

SARAVIA V. BARR – NOTICE OF PROPOSED SETTLEMENT

If you are a non-citizen minor who came to the United States as an unaccompanied child, was released from government custody, and then re-arrested by immigration authorities under suspicion of gang membership, your rights may be affected by a proposed class action settlement.

A proposed settlement has been reached in a class action lawsuit called *Saravia v. Barr*, Case No. 3:17-cv-03615 (N.D. Cal.). This lawsuit is about the rights of noncitizen minors who were once detained in U.S. government custody by the Office of Refugee Resettlement (“ORR”), released to parents or other sponsors in the United States, and then re-arrested by the government based on allegations of gang membership or affiliation. The parties in the lawsuit have proposed to settle the case, and a federal court must decide whether to approve the settlement.

This Notice will tell you about your rights under this proposed settlement. You are not being sued, and this is not an advertisement. If you think this Settlement relates to you, please read.

What is the lawsuit about?

Saravia v. Barr is a federal court case brought on behalf of a class of noncitizen minors who entered the United States as unaccompanied minors, were detained by ORR, were released to a parent or other sponsor, and were later rearrested by immigration officials based on allegations of gang affiliation. A case like this is brought on behalf of a whole group of people who are alleging similar legal disputes.

The case alleges that the rearrest and detention of, and denial of immigration benefits to, these minors violates the U.S. Constitution, the Trafficking Victims Protection Reauthorization Act (“TVPRA”), and other laws. In November 2017, a federal Judge issued an order requiring that the government provide Class Members with a hearing before an immigration judge within seven days of their rearrest (called a “Saravia Hearing”). See *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197-98 (N.D. Cal. 2017).

After additional litigation, Plaintiff and the government subsequently agreed to a settlement, which will (1) provide Class Members with the right to a Saravia Hearing pursuant to certain procedures, and (2) provide certain rights to Class Members with respect to their applications for certain immigration benefits, including applications for asylum, Special Immigrant Juvenile (“SIJ”) status, or T or U nonimmigrant status.

The government denies any wrongdoing, but is settling the case in order to avoid the expense and resources to keep fighting the case. The Plaintiff and their attorneys believe that the Settlement provides important rights and benefits for the Class, and that it is in the best interests of the Class to settle the case, while avoiding the expense and delay of continuing to litigate the case.

Who is included?

There are two groups of people who will have rights under this Settlement. You may be a “Class Member,” and you may also be a “Subclass Member.”

You may be a Class Member if you:

- Are a noncitizen minor;
- Came to the United States as an unaccompanied minor;
- Were previously detained in Office of Refugee Resettlement (“ORR”) custody and then released to a parent or other sponsor;
- Were rearrested by the Department of Homeland Security (“DHS”) based, in whole or in part, on allegations of gang affiliation; and
- were not subject to a final order of removal.

You may also be a Subclass Member if you:

- Are or were a Class Member as described above; and
- Applied for asylum, Special Immigrant Status (“SIJ”), T or U nonimmigrant status, or a waiver of inadmissibility or application for adjustment of status that is related to an application for asylum, SIJ status, or T or U nonimmigrant status, before the age of 21; and
- Your application was denied by United States Citizenship and Immigrant Services (“USCIS”) when any information that you are or may have been affiliated with a gang is the basis for the denial.

What rights does the settlement provide?

This is only a summary of the Settlement. If you want to know more, you should read the Settlement or talk to your lawyer to learn more about it.

The Settlement affects the U.S. government’s authority to arrest or detain the Class Members. Among other things, the Settlement Agreement requires that the U.S. government will:

- Adopt policies and procedures for how ICE arrests minors who are suspected of being gang members or affiliates. These policies require ICE to follow guidance in determining before any operation whether any unaccompanied alien children (“UAC”) may be encountered. If ICE arrests a UAC, ICE must contact other ICE officers and lawyers for guidance concerning the legal requirements that apply to the arrest or detention of Class Members. If the Class Member’s circumstances have not changed since their last release from ORR, the Class Member will be released to the prior sponsor they were released to, or to immediate family members who have no ascertainable criminal history and/or were not targets of the operation.
- Ensure that ICE officers are trained on the procedures and policies for arresting Class Members.

If a Class Member is arrested, the Settlement ensures that he or she will get a hearing before an immigration judge where they can argue that he or she should not be detained. The Settlement requires that the hearing will follow these rules:

- The hearing must take place within ten days of the rearrest, unless the Class Member wants more time to get ready for the hearing or find a lawyer for the hearing.
- The government will give the Class Member notice and information explaining the nature of the proceedings. This notice must be given to the Class Member and his or her counsel within 48 hours of the rearrest.
- The Class Member will also have the right to select where the hearing will take place.
 - If the Class Member is in ICE detention, the hearing will take place in the place of the immigration court nearest to the Class Member's rearrest, unless within five days, the Class Member chooses to have the hearing take place in the immigration court nearest to where they are currently detained, or the place where they lived before they were arrested.
 - If the Class Member is in ORR detention, the Class Member can choose whether to have the hearing in the immigration court nearest to the place they are currently detained, or where they were rearrested, or where the Class Member was living before they were rearrested, unless there is no ORR facility willing to accept the minor within three hours' drive of the immigration court where the Class Member was rearrested or living before they were rearrested.
- At this hearing, the government has the burden to show how the circumstances have changed since the Class Member was released to his or her sponsor such that the Class Member is either a danger to the community or is a flight risk justifying his/her detention. The Class Member has the right to hire a lawyer for that hearing, or to ask for time to find a lawyer.
- If a Class Member wins their hearing, the Class Member must be released to their previous sponsor, or if in ICE's custody a parent or legal guardian, within three (3) calendar days, except where the sponsor is either unable or unfit to reassume custody.
- If the previous sponsor is not available anymore, or ORR has evidence that the prior sponsor, or others in the sponsors household, are abusing or neglecting the Class Member or other children living with them, or (in some cases) the child was not living with the prior sponsor before rearrest, ORR will evaluate whether the child can be released to a new sponsor.
- Any Class Member who is not released within three (3) days will be put in a shelter if there is one available to take the child.

The Settlement also sets procedures for Subclass Members who applied for certain immigration benefits before USCIS, and were denied those benefits because the government accused them of being gang members or affiliates.

The benefits at issue are Special Immigrant Juvenile Status, T-visas, U-visas, and asylum. The Settlement does not involve other immigration benefits, and does not involve immigration benefits that you apply for in immigration court.

The Settlement requires the government to:

- Adopt policies and procedures for Subclass Members who apply for Special Immigration Juvenile Status, which affects USCIS’s ability to rely on allegations of gang affiliation or membership to deny immigration benefits.
- Give Subclass Members notice and evidence, or a summary of evidence, if the government wants to deny immigration benefits based on allegations of gang affiliation.
- Give Subclass Members the chance to respond with their own arguments and evidence.
- Give any Subclass Member who was previously denied an immigration benefit based on allegations of gang affiliation the chance to apply for a new decision.

The Settlement Agreement does not provide any monetary payments to Class Members, but also does not prevent Class Members from filing other lawsuits seeking money for harms they may have suffered due to the facts in the lawsuit.

If the Settlement Agreement is approved, Class Members will settle the legal claims identified in the Agreement and agree to stop fighting this lawsuit. All of the terms of the proposed Settlement are subject to Court approval at a “Final Approval Hearing” which is explained below. A copy of the Settlement Agreement is available at <https://www.aclunc.org/our-work/legal-docket/saravia-v-sessions-due-process-immigrant-youth>, or, if this Notice was mailed, is enclosed.

You have the right to object to the Settlement.

If you like the Settlement’s terms, you don’t have to do anything.

If you are not satisfied with the Settlement, you do not have the right to opt out of it. But you do have the right to ask the Court to deny approval for the Settlement by filing an objection. If the Court denies approval, the lawsuit will continue. If that is what you want to happen, you must object. You may object to the proposed settlement in writing. If you object in writing, you may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must:

- Clearly identify the following case name and number: *Saravia v. Barr*, Case No. 3:17-cv-03615 (N.D. Cal.);
- Be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and
- Be filed or postmarked on or before December 14, 2020.

When and where will the Court decide whether to approve the Settlement?

The Final Approval Hearing will be held on January 14, 2021, at 10 AM PT at Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, to determine the fairness, reasonableness, and adequacy of the proposed Settlement. The date may change without further notice to the class.

Where can I get more information?

This notice summarizes the proposed settlement. For the full terms of the settlement, please see the attached Settlement Agreement. You should feel free to talk to your lawyer if you want to know more about the Settlement.

The Settlement Agreement is also available at the following websites:

<https://www.aclunc.org/our-work/legal-docket/saravia-v-sessions-due-process-immigrant-youth>

<https://www.ice.gov/legal-notices>

<https://www.acf.hhs.gov/ort/resource/unaccompanied-childrens-services>

You can also contact Class Counsel at these mail or email addresses:

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This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Francisco Division, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

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