old Guatemalan girl. She is currently in the custody of Defendant ORR detained at the New Life Foster Family Agency Long Term Foster Care in Riverside, California. She is in removal proceedings before the immigration court and has expressed fear of being returned to Guatemala.

12. Plaintiff T.A.C.P. is a minor and a Guatemalan boy. He is currently in the custody of Defendant ORR detained at the Trinity Youth Services in El Monte, California. He is in removal proceedings before the immigration court, and he has expressed fear of returning to Guatemala.

13. Plaintiff M.F.A.P.V. is a minor and Guatemalan national. She is currently in the custody of Defendant ORR in the care of a foster care program located in Modesto, California, and living with a foster family in Fresno, California. She is currently in removal proceedings before the immigration court and has expressed a fear of returning to Guatemala.

14. Plaintiff L.F.M.M. is a sixteen-year-old Guatemalan boy. He is currently in the custody of Defendant ORR detained at the Wayfinder the Haven facility in Los Angeles, California. He is in removal proceedings before the immigration court and has expressed fear of being returned to Guatemala.

15. Plaintiff G.A.B.B. is a seventeen-year-old Guatemalan national. He is currently in the custody of Defendant ORR detained at the Everstand - Caminos West facility in Mechanicsburg, Pennsylvania. He is in removal proceedings before the immigration judge and has express fear or returning to Guatemala.

16. Plaintiff A.R.M.D. is a seventeen-year-old Guatemalan boy. He is currently in the custody of Defendant ORR detained at the Cross Connections Henderson in Harlingen, Texas. He is in removal proceedings before the immigration court and has expressed fear or returning to Guatemala.

17. Plaintiff M.Y.A.T.C. is an sixteen-year-old Guatemalan girl at the Long Term Foster Care in the Bronx, New York. She is in 11th and is pursuing her removal case before the immigration court.

B. Defendants

18. Defendant Pamela J. Bondi is the U.S. Attorney General at the U.S. Department of Justice, which is a cabinet-level department of the United States government. She is sued in her official capacity.

19. Defendant Kristi Noem is the Secretary of the U.S. Department of Homeland Security, which is a cabinet-level department of the United States government. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

20. Defendant U.S. Department of Homeland Security ("DHS") is a cabinet-level department of the United States government. Its components include Immigration and Customs Enforcement ("ICE").

21. Defendant Todd Lyons is the Acting Director of ICE. Defendant Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Defendant Lyons is a legal custodian of Petitioners. Defendant Lyons is sued in his official capacity.

22. Defendant ICE is the subagency of DHS that is responsible for carrying out removal orders and overseeing immigration detention. Defendant ICE is a legal custodian of Petitioners.

23. Defendant Marco Rubio is the Secretary of State at the U.S. Department of State, which is a cabinet-level department of the United States government. He is sued in his official capacity.

24. Defendant U.S. Department of State is a cabinet-level department of the United States government.

25. Defendant Robert F. Kennedy, Jr. is the Secretary of Health and Health and Human Services ("HHS"), which is a cabinet-level department of the United States Government. Defendant Kenney is sued in his official capacity.

26. Defendant U.S. Department of Health and Human Services is a cabinet-level department of the United States government. Its components include the Office of Refugee Resettlement ("ORR") that is responsible for overseeing the care and custody of unaccompanied minors.

27. Defendant ORR is the subagency of HHS that is responsible for overseeing the care and custody of unaccompanied minors.

28. Defendant Angie Salazar is the Acting Director of ORR. Defendant Salazar oversees the care and custody of unaccompanied minors. Defendant Salazar is sued in his official capacity.

BACKGROUND

I. Protections for Children under the Trafficking Victims Protection Reauthorization Act of 2008

A. *Right to Removal Proceedings under 8 U.S.C. §1229a*

29. The Trafficking Victims Protection Reauthorization Act ("TVPRA") of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), embodies Congress' intent to provide unique substantive and procedural protections to unaccompanied minors seeking refuge in the United States and represents the culmination of two decades of bipartisan advocacy on behalf of this uniquely vulnerable population.[3]

30. The TVPRA and related statutes create a comprehensive scheme that mandates special procedures for adjudicating removal proceedings against an unaccompanied minor and for caring for unaccompanied minors during the pendency of their removal proceedings.

31. Pursuant to the TVPRA, any unaccompanied child sought to be removed from the United States by the Department of Homeland Security ("DHS"), except for certain unaccompanied children from a contiguous countries, shall be (i) placed in removal proceedings under 8 U.S.C. § 1229a; (ii) eligible for relief under 8 U.S.C. § 1229c at no cost to the child; ***and*** (iii) provided access to counsel in accordance with subsection (c)(5). 8 U.S.C. § 1232 (a)(5)(D). (emphasis added).

[3] *See, e.g.*, Cong. Research Serv., Unaccompanied Alien Children: An Overview 5-6 (Sept. 5, 2024), *available at* https://sgp.fas.org/crs/homesec/R43599.pdf/.

32. Guatemala is not a country that is contiguous to the United States, as they share no border. As such, the mandate provided in 8 U.S.C. § 1232(a)(5)(D) applies to Guatemalan unaccompanied children.

33. By requiring that DHS place unaccompanied children in § 1229a removal proceedings, the TVPRA exempts unaccompanied children from placement expedited removal proceedings pursuant to 8 U.S.C. § 1225(b). 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D). Under the expedited removal statute, certain noncitizens with limited ties to the United States may be removed without a hearing. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). However, all unaccompanied children—regardless of the circumstances of their arrival to the United States—receive the benefit of full immigration proceedings, including a hearing on claims for relief before an immigration judge.

34. Congress provided even further procedural protection to unaccompanied minors in removal proceedings by mandating that their claims for asylum be heard in the first instance before an asylum officer in a non-adversarial setting rather than in an adversarial courtroom setting. 8 U.S.C. § 1158(b)(3)(C).

35. The TVPRA contains no exceptions to its protections, confirming Congress's clear directive regarding the removal protections afforded to unaccompanied children. It does not distinguish between unaccompanied children who have or do not have prior immigration histories. More specifically, it does not exclude those who have prior removal orders.

36. The TVPRA does not allow DHS to bypass § 1229a proceedings and remove children without observance of the procedures of the Immigration and Nationality Act ("INA") and without their day in court.

B. *Access to Counsel*

37. In addition, U.S.C. § 1232(c)(5) requires, in its use of "shall," that the Secretary of Health and Human Services ensure, to the greatest extent practicable, that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security (other than those children from contiguous countries as described in (a)(2)), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.

C. *Safe Repatriation*

38. The TVPRA also provides special procedures to ensure the safe repatriation of unaccompanied minors who seek to depart the United States voluntarily or who are ordered removed at the termination of removal proceedings.

39. Once placed in § 1229a proceedings, only an immigration judge may grant an unaccompanied minors voluntary departure pursuant to § 1229c. Voluntary departure is a form of immigration relief that allows certain noncitizens in removal proceedings to request to depart the United States without the issuance of a removal order and generally occurs at the noncitizen's expense. 8 U.S.C. § 1229c(a)(1).

40. The TVPRA mandates, however, that unaccompanied minors granted voluntary departure not bear the cost of their repatriation. 8 U.S.C. § 1232 (a)(5)(D)(ii).

41. To further protect children from traffickers and other persons seeking to victimize children,, DHS, in conjunction with the Department of State, DOJ, and HHS, bears an affirmative responsibility to ensure the safety of any unaccompanied seeking repatriation through a voluntary departure order or ordered removed from the United States. 8 U.S.C. § 1232(a)(1).

42. The TVPRA similarly requires DHS and HHS to work together to ensure "safe and sustainable repatriation and reintegration" of unaccompanied minors into their countries of

nationality or last habitual residence, "including placement with their families, legal guardians, or other sponsoring agencies." 8 U.S.C. § 1232(a)(5).

D. *Exclusive ORR Custody*

43. The TVPRA, along with the Homeland Security Act ("HSA"), Pub. L. No. 107-296, § 462, 116 Stat. 2135 (2002), creates a unique system for housing and caring for unaccompanied children in government custody and for ensuring their safety when released from government custody. This system is wholly separate from the detention program operated for adult noncitizens by Defendant ICE.

44. ORR is the only agency authorized to retain custody of unaccompanied minors. The TVPRA provides that, except in the case of unaccompanied minors from a contiguous country, "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1); *accord* 6 U.S.C. § 279(b); 45 C.F.R. §§ 410.1002-1004. Any federal department or agency that has an unaccompanied minor in its custody must transfer the minor to ORR custody "not later than 72 hours after determining" that the minor is unaccompanied. 8 U.S.C. § 1232(b)(3). Unaccompanied minors in ORR custody "shall be promptly placed in the least restrictive setting that is in the best interest of the child." *Id*. § 1232(b)(c)(2).

45. The HSA further charges ORR with "ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child." 6 U.S.C. § 279(b)(1)(B).

46. ORR has promulgated detailed regulations for making placement determinations as to unaccompanied minors (*i.e.*, determining where to house them while in custody), 45 C.F.R. §§

410.1100-1109, and for determining when and to whom to release an unaccompanied minor in ORR custody. *Id.* §§ 410.1200-1210. The regulations require that "unaccompanied children shall be treated with dignity, respect, and special concern for their particular vulnerability," *id.* § 419.1003(a), and that "ORR shall place each shall place each unaccompanied child in the least restrictive setting that is in the best interests of the child, giving consideration to the child's danger to self, danger to others, and runaway risk." *Id.* § 419.1003(f).

II. Other Legal Safeguards for Unaccompanied Minors

A. *Flores Settlement*

47. Prior to the enactment of the HSA and the TVPRA, federal courts intervened on several occasions to protect unaccompanied minors from abuses in the immigration system. These protections remain binding on Defendants.

48. In 1997, a federal court in the Central District of California approved a consent decree covering "[a]ll minors who are detained in the legal custody of the INS [Immigration and Naturalization Service]." Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px), ¶ 10 (C.D. Cal. Jan. 17, 1997).[4] Among other requirements, the Flores Settlement Agreement directs the INS to "treat all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors" and to "place each detained minor in the least restrictive setting appropriate to the minor's age and special needs." *Id.*

49. Section 462 of the HSA extended to all the key protections of the *Flores* Settlement Agreement, including its "least restrictive setting" requirement. Pub. L. No. 107-296, § 462, 116 Stat. 2143 (2002).

[4] *Available at* http://www.aila.org/File/Related/14111359b.pdf [hereinafter the "Flores Settlement Agreement"]. After *Flores*, the INS was dissolved and subsumed into DHS, whereupon DHS inherited the INS' obligations under the *Flores* Settlement Agreement.

B. *Perez-Funez Permanent Injunction*

50. In 1985, another court in the Central District of California issued a permanent injunction granting certain special protections to unaccompanied children before they can accept voluntary departure. *Perez-Funez v. District Director*, 619 F. Supp. 656 (C.D. Cal. 1985). This lawsuit arose out of the then-INS coercive practices and its protections are now implemented by regulation. 8 C.F.R. §§ 236.3(g)-(h), 1236.3(g)-(h). (1) a written notice of rights; (2) a list of free legal service providers; and (3) access to telephones and notice that they may call a parent, close relative, friend, or attorney. Additionally, for unaccompanied children from noncontiguous countries (i.e. children not from Canada or Mexico), DHS must ensure that the child in fact communicates with a parent, adult relative, friend, or attorney. *Id*. §§ 236.3(g), 1236.3(g).

III. Protections for all Noncitizens under Immigration and Nationality Act

51. The special protections afforded to unaccompanied minors in removal proceedings in light of their vulnerability complement the more general statutory procedures that guarantee fairness in all removal proceedings and the rights of all people seeking refuge in the United States. These general procedures are also binding on Defendants when they seek to remove an unaccompanied minor.

52. For many decades, the Immigration and Nationality Act of 1952 ("INA"), as amended, has provided for a comprehensive system of procedures that the government must follow before removing a noncitizen from the United States. The INA provides the exclusive procedure by which the government may determine whether to remove an individual, including children. 8 U.S.C. § 1229a(a)(3).

53. Once immigration proceedings have been initiated, ICE cannot unilaterally cancel them as jurisdiction is vested with the immigration judge. 8 C.F.R. § 239.2. Once a Notice to Appear

is filed with the court, the child's removal proceedings have begun, and the decision to dismiss proceedings rests only with the immigration court.

54. All noncitizens ordered removed at the conclusion of § 1229a proceedings have the right to appeal that decision to the Board of Immigration Appeals ("BIA") and to petition a Court of Appeals for judicial review. 8 U.S.C. §§ 1229a(c)(5); 1252(b). A removal order cannot be executed during the pendency of the appeal period or of the appeal itself. 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 1241.1.

55. In addition to laying out the process by which the government determines whether to remove an individual, the INA also enshrines certain forms of humanitarian protection.

56. First, the INA provides that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such alien's status," may apply for asylum. 8 U.S.C. § 1158(a)(1). To qualify for asylum, a noncitizen must show a "well-founded fear of persecution" on account of a protected ground, such as race, nationality, political opinion, or religion. 8 U.S.C. § 1101(a)(42)(A).

57. Second, Congress has barred the removal of an individual to a country where it is more likely than not that he would face persecution on one of these protected grounds. 8 U.S.C. § 1231(b)(3). That protection implements this country's obligations under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. The relevant form of relief, known as "withholding of removal," requires the applicant to satisfy a higher standard with respect to the likelihood of harm than asylum; granting that relief is mandatory if the standard is met absent limited exceptions.

58. Third, the Convention Against Torture ("CAT") prohibits the government from returning a noncitizen to a country where it is more likely than not that he would face torture. *See* 8 U.S.C.

§ 1231 note. That protection implements the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242. As with withholding of removal, CAT relief also requires the applicant to satisfy a higher standard with respect to the likelihood of harm than asylum and relief is mandatory if that standard is met. There is no exception to CAT relief.

IV. Defendants' Plans to Remove Guatemalan Children

59. On August 29, 2025, reports surfaced that the Trump administration is planning to remove hundreds of unaccompanied Guatemalan children in government custody as soon as this weekend.[5] Many of these children in ORR custody are waiting to be released to a relative or guardian "sponsor" in the United States who can care for them while they make their case for protection before the immigration courts. Instead, Defendants seek to return then to Guatemala in violation of the law.

60. Upon information and belief, the administration has identified more than 600 children from Guatemala to potentially deport as a part of a first of its kind pilot program through an agreement negotiated with the Guatemalan government.

61. Upon information and belief, Defendants have not provided notice to unaccompanied minors subject to summary removal and have not provided them an opportunity to contest their summary removal. Rather, in certain instances, Defendants have simply removed minors' pending cases from the immigration court docket in preparation for their summary removal.

[5] Priscilla Alvarez, *Exclusive: Trump administration plans to send hundreds of Guatemalan children in government custody back to home country*, CNN (Aug. 29, 2025), https://www.cnn.com/2025/08/29/politics/migrant-kids-guatemala-immigration; Jody Garcia *et al.*, *U.S. is Working With Guatemala to Return Hundreds of Children*, N.Y. Times (Aug. 29, 2025), https://www.nytimes.com/2025/08/29/us/immigration-guatemala-children.html.

62. Defendants, along with Guatemalan consulate, have also conducted interviews of unaccompanied minors that, upon information and belief, have been planned in preparation for their summary removal.

63. Upon information and belief, the children, who range in age, do not have a parent in the United States, though some may have a relative.

64. Many of these children, including Plaintiffs, are in ongoing removal proceedings before the immigration court where they are represented by counsel pursuant to the TVPRA.

65. Upon information and belief, no Plaintiff is subject to an executable final order of removal.

66. Upon information and belief, officials have internally referred to these removals as "repatriations" and not deportations, implying the children impacted are not being involuntarily removed.[6] However, there is no indication that ICE is complying with its obligations outlined above to provide access to counsel or with the mandated safeguards it must implement before children agree to voluntary departure under *Perez-Funez*.

V. Harm to Plaintiffs

67. If removed to Guatemala, Plaintiffs will suffer grievous and irreparable injury.

68. Plaintiffs will lose the opportunity to seek permanent status in the United States in immigration court. Plaintiffs fear persecution in Guatemala. By removing them before they have had the opportunity to present their fear-based claims, they are at risk of persecution, torture, or death.

69. Defendants have failed to comply with legal obligations to ensure safe repatriation to Guatemala. As a result, Plaintiffs are at risk of not receiving care and access to basic needs such

[6] *See* Alvarez, *supra* note 7.

as shelter, food, and education they would otherwise be legally required to provide in ORR custody.

70. Defendants' actions are thus exposing children to multiple harms in returning them to a country where they fear persecution and by flouting their legal obligations to care for them in the United States.

CLASS ALLEGATIONS

71. Class Representative Plaintiffs bring this action under Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and a class of all other persons similarly situated.

72. In this action, Class Representative Plaintiffs seek to represent the following Proposed Class: all Guatemalan unaccompanied minors in ORR custody who are not subject to an executable final order of removal.[7]

73. The proposed class satisfies the requirements of Rule 23(a)(1) because the class is so numerous that joinder of all members is impracticable. Hundreds of Guatemalan unaccompanied minors in government custody across the country will potentially be subjected to summary removal under the Trump administration's plans.

[7] A removal order can only be effectuated upon the commencement of a 90-day removal period, which "begins on the latest of three dates: (1) the date the order of removal becomes 'administratively final,' (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the alien is released from non-immigration detention or confinement." *Johnson v. Guzman-Chavez*, 594 U.S. 523, 528 (2021) (citing 8 U.S.C. § 1231(a)(1)(B)). In general, a removal order becomes administratively final upon dismissal of an appeal by the BIA, upon waiver of appeal by a noncitizen, or at the expiration of the appeal period. 8 C.F.R. § 1241.1.

Immigration judges are authorized to dismiss or terminate removal proceedings in certain circumstances. 8 C.F.R. §§ 1003.10(b); 1003.18(d); 1239.2(c). Dismissal and termination are dispositions that do not result in an order of removal.

74. The class satisfies the commonality requirements of Rule 23(a)(2). The members of the class are subject to a common practice: summary removal without proceedings before an immigration judge. This suit also raises questions of law common to members of the proposed class, including whether the administration's plans violate the TVPRA, the INA, the Fifth Amendment, and the Equal Protection Clause.

75. The proposed class satisfies the typicality requirements of Rule 23(a)(3), because the claims of the Class Representative Plaintiffs are typical of the claims of the class. Each proposed class member, including Class Representative Plaintiffs, faces the same principal injury (summary removal to Guatemala without proceedings before an immigration judge), based on the same government practice (the administration's attempts to remove hundreds of Guatemalan unaccompanied minors), which is unlawful as to the entire class because it violates statutory and constitutional protections.

76. The proposed class satisfies the adequacy requirements of Rule 23(a)(4). The Class Representative Plaintiffs seek the same relief as the other members of the class—among other things, an order granting a temporary restraining order to preserve the status quo pending further proceedings, declaring that Defendants' attempts to remove Guatemalan unaccompanied minors without proceedings before an immigration judge violates the TVPRA, the INA, and the Fifth Amendment, and enjoining Defendants from removing Guatemalan unaccompanied minors who have not been ordered removed by an immigration judge. In defending their rights, Class Representative Plaintiffs will defend the rights of all proposed class members fairly and adequately. The Class Representative Plaintiffs are members of the class, and their interests do not conflict with those of the other class members.

77. The proposed class is represented by experienced attorneys from the National Immigration Law Center. Proposed Class Counsel have extensive experience litigating class action lawsuits and other complex systemic cases in federal court on behalf of noncitizens.

78. The proposed class also satisfies Rule 23(b)(2). Defendants have acted (or will act) on grounds generally applicable to the class by subjecting them to summary removal rather than affording them the protection of immigration laws. Injunctive and declaratory relief is therefore appropriate with respect to the class as a whole.

CAUSES OF ACTION[8]

FIRST CLAIM FOR RELIEF

Violation of the Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232(a)(5)(D) (All Defendants)

79. Plaintiffs reallege and incorporate the allegations of all the preceding paragraphs.

80. Plaintiffs are unaccompanied alien children as defined in 6 U.S.C. § 279(g)(2).

81. Under the TVPRA, Plaintiffs are legally entitled to pursue claims of asylum and other immigration relief through removals proceedings before the immigration court and any appeals.

82. Defendants' attempts to remove Plaintiffs before they have completed proceedings violates of 8 U.S.C. § 1232(a)(5)(D).

SECOND CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1232(c)(5), et seq. (All Defendants)

83. Plaintiffs reallege and incorporate the allegations of all the preceding paragraphs.

; [8] Insofar as cause of action seeks to enjoin Defendants, Plaintiffs do not seek such relief against the President.

84. Plaintiff children are entitled to access to counsel under the TVPRA. By removing them prior to the completion of their removal proceedings, Defendants are violating their legal obligation to ensure children in removal proceedings have lawyers to assist them with the legal process.

THIRD CLAIM FOR RELIEF

Violation of Equal Protection under the Due Process Clause of the Fifth Amendment (All Defendants)

85. Plaintiffs reallege and incorporate the allegations of all the preceding paragraphs.

86. Plaintiffs are all nationals of Guatemala.

87. Defendants are attempting to remove children of Guatemalan origin.

88. National origin is a protected class under the Constitution, and any policy or practice that targets a class of persons based on national origin is subject to strict scrutiny. Accordingly, the government must show its actions are narrowly tailored to further a compelling government interest. U.S. Const. amend. XIV, § 1; *Yick Wo v. Hopkins*, 118 US 356, 374 (1886); *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

89. Defendants' actions are not narrowly tailored and there is no compelling government interest that justifies their discrimination against this class of noncitizens based on their national origin.

FOURTH CLAIM FOR RELIEF

Violation of Due Process Under the Fifth Amendment (All Defendants)

90. Plaintiffs reallege and incorporate the allegations of all the preceding paragraphs.

91. The Due Process Clause of the Fifth Amendment provides in relevant part that: "No person shall be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

92. In denying Plaintiffs meaningful procedural protections to challenge their removal, their removal to Guatemala violates due process. *See Immigrant Defs. Law Ctr. v. U.S. Dep't of Homeland Sec.,* No. CV210395FMORAOX, 2021 WL 4295139, at *5 (C.D. Cal. July 27, 2021) (reaffirming TVPRA and due process protections for unaccompanied children).

FIFTH CLAIM FOR RELIEF

Violation of Due Process—*Accardi* Doctrine

93. Defendants' plans to remove children to Guatemala and out of ORR custody is in direct contravention of the Foundational Rule, which sets for binding regulations and obligations that Defendants must follow. *See* 45 C.F.R. 410 *et seq.* By failing to follow its own regulations, Defendants are violating due process under the *Accardi* doctrine.

94. The *Accardi* doctrine holds that "government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise discretionary decisions." *See U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Failure to do so gives rise to a due process claim. *Jefferson v. Harris*, 285 F. Supp. 3d 173, 178 (Jan 4, 2018); *Wilkinson v. Legal Servs. Corp*, 27 F.Supp.2d 32, 34 n.3 (D.D.C. 1998).

SIXTH CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1101, *et seq.*
(All Defendants)

95. Plaintiffs reallege and incorporate the allegations of all the preceding paragraphs.

96. The INA, 8 U.S.C. § 1101, *et seq.*, sets out the sole mechanisms established by Congress for the removal of noncitizens.

97. The INA provides that a removal proceeding before an immigration judge under 8 U.S.C. § 1229a is "the sole and exclusive procedure" by which the government may determine whether to remove an individual, "[u]nless otherwise specified" in the INA. 8 U.S.C. § 1229a(a)(3).

98. The INA's "exclusive procedure" and statutory protections apply to any removal of a noncitizen from the United States, including unaccompanied minors. The administration's plan to remove unaccompanied minors without allowing them to complete removal proceedings thus violates 8 U.S.C. § 1229a and the INA and is contrary to law.

SEVENTH CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1158, Asylum
(All Defendants)

99. Plaintiffs reallege and incorporate the allegations of all the preceding paragraphs.

100. The INA provides, with certain exceptions, that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title." 8 U.S.C. § 1158(a)(1).

EIGHTH CLAIM FOR RELIEF

Violation of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"),
codified at 8 U.S.C. § 1231 note
(All Defendants)

101. Plaintiffs reallege and incorporate the allegations of all the preceding paragraphs.

102. FARRA prohibits the government from returning a noncitizen to a country where it is more likely than not that he would face torture.

103. Respondents' removal of Guatemalan children violates FARRA because it does not provide adequate safeguards to ensure that Petitioners are not returned to a country where it is more likely than not that they would face torture. As a result, Respondents' actions against Petitioners are contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully pray this Court to:

a. Assume jurisdiction over this matter;

b. Grant a temporary restraining order to preserve the status quo pending further proceedings;

c. Certify the class;

d. Enjoin Defendants from transferring unaccompanied Guatemalan children from ORR custody, except any child whose request for voluntary departure has been granted by an Immigration Judge;

e. Declare that Plaintiffs are entitled to 240 proceedings under the TVPRA, the INA, and the Fifth Amendment;

f. Award Petitioners' counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

g. Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: August 31, 2025

Respectfully submitted,

/s/ Hilda Bonilla

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Counsel for Plaintiffs
**Pro Hac Vice application forthcoming*

CERTIFICATE OF SERVICE

I, Hilda Bonilla, certify that a true and correct copy of this Complaint will be served on all Defendants in accordance with the Federal Rules of Civil Procedure.

/s/ Hilda Bonilla

Hilda Bonilla
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

L.G.M.L., L.M.R.S., M.O.C.G., H.L.E.C, T.A.C.P., M.F.A.P.V., L.F.M.M., G.A.B.B., A.R.M.D. M.Y.A.T.C. [1] *on behalf of themselves and all others similarly situated by and through their next friend*, YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security, U.S. DEPARTMENT OF HOMELAND SECURITY; TODD LYONS, in his official capacity as Acting Director of the Director of U.S. Immigration and Customs Enforcement, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ANGIE SALAZAR in her official capacity as Acting Director of the Office of Refugee Resettlement, OFFICE OF REFUGEE RESETTLEMENT, PAMELA BONDI, in her official capacity as Attorney General, U.S. DEPARTMENT OF JUSTICE, MARCO RUBIO, in his official capacity as Secretary of State, U.S. STATE DEPARTMENT,

Defendants.

Case No. 25-cv-2942

PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND MEMORANDUM OF LAW IN SUPPORT

FLIGHTS DEPARTING UNITED STATES IN THE NEXT FOUR HOURS

[1] Motion for these Plaintiffs to proceed under pseudonym forthcoming.

INTRODUCTION

Plaintiff Children seek emergency relief to prevent irreparable harm to hundreds of minors because Defendants are planning to remove them to Guatemala imminently and in violation of multiple laws. **Plaintiffs' counsel has learned that flights are reportedly scheduled to depart the United States within the next 2 -4 hours.**

Although these children are supposed to be in the care and custody of the Office of Refugee Resettlement ("ORR"), defendants are illegally transferring them to Immigration and Customs Enforcement ("ICE") custody to put them on flights to Guatemala, where they may face abuse, neglect, persecution, or torture. Defendants are further depriving Plaintiff Children of due process by preventing these children from pursuing claims of asylum or other forms of immigration relief before the immigration courts. Plaintiffs seek emergency relief from this Court in order to prevent grave and irreparable harms resulting from Defendants' reckless and illegal actions.[2]

LEGAL AND FACTUAL BACKGROUND

On August 29, 2025, reports surfaced that the administration is planning to remove hundreds of Guatemalan children in government custody who arrived in the United States alone.[3] These children, currently in the custody of the Office of Refugee Resettlement—a component of the Department of Health and Human Services that is charged with caring for unaccompanied children—are waiting to be released to a relative or guardian in the United States who can care

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[2] One other court has already issued a TRO enjoining Defendants from removing named petitioners from the United States in an action filed by Guatemalan unaccompanied minors in Illinois. *See* Emergency Order Concerning Stay of Transfer or Removal, *J.J.T.S. v. Francis*, No.1:25-cv-10428 (N.D. Ill. Aug. 30, 2025), ECF No. 4.

[3] Priscilla Alvarez, *Exclusive: Trump administration plans to send hundreds of Guatemalan children in government custody back to home country*, CNN (Aug. 29, 2025), https://www.cnn.com/2025/08/29/politics/migrant-kids-guatemala-immigration; Jody Garcia *et al.*, *U.S. is Working With Guatemala to Return Hundreds of Children*, N.Y. Times (Aug. 29, 2025), https://www.nytimes.com/2025/08/29/us/immigration-guatemala-children.html.

for them while they make their case for protection before the immigration courts. Instead, they are being returned to Guatemala.

The administration has reportedly identified more than 600 children from Guatemala to potentially deport as a part of a first of its kind pilot program through an agreement negotiated with the Guatemalan government.[4] Defendants have not provided notice to unaccompanied minors subject to summary removal and have not provided them an opportunity to contest their summary removal. Rather, in certain instances, Defendants have simply removed minors' pending cases from the immigration court docket in preparation for their summary removal. Ex. J, Declaration of Laura Fisher Flores, Legal Director, South Texas Asylum Representation Project ("ProBAR") ¶8 ("Fisher Decl."). Accordingly, Defendants are not complying with their obligations to provide access to counsel or with the mandated safeguards it must implement before any child requests voluntary departure, which must be approved by an immigration judge. *Perez-Funez v. District Director*, 619 F. Supp. 656 (C.D. Cal. 1985).

Plaintiff Children are ten unaccompanied minors from Guatemala between the ages of 10 and 17 whom Defendants are seeking to remove from the United States in clear violation of the unambiguous protections that Congress has provided them as vulnerable children. Ex. A-J. Defendants do not currently have authority under the immigration statutes to remove any of the Plaintiff Children. Many have active proceedings before immigration courts across the country, yet Defendants plan to remove them in violation of the Trafficking Victims Protection Reauthorization Act of 2008, the Immigration and Nationality Act, and the Constitution.

A. Protections for Children under the Trafficking Victims Protection Reauthorization Act of 2008

1. Right to Removal Proceedings under 8 U.S.C. §1229a

[4] *Id.*

The Trafficking Victims Protection Reauthorization Act ("TVPRA") of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), embodies Congress' intent to provide unique substantive and procedural protections to unaccompanied minors seeking refuge in the United States and represents the culmination of two decades of bipartisan advocacy on behalf of this uniquely vulnerable population.[5] The TVPRA and related statutes create a comprehensive scheme that mandates special procedures for adjudicating removal proceedings against an unaccompanied minor and for caring for unaccompanied minors during the pendency of their removal proceedings.

Pursuant to the TVPRA, any unaccompanied child sought to be removed from the United States by the Department of Homeland Security ("DHS"), except for certain unaccompanied children from a contiguous countries, shall be (i) placed in removal proceedings under 8 U.S.C. § 1229a; (ii) eligible for relief under 8 U.S.C. § 1229c at no cost to the child; *and* (iii) provided access to counsel in accordance with subsection (c)(5). 8 U.S.C. § 1232 (a)(5)(D). (emphasis added). Guatemala is not a country that is contiguous to the United States, as they share no border. As such, the mandate provided in 8 U.S.C. § 1232(a)(5)(D) applies to Guatemalan unaccompanied children.

By requiring that DHS place unaccompanied children in § 1229a removal proceedings, the TVPRA exempts unaccompanied children from placement expedited removal proceedings pursuant to 8 U.S.C. § 1225(b). 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D). Under the expedited removal statute, certain noncitizens with limited ties to the United States may be removed without a hearing. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). However, all unaccompanied children—regardless of the circumstances of their arrival to the United States—receive the

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[5] *See, e.g.*, Cong. Research Serv., Unaccompanied Alien Children: An Overview 5-6 (Sept. 5, 2024), *available at* https://sgp.fas.org/crs/homesec/R43599.pdf/.

benefit of full immigration proceedings, including a hearing on claims for relief before an immigration judge. Congress provided even further procedural protection to unaccompanied minors in removal proceedings by mandating that their claims for asylum be heard in the first instance before an asylum officer in a non-adversarial setting rather than in an adversarial courtroom setting. 8 U.S.C. § 1158(b)(3)(C).

The TVPRA contains no exceptions to its protections, confirming Congress's clear directive regarding the removal protections afforded to unaccompanied children. It does not distinguish between unaccompanied children who have or do not have prior immigration histories. More specifically, it does not exclude those who have prior removal orders. The TVPRA does not allow DHS to bypass § 1229a proceedings and remove children without observance of the procedures of the Immigration and Nationality Act ("INA") and without their day in court.

2. Access to Counsel

In addition, U.S.C. § 1232(c)(5) requires, in its use of "shall," that the Secretary of Health and Human Services ensure, to the greatest extent practicable, that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security (other than those children from contiguous countries as described in (a)(2)), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.

3. Safe Repatriation

The TVPRA also provides special procedures to ensure the safe repatriation of unaccompanied minors who seek to depart the United States voluntarily or who are ordered removed at the termination of removal proceedings. Once placed in § 1229a proceedings, only an immigration judge may grant an unaccompanied minor's voluntary departure pursuant to § 1229c. Voluntary departure is a form of immigration relief that allows certain noncitizens in removal proceedings to request to depart the United States without the issuance of a removal order and generally occurs at the noncitizen's expense. 8 U.S.C. § 1229c(a)(1). The TVPRA mandates, however, that unaccompanied minors granted voluntary departure not bear the cost of their repatriation. 8 U.S.C. § 1232 (a)(5)(D)(ii).

To further protect children from traffickers and other persons seeking to victimize children, DHS, in conjunction with the Department of State, DOJ, and HHS, bears an affirmative responsibility to ensure the safety of any unaccompanied seeking repatriation through a voluntary departure order or ordered removed from the United States. 8 U.S.C. § 1232(a)(1).

The TVPRA similarly requires DHS and HHS to work together to ensure "safe and sustainable repatriation and reintegration" of unaccompanied minors into their countries of nationality or last habitual residence, "including placement with their families, legal guardians, or other sponsoring agencies." 8 U.S.C. § 1232(a)(5).

4. Exclusive ORR Custody

The TVPRA, along with the Homeland Security Act ("HSA"), Pub. L. No. 107-296, § 462, 116 Stat. 2135 (2002), creates a unique system for housing and caring for unaccompanied children in government custody and for ensuring their safety when released from government custody. This system is wholly separate from the detention program operated for adult noncitizens by Defendant ICE. ORR is the only agency authorized to retain custody of unaccompanied minors. The TVPRA provides that, except in the case of unaccompanied minors from a contiguous country, "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1); *accord* 6 U.S.C. § 279(b); 45 C.F.R. §§ 410.1002-1004. Any federal department or agency that has an unaccompanied minor in its custody must transfer the minor to ORR custody "not later than 72 hours after determining" that the minor is unaccompanied. 8 U.S.C. § 1232(b)(3). Unaccompanied minors in ORR custody "shall be promptly placed in the least restrictive setting that is in the best interest of the child." *Id*. § 1232(b)(c)(2). The HSA further charges ORR with "ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child." 6 U.S.C. § 279(b)(1)(B).

ORR has promulgated detailed regulations for making placement determinations as to unaccompanied minors (*i.e.*, determining where to house them while in custody), 45 C.F.R. §§ 410.1100-1109, and for determining when and to whom to release an unaccompanied minor in ORR custody. *Id*. §§ 410.1200-1210. The regulations require that "unaccompanied children shall be treated with dignity, respect, and special concern for their particular vulnerability," *id*. § 419.1003(a), and that "ORR shall place each unaccompanied child in the least restrictive setting that is in the best interests of the child, giving consideration to the child's danger to self, danger to others, and runaway risk." *Id*. § 419.1003(f).[6]

I. Other Legal Safeguards for Unaccompanied Minors

A. *Flores Settlement*

[6] ORR is mandated to follow certain procedures for the care and custody of unaccompanied minors and is tasked with their safe reunification with family members OR ensure their safe repatriation should the immigration court determine that that is the best interest of the child while in their care. The ORR Policy Guide provides guidance to care providers and other service providers regarding the placement, care, and services provided to unaccompanied alien children in ORR custody consistent with ORR's legal authorities (e.g., section 462 of the Homeland Security Act of 2002, Public Law 107-296, 6 U.S.C. 279; section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, 8 U.S.C. 1232; the Unaccompanied Alien Children Program Foundational Rule, codified at 45 C.F.R. Part 410; the Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Alien Children Interim Final Rule, codified at 45 C.F.R. Part 411; and the Investigations of Child Abuse and Neglect Interim Final Rule, codified at 45 C.F.R. Part 412).

Prior to the enactment of the HSA and the TVPRA, federal courts intervened on several occasions to protect unaccompanied minors from abuses in the immigration system. These protections remain binding on Defendants. In 1997, a federal court in the Central District of California approved a consent decree covering "[a]ll minors who are detained in the legal custody of the INS [Immigration and Naturalization Service]." Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px), ¶ 10 (C.D. Cal. Jan. 17, 1997).[7] Among other requirements, the Flores Settlement Agreement directs the INS to "treat all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors" and to "place each detained minor in the least restrictive setting appropriate to the minor's age and special needs." *Id.* Section 462 of the HSA extended to all the key protections of the *Flores* Settlement Agreement, including its "least restrictive setting" requirement. Pub. L. No. 107-296, § 462, 116 Stat. 2143 (2002).

B. *Perez-Funez Permanent Injunction*

In 1985, another court in the Central District of California issued a permanent injunction granting certain special protections to unaccompanied children before they can accept voluntary departure. *Perez-Funez v. District Director*, 619 F. Supp. 656 (C.D. Cal. 1985). This lawsuit arose out of the then-INS coercive practices and its protections are now implemented by regulation. 8 C.F.R. §§ 236.3(g)-(h), 1236.3(g)-(h). (1) a written notice of rights; (2) a list of free legal service providers; and (3) access to telephones and notice that they may call a parent, close relative, friend, or attorney. Additionally, for unaccompanied children from noncontiguous

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[7] *Available at* http://www.aila.org/File/Related/14111359b.pdf [hereinafter the "Flores Settlement Agreement"]. After *Flores*, the INS was dissolved and subsumed into DHS, whereupon DHS inherited the INS' obligations under the *Flores* Settlement Agreement.

countries (i.e. children not from Canada or Mexico), DHS must ensure that the child in fact communicates with a parent, adult relative, friend, or attorney. *Id.* §§ 236.3(g), 1236.3(g).

II. Protections for all Noncitizens under Immigration and Nationality Act

The special protections afforded to unaccompanied minors in removal proceedings in light of their vulnerability complement the more general statutory procedures that guarantee fairness in all removal proceedings and the rights of all people seeking refuge in the United States. These general procedures are also binding on Defendants when they seek to remove an unaccompanied minor.

For many decades, the Immigration and Nationality Act ("INA"), as amended, has provided for a comprehensive system of procedures that the government must follow before removing a noncitizen from the United States. The INA provides the exclusive procedure by which the government may determine whether to remove an individual, including children. 8 U.S.C. § 1229a(a)(3). Once immigration proceedings have been initiated, ICE cannot unilaterally cancel them as jurisdiction is vested with the immigration judge. 8 C.F.R. § 239.2. Once a Notice to Appear is filed with the court, the child's removal proceedings have begun, and the decision to dismiss proceedings rests only with the immigration court.

In addition to laying out the process by which the government determines whether to remove an individual, the INA also enshrines certain forms of humanitarian protection. First, the INA provides that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such alien's status," may apply for asylum. 8 U.S.C. § 1158(a)(1). To qualify for asylum, a noncitizen must show a "well-founded fear of persecution" on account of a protected ground, such as race, nationality, political opinion, or religion. 8 U.S.C. § 1101(a)(42)(A).

Second, Congress has barred the removal of an individual to a country where it is more likely than not that he would face persecution on one of these protected grounds. 8 U.S.C. § 1231(b)(3). That protection implements this country's obligations under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. The relevant form of relief, known as "withholding of removal," requires the applicant to satisfy a higher standard with respect to the likelihood of harm than asylum; granting that relief is mandatory if the standard is met absent limited exceptions.

Third, the Convention Against Torture ("CAT") prohibits the government from returning a noncitizen to a country where it is more likely than not that he would face torture. *See* 8 U.S.C. § 1231 note. That protection implements the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242. As with withholding of removal, CAT relief also requires the applicant to satisfy a higher standard with respect to the likelihood of harm than asylum and relief is mandatory if that standard is met. There is no exception to CAT relief.

PLAINTIFFS

Plaintiff Children are Guatemalan unaccompanied minors who face imminent risk of summary removal to Guatemala without proceedings before an immigration judge. The children range in age from 7 to 17. They are in custody at facilities operated by ORR the United States. *See* Ex. A-I. The majority of Plaintiff Children are in the middle of the § 1229a removal proceedings mandated by the TVPRA. Many have hearings scheduled in the next few weeks. *See, e.g.*, Ex. I, Declaration of A.R.M.D ¶4 (next hearing scheduled for October 1, 2025) ("A.R.M.D. Decl."); Ex. D., Declaration of H.L.E.C. ¶3 ("H.L.E.C. Decl."); Ex. C, Declaration of M.O.C.G. ¶7 ("M.O.C.G. Decl."); Ex. E, Declaration of T.A.C.P. ¶4 ("T.A.C.P. Decl.") (next hearing scheduled for November 26, 2025); Ex. H, Declaration of G.A.B.B. ¶5 ("G.A.B.B. Decl."). Several are also pursuing asylum through the non-adversarial procedure that the TVRPA uniquely affords them by filing affirmative asylum applications with the United States Citizenship and Immigration Service ("USCIS"). Plaintiff L.P.M.M., for example, is a sixteen year-old who states, "I am now just waiting for an asylum interview to be scheduled. I still have the right to continue fighting for protection." Ex. G, Declaration of L.F.M.M. ¶3 ("L.F.M.M. Decl."); *see also* Ex. J, Declaration of M.Y.A.T.C. ¶4 ("M.Y.A.T.C. Decl.").

Many Plaintiff Children recently learned that the government is seeking to remove them summarily from the United States. In the face of this troubling news, they uniformly express a desire to remain in the United States and to continue seeking immigration relief. *See, e.g.*, A.R.M.D. Decl. ¶¶4, 6, Ex. I ("I want to be able to attend my court hearing and be able to present my case . . . . I do not wish to return to Guatemala because Guatemala is not safe for me."); H.L.E.C. Decl. ¶¶6, 8, Ex. D ("I came to the United States after experiencing abuse and neglect from my father and from the father of my child . . . . I want to remain the United States and continue to fight my case in Immigration Court[.]"); T.A.C.P. Decl. ¶5, Ex. E ("I want the opportunity to stay here in the United States where I am safe. I want the U.S. government to respect my rights.").

Counsel for Plaintiff Children learned at the time of filing that summary removals of Guatemalan unaccompanied minors were imminent. Defendants have not provided Plaintiff Children or their counsel notice of their plan to subject them to summary removal. In at least some cases, after reports of Defendants' plan emerged, counsel surmised that certain unaccompanied Guatemalan minors would be subject to summary removal when their cases disappeared from the immigration court docket. *See* Fisher Decl. ¶9. Homeland Security

Investigations, a component of Defendant DHS, has conducted interviews of several Plaintiff Children in which they asked them about their family members in Guatemala. *See, e.g.*, Fisher Decl. ¶¶6, 7; A.R.M.D. Decl. ¶2, Ex. I; H.L.E.C. Decl. ¶5, Ex. D; M.O.C.G. Decl. ¶5, Ex. c; *see also* M.Y.A.D.T. Decl. ¶6, Ex. J ("A few weeks ago, in August 2025, my parents, who live in Guatemala, told me that they received a strange phone call. The person told them that the U.S. government is planning to deport me with a larger group of Guatemalan minors."). The legal director of a nonprofit organization providing pro bono legal services to unaccompanied minors reports that HSI proceeded with the interviews even when minors asked for their attorneys to be present or declined to be interviewed. Fisher Decl. ¶6.

LEGAL STANDARD

To obtain a temporary restraining order, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014); *Am. Foreign Serv. Ass'n v. Trump*, No. 1:25-cv-352 (CJN), 2025 WL 435415, at *1 (D.D.C. Feb. 7, 2025). The standards for issuing a temporary restraining order and a preliminary injunction are "the same." *Doe v. McHenry*, No. 1:25-cv-286-RCL, 2025 WL 388218, at *2 (D.D.C. Feb. 4, 2025).

ARGUMENT

A. Plaintiffs Are Likely to Succeed on the Merits.

1. *Defendants' summary removal of Plaintiffs violates the statutory protections afforded to unaccompanied minors.*

Plaintiffs are likely to succeed on the merits of their claim that Defendants' summary removals violate the TVPRA and the INA and the due process clause. These statutes unambiguously mandate a specific procedure for determining whether unaccompanied minors may be removed from the United and specific protections that the government has no discretion to ignore. Defendants' summary removal of Plaintiffs while their removal proceedings are pending deprives them of the substantive and procedural protections Congress has afforded unaccompanied minors and of the general protections Congress has afforded noncitizens in removal proceedings. Further, Defendants' deliberate targeting of Guatemalan children for removal violates the due process clause of the Fifth Amendment, as it constitutes unlawful discrimination based on national origin.

The TVPRA "guarantees certain protections for unaccompanied children—irrespective of the specific circumstances that led an unaccompanied child to arrive at the border." *Immigrant Defs L. Center v. DHS*, No. 21-cv-395 (FMO), 2025 WL 1191572, at *12 (C.D. Cal. March 14, 2025). The TVPRA requires that any unaccompanied child sought to be removed by DHS—except for certain unaccompanied children from a contiguous country subject to exceptions not applicable here—shall (i) be placed in removal proceedings under section 8 U.S.C. § 1229a; (ii) be eligible for relief under 8 U.S.C. § 1229c [voluntary departure] at no cost to the child; ***and*** (iii) be provided access to counsel in accordance with subsection (c)(5). 8 U.S.C. § 1232 (a)(5)(D) (emphasis added); *see also Immigrant Defs L. Center*, 2025 WL 1191572, at *12 ("§ 1232(a)(5)(D)(i) entitles '[a]ny unaccompanied alien child' to placement in § [1229a] proceedings as an unaccompanied child with the full range of protections to which unaccompanied children are entitled.").

Guatemala is not a country that is contiguous to the United States, as they share no border. As such, the mandate provided in 8 U.S.C. § 1232(a)(5)(D) and any other statutory language regarding unaccompanied minors unambiguously apply to Guatemalan unaccompanied children like Plaintiffs and the putative class. Section 1232(a)(5)(D) contains no exceptions other than those for minors from contiguous countries. By summarily removing Plaintiffs, Defendants are violating the statutory mandate of § 12232(a)(5)(D).

The TVPRA contains numerous other provisions that enshrine the substantive and procedural rights of unaccompanied minors and demonstrate Congress' intent to provide them with special protections. *See, e.g.*, 8 U.S.C. § 1232(a)(3)(5) (directing HHS to "ensure, to the greatest extent practicable" that unaccompanied minors "has counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking"); *id*. § 1232(a)(5)(6) (authorizing HHS "to appoint independent child advocates for trafficking victims and other vulnerable unaccompanied alien children"); *id*. § 1232(d)(8) (stating that "[a]pplications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children's cases."); *id*. § 1232(e) (requiring DOS, DHS, HHS, and DOJ to "provide specialized training to all Federal personnel, and upon request, state and local personnel, who have substantive contact with unaccompanied alien children.").

The TVPRA also amended the asylum statute to provide that, even when an unaccompanied minor has been placed in removal proceedings, "[a]n asylum officer [rather than the immigration judge] shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child." 8 U.S.C. § 1158(b)(3)(C); *see also O.A. v. Trump*, 404 F. Supp. 3d 109, 121-22 (D.D.C. 2019) (noting that the TVPRA entitles unaccompanied minors to present their asylum claims "in the first instance in a non-adversarial setting."); *J.O.P. v. DHS*, 338

F.R.D. 33, 65 (D. Md. 2020) (enjoining DHS from applying eligibility criteria that would deprive certain unaccompanied minors of initial non-adversarial review). Thus, summary removal of vulnerable unaccompanied minors in the middle of their removal proceedings is manifestly incompatible with these special protections.

Once an unaccompanied minor is placed in § 1229a proceedings, the government cannot simply choose to cancel those proceedings by removing cases from the immigration court's docket. The INA provides that, "[u]nless otherwise specified in this chapter, a proceeding under [§ 1229a] shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3). The INA also provides all noncitizens in § 1229a proceedings the right to appeal an unfavorable decision to the Board of Immigration Appeals ("BIA") and to petition a Court of Appeals for judicial review. *See* 8 U.S.C. §§ 1229a(c)(5); 1252(b). A removal order can only be effectuated upon the commencement of a 90-day removal period, which "begins on the latest of three dates: (1) the date the order of removal becomes 'administratively final,' (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the alien is released from non-immigration detention or confinement." *Johnson v. Guzman-Chavez*, 594 U.S. 523, 528 (2021) (citing 8 U.S.C. § 1231(a)(1)(B)). Regulations provide specific mechanisms and conditions under which DHS may seek to cancel a Notice to Appear after jurisdiction has vested with the immigration court and before the issuance of a removal order. *See* 8 C.F.R. § 239.2.

The government likewise cannot simply ignore the TVPRA's statutory mandate that it provide unaccompanied minors with the opportunity to seek voluntary departure under 8 U.S.C. § 1229c. *See, e.g.*, *Immigrant Defs. L. Center*, 2025 WL 1191572, at *14 ("The language of § 1232(a)(5)(D)(ii) is clear that '[a]ny unaccompanied alien child' – meaning all unaccompanied children – must be eligible for voluntary departure.") (citing A. Scalia & B. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 140 (2012)). 8 U.S.C. § 1229c in turn authorizes the Attorney General "[to] permit an alien voluntarily to depart from the United States" subject to certain restrictions. Voluntary departure is a form of immigration that only an immigration judge can grant. The TVPRA contains numerous provisions that ensure that unaccompanied minors do not bear the cost of their voluntary repatriation, 8 U.S.C. § 1232 (a)(5)(D)(ii), and that the government ensure their safety and sustainable repatriation. *Id*. §§ 1232(a)(1), (5); *see also Perez-Funez v. District Director*, 619 F. Supp. 656 (C.D. Cal. 1985) (granting unaccompanied minors special protection before they can accept voluntary departure); 8 C.F.R. §§ 236.3(g)-(h), 1236.3(g)-(h) (providing procedural rights for voluntary departure). Although Plaintiffs seek to remain in the United States, Defendants' summary removals nonetheless deprive them of their statutory right to request voluntary departure under special conditions.

Defendants' summary removals of unaccompanied minors while their § 1229a proceedings are pending are an obvious violation of the TVPRA and the INA. "[T]he President and federal agencies may not ignore statutory mandates or prohibitions merely because of policy disagreement with Congress." *In re Aiken Cnty.*, 725 F.3d 255, 261 (D.C. Cir. 2013). Plaintiffs are likely to succeed on the merits.

2. Plaintiffs are likely to succeed on their Equal Protection claim because they face discrimination on the basis of national origin.

Plaintiffs are likely to succeed on the merits of their claim that Defendants' actions constitute discrimination on the basis of national origin, in violation of the equal protection guarantee of the Due Process clause of the Fifth Amendment.

All Plaintiffs and putative class members are Guatemalan nationals. Defendants seek to expeditiously remove children of Guatemalan nationality in ORR custody. This constitutes unconstitutional discrimination on the basis of national origin.

The Supreme Court has consistently applied a strict scrutiny standard to government actions that discriminate on the basis of national origin. *See, e.g., Yick Wo v. Hopkins*, 118 US 356, 374 (1886); *Clark v. Jeter*, 486 U.S. 456, 461 (1988); *City of Cleburne v. Cleburne Living Center*, 473 US 432, 440 (1985); *United States Railroad Retirement Board v. Fritz*, 449 US 166, 174 (1980); *Pena-Rodriguez v. Colorado*, 137 S Ct 855, 883 (2017) (Alito dissenting).

Here, Plaintiffs are likely to succeed on the merits because Defendants are targeting them based on national origin. Defendants' actions are not narrowly tailored, and there is no compelling government interest to justify such targeting on the basis of national origin. Thus, Defendants' actions violate the equal protection guarantee of the Fifth Amendment.

3. *Plaintiffs are likely to succeed on the merits because Defendants' actions violate Due Process.*

Plaintiffs are likely to succeed on their claim that their summary removal while their removal proceedings are pending violates the Due Process Clause of the Fifth Amendment. "'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). As children, Plaintiffs are entitled to special due process protections. The Supreme Court has noted that, "[v]iewed together, our cases show that although children generally are protected by the same constitutional guarantees as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for concern, sympathy, and paternal attention." *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (quotation marks, alterations, and citation omitted). "The three basic elements of a procedural due process claim are (1) a deprivation, (2) of life, liberty, or property, (3) without due process of law." *Morris v. Carter Global Lee, Inc.*, 997 F. Supp. 2d 27, 35-36 (D.D.C. 2013).

Plaintiffs have a liberty interest in avoiding summary removal. *See, e.g.*, *J.G.G*, 145 S. Ct. at 1006 ("The detainees' rights against summary removal . . . are not currently in dispute."). The TVPRA and the INA further substantiate their protected interest. A statute creates a protected interest where it includes "rules or understandings that secure certain benefits and that support claims of entitlements to those benefits." *The Board of Regents of State Colleges v. Roth*, 408 U.S. 464, 577 (1972); *see also Abrego Garcia v. Noem*, 777 F. Supp. 3d 501 (D. Md. 2025) (finding that INA's withholding of removal provision created a protected interest "in avoiding forcible removal to El Salvador" by limiting DHS's discretion to remove noncitizen absent process), *aff'd in relevant part sub. Nom*, 145 S. Ct. 1017 (2025). The TVPRA mandates several special procedural protections for unaccompanied minors that demonstrate their protected interest in avoiding summary removal: placement in § 1229a removal proceedings (*i.e.*, an exception from expedited removal proceedings), 8 U.S.C. § 1232(a)(5)(D)(i); eligibility for voluntary departure at no cost to the child, *id*. § 1232(a)(5)(D)(ii); enhanced access to counsel, *id*. §§ 1232(a)(5)(D)(iii), (c)(5); and special non-adversarial consideration of their asylum applications. 8 U.S.C. § 1158(b)(3)(C). Each of rules mandatorily structure removal proceedings in such a way as to protect and benefit unaccompanied minors in light of their unique vulnerabilities.

Defendants are depriving Plaintiffs of their interest in avoiding summary removal. As described *supra*, Defendants are unlawfully ignoring the mandatory procedures and protections that amount to Plaintiff's protected interest. Moreover, Defendants have offered Plaintiffs *no* procedure whatsoever by which to challenge their summary removal. *See, e.g.*, Flores Decl. ¶10. Nor have Defendants provided them adequate notice that they will be imminently subject to summary removal, choosing instead in certain cases to simply remove their cases from the immigration court docket without observance of any procedure. *See id.*; *see also, e.g.*, *Abrego Garcia*, 777 F. Supp. 3d at 517 ("Defendants deprived Abrego Garcia of this right without *any procedural protections* due to him. Indeed, nothing in the record suggests that Abrego Garcia received any process at all."); *cf. A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367-68 (2025) ("Due process requires notice that is 'reasonably calculated, under all the circumstances, to apprise interested parties' and that 'afford[s] a reasonable time ... to make [an] appearance.'") (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Plaintiffs therefore show a likelihood of success on the merits of their claim that their imminent summary removals violate the Due Process Clause of the Fifth Amendment.

B. Plaintiffs will suffer irreparable harm if removed

The threat of removal without the opportunity to apply for humanitarian protection or other immigration relief for which Plaintiffs are eligible further heightens the irreparable injury. *Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 172 (D.D.C. 2021) (finding irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"), aff'd in part, rev'd in part on other grounds, 24 F.4th 718 (D.C. Cir. 2022); *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 517 (D.D.C. 2020) (irreparable injury exists where class members were "threatened with deportation prior to receiving any of the protections the immigration laws provide"); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1504– 05 (C.D. Cal. 1988) (plaintiffs would suffer irreparable harm if they were summarily removed without being afforded opportunity to exercise their right to apply for asylum).

Here, Plaintiff children have demonstrated clear and irreparable harms if removed to Guatemala. Several plaintiffs lack guardians who can provide safety and care. Many fear return and wish to continue pursuing their asylum claims before the immigration courts. Facing risks of persecution and torture. Further, Defendants have failed to comply with legal obligations to ensure safe repatriation to Guatemala. As a result, Plaintiffs are at risk of not receiving care and access to basic needs such as shelter, food, and education that Defendants are legally required to provide either in ORR custody or through safe repatriation *after* unaccompanied children have completed their removals proceedings or chosen to voluntarily depart with legally mandated safeguards. Once they are removed to Guatemala, harms will be irreparable.

For these reasons, Plaintiffs satisfy their burden to show that they are at imminent risk of irreparable harm unless the Court grants temporary emergency relief.

C. The Balance of Equities and Public Interest Weigh Decidedly in Favor of a Temporary Restraining Order.

The balance of equities and the public interest factors merge in cases against the government. *See Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (citations omitted). Where, as here, the challenged governmental conduct deprives Plaintiffs of their rights and is contrary to the rule of law, both factors weigh in Plaintiffs' favor. The public—and therefore the government—has an interest in protecting people in government custody, particularly children. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) (describing the "public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) ("It is always in the public interest to prevent the violation of a party's constitutional rights." (quotation marks and citations omitted)); *Torres v. U.S. Dep't of*

Homeland Sec., 2020 WL 3124216, at *9 (C.D. Cal. Apr. 11, 2020) ("[T]he public has an interest in the orderly administration of justice[.]"). In this case, the public has a particular interests in ensuring children are not unlawfully removed to unsafe conditions.

D. The Court Should Not Require Plaintiffs to Provide Security Prior to the Temporary Restraining Order.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damage sustained by any party found to have been wrongfully enjoined or restrained." However, "courts in this Circuit have found the Rule 'vests broad discretion in the district court to determine the appropriate amount of an injunction bond,' including the discretion to require no bond at all." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 107 (D.D.C. 2012) (internal quotation marks, citation, and alterations omitted). District courts exercise this discretion to require no security in cases brought by indigent and/or incarcerated people, and in the vindication of immigrants' rights. *See, e.g.*, *P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020). This Court should do so here as well. Alternatively, the Court should order Plaintiffs to post security in the amount of $1.00.

CONCLUSION

The Court should grant Plaintiffs' motion for a temporary restraining order for them and putative class members.

Dated: August 31, 2025

Respectfully submitted,

/s/ Hilda Bonilla

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CERTIFICATE OF SERVICE

I, Hilda Bonilla, certify that a true and correct copy of this Request for Emergency Temporary Restraining Orders was filed via the Court's CM/ECF filing system and will be served on all Defendants in accordance with the Federal Rules of Civil Procedure.

/s/ Hilda Bonilla

Hilda Bonilla
Attorney for Plaintiffs

Dated: August 31, 2025

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

L.G.M.L., *et al.*,

Plaintiffs,

v.

NOEM, *et al.*

Defendants.

Case No. 1:25-cv-02942

PLAINTIFFS' EMERGENCY MOTION FOR PROVISIONAL CLASS CERTIFICATION

INTRODUCTION

Plaintiffs seek class certification pursuant to Federal Rule of Civil Procedure 23 and Local Rule 23.1(b) of a class of all Guatemalan unaccompanied minors in ORR custody who are not subject to an executable final order of removal. Counsel intends to file shortly a declaration regarding class counsel. In the interest of time given the exigent circumstances of the imminent hearing, Plaintiffs file the motion without the declaration.

Plaintiffs easily satisfy the Rule 23 requirements for class certification. *First*, the proposed class is numerous and consists of hundreds of children across the country who will imminently be summarily removed to Guatemala. *Second*, the proposed class members share common questions of law and fact because the members of the class are subject to a common practice: summary removal without proceedings before an immigration judge. This suit also raises questions of law common to members of the proposed class, including whether the administration's plans violate the TVPRA, the INA, the Fifth Amendment, and the Equal

Protection Clause. *Third*, the claims of the Class Representative Plaintiffs are typical of the claims of the class. Each proposed class member, including Class Representative Plaintiffs, faces the same principal injury (summary removal to Guatemala without proceedings before an immigration judge), based on the same government practice (the administration's attempts to remove hundreds of Guatemalan unaccompanied minors), which is unlawful as to the entire class because it violates statutory and constitutional protections. *Fourth*, the class representatives and their experienced counsel will fairly and adequately protect class interests as well as vigorously prosecute the action on behalf of the class.

Finally, certification is warranted under Rule 23(b)(2) because Defendants are acting in the same manner with respect to the class of detained immigrant children in their custody, such that a declaration and injunction with respect to the whole class is appropriate. Alternatively, certification under Rule 23(b)(1) is warranted because bringing separate actions by individual detained immigrant children is impracticable and would risk inconsistent outcomes and incompatible standards of conduct for Defendants.

The court should certify the proposed class and appoint class counsel to uniformly resolve the legality of Defendants' conduct. Class certification is likewise appropriate in order to provide uniform relief for the hundreds of children currently at risk of imminent unlawful summary removal to Guatemala.

FACTUAL BACKGROUND

Plaintiffs incorporate by reference the facts submitted in the Complaint. ECF No. 1. Briefly, the ten putative class representatives like the rest of the Guatemalan unaccompanied children in ORR custody have been prepared for removal or are at imminent risk of being prepared for removal to Guatemala without final orders of removal by an Immigration judge.

Many have expressed fear of return. Many have or had pending immigration cases in immigration court. All are at risk of unlawful summary removal and harm in their country of origin.

STANDARD OF REVIEW

Class actions in federal court are governed by Federal Rule of Civil Procedure 23. Class certification demands a "rigorous analysis" under Federal Rule of Civil Procedure 23. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011). The issue at this stage is not, however, whether Plaintiffs can or have proven the elements of their claims on the merits. *See Lewis v. U.S. Parole Comm'n,* 743 F. Supp. 3d 181, 194 n.3 (D.D.C. 2024) ("If some objective legal standard applies in common to the entire class and will be dispositive of each plaintiff's success on the merits, plaintiffs need not prove that standard is met at the class certification stage."); *see also Nat'l ATM Council v. Visa, Inc*., No. 21-7109, 2023 WL 4743013, at *5 (D.D.C. 2023) (probing merits of plaintiffs' claims permissible "insofar as necessary to ensure that the Rule 23 requirements are met"). Instead, class certification focuses on the nature of the issues and whether common proof can resolve them.

Federal Rule of Civil Procedure 23 requires a party moving for class certification to first satisfy four prerequisites: (1) the class must be so numerous that joinder of all the members is impracticable ("numerosity"); (2) there must be questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class ("typicality"); and (4) the representative parties must fairly and adequately protect the interests of the class ("adequacy"). Fed. R. Civ. P. 23(a)(1)–(4); *see Brown v. District of Columbia*, 928 F.3d 1070, 1079 (D.C. Cir. 2019).

A class that meets all the requirements of Rule 23(a) should be certified if "prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). Certification is proper under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2); *see Wal-Mart*, 564 U.S. at 360; *Brown*, 928 F.3d at 1082. The Court must appoint class counsel upon certifying a class. Fed. R. Civ. P. 23(g).

Finally, a class may be provisionally certified in conjunction with a motion for preliminary injunction "to achieve meaningful relief with respect to [an] allegedly unlawful policy." *Damus v. Nielsen*, 313 F.Supp.3d 317, 329 (D.D.C. 2018). This Court has repeatedly granted provisional class certifications for the purposes of preliminary injunctive relief. *See, e.g.*, *Kirwa v. U.S. Dept. of Defense*, 285 F. Supp. 3d 21, 44 (D.D.C. 2017); *Feng Wang v. Pompeo*, 354 F. Supp. 3d 13, 16 n.1 (D.D.C. 2018). Like class certification, provisional class certification requires Plaintiffs to satisfy the requirements of Federal Rule of Civil Procedure 23, with the understanding that the certification may be "altered or amended" before a decision on the merits of the claims. *R.I.L-R. v. Johnson*, 80 F. Supp. 3d 164, 179–80 (D.D.C. 2015) (citing *Berge v. United States*, 949 F. Supp. 2d 36, 49 (D.D.C. 2013)); *see also P.J.E.S. by and through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 530–31 (D.D.C. 2020) (listing cases).

ARGUMENT

The Proposed Class Members Are So Numerous That Joinder Is Impracticable

A proposed class must be "so numerous that joinder of all members is impracticable."

Fed. R. Civ. P. 23(a)(1). "Impracticability of joinder means only that it is difficult or inconvenient to join all class members, not that it is impossible to do so." *Coleman through Bunn v. District of Columbia*, 306 F.R.D. 68, 76 (D.D.C. 2015) (citing *Bond v. Fleet Bank (RI), N.A.*, No. 1-177, 2002 WL 31500393, at *4 (D.R.I. Oct. 10, 2002)). There is no minimum threshold number of members making joinder impracticable, but "'[i]n this district, courts have found that numerosity is satisfied when a proposed class has at least forty members.'" *Charles H. v. District of Columbia*, No. 21-cv-00997-CJN, 2021 WL 2946127, at *13 (D.D.C. June 16, 2021) (citations omitted). Notably, "the Court need only find an approximation of the size of the class, not an exact number of putative class members." *Id.* at 76 (internal quotation marks and citations omitted). Plaintiffs must provide "some evidentiary basis beyond a bare allegation"[1] of a sufficiently numerous class, but the court may draw "reasonable inferences from the facts presented to find the requisite numerosity." *Id.* (citing *McCuin v. Sec'y of Health & Hum. Servs.*, 817 F.2d 161, 167 (1st Cir. 1987)).

The proposed class is sufficiently numerous. Hundreds of Guatemalan unaccompanied minors in government custody across the country will potentially be subjected to summary removal under the Trump administration's plans. Over 100 are boarding or boarded a plane for removal.

Based on this information, the Court can easily conclude that the number of Guatemalan unaccompanied children in ORR custody without a final order of removal at risk of summary removal to Guatemala is sufficiently large to satisfy the numerosity requirement. *See, e.g.*,

[1] Plaintiffs may satisfy this evidentiary basis by relying upon a government agency's own records, as well as any expert affidavits. *See Garza v. Hargan*, 304 F. Supp. 3d 145, 155 (D.D.C. 2018), *aff'd in part, vacated in part on other grounds, sub nom. J.D. v. Azar*, 925 F.3d 1291 (D.C. Cir. 2019); *Hoyte v. District of Columbia,* 325 F.R.D. 485, 492, 495–96 (D.D.C. 2017).

P.J.E.S., 502 F. Supp. 3d at 531 (relying on government and news reports of the number of immigrant children apprehended or expelled together with a much smaller number children identified by counsel as having been subjected to the policy at issue). *See also J.D. v. Azar*, 925 F.3d 1291, 1323 (D.C. Cir. 2019) (assessing "non-numerical considerations that might make joinder impracticable, including the fluidity of ORR custody, the dispersion of class members across the country, and their limited resources."); *see also D.L. v. District of Columbia*, 302 F.R.D. 1, 11 (D.D.C. 2013), *vacated on other grounds*, 713 F.3d 120 (D.C. Cir. 2013).

Additionally, the class members' inherent vulnerability as minors in federal custody who are dependent on adults and have no independent financial resources also make joinder impracticable. *See D.L.*, 302 F.R.D. at 11; *Coleman*, 306 F.R.D. at 80. Unaccompanied children are held in hundreds of facilities funded by ORR spanning across more than a dozen states,[2] reflecting a vast "geographic dispersion of class members." *Coleman*, 306 F.R.D. at 80; *see also Garza,* 304 F. Supp. 3d at 157 (finding joinder impractical "especially given that the proposed class members are undocumented minors who are geographically dispersed and who are not at liberty—financially or otherwise—to move or act at will inside the United States."). Accordingly, the proposed class satisfies the numerosity requirement of Rule 23(a)(1).

The Proposed Class Presents Common Questions of Law and Fact

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class," or commonality. Fed. R. Civ. P. 23(a)(2). To establish commonality, class members must have "suffered the same injury," and the class claims must "depend on a common contention" that "is capable of classwide resolution—which means that determination of its truth or falsity will

[2] Office of Refugee Resettlement, *Unaccompanied Alien Children Bureau Fact Sheet* (Apr. 4, 2025), *archived at* https://perma.cc/S68K-5283.

resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart,* 564 U.S. at 350. "The touchstone of the commonality inquiry is 'the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.'" *Coleman*, 306 F.R.D. at 82 (quoting *Wal-Mart*, 564 U.S. at 390 (internal citations omitted) (emphasis in original)). "[E]ven a single common question will do." *Wal-Mart*, 564 U.S. at 359 (internal quotation marks, alterations, and citations omitted).

Courts have consistently held that "commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all putative class members." *Thorpe v. District of Columbia*, 303 F.R.D. 120, 147 (D.D.C. 2014), *aff'd sub nom. In re District of Columbia*, 792 F.3d 96 (D.C. Cir. 2015); s*ee also R.I.L-R*, 80 F. Supp. 3d at 181 ("commonality is satisfied where there is 'a uniform policy or practice that affects all class members.'"); *P.J.E.S.*, 502 F.Supp.3d at 532 (commonality means that "if any person in the class has a meritorious claim, they all do.").

"Factual variations among the class members will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all proposed class members." *Bynum v. District of Columbia*, 214 F.R.D. 27, 33 (D.D.C. 2003); *see also Coleman*, 306 F.R.D. at 83; *Afghan & Iraqi Allies v. Pompeo*, 334 F.R.D. 449, 459 (D.D.C. 2020) (certifying a class where "the factual variations among the class members . . . are not fatal to commonality because they do not undermine the class's common characteristics") (internal citations omitted); *S.R. by and through Rosenbauer v. Penn. Dep't of Human Servs.*, 325 F.R.D. 103, 108–09 (M.D. Pa. 2018) (rejecting argument that the "individualized nature of placement and service decisions for each child in the dependency and delinquency systems makes classwide resolution impossible" because the "putative class seeks declaratory and injunctive relief to address systemic deficiencies").

Here, the members of the class are subject to a common practice: summary removal without proceedings before an immigration judge. This suit also raises questions of law common to members of the proposed class, including whether the administration's plans violate the TVPRA, the INA, the Fifth Amendment, and the Equal Protection Clause. This "system-wide" action affects "all putative classmembers." *Thorpe*, 303 F.R.D. at 147. The resolution of these questions is a prerequisite to any challenge to individual summary removals, and each of these questions can be resolved for the "class as a whole." *Wal-Mart*, 564 U.S. at 360.

Furthermore, courts have found that plaintiffs asserting that an agency has failed to follow its own regulations (*Accardi* claims), as Plaintiffs do here, meet the commonality requirement because the question of whether agencies are complying with their own binding policies inherently raises common legal and factual questions. *See, e.g.*, *Damus*, 313 F. Supp. 3d at 332 (plaintiffs alleging violation of *Accardi* doctrine satisfied commonality requirement because allegation that ICE officers violated an agency rule to provide individualized parole determinations generated common question of law and fact); *Mons v. McAleenan*, No. 19-1593 (JEB), 2019 WL 4225322, at *9–10 (D.D.C. Sept. 5, 2019) (same). Plaintiffs' *Accardi* claim, alleging that Defendants are violating their obligations under the Foundational Rule, similarly generate common questions of law and fact in satisfaction of the commonality requirement.

Similar classes have been certified by other district courts. *E.g.*, *Lucas R. v. Azar*, Case No. CV 18-5741-DMG (PLAx), 2018 WL 7200716, at *17 (C.D. Cal. Dec. 27, 2018) (certifying a class of unaccompanied children "whom ORR is refusing or will refuse to release to parents or other available custodians within thirty days of the proposed custodian's submitting a complete family reunification packet on the ground that the proposed custodian is or may be unfit"); *see also*, Class Cert. Order, *J.E.C.M. v. Hayes*, No. 1:19-cv-903 (E.D. Va. Apr. 26, 2019), ECF No. 138, *amended by* ECF No. 149 (E.D. Va. May 2, 2019) (certifying a class of unaccompanied children held in ORR custody for 60 days or more whose sponsor initiated the sponsorship process and the children were not released to the sponsor). Here, the proposed class likewise satisfies the commonality requirement of Rule 23(a)(2).

Plaintiffs' Claims Are Typical of the Claims of the Members of the Proposed Class

Typicality exists when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This requirement "ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate." *Wal-Mart*, 564 U.S. at 349. "A class representative satisfies the typicality requirement if the representative's claims are based on the same legal theory as the claims of the other class members and her injuries arise from the same course of conduct that gives rise to the other class members' claims." *Coleman*, 306 F.R.D. at 83 (quoting *Bynum*, 214 F.R.D. at 35). This alignment of legal theory and course of conduct occurs when, as here, "the plaintiffs' claims all arise from a common statutory background and raise identical legal questions." *Id.*

Neither the claims nor the relevant facts need to be identical across class members to maintain typicality, which "refers to the nature of the claims of the representative, not the individual characteristics of the plaintiff." *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 209 (D.D.C. 2018) (quoting *Hoyte*, 325 F.R.D. at 490); *see Wagner v. Taylor*, 836 F.2d 578, 591 (D.C. Cir. 1987) ("Courts have held that typicality is not destroyed by 'factual variations.'") (quoting *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 831 (8th Cir. 1977)); *J.D.*, 925 F.3d at 1322 ("[T]o destroy typicality, a distinction must differentiate the 'claims or defenses' of representatives from those of the class.") (citation omitted) (emphasis omitted).

Plaintiffs' claims here are typical of the proposed class members' claims. Each proposed class member, including Class Representative Plaintiffs, faces the same principal injury (summary removal to Guatemala without proceedings before an immigration judge), based on the same government practice (the administration's attempts to remove hundreds of Guatemalan unaccompanied minors), which is unlawful as to the entire class because it violates statutory and constitutional protections.

Plaintiffs' claims are also based on the same legal theory as all proposed class members' claims: —that Defendants have violated the Fifth Amendment of the Constitution (Equal Protection and Due Process), the TVPRA (8 U.S.C. § 1232(a)(5)(D) and 1232(c)(5), their own regulations (*Accardi* Doctrine), the INA (8 U.S.C. § 1101, *et seq.*), and the FARRA (8 U.S.C. § 1231.

Thus, Plaintiffs' claims are "sufficiently interrelated with the class claims to protect absent class members." *R.I.L-R*, 80 F. Supp. 3d at 181; *see also Damus*, 313 F. Supp. 3d at 334 (finding typicality requirement satisfied where named plaintiff challenged ICE violation of policy requiring individualized parole determinations for asylum seekers in custody); *Lucas R.*, 2018 WL 7200716 (finding typicality where ORR refused to release named plaintiffs to their sponsors without notice and an opportunity to be heard regarding their sponsors' suitability). Therefore, the proposed class satisfies the typicality requirement of Rule 23(a)(3).

Plaintiffs Will Adequately Protect the Interests of the Proposed Class and Counsel are Qualified to Litigate this Action

Finally, Rule 23(a) requires that the representative parties must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Two criteria for determining the adequacy of representation are generally recognized: (1) the named representative must not have antagonistic or conflicting interests with the unnamed members of the class, and (2) the representative must appear able to vigorously prosecute the interests of the class through qualified counsel." *Nat'l Veterans Legal Servs. Program v. United States*, 235 F. Supp. 3d 32, 41 (D.D.C. 2017) (quoting *Twelve John Does v. District of Columbia*, 117 F.3d 571, 575–76 (D.C. Cir. 1997)). Plaintiffs easily meet both requirements.

First, Plaintiffs have no antagonistic or conflicting interests with the proposed class members' interests. As discussed, Plaintiffs assert the same legal claims as the proposed class members. Plaintiffs aim to secure injunctive and declaratory relief that will ensure all proposed class members are afforded their statutory and constitutional rights, as outlined in the Complaint. Where, as here, Plaintiffs seek "identical relief for all class members," they do not have conflicting interests. *P.J.E.S.*, 502 F.Supp.3d at 532.

Second, Plaintiffs are competent to represent the class. Adequacy "does not require either that the proposed class representatives have legal knowledge or a complete understanding of the representative's role in class litigation." *Garnett*, 301 F. Supp. 3d at 210 (citation omitted). It only requires that the named plaintiff have "some rudimentary knowledge of [their] role as . . . class representative[s] and [be] committed to serving in that role in litigation." *Id*. (citation omitted). In addition, class counsel are qualified and able to vigorously prosecute the interests of the class. Class counsel are not conflicted, they have no interests or commitments that are antagonistic to, or that would detract from, their efforts to seek a favorable decision for the class. Class counsel have extensive experience litigating complex federal class actions, administrative law, and immigration law. *See Coleman*, 306 F.R.D. at 84 (finding adequacy when class counsel has extensive experience litigating class actions); *Healthy Futures of Tex. v. U.S. Dep't of Health*

& Hum. Servs., 326 F.R.D. 1, 7–8 (D.D.C. 2018) (same). Accordingly, this aspect of Rule 23(a)(4) is also satisfied.

Class Certification Under Rule 23(b)(2) is Appropriate

Plaintiffs seek to certify this class under Rule 23(b)(2), which requires that defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). As the Supreme Court noted in *Wal-Mart*, "'[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples' of what (b)(2) is meant to capture." 564 U.S. at 361 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997)). This Circuit has described a Rule 23(b)(2) action as an efficient and consolidated way to address systemic harms that are best remedied with an injunction, particularly in civil rights cases like this one. *See D.L.*, 860 F.3d at 726 ("Rule 23(b)(2) exists so that parties and courts, especially in civil rights cases like this, can avoid piecemeal litigation when common claims arise from systemic harms that demand injunctive relief").

"The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Coleman*, 306 F.R.D. at 84 (quoting *Wal-Mart*, 564 U.S. at 360). Although the injunction must provide relief to each class member, "[i]f a certain outcome is legally mandated and an injunction provides each member of the class an increased opportunity to achieve that outcome, Rule 23(b)(2) is satisfied." *Brown*, 928 F.3d at 1082–83; *see also P.J.E.S.*, 502 F. Supp. 3d at 534 (D.D.C. 2018) (provisionally approving class of unaccompanied children seeking class-wide relief to enjoin enforcement of Title 42 immigration restrictions against them).

Courts in this District have interpreted Rule 23(b)(2) to impose two requirements: "(1) the defendant's action or refusal to act must be generally applicable to the class, and (2) plaintiff must seek final injunctive relief or corresponding declaratory relief on behalf of the class." *Steele v. United States*, 159 F. Supp. 3d 73, 81 (D.D.C. 2016) (quotations and citations omitted); *Bynum*, 214 F.R.D. at 37; *R.I.L-R*, 80 F. Supp. 3d at 182.

Both requirements are satisfied here. Defendants have acted (or will act) on grounds generally applicable to the class by subjecting them to summary removal rather than affording them the protection of immigration laws. Injunctive and declaratory relief is therefore appropriate with respect to the class as a whole.

Additionally, a declaration that Defendants' conduct is unlawful and an injunction directing Defendants not to remove any class member for 14 days would benefit the whole class by allowing the Court the time necessary to evaluate and resolve, at least preliminarily, the Plaintiffs' claims. Therefore, the Court should find that the proposed class meets Rule 23(b)(2)'s requirements.

The Proposed Class is Sufficiently Definite and Ascertainable

The D.C. Circuit has not yet decided whether Rule 23(b)(2) requires that a class be ascertainable. *See J.D.*, 925 F.3d at 1319–20 (noting conflict in decisions of sister circuits); *see also Ramirez v. U.S. Immigr. & Customs Enf't*, 338 F. Supp. 3d 1, 48 (D.D.C. 2018) ("it is far from clear that there exists in this district a requirement that a class certified under Rule 23(b)(2) must demonstrate ascertainability to merit certification"). Courts that apply such a requirement in addition to the Rule 23 requirements have considered whether the class is "clearly defined" and "sufficiently ascertainable"—in other words, that the class exists, and that it is "administratively feasible for the Court to determine whether a particular individual is a member" of the class. *Huashan Zhang v. U.S. Citizenship & Immigr. Servs.,* 344 F. Supp. 3d 32, 61–62 (D.D.C. 2018), *aff'd*, 978 F.3d 1314 (D.C. Cir. 2020) (quoting *Pigford v. Glickman*, 182 F.R.D. 341, 346 (D.D.C. 1998)); *see also Thorpe*, 303 F.R.D. at 139.

In Rule 23(b)(2) classes, such as this one, where plaintiffs only seek an injunction and notice is not required, "precise ascertainability" is not required. *D.L.*, 302 F.R.D. at 17 (quoting William B. Rubenstein et al., *Newberg and Rubenstein on Class Actions* § 3:7 (5th ed.)). Rule 23(b)(2) classes are sufficiently ascertainable "as long as plaintiffs can establish the existence of a class and propose a class definition that accurately articulates the general demarcations of the class of individuals who are being harmed by the alleged deficiencies." *Thorpe*, 303 F.R.D. at 139 (internal citations and quotation marks omitted). It must also be "administratively feasible" to determine who is in the proposed class—that is, counsel and putative class members should be able to determine who is in the class "simply by reading the [class] definition." *Coleman*, 306 F.R.D. at 75 (internal citations omitted) (alteration in original).

If ascertainability is required here, the proposed class easily meets that standard. A proposed class member is an unaccompanied child who is or will be in the custody of HHS, Guatemalan nationality, who does not have a final order of removal issued by an immigration judge. Thus, "simply by reading the [class] definition," children in the custody of ORR will be able to determine whether they are class members. *See, e.g., Coleman*, 306 F.R.D. at 75.

The proposed class consists entirely of children known to Defendants, who are in Defendants' custody. Furthermore, Defendants possess data that could be readily used to identify the children in its custody, and Defendants have in fact already compiled a list of class members they intend to summarily remove. Any future class members will be known to Defendants when they are taken into Defendants' custody. For these reasons, the proposed class is "adequately defined" and "sufficiently ascertainable." *Huashan Zhang*, 344 F. Supp. 3d at 61–62.

Alternatively, Class Certification is Appropriate Under Rule 23(b)(1)(A)

Alternatively, the class can be certified under Rule 23(b)(1)(A). A class that meets all the requirements of Rule 23(a) should be certified if "prosecuting separate actions by or against individual class members would create a risk of: [] an inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). Certification is appropriate when "the class seeks injunctive or declaratory relief to change an alleged ongoing course of conduct" that is "illegal as to all members of the class." *Nio v. U.S. Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. 2017) (internal citation omitted). Rule 23(a)(1) prevents inconsistent or varying adjudications that "would impair the opposing party's ability to pursue a uniform continuing course of conduct." *See Franklin v. Barry*, 909 F. Supp. 21, 31 (D.D.C. 1995) (granting certification under Rule 23(b)(1)(A) to avoid a "haunting specter of inconsistency, resulting in incompatible standards for prison officials" in their treatment of prisoners); *Larionoff v. United States*, 533 F.2d 1167, 1181 n.36 (D.C. Cir. 1976) (certifying a class under Rule 23(b)(1)(A) because the prosecution of separate actions by or against members of the class would create a risk of inconsistency and incompatible standards of conduct.).

Certification under 23(b)(1)(A) is appropriate here. Plaintiffs are attempting to secure injunctive and declaratory relief to change a uniform course of conduct that is illegal as to all proposed class members. Individual prosecution of claims will risk inconsistent results across jurisdictions in which children are held or transferred to or from ORR custody. Defendants would then face inconsistent judgments as to the legality of summary removal of Guatemalan children in their care. Therefore, the Court should find that the proposed class meets Rule 23(b)(1)(A)'s requirements.

The Court Should Designate Plaintiffs' Counsel as Class Counsel

If the Court grants Plaintiffs' motion to certify the class, the Court must also appoint class counsel. Fed. R. Civ. P. 23(g). The Court is tasked with weighing "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). It may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

Plaintiffs' counsel meets the standard. Plaintiffs are represented collectively by the National Immigration Law Center. Attorneys are seasoned litigators, with substantial experience in class action lawsuits, administrative law litigation, complex cases in federal court on behalf of noncitizens. Counsel have already invested "substantial time and resources to identifying and investigating potential claims in the action" and will continue to do so. *See Encinas v. J.J. Drywall Corp.*, 265 F.R.D. 3, 9 (D.D.C. 2010). Accordingly, Plaintiffs' counsel should be designated as counsel for the class.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), certify a class consisting of: all Guatemalan unaccompanied minors in ORR custody who are not subject to an executable final order of removal.

Dated: August 31, 2025

Respectfully submitted,

/s/ Hilda Bonilla

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