



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

February 2020 Litigation Update to the Vera Unaccompanied Children Legal Services Program

Ongoing Litigation

I. Detention

[Stipulated Settlement Agreement, *Flores v. Reno*, No.CV 85-4544-RJK \(Px\) \(C.D. Cal. Jan. 17, 1997\)](#): *Flores v. Reno* was filed in 1985 on behalf of immigrant children detained by the federal government. At that time, the Immigration and Naturalization Service (INS) had no nationwide policy on the care and custody of children in its custody. Children were often held in juvenile detention centers for children who had been adjudicated delinquent, in hotels and even in adult detention facilities. Further, there was no consistent policy or uniform procedure governing release of children in INS custody. The lawsuit challenged the conditions of confinement and lack of release procedures. After twelve years of litigation, a federal District Court in the Central District of California approved a class-wide settlement agreement in *Flores v. Reno* on January 28, 1997. The settlement agreement set the national standard for the detention, treatment and release of children in federal immigration-related custody. The settlement agreement requires the government to make prompt and continuous efforts to release children in its custody to a “sponsor” who may include the child’s parent, legal guardian, another adult relative or an adult individual or entity designated by the child’s parent or legal guardian. If prompt release is not possible, the government is required to place children in non-secure facilities that are licensed to provide care of children.

The *Flores* case remains under the supervision of a federal district judge until the government issues final regulations implementing the 1997 agreement. There have been numerous lawsuits filed to enforce the agreement, the most recent of which is *Flores v. Barr*, which is discussed below.

***Flores v. Barr*, No. 19-56326, (9th Cir.)**: On November 15, 2019, the government appealed the district court’s [ruling](#) that the regulations issued by the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) on August 23, 2019 on the [Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children](#), 84 Fed. Reg. 44,392–44,535 (Aug. 23, 2019) do not have the effect of terminating the *Flores* Agreement, the government has not met its burden to show an alternative reason to

terminate the Agreement and the government is permanently enjoined from implementing the new regulations. *Flores v. Barr*, No. 2:85-CV-04544, (C.D. Cal at 24). Briefing in this case is ongoing.

***Saravia v. Sessions, et al.*, No. 3:17- CV-03615 (N.D. Cal):** Complaint alleges that A.H. is present in the U.S. as an unaccompanied alien child, is pursuing (and entitled to) SIJS, was arrested, transported across the country and incarcerated in a secure facility in violation of his constitutional and statutory rights, and the *Flores* decree. The lawsuit was amended in August 2017 to add two additional minor plaintiffs in ORR custody – and also seeks to represent a class of similarly situated minors in ORR custody. Complaint seeks: (1) a declaration that the arrest, transportation, and detention of A.H. are in violation of A.H.’s First and Fifth Amendment rights, the TVPRA, the INA, and the Flores Decree; (2) a declaration that: (a) A.H. is entitled to immediate release by Defendants to the custody of Plaintiff; or, in the alternative, (b) a declaration that A.H. is entitled to be transferred to an ORR facility close to Plaintiffs’ home and afforded a prompt hearing in which ORR has the burden of justifying A.H.’s detention and A.H. has the right to be represented by counsel, notice of and access to the evidence on which ORR relies, and an opportunity to cross examine witnesses and present A.H.’s response before a neutral decision maker; or, in the alternative, (c) a declaration that A.H. is entitled to a bond redetermination hearing; (3) a temporary restraining order and a preliminary and permanent injunction ordering Defendants, and all persons acting under their direction: (a) to immediately release A.H. to the custody of Plaintiff; or, in the alternative (b) to transfer A.H. to an ORR facility close to Plaintiffs’ home and afford him a prompt hearing in which ORR has the burden of justifying A.H.’s detention and A.H. has the right to be represented by counsel, notice of and access to the evidence on which ORR relies, and an opportunity to cross examine witnesses and present A.H.’s response before a neutral decision maker; or, in the alternative, (c) to conduct a bond redetermination hearing within three (3) court days of the issuance of the injunction. Settlement conference was held on December 9, 2019. The parties reached agreement on all material terms of the settlement (subject to the contingency of agency and DOJ approval). The process for finalizing the draft settlement and obtaining the necessary approvals likely will extend into January. As of February 14, 2020, there is no further information available on PACER.

***Lucas R., et al. v. Azar, et al.*, No. 2:18- cv-05741 (C.D. Cal.):** Class action seeking declaratory and injunctive relief. The complaint challenges the federal government’s (1) refusal to release children to parents or other available custodians; (2) detention of children in secure or medium secure facilities, or Residential Treatment Centers; and (3) administration of psychotropic medication to children without procedural safeguards. On November 2, 2018, the court granted the Defendants’ motion to dismiss in part, dismissing any claims seeking enforcement of the

Flores settlement as duplicative. Plaintiffs can, however, pursue claims based on the Defendants' failure to provide sufficient safeguards for unaccompanied minors to exercise their Flores rights, as well as their TVPRA, APA, and due process claims. The court granted plaintiffs' motion for class certification, certifying five separate classes of all minors in ORR custody. The parties have held multiple settlement conferences between December and February and settlement discussions are ongoing. The bench trial is set for October 20, 2020. The final pretrial conference is set for September 22, 2020.

Garza v. Azar, et al., No. 1:17-cv-02122 (D.D.C.): Class action seeking declaratory and injunctive relief. The complaint challenges the federal government's policies preventing unaccompanied children from seeking an abortion while in the custody of the Office of Refugee Resettlement (ORR). The complaint alleges that this practice violated the children's rights under the Establishment and Free Speech Clauses of the First Amendment, and the Fifth Amendment right to privacy, liberty, and informational privacy. Defendants are currently drafting a new policy regarding the issue of parental notification. The parties met and conferred on February 7, 2020. The Defendants continue to work to complete the draft of the new policy and anticipate completion before March 9, 2020, when a stipulated stay to the litigation will expire. Upon Plaintiffs' receipt and review of the policy, the parties will meet and confer to determine whether further litigation of the parental notification policy is required, and, if so, to discuss a proposed briefing schedule.

Ramirez et al. v. U.S. ICE, et al., No. 1:18-cv-00508 (D.D.C.): Class action seeking declaratory and injunctive relief. The complaint alleges that the federal government placed the plaintiffs in adult detention after they turned eighteen without considering less restrictive placements in violation of the TVPRA. The bench trial began on December 2, 2019 and concluded on January 15, 2020. Plaintiffs and Defendants were ordered to file proposed findings of fact and conclusions of law, along with separate briefing on remedies, on or before February 18, 2020. The parties shall respond to one another's filings on or before March 10, 2020.

J.E.C.M., et al. v. Hayes, et al., No. 1:18-cv-903-LMB (E.D. Va.): Petition for writ of habeas corpus filed on July 20, 2018, seeking release of a 13-year-old Honduran boy (J.E.C.M.) from the Northern Virginia Juvenile Detention Center to his brother-in-law. Defendants moved to dismiss for lack of jurisdiction and for failure to state a claim. The Human Trafficking Legal Center filed an amicus curie opposition to the motion to dismiss for failure to state claim. In November 2018, the Court granted the motion to dismiss as to the individual claims of plaintiffs, but denied the motion in all other respects. Petitioner successfully sought to certify the following two classes

under Fed. R. Civ. P. 23(c)(1): (1) Minor Class: All children designated as unaccompanied alien minors who (a) were, are being, or will be held in the custody of the ORR anywhere in Virginia at any date on or after July 20, 2018, and (b) have been or will be held in ORR custody for 60 days or more. (2) Sponsor Class: All individuals, anywhere in the United States, who (a) have initiated the process to sponsor a member of the Minor Class (b) as a Category 1 or Category 2 sponsor (c) by either (i) returning a family reunification packet to ORR or to an ORR contracted caseworker or (ii) otherwise advising ORR or an ORR-contracted caseworker of their desire or willingness to sponsor the Minor Class member (d) to whom the Minor Class member has not been released. A motion hearing was held on November 22, 2019. Both parties moved for summary judgment and the judge took those motions under advisement. The parties have since filed notices and supplemental memoranda in relation to the motions for summary judgment. Those documents in this case are not available to the public.

II. Asylum

[*J.O.P. v. DHS, No. 19:1944 \(D.C. Oct. 15, 2019\)*](#): On October 15, 2019, the U.S. District Court in Greenbelt, Maryland granted a preliminary injunction in this lawsuit challenging a [May 31, 2019 USCIS policy](#) limiting USCIS asylum jurisdiction over applicants previously determined to be “unaccompanied alien children.” The injunction adopts the terms of the previous TRO issued in this case, providing assurance that USCIS must continue to abide by its 2013 policy until the conclusion of the litigation or further order of the court. Plaintiffs’ motion to enforce the preliminary injunction was filed on November 22, 2019, an amended complaint was filed on December 20, 2019, and Plaintiffs’ reply in support of their motion to enforce the preliminary injunction was filed on January 22, 2020. Please see [CLINIC’s litigation webpage](#) for more information about the litigation and case-related documents.

Advocates for clients in the following situations should contact Plaintiffs’ counsel Mary Tanagho Ross, mross@publiccounsel.org, and Kevin DeJong, KDeJong@goodwinlaw.com:

- have received an adverse decision from USCIS dated **on or after August 3, 2019** based on USCIS’s May 31, 2019 policy.
- have not yet received a retraction of an adverse decision from USCIS issued **before August 3, 2019 and** based on USCIS’s May 31, 2019 policy.
- have received an adverse jurisdictional decision from USCIS **on or after August 3, 2019** based on a misapplication of the Kim Memo.
- have requested **on or after August 3, 2019** but to no avail that USCIS speed up adjudication of a case over which it has initial jurisdiction in the face up an upcoming immigration court hearing.

- have witnessed ICE advocating **on or after August 3, 2019** for an IJ to take jurisdiction over an asylum claim whose initial jurisdiction lies with USCIS under the terms of the Kim Memo.

III. Special Immigrant Juvenile Status

[J.L. et al. v. Cuccinelli, et al. No. 5:18-CV-4914-NC \(DMR\), \(N.D. Cal Oct. 25, 2019\)](#): On December 18, 2019, the U.S. District Court for the Northern District of California granted Final Approval of the Settlement Agreement in *J.L. et al. v. Cuccinelli, et al.*, a lawsuit which challenged USCIS' requirement that a state court have the authority to return a child to the custody of her parent in order for that court to issue valid predicate findings in support of a Special Immigrant Juvenile Status ("SIJ") petition (the "Reunification- Authority Requirement"). On October 30, 2019, the Court had granted Preliminary Approval to the Settlement Agreement.

The Final Class Notice and other documents related to the case can be found on Public Counsel's webpage for more information about the litigation and the Settlement Agreement.
<http://www.publiccounsel.org/SIJS-CA>.

Note from Plaintiffs' Counsel: It recently came to our attention that the government may have violated the preliminary injunction issued by the District Court, which prevented them from taking any adverse adjudicatory or enforcement action against class members. Please reach out to us if you suspect the government may have violated the preliminary injunction. Specifically, let us know if, between October 24, 2018 and December 18, 2019, the government took any of the following action against a child with a 1501.1 guardianship and a pending I-360:

1. Issued an NTA or otherwise initiated removal proceedings
2. Executed, or attempted to execute, a removal order
3. Detained
4. Issued an RFE, NOID, or denial of the I-360

Please send us the following information:

1. Class member's full name
2. A number
3. Date I-360 was filed
4. I-360 receipt number
5. Confirmation that the I-360 petition was based on 1510.1 guardianship
6. Date of violation and details about what occurred

Finally, if your client is a class member and has received a final removal order and would like to file a motion to reopen his or her removal proceedings or seek to rescind the final removal order,

please let class counsel know as soon as possible. Please send all case related communications to: CASIJClassAction@manatt.com.

The Court previously certified the following class: “Children who have received or will receive guardianship orders pursuant to California Probate Code § 1510.1(a) and who have received or will receive denials of their SIJ petitions on the grounds that the state court that issued the SIJ Findings lacked jurisdiction because the court did not have the authority to reunify the children with their parents.” Per the terms of the Settlement, you could become part of the Class if you have received or will receive a Section 1510.1 guardianship order from the Probate Court after your 18th birthday and before your 21st birthday and you filed an SIJ petition by December 15, 2019. The adjudication timeline benefits of the Settlement may also extend to you if you were 18 or older when you submitted your SIJ petition and you submitted your SIJ petition before October 1, 2019.

The Settlement Agreement provides significant relief for the Class Members, including:

- Prohibiting the Government from applying the Reunification-Authority Requirement. *See* Agreement at III.A.
- Providing that “[a] Person is not disqualified from SIJ classification provided that (1) state law confers upon a state court the jurisdiction to declare the Person dependent, legally commit the Person to an individual or entity, or place the Person under the custody of an individual or entity regardless of age; and (2) the Person is unmarried and under the age of 21 when he or she petitions for SIJ classification.” *See* Agreement at III.C.
- Requiring the Government to recognize California Probate Courts as “juvenile courts” for the purposes of the SIJ Statute and to recognize children under the age of 21 appointed guardians under California Probate Code § 1510.1 as eligible for SIJ. *See* Agreement at III.B, D.
- Prohibiting the Government from asserting new grounds for a request for evidence (RFE), notice of intent to deny (NOID), notice of intent to revoke (NOIR), denial, or revocation for Class Members who had already received an RFE, a NOID, a NOIR, denial or revocation based solely on the Reunification-Authority Requirement, except where USCIS is aware of a change in the facts regarding Class Member’s eligibility that has occurred since USCIS’s previous action. *See* Agreement at V.D,E.
- Prohibiting the Government from issuing any general RFEs to Class Members requesting that they affirmatively indicate any changes in factual circumstances that is not otherwise indicated in information available to USCIS. *See* Agreement at V.E.
- Prohibiting the Government from asserting any age-based related grounds (other than being under 21 years of age) for denying SIJS to Class Members. *See* Agreement at V.E.

The Settlement Agreement also sets forth a timeline for adjudication and re-adjudication of Class Members' SIJ petitions in accordance with its terms. *See* Agreement at V.A-D. Beginning on the Effective Date of the Settlement Agreement, USCIS must:

- Within **30 days**, adjudicate the SIJ petitions of all Class Members who previously received denials or revocations of their SIJ petitions;
- Within **60 days**, adjudicate the SIJ petitions of all Class Members in removal proceedings or who have received final orders of removal;
- Within **90 days**, adjudicate the SIJ petitions of All Class Members who previously received RFEs, NOIDs, or NOIRs;
- Within **180 days**, adjudicate all other Class Members' SIJ petitions.

After USCIS adjudicates all the Class Members' SIJ petitions in accordance with the Settlement Agreement, the Settlement Agreement will remain in force and the Court will retain jurisdiction over any further enforcement for one year.

See Public Counsel's webpage for more information about the litigation and the Settlement Agreement. <http://www.publiccounsel.org/SIJS-CA>. If you believe that USCIS's adjudication of your client's SIJ Petition violates the Agreement, please contact Plaintiffs' counsel at CASIJClassAction@manatt.com.

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Moreno Galvez v. Cissna, et al., No. 0:19-cv-35884, (9th Cir): Class action seeking injunctive and declaratory relief. Complaint challenges the federal government's policy of refusing to adjudicate plaintiffs' SIJS petitions in accordance with the INA. On July 17, 2019, the Court granted plaintiffs' motion to certify the class and also granted plaintiffs' motion for preliminary injunction. The Court ruled that defendants are enjoined and restrained from: (1) denying SIJS on the ground that a Washington state court does not have jurisdiction or authority to "reunify" an immigrant with his or her parents; and (2) initiating removal proceedings against or removing any SIJS petitioner whose SIJS petition has been denied on the ground that the Washington state court did not have jurisdiction or authority to "reunify" an immigrant with his or her parents. The Court ordered that USCIS shall, within 30 days, reopen and re-adjudicate any SIJS petition that was denied on the grounds that the Washington state court did not have jurisdiction or authority to "reunify" an immigrant with his or her parents. USCIS was also ordered to adjudicate all outstanding SIJS petitions based on a Washington state court order within 30 days if more than 150 days have already passed since the petition was filed. All other SIJS petitions

based on Washington state court orders shall be adjudicated within the 180-day period set forth in the statute in the absence of an affirmative showing that the petition raises novel or complex issues which cannot be resolved within the allotted time. The Court denied the government's motion for reconsideration on August 23, 2019. The government filed an appeal of the injunction on October 21, 2019. DHS opening brief is due on February 26, 2020. Appellees' answering brief is due March 27, 2020.

Perez v. Cuccinelli, No. 18-1330, 2020 U.S. App. LEXIS 3993 (4th Cir. Feb. 10, 2020): The U.S. Citizenship and Immigration Services (USCIS) improperly denied the Plaintiff's application for Special Immigrant Juvenile Status because USCIS's interpretation of the Special Immigrant Juvenile Provision, that 8 U.S.C.S. § 1101(a)(27)(J)(i) required a permanent custody order, was entitled to no deference, defied the plain statutory language, and impermissibly intruded into issues of state domestic relations law.

N. B. D. v. Kentucky Cabinet for Health and Family Services (petition for writ of certiorari pending before the Supreme Court): The issue presented is whether federal law *requires* state courts to make predicate SIJ findings upon request. The Kentucky high court found that it does not, but there is a lack of consensus across states. Petitioners have requested review before the Supreme Court. The Court has not decided whether to grant the petition for *writ of certiorari*. On January 13, 2020, it asked the U.S. solicitor general to file a brief expressing the federal government's views on the issue.