



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

May 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. Briefing in this case is ongoing. On January 28, 2020, CLINIC and its nonprofit partners submitted a brief in *Flores v. Barr* to provide the court with their on-the-ground expertise regarding the adverse impact on children should the government be permitted to go forward with its new regulations.

***Flores v. Barr*, No. 2:85-CV-04544, (C.D. Cal):** On March 28, 2020, United States District Judge Dolly Gee issued a nationwide temporary restraining order (TRO) requiring that the Trump administration "make every effort to promptly and safely release" from custody the *Flores v. Barr* class members. Class members in the *Flores* case include all children detained by ICE in family detention centers and all unaccompanied children detained by ORR. The restraining order also requires that by April 6 the Government provide the court, the court-appointed Special Master, and the lawyers representing the children data on all minors not released by then including their names, dates of apprehension, places of detention, and why they have not been released in eight states that have 3000 or more confirmed COVID-19 cases as of the date of the restraining order. The states are California, Illinois, Louisiana, Massachusetts, Michigan, New Jersey, New York, and Washington. The order also requires that by no later than April 9, 2020, juvenile coordinators "shall provide the Court and the Special Monitor with a report regarding whether their facilities are at, above, or below capacity levels (with specific numbers) and the status of implementation of CDC-compliant guidance.

On April 10, 2020, Judge Gee extended the TRO until April 24, 2020, granted the Defendants' request for supplemental briefing and scheduled a videoconference on the Plaintiffs' motion for preliminary injunction on April 24, 2020. On April 24, Judge Gee treated the Plaintiffs' motion for preliminary injunction as a motion to enforce the *Flores Settlement Agreement* which she denied in part and granted in part. Most importantly, Judge Gee ordered ORR and ICE to make every effort to release class members with suitable custodians, including custodians who are in the MPP program or are in removal proceedings absent a specific and individualized determination that they are a flight risk or danger to themselves or others. The court scheduled a video status conference for May 22, 2020 to discuss compliance with the order.

***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 May 12, 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. On March 10, 2020, the court issued an order approving the parties' joint stipulation to modify the trial schedule. The bench trial is now set for January 19, 2021. The final pretrial conference is set for December 22, 2020. On April 2, 2020, the court denied the plaintiffs' request for an order to show cause regarding a preliminary injunction. The plaintiffs had requested that members of the class be immediately released from detention, given the COVID-19 crisis, unless the defendants could justify further detention. The court indicated that the temporary restraining order granting relief in the related *Flores v. Barr* case (see above) rendered the plaintiffs request for injunctive relief moot.

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. On April 24, 2020 and May 11, 2020, the parties met and conferred. They stipulated to stay the proceedings while they consider how to proceed with motions practice. A joint status report is due to the court on June 3, 2020, and every thirty days thereafter.

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. In April 2020, the plaintiffs and defendants filed proposed findings of fact and conclusions of law, along with separate briefing on remedies. As of May 12, 2020, there is no further information available to the public.

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. The court denied the plaintiff's motion for a temporary restraining order on May 8, 2020 and ordered the parties to submit a status report no later than May 15, 2020. The documents related to the motion for a temporary restraining order and all other documents in this case are not available to the public.

II. Asylum

[J.O.P. v. DHS, No. 19:1944 \(D.C. Oct. 15, 2019\)](#): 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. The most recent order of the court, dated March 31, 2020, indicated that the court would contact both parties to arrange a status call to discuss all pending motions. Please see [CLINIC's litigation webpage](#) for more information about the litigation and case-related documents.

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.

On February 14, 2020, the court issued an order holding the defendants in civil contempt and ordering sanctions. On March 27, 2020, the court issued an order granting the defendants' motion for reconsideration regarding compliance. A status conference is scheduled for May 13, 2020. *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>.

***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. On March 4, 2020, Appellants' unopposed motion for dismissal was granted with prejudice.

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, the Court asked the U.S. solicitor general to file a brief expressing the federal government's views on the issue.

Joshua M. v. Barr, No. 3:19cv770, 2020 U.S. Dist. (E.D. Va. Feb. 20, 2020): The court denied the government's motion to dismiss. The petitioner, who has an approved I-360 petition, filed a *habeas corpus* petition challenging his removal order and pending removal. The court noted that the petition implicates the cross-section between the Executive, Legislative, and Judicial branches, and raises questions regarding how the judicial branch may proceed when the executive branch has detained and ordered removed a person that has received a special legal status in accordance with statutes that the legislative branch enacted. "Ultimately, Joshua's success in prevailing against this motion to dismiss turns on his singular (and rarely evaluated by courts) immigration status: he is a Special Immigrant Juvenile."

A.O. v. Cuccinelli, No. 19-cv-06151-SVK, 2020 U.S. Dist. (N.D. Cal. May 1, 2020): The court issued a preliminary injunction that enjoins the government from denying SIJS petitions on the grounds that a California juvenile court lacks authority to reunify an 18-to-20 year old youth with his or her parents. It also enjoins the government from initiating removal proceedings against or removing any SIJS petitioner who has been declared a dependent under California Welfare and Institutions Code Section 300 and whose SIJS petition has been denied on the grounds that the juvenile court lacks authority to reunify an 18-to-20 year old youth with his or her parents. The injunction orders the government to provide no less than 14-days' notice to plaintiffs' counsel before taking any adverse adjudicatory or enforcement action against any plaintiffs or members of the proposed class during the course of the litigation.

Notable Federal Court Decisions

Amides-Galdamez v. Barr, No. 19-1290 NAC, 2020 U.S. App. (2d Cir. Apr. 22, 2020): The court held that the BIA did not abuse its discretion in denying a continuance based on the Respondent's pending bond appeal or pending application for Special Immigrant Juvenile Status (SIJS). The court found that the bond proceedings were separate and apart from the removal proceedings, the outcome of the bond proceedings was too speculative to support a continuance and the bond proceedings did not relate to the merits of his applications for relief from removal. The court further held that there was no request for a continuance based on his pending SIJS application for the IJ to rule on and that the BIA reasonably concluded that even assuming the

Respondent was eligible for SIJS, the likelihood of that relief remained speculative given the long wait for an available visa. Therefore, the court held that the BIA did not abuse its discretion in finding that a pending SIJS application did not meet the good cause standard for a continuance.

***C.T.M. v. Moore*, No. 3:20-CV-0540-B-BT, 2020 U.S. Dist. (N.D. Tex. Mar. 16, 2020):**

Petition for writ of *habeas corpus*, mandamus and temporary restraining order filed for an unaccompanied child held in adult custody by ICE, seeking her release from adult custody and placement with ORR. A radiograph was used to assist in determining the child's age. The IJ determined she was a child, and ICE did not object, but ORR disagreed and refused to accept her for placement in its custody. On March 16, 2020, the court denied the motion for a TRO concluding that C.T.M. has not established a substantial likelihood of success on the merits of her claims. The court further held that even if the court were to recognize a likelihood of success on the merits based on C.T.M.'s claim of unreasonable delay, which she raised at the hearing, she has not shown a substantial threat of irreparable harm.

***J.S.G. ex rel. Hernandez v. Stirrup*, No. SAG-20-1026, 2020 U.S. Dist. (D. Md. Apr. 26,**

2020). The court granted a temporary restraining order (TRO) and a writ of *habeas corpus* directing ORR to release the petitioner to his grandfather before he turned 18 and was transferred to ICE adult detention. In the TRO the court found that: (a) the petitioner was likely to succeed on the merits of his claims that Respondents violated the Trafficking Victims Protection Reauthorization Act of 2008, and the *Flores* Settlement Agreement; (b) the petitioner was likely to suffer imminent, irreparable harm, absent a TRO; (c) the balance of the equities favors granting the petitioner a TRO; and (d) issuing a TRO serves the public interest. The court enjoined the government from detaining the respondent at the ORR shelter and ordered his release to his grandfather before his 18th birthday.