
 C.D.A., a minor,)
)
 Plaintiff,)
)
 v.)
)
 JEFFERSON B. SESSIONS III, Attorney)
 General of the United States; KIRSTJEN)
 M. NIELSEN, Secretary, U.S. Department)
 of Homeland Security; THOMAS HOMAN,)
 Acting Director, U.S. Immigration and)
 Customs Enforcement; KEVIN K.)
 MCALEENAN, Acting Commissioner,)
 U.S. Customs and Border Protection;)
 ALEX M. AZAR II, Secretary, U.S.)
 Department of Health and Human Services;)
 SCOTT LLOYD, Director, Office of)
 Refugee Resettlement; RICARDO WONG,)
 Director, ICE Field Office for Enforcement)
 Removal Operations in Chicago, IL;)
 MARGARET HARTNETT, Director, ICE)
 Field Office for Enforcement and Removal)
 Operations in El Paso, TX; HEARTLAND)
 ALLIANCE INTERNATIONAL, LLC;)
 SUSAN TRUDEAU, Senior Director,)
 Heartland International Children’s Rescue)
 Center; CORECIVIC, INC.; BRIAN)
 KOEHN, Warden of the Cibola County)
 Correctional Center,)
)
 Defendants.)

Civ. No. 1:18-cv-4291

**PETITION FOR JUDICIAL REVIEW
OF PLACEMENT DETERMINATION
PURSUANT TO FLORES
SETTLEMENT AGREEMENT**

Introduction

1. This case challenges the placement decision by the United States government for a 9-year-old boy resulting in his forcible separation from his father for no legitimate or lawful reason, in violation of the law and the special protections afforded to minors in the custody of United States immigration authorities.
2. This is an action on behalf of a child pursuant to Paragraph 24B of the Flores Settlement Agreement (hereinafter “FSA” or the “Settlement”), arising from longstanding litigation

in the matter of *Flores v. Sessions*, CV-85-4544 (C.D. Cal.). The Settlement gives the Plaintiff C.D.A., a 9-year-old child, the right to challenge the improper and unlawful decision of the Department of Homeland Security (“DHS”) to place him in the custody of the Office of Refugee Resettlement (“ORR”) at the Heartland International Children’s Rescue Center in Chicago, Illinois and away and apart from his father, Mr. [REDACTED] [REDACTED] who is detained at the Cibola County Correctional Center in Milan, New Mexico, following their apprehension, together, by Customs and Border Patrol (“CBP”) as an asylum-seeking family.

3. Despite seeking protection together as a family at the southern United States border, father and son are now separated by thousands of miles and on opposite sides of the country.
4. C.D.A., a child, brings this action to contest the decision of the United States government to separate him from his father. The decision to separate C.D.A. from his father was made without any consideration given to the irreparable psychological and physical damage that separation causes to children and without reason. There were, at no time, any assertions of abuse, neglect, or parental unfitness, nor were any hearings or process conducted of any kind by the government prior to the decision to separate.
5. C.D.A. files this action against the United States government and its actors to ask this Honorable Court to reunite him with his father. The Court retains this authority under paragraph 24B of the Flores Settlement Agreement should a child elect to challenge the governments improper placement decision. C.D.A. elects to have his placement reviewed and challenges the U.S. government’s decision to take him from his father.

6. Since 1997, the Flores Settlement Agreement has provided for more than 21 years that all minors in immigration custody shall be treated with “dignity, respect and special concern for their particular vulnerability as minors.” DHS’ arbitrary and unlawful decision to separate C.D.A., a child, from his accompanying parent violated the FSA under various provisions outlined below. In addition, the decision by DHS to separate parent and child violates the Due Process Clause of the Fifth Amendment which does not and cannot permit the United States government to forcibly separate an asylum-seeking family, a father from a son, without justification or hearing in flagrant violation of the FSA.
7. The Flores Settlement contemplated a moment in history where DHS would ignore its obligations under the Settlement and the Constitution, such as it has now by enacting an unlawful administrative policy of family separation along the southern United States border without regard to each child’s individual situation. C.D.A. now comes before this Honorable Court seeking to challenge his unlawful placement, declare it improper, and seek reunification with his father.

Subject Matter Jurisdiction

8. This case arises under the FSA, a consent decree to which the United States government is a party and C.D.A. is a protected class member. This Court has jurisdiction pursuant to ¶ 24(B) of the Flores Agreement; 28 U.S.C. § 1331 (federal question jurisdiction with a waiver of sovereign immunity pursuant to the Administrative Procedure Act, 5 U.S.C. §701 et seq.); 28 U.S.C. § 2241 (habeas jurisdiction); 28 U.S.C. § 1346 (United States as defendant); and Art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”). Jurisdiction lies to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act). Plaintiffs are in custody for purposes of habeas jurisdiction.

Venue

9. Petitioner C.D.A. is presently detained at the Heartland International Children's Rescue Center in the custody of the Office of Refugee Resettlement in Chicago, Illinois.
10. Venue in the Northern District of Illinois is proper pursuant to the FSA consent decree which protects C.D.A. as a class member and provides that he "may seek judicial review in any United States District Court with jurisdiction and venue over the matter" to challenge his placement by DHS and the conditions of his placement.

Parties

11. Plaintiff-Petitioner C.D.A. is a 9-year-old minor child, native and citizen of Brazil. This action is brought on his behalf, under the authority of his father Mr. [REDACTED] [REDACTED] Mr. [REDACTED] is also a native and citizen of Brazil. Together, he and his son fled Brazil seeking protection from persecution they suffered and fear they will continue to suffer if they are forced to return to Brazil. They came to the United States border to lawfully seek asylum together as a family.
12. Defendant-Respondent Jefferson B. Sessions III is the Attorney General of the United States and the head of the United States Department of Justice ("DOJ"). The DOJ is the federal agency responsible for enacting a nationwide policy of family separation and approving and recommending separation in each decision to separate a family. Defendant-Respondent Sessions shares responsibility for the administration and enforcement of the immigration laws and is an architect of his administration's family separation policy that resulted in C.D.A. being taken from his father. He is sued in his official capacity.

13. Defendant-Respondent Kirstjen Nielsen is the Secretary of the Department of Homeland Security (“DHS”), the Department of the Executive Branch of the United States government that oversees the agencies responsible for enforcing the immigration laws of the United States. Defendant-Respondent Nielsen is the head of DHS and has ultimate responsibility for the administration and enforcement of the immigration laws. She is an architect of her administration’s family separation policy that resulted in C.D.A. being taken from his father. She is sued in her official capacity.
14. Defendant-Respondent Thomas Homan is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”), the agency within DHS that is responsible for carrying out removal orders and oversees enforcement and removal operations throughout the United States. In that capacity, Defendant-Respondent Homan has direct authority over all ICE policies, procedures and practices relating to the detention and deportation of noncitizens. He is sued in his official capacity.
15. Defendant-Respondent Kevin K. McAleenan is the Acting Commissioner of U.S. Customs and Border Protection (“CBP”), the agency within DHS that is responsible for the initial processing and detention of noncitizens apprehended near the United States Border. In that capacity, Defendant-Respondent McAleenan has direct authority over all CBP policies, procedures and practices relating to the apprehension of asylum seekers and the decisions by CBP to separate families. He is sued in his in official capacity.
16. Defendant-Respondent Alex M. Azar II is the Secretary of the U.S. Department of Health and Human Services (“HHS”), the Department of the Executive Branch of the United States government that oversees the division and office responsible for the care and custody of minors detained without their parents. Defendant-Respondent Azar is the head

of HHS, and has ultimate responsibility for the physical care and daily detention of minors in the custody of immigration authorities without their parents. He is sued in his official capacity.

17. Defendant-Respondent Scott Lloyd is the Director of the Office of Refugee Resettlement (“ORR”), the office within the Administration for Children and Families (a division of HHS) that is responsible for providing care and placement for children detained by the United States government without their parents. In that capacity, Defendant-Respondent Lloyd has direct authority over all ORR policies, procedures and practices relating to the physical care and daily detention of minors detained without parents in ORR facilities. He is sued in his official capacity.
18. Defendant-Respondent Ricardo Wong is the Director of the ICE Field Office for Enforcement and Removal Operations in Chicago, Illinois. He exercises authority over ICE activities in the Illinois region. He is sued in his official capacity.
19. Defendant-Respondent Margaret Hartnett is the Director of the ICE Field Office for Enforcement and Removal Operations in El Paso. She exercises authority over ICE activities in the New Mexico region. She is sued in her official capacity.
20. Defendant-Respondent Heartland Alliance International, LLC is the entity operating the Heartland International Children’s Rescue Center in Chicago, Illinois, an ORR shelter that is currently detaining C.D.A. away from his father. It is the entity ultimately responsible for the local policies, procedures and practices relating to the Plaintiff-Petitioner’s detention, including but not limited to lack of access to communication with his father. The center is charged with and has direct authority over the physical care and daily detention of Plaintiff-Petitioner C.D.A.

21. Defendant-Respondent Susan Trudeau is a Senior Director of the Heartland International Children's Rescue Center in Chicago, Illinois, an ORR shelter that is currently detaining C.D.A. away from his father. She is charged with and has direct authority over the physical care and daily detention of Plaintiff-Petitioner C.D.A.
22. Defendant-Respondent CoreCivic, Inc. is the for-profit private prison company that operates the Cibola County Correctional Center in Milan, New Mexico, where the Petitioner's father is currently detained. It is the entity ultimately responsible for the local policies, procedures and practices relating to the detention of Plaintiff's father, including but not limited to lack of access to communication with the Plaintiff. The detention facility is charged with and has direct authority over the physical care and daily detention of Petitioner's father, separate and apart from the Petitioner, his biological son.
23. Defendant-Respondent Brian Koehn is the Warden of the Cibola County Correctional Center in Milan, New Mexico, an employee of CoreCivic, and is the legal custodian of Petitioner's father. He is charged with and has direct authority over the physical care and daily detention of Petitioner's father, separate and apart from the Petitioner, his biological son.

Notice Required by the Flores Settlement Agreement

24. On June 19, 2018, counsel for the Plaintiff contacted the Office of the U.S. Attorney in Chicago via telephone (left a message) and facsimile, and provided notice of FSA violations as required by Paragraph 37 of the FSA, copying the Center for Constitutional Law, the National Center for Youth Law, the Office of the U.S. Attorney for the Central District of California, and the Office of Immigration Litigation at the Department of Justice. The widespread and deliberate nature of the government's violations as

thousands of children are being affected by the new “family separation” policy suggests that the government is already well aware of these violations, and that any delay will be an exercise in futility that will only further irreparably harm the Plaintiff. [Exhibit A – Required Notice to Parties Pursuant to FSA, ¶ 37] On June 19, 2018, counsel spoke via telephone with Sarah B.]. Sarah Fabian, a Senior Litigator with the DOJ’s Office of Immigration Litigation has conferred with counsel as required and, has confirmed our compliance with this requirement on behalf of the government.

Legal Framework of the Flores Settlement Agreement

25. On January 28, 1997, a class-wide settlement agreement was reached in a case that is presently captioned *Flores v. Sessions*, CV-85-4544 (C.D. Cal.) (Flores Agreement). According to the stipulation of the parties in that settlement agreement, the terms of the Flores Agreement are in effect and remain in effect until the 45th day “following defendants’ publication of final regulations implementing” the Flores Agreement itself. Regulations have never been published. [Exhibit B – Flores Settlement Agreement].
26. The Flores Agreement applies to “[a]ll minors who are detained in the legal custody of the INS.” See Flores Agreement ¶ 10. A “minor” is “any person under the age of eighteen (18) years who is detained in the legal custody of the INS.” See *id.* ¶ 4.
27. The Flores Agreement “sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS[.]” See *id.* ¶ 9. The immigration authorities must treat “all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors.” See *id.* ¶ 11.

28. Each Defendant-Respondent is subject to compliance under the Flores Settlement Agreement. C.D.A. is a class member of the FSA as he is a minor detained in the legal custody of DHS [legacy INS].
29. The FSA applies to *all minors* in immigration custody, regardless of whether the child is apprehended unaccompanied by his parent or accompanying his parent. *See Flores v. Lynch*, 828 F.3d 898, 905-6 (9th Cir. 2016)

Paragraph 11 Protections:

30. Paragraph 11 of the FSA requires that “[t]he INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others.”
31. Family separation fails to take into account the dignity, respect and special concern for minors. A separated child is not placed in the least restrictive setting appropriate when the child is apprehended with their parent. *See Reno v. Flores* (91-905), 507 U.S. 292 (1993) “The parties to the present suit agree that the Service must assure itself that someone will care for those minors pending resolution of their deportation proceedings. That is easily done when the juvenile's parents have also been detained and the family can be released together...”
32. The settlement and resulting litigation further contemplates instances where detention of the minor (and accompanying family) is necessary or mandated by law and outlines the requirements for detention or applicable discretion in those instances. At no point does

the settlement require or call for the immediate separation of parent and accompanying child without regard to available alternatives or for no justifiable reason without cause or process.

Paragraph 12 Protections:

33. Paragraph 12 of the FSA requires “Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, **and contact with family members who were arrested with the minor**” (emphasis added).
34. Defendants-Respondents are required to facilitate contact with family members arrested with C.D.A. They have not done so.

Paragraph 14 Protections:

35. The Flores Agreement provides Defendants with four options respecting the custody of a class member, in a preference order: (1) a Paragraph 14 release from DHS custody; (2) a Paragraph 19 temporary placement in a licensed program; (3) a Paragraph 21 secure placement; or, (4) a brief Paragraph 12 placement in an INS detention center when immediate release or placement is not possible.
36. At all times, the Defendants must seek and work to release a minor. “Where the INS determines that the detention of the minor is not required either to secure his or her timely

appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay[.]” *See id.* ¶ 14.

37. Under the Flores Agreement, the release of the class member to his or her parent is the primary objective. *See id.* ¶ 14. Family unity is always the preferred option.

38. Paragraph 14 of the FSA requires “Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- a. a parent¹;
- b. a legal guardian;
- c. an adult relative (brother, sister, aunt, uncle, or grandparent);
- d. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;
- e. a licensed program willing to accept legal custody; or

¹ 8 C.F.R. § 1236.3(b)(iii) goes even further and spells out that if a juvenile and a parent are each in detention which is deemed mandatory, nonetheless they may be considered for release on a case-by-case basis. This Court retains authority to review placement as laid out in the instant complaint.

f. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.”

39. The father of C.D.A. has always been, and continues to be, available to provide care and custody of C.D.A. But for the interference of the Defendants-Respondents’ unlawful placement decision of C.D.A., they would have remained an intact family throughout the asylum process.

40. There have been no attempts to reunify C.D.A. with his father, as required under the FSA. Rather, the Defendants-Respondents have willfully violated their legal obligations by forcibly separating the family.

41. The placement decisions by the Defendants-Respondents and separation are not based on any objective discretionary determination but rather based on animus towards asylum-seeking families. Further, the separation also fails to ensure the minors safety or surety that a child will appear before DHS or the court, which is best served in the custody of the accompanying parent entering the same asylum process.

42. In effect, the Defendants-Respondents have turned C.D.A. into an unaccompanied minor despite his seeking asylum as an accompanying child.

43. In essence, the Defendants-Respondents’ wrongful placement of C.D.A. in ORR custody as an unaccompanied child has transformed him from an accompanied child, who previously resided with his family/father, to a detained child who is unable to access the much-needed love and support that only his parent can provide. The Defendants-Respondents’ decision to place C.D.A. away from his parent will force him to proceed through a difficult immigration court process alone, without his father’s support and

testimony, much like children who are unaccompanied. This not only affects his custody and well-being, but also puts C.D.A.'s ability to seek legal protections at grave risk, all because of Defendants-Respondents' choice to forcibly separate him from his parent.

Paragraph 24B Protections:

44. The Flores Agreement authorizes class members to challenge the placement and custodial decision regarding the minor in "any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1." *See id.* ¶ 24B of the FSA.
45. The standard of review for placement decisions is "*de novo*." *See* ¶ 24C of the FSA.
46. C.D.A. contests the decision of Defendants-Respondents to forcibly separate him from his father without cause.

Paragraph 36 Protections:

47. The FSA also provides a reservation of rights provision which permits a class member to exercise any "independent rights" he may have as contemplated by the settlement. *See* ¶ 36 of the FSA: "Nothing in this agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have."
48. C.D.A.'s fundamental rights to family integrity were violated when Defendants-Respondents forcibly separated him from his father.
49. In forcibly separating C.D.A. from his father, Defendants-Respondents violated his independent rights under the FSA and the Due Process Clause of the Fifth Amendment.
50. C.D.A., a child, retains a liberty interest under the Due Process Clause of the Fifth Amendment to remain together as an asylum-seeking family.

Facts

51. Petitioner, C.D.A., is a citizen of Brazil and is nine years of age.
52. Mr. [REDACTED] is the father of C.D.A.
53. Father and son were apprehended at the southern border of the United States. Mr. [REDACTED] has asserted a fear of return to Brazil and C.D.A. is a derivative on his father's asylum application. They are legitimate and lawful asylum seekers.
54. Prior to fleeing Brazil, C.D.A. and his father lived together as a family. They have always lived together as father and son.
55. C.D.A. has always relied on the care and love of his father.

Fear of Persecution and Pending Immigration Proceedings

56. Before fleeing to the United States, Mr. [REDACTED] lived in Brazil with his son.
2. Mr. [REDACTED] fears returning to Brazil because he owes a large amount of money, roughly \$10,000, to a group that engages in human trafficking. Because he cannot pay this debt, he fears that if he is returned to Brazil, he and C-D-A- will be forced to work for the organization in indentured servitude.
3. Mr. [REDACTED] does not believe he and his son could be safe anywhere in the country, as the group controls many people throughout Brazil. Mr. [REDACTED] could not go to the police for protection, because he believes the police will only help people with money.
4. Mr. [REDACTED] fled to the United States with C.D.A.. He attempted to enter at a Port of Entry, but was told it was "closed."

5. On approximately May 23, 2018, the Defendants-Respondents took C.D.A. and his father into custody near the United States-Mexico border.
57. After being held two days in a border facility, an official named Victor Sandoval told Mr. [REDACTED] and C.D.A. that they would be separated for a “process” lasting 3-5 days, and afterwards they would be reunited. This officer Sandoval did not tell Mr. [REDACTED] where he was taking C.D.A.
58. Nine-year-old C.D.A. was upset but his father tried to calm him down, saying it would only be a few days and they’d be together again. Mr. [REDACTED] told his son he wouldn’t leave him.
59. It has been now more than three weeks since Mr. [REDACTED] has seen or heard from his son.
6. Upon forcibly separating Mr. [REDACTED] from his son, Defendants-Respondents did not inform him of his son’s whereabouts.
7. C.D.A. was sent to ORR custody in Heartland International Children’s Rescue Center in Chicago, Illinois. Mr. [REDACTED] at the time of filing, was not aware of the name of the center holding his son.
60. Mr. [REDACTED] was placed in U.S. Marshal custody and charged with “Illegal Entry Without Inspection” (8 U.S.C. § 1325), a misdemeanor. He was held in the custody of the U.S. Marshals for about 12 days, and was sentenced to time served for the misdemeanor offense of illegal entry. Both C.D.A. and his father remain lawful asylum seekers despite this charge.

61. The father of the Petitioner was returned to Defendants-Respondents' custody on or about June 7, 2018. C.D.A. was not returned to his father's care and the family remain separated despite available alternatives and the requirements of the FSA.
8. Mr. [REDACTED] is currently detained in the Cibola County Correctional Center in Milan, New Mexico.
9. Mr. [REDACTED] now understands that C-D-A- is in the custody of the Office of Refugee Resettlement in Chicago.
10. When Mr. [REDACTED] was provided with the ORR hotline number by counsel, he called it repeatedly. He says they took his information and told him they would call him back. He has not managed to find out if he can receive calls at the detention center where he is.
11. Mr. [REDACTED] claimed fear of returning to Brazil and is awaiting a credible fear interview with the Asylum Office.
62. C.D.A. remains detained at Defendants-Respondents' facility in Chicago, Illinois. Family in Brazil who have spoken to C.D.A. report that he is very scared, sad, and desperate to be reunited with his father.
63. Detention unnecessarily exposes children with high rates of previous trauma to additional psychological trauma, putting children like C.D.A. at greater risk for physical and mental health problems. This is only exacerbated by the detention of Petitioner separate and apart from his father. C.D.A. is likely depressed and suffers from the effects of trauma. He requires, and is entitled to, specialized and appropriate mental health services.
64. On May 7, 2018, Defendants-Respondents implemented the so-called "zero tolerance" policy of prosecuting parents with illegal entry and separating them from their children.

The stated goal of this policy is to serve as a deterrent for migrant parents who enter the United States without authorization accompanied by their children. These statements make clear that family separation is not a collateral consequence of regular law enforcement under this policy, it is an explicitly intentional goal.

65. Separating families is detrimental to children's well-being, burdens the immigration court process, and increases costs to the government.
66. Intentionally rendering children unaccompanied has negative consequences to the children and parents, as well as to the adjudication system. Separating a child from a parent is traumatic for both parties, and this practice has been proven to be detrimental to the well-being of children.
67. Medical professionals, including the American Academy of Pediatrics, have condemned the practice of family separation, explaining that "[f]ear and stress, particularly prolonged exposure to serious stress without the buffering protection afforded by stable, responsible relationship . . . can harm the developing brain and harm short-and long-term health."²

Claims for Relief

Count I: Violation of the Flores Agreement – Placement Decision Under Paragraph 14

68. All previous paragraphs are incorporated as though fully set forth herein.
69. The forcible separation of C.D.A. from his accompanying father at apprehension violates the Flores Settlement Agreement which requires placement with his parent in the first instance.

² Letter from Colleen A. Kraft, MD, FAAP, President of the American Academy of Pediatrics, March 1, 2018, available at <https://downloads.aap.org/DOFA/AAP%20Letter%20to%20DHS%20Secretary%2003-01-18.pdf>

70. There have been no attempts to reunify C.D.A. with his father, as required under the FSA. Nor have Defendant-Respondents engaged in any individualized custody determinations concerning C.D.A. with regards to family unity. Rather, the Defendants-Respondents have willfully violated their legal obligations under the FSA by forcibly separating the family.

**Count II: Violation of the Flores Agreement –
Paragraph 24(b) Violation**

71. All previous paragraphs are incorporated as though fully set forth herein.

72. Defendants-Respondents' separation of children from their parents constitutes an intentional interference with parental rights. Enforcement actions cannot be used as justification to effect intentional family separation.³

73. The Flores Settlement Agreement permits a child to contest the placement decision of Defendants-Respondents. C.D.A. asserts this right and alleges that his placement thousands of miles away from his accompanying parent is improper.

74. The United States Supreme Court has on numerous occasions reaffirmed this right.⁴

³ In *Aguilar v. U.S. Immig. and Customs Enforcement*, 501 F.3d 1 (1st Cir. 2007), the U.S. Court of Appeals for the First Circuit explained that a violation of the right to family integrity could be found in government conduct that intended to interfere with rights to family integrity in some way. Indeed, the First Circuit went so far as to state that “it is easy to imagine how viable claims might lie” if by government action “a substantial number of young children [were] knowingly placed in harm’s way.” In a recent decision in the Southern District of California, a federal judge relied on exactly that statement to identify a constitutional concern with the way the government’s family separation policy is playing out on the border today. *Ms. L. v. ICE*, No. 18-cv-0428 (June 6, 2018).

⁴ See *Santosky v. Kramer*, 455 U.S. 745, 753-54 & n.7 (1982) (recognizing not just the “fundamental liberty interest of natural parents in the care, custody and management of their child” but also “the important liberty interests of the child”); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”) (citations omitted). In *Troxel v. Granville*, the Supreme Court cited nearly 80 years of precedent and described parents’ rights “in the care, custody, and control of their children” to be “perhaps the oldest of the fundamental liberty interests recognized by this Court.” 530 U.S. 57, 66 (2000). The Court has explained that government action may only intentionally infringe on this liberty interest when necessary for the child’s welfare interest and safety. Even in those circumstances, government action is limited, and the parent is constitutionally entitled to a hearing on his or her fitness before their child is taken from their custody. *Stanley v. Illinois*, 405 U.S. 645 (1972). These federal constitutional rights and protections have been applied equally to immigrant and citizen parents in child welfare cases. See, e.g., *In re Doe*, 281 P.3d 95 (Idaho 2012); *In re E.N.C.*, 384 S.W.3d 796 (Tex. 2010); and *In re Interest of Angelica L.*, 767 N.W.2d 74 (Neb. 2009).

75. In 1993 Justice Scalia in *Reno v. Flores* (507 U.S. 292) explained that ensuring that minors will be cared for during the pendency of removal proceedings is “easily done when the juvenile’s parents have also been detained and the family can be released together.”
76. In addition, state laws provide both substantive and procedural protections of the rights of parents to care for their children, and of children to be with their parents, such that children may only be separated from their parents as a matter of last resort.
77. The Flores Agreement *requires* the federal government to place children in custody in the least restrictive setting that is in the best interests of the child, and to grant preference to parents—without regard to the parents’ immigration status—above all other forms of release.
78. Therefore, the decision to place C.D.A. at Defendants-Respondents’ Chicago, Illinois facility violates the FSA, and the child seeks review of this placement decision pursuant to Paragraph 24(b) of the Flores Agreement.

**Count III: Violation of the Flores Agreement –
Paragraph 12 Violation**

79. All previous paragraphs are incorporated as though fully set forth herein.
80. C.D.A. has not been provided, in any way, sufficient communication with his father. They were apprehended together as an asylum-seeking family. As an accompanying child, C.D.A. has enforceable rights under the settlement to communicate freely with his father.
81. Therefore, the decision to place C.D.A. at Defendants-Respondents’ Chicago, Illinois ORR facility violates Paragraph 12 of the Flores Agreement.

Count IV: Violation of Due Process

82. All previous paragraphs are incorporated as though fully set forth herein.
83. The Due Process Clause of the Fifth Amendment applies to all “persons” in the United States and applies to C.D.A., a 9-year-old boy.
84. C.D.A. has a liberty interest under the Due Process Clause in remaining together as a family with his accompanying father.
85. The separation of C.D.A. and his father violates substantive due process because it furthers no legitimate purpose, nor any compelling governmental interest.
86. The separation of C.D.A. and his father also violates procedural due process because it occurred without justification nor hearing.

Request for Relief

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

- A. Declare the separation of C.D.A. from his father as unlawful;
- B. Declare that the separation of C.D.A. from his father violates the Flores Settlement Agreement, a consent decree to which Defendants-Respondents are bound under Paragraph 14;
- C. Declare that the separation of C.D.A. from his father violates the Flores Settlement Agreement, a consent decree to which Defendants-Respondents are bound under Paragraph 12;
- D. Order the proper placement of C.D.A. with his accompanying father pursuant to paragraph 24B of the Flores Settlement;
- E. Order the open and active communication of C.D.A. with his father as required under Paragraph 12 of the Flores Settlement Agreement;

- F. Order Defendants-Respondents to reunite C.D.A. with his father;
- G. Preliminarily and permanently enjoin Defendants-Respondents from continuing to separate C.D.A. from his father;
- H. Enjoin Defendants-Respondents from removing C.D.A. or his father until they are reunited;
- I. Award Plaintiffs reasonable attorney's fees and costs pursuant to 28 U.S.C. § 2412; and
- J. Award all other relief to Plaintiffs that it deems just, equitable, and proper.

Respectfully submitted this 20th day of June, 2018.

Respectfully Submitted,

Dated: June 20, 2018

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**Pro hac vice motions forthcoming*