UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L.V.M., a minor, by and through his next friend EDITH ESMERALDA MEJIA DE GALINDO, on his own behalf and on behalf of others similarly situated, Plaintiffs/Petitioners, v. SCOTT LLOYD, Director, Office of Refugee Resettlement; JONATHAN WHITE, Deputy Director, Office of Refugee Resettlement; STEVEN WAGNER, Acting Assistant Secretary for the Administration for Children and Families, U.S. Department of Health and Human Services; ALEX AZAR, Secretary, U.S. Department of Health and Human Services; ELCY VALDEZ, Federal Field Specialist, Office of Refugee Resettlement; JEREMY KOHOMBAN, President and Chief Executive Officer, Children's Village. Defendants/Respondents.	Case No. **CLASS ACTION COMPLAINT AND PETITION FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This class action lawsuit challenges the government's prolonged detention of immigrant children across New York State. Thousands of children who make the long and perilous journey to the United States each year are trauma survivors fleeing violence and persecution in their home countries. In recognition of this population's vulnerability, federal laws and policies offer special protections to these children and require that they promptly be reunited with loved ones in the United States while their immigration cases are adjudicated.

2. In a sharp break from the laws and policies intended to protect these vulnerable children, the Trump administration has vilified and targeted them. President Trump has said that large numbers of immigrant children are gang members and "animals;" Attorney General Sessions has described them as "wolves in sheep's clothing;" and both men have denounced the laws

that protect these children. On the day before the filing of this lawsuit, the administration issued a statement attacking the federal statute that protects immigrant children, characterizing its protections as "loopholes."

3. Under Scott Lloyd, whom President Trump appointed to head the agency responsible for the care of immigrant children – the Office of Refugee Resettlement – the process of reunifying the children in the plaintiff class has ground to a virtual halt, trapping these children in highly restrictive government-controlled facilities. Among other measures, Lloyd altered agency policy and practice in mid-2017 such that he now personally reviews and must approve nearly all reunification decisions involving children in the plaintiff class. In the six months of implementing this new procedure (June to December 2017), Lloyd approved the release of only a handful of class members in New York. This marks a significant departure from years past where children like the class members in this case waited only one to three months for release.

4. Plaintiff L.V.M. is one of dozens of children in New York victimized by the Trump administration's new regime for handling immigrant children. L.V.M. had never spent a night apart from his mother until July 2017, when federal officials removed him from his home on Long Island on false gang allegations. The only judge to review that claim soundly rejected it, ORR itself has moved L.V.M. to a placement reserved for children who do not present a danger, L.V.M. has not had a single disciplinary incident while in detention, and his mother has done everything requested of her to secure her son's return home. Nonetheless, L.V.M. remains in government custody seven months later with no end in sight and no explanation for why he has yet to be returned to his mother's care. And not only does his plight exemplify the unlawful and damaging delays in the reunification process, it also reveals the depth of Lloyd's role in

this process, as he personally interviewed L.V.M. shortly after he was detained, a remarkable step given that Lloyd heads an agency with thousands of children in its custody.

5. Given the specter of indefinite detention, L.V.M. now seeks the Court's intervention on behalf of himself and a class of minors similarly situated to him so that he can be reunited with his mother and so that immigrant children in custody in New York will no longer be subjected to endless and unexplained delays and to the grievous harms that children suffer when separated from their families and left to languish in government custody. The defendants' actions violate the federal statute that governs the detention and release of immigrant children, the Administrative Procedure Act's prohibition on unreasonable delays and arbitrary and capricious agency conduct, and the Constitution's Due Process Clause. Defendants' actions are causing serious and irreparable harm to L.V.M. and the other juveniles in the plaintiff class. The plaintiffs therefore seek declaratory and injunctive relief from this Court to end these violations and harms.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1361 (mandamus).

7. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to these claims occurred in this district. Venue is also proper under 28 U.S.C. § 2241(d) because L.V.M. is detained within this district.

PARTIES

8. Plaintiff L.V.M. is a 17-year-old boy from El Salvador who has been detained by the defendants since July 6, 2017.

9. Plaintiff Edith Esmeralda Mejia de Galindo is L.V.M.'s mother. She lives in Bellport, New York, and prior to L.V.M.'s detention by defendants in July 2017 had resided with and cared for her son throughout his life.

10. Defendant Alex Azar is the Secretary of the Department of Health and Human Services, the department of which ORR is part. Azar is a legal custodian of L.V.M. and is sued in his official capacity.

11. Defendant Steven Wagner is the Acting Assistant Secretary for the Administration for Children and Families under the U.S. Department of Health and Human Services. The Administration for Children and Families is the office within HHS that has responsibility for ORR. Wagner is a legal custodian of L.V.M. and is sued in his official capacity.

12. Defendant Scott Lloyd is the Director of the Office of Refugee Resettlement ("ORR"). ORR is the government entity directly responsible for the detention of L.V.M. Lloyd is a legal custodian of L.V.M. and is sued in his official capacity.

13. Defendant Jonathan White is the Deputy Director of ORR. White is a legal custodian of L.V.M. and is sued in his official capacity.

14. Defendant Elcy Valdez is the Federal Field Specialist for ORR who oversees Children's Village. Federal Field Specialists are ORR officials who act as regional approval authorities for the transfer and release of most children in facilities under their supervision. Valdez is a legal custodian of L.V.M. and is sued in her official capacity.

15. Defendant Jeremy Kohomban is the President and Chief Executive Officer of the Children's Village, a government-contracted nonprofit facility in Dobbs Ferry, N.Y. where L.V.M. is currently in custody. Kohomban is a legal custodian of L.V.M. and is sued in his official capacity.

FACTS AND LEGAL FRAMEWORK COMMON TO ALL PLAINTIFFS

Legal Framework and Policies Governing Custody and Release of Immigrant Children

16. Each year, thousands of children come to the United States from foreign countries, some with relatives and some alone. In recent years, the U.S. has seen an influx of children from Mexico and Central America fleeing endemic levels of crime and violence that have made those countries extremely dangerous, especially for children and young adults. The United Nations estimates that nearly two-thirds of immigrant children now coming to the U.S. from Mexico and Central America have suffered harms and persecution warranting international refugee protection.

17. In the 1980s and 1990s, immigrant children who arrived to the U.S. were routinely locked up for months in unsafe and unsanitary jail cells, in remote facilities across the country. These conditions prompted a federal lawsuit, *Flores v. Reno*, which resulted in a 1997 consent decree still effective today that sets national standards for the detention, release, and treatment of immigrant children in government custody. In addition to setting certain minimal detention standards, *Flores* guarantees that children shall be released "without unnecessary delay" and requires the Government to undertake "prompt and continuous efforts" towards family reunification. The *Flores* consent decree also gives these children the right to a bond hearing before an immigration judge.

18. In 2002, Congress took further action to protect this vulnerable population when it passed the Homeland Security Act ("HSA") and transferred the care and custody of unaccompanied immigrant children from the Immigration and Nationality Service to the Office of Refugee Resettlement, housed within the Department of Health and Human Services. ORR is not a security agency; its mission is to "incorporate[e] child welfare values" into the care and placement of unaccompanied immigrant children.

19. Building on *Flores* and the provisions of the HSA regarding immigrant children, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), which grants legal protections to children in ORR custody and tasks the agency with ensuring they are "promptly placed in the least restrictive setting that is in the best interest of the child." Senator Diane Feinstein, a sponsor of the bill that would become the TVPRA, explained that the legislation was intended to redress situations like one she had personally witnessed, where an unaccompanied child remained in custody for nine months after her initial detention. The text and legislative history of the TVPRA make clear that Congress enacted it to facilitate the speedy release and minimally restrictive placement of immigrant children.

20. ORR has never promulgated regulations under the TVPRA. The only public guidance on ORR's detention and release procedures is a guide that has existed for at least a decade but was not published online until 2015.[1] ORR edits and amends this guide as often as once a week and does so without any explanation or announcement of the changes. ORR also regularly advises its staff and service providers of nonpublic changes in policy by email or phone.

21. Reviewing ORR's placement practices in 2016, a subcommittee of the Senate Committee on Homeland Security and Governmental Affairs found that ORR had "failed to adopt and maintain a regularized, transparent body of policies and procedures concerning the placement of UACs" and castigated the agency for what it called "[s]etting governmental policy on the fly" in a manner "inconsistent with the accountability and transparency that should be expected of every administrative agency." Despite this lack of public accountability and transparency

[1] See Office of Refugee Resettlement, ORR Guide: Children Entering the United States Unaccompanied (Jan. 30, 2015), https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied

over ORR's activities, the online guide does provide a set of procedures for the agency to follow when determining the placement and release of children in its care.

22. These procedures are applicable to over 7,000 children in ORR custody nationwide. Approximately 1200 of these children reside in placements in New York.[2] These children are placed with one of nine nongovernmental organizations that house children pursuant to contracts with the Department of Health and Human Services. Children's Village, in Dobbs Ferry, New York, is one of the largest ORR-contracted shelters in the state and houses approximately 183 children. It also has the only staff-secure placement in New York, housing a total of 28 children. Outside Children's Village, approximately 430 children reside in shelter-level placements across the state, including at shelters such as Lincoln Hall in Lincolndale and MercyFirst in Syosset.

23. Beginning when a child comes into ORR custody, the agency's online guide provides that ORR may place him or her in one of three levels of care based on an assessment of the level of security risk and harm to self or others that the child poses: "shelter care" is the least restrictive custodial setting, "staff secure" is the intermediate level, and "secure" care is the most restrictive level.[3] Secure facilities are like juvenile jails; there are only two such facilities in use nationwide, one in California and one in Virginia. Staff-secure facilities, while not using locked pods or cells, are still very restrictive in that children's movement inside the unit is controlled; children are not permitted to leave the facility except to attend court; outdoor recreation is limited to one hour a day in a fenced in area; and there is a higher staff-to-child

[2] Of the 1200, approximately half are in shelter placements and half are in transitional foster care placements. In addition to these 1200, there are several dozen children in long-term foster care in New York.

[3] Children can also be placed in Residential Treatment Centers, given psychiatric or psychological issues, and in long-term or transitional foster care.

ratio than in shelter units. Shelter-level placements, while less restrictive than staff-secure or secure custody, are nonetheless much more restrictive than a home environment. Children are not permitted to move between rooms or up and down the stairs without staff permission; external doors are locked; and time outdoors is limited. At Children's Village, children in shelter-level care are permitted only two outgoing calls a week.

24. ORR places children in secure or staff-secure settings (either initially upon entry into the ORR system or as the result of a "step up" once the child is already in ORR custody) for a variety of reasons, including disruptive behaviors, even those tied to mental health;[4] an expression of a desire to leave ORR custody, which can be construed as making the child an "escape risk"; and other disclosures of behaviors or thoughts deemed to raise safety concerns, including ones made to mental health professionals or social workers contracted by ORR to care for children.

25. ORR's online guide also contains procedures governing the release of children in its care. The guide provides for ORR to "begin[] the process of finding family members and others who may be qualified to care for an unaccompanied alien child as soon as the child enters ORR's care." For children without a viable sponsor in the U.S., ORR has a long-term foster-care program through which children who have demonstrated "safe behavior in a non-secure setting" can be placed with families in the community, rather than a shelter. ORR also has policies and procedures that "require the timely release of children and youth to qualified parents, guardians, relatives or other adults, referred to as 'sponsors.'" Once a custodian or sponsor has been identified, he or she must complete two forms—an authorization for release of information and a family reunification application—and provide documentation of the identity of the child, the

[4] ORR's ability to address mental-health linked behavioral issues in more therapeutic Residential Treatment Centers, *see* ORR Guide 1.4.6, is limited because there are only two nationwide.

sponsor's identity and address, his or her relationship to the child, and "evidence verifying the identity of all adults residing with the sponsor and all adult care givers identified in a sponsor care plan."

26. Once an ORR care provider and a nongovernmental third-party reviewer, called a "case coordinator, "conclude[] that the release is safe and the sponsor can care for the physical and mental well-being of the child," the care provider "makes a recommendation for release" to the ORR Federal Field Specialist (FFS), an individual who acts as the local ORR liaison with the facility. Historically, the FFS then either approved or denied release or requested more information. Prior to 2017, children placed in staff-secure custody were typically released to a sponsor within 30 to 90 days. For children in shelter care, the average length of time in custody was 34 days, after which time the vast majority were reunited with a sponsor. But as described below, new changes to the long-standing policy of the FFS approving or denying release were instituted by Director Lloyd last spring and made public in June 2017, resulting in the reunification process coming to a virtual halt.

Changes to ORR's Policies and Practices Under the Trump Administration

27. The Trump administration has repeatedly engaged in rhetoric and policies that demonize immigrant children and aim to subvert the laws intended to protect them. Recent policy changes enacted by ORR reflect the Trump administration's rhetoric vilifying immigrant children as dangerous criminals or gang members. The administration has deployed this rhetoric despite the fact that ORR's own internal review has found that, even by its own flawed identification process, fewer than two percent of children in its custody have gang ties.

28. The Administration has taken particular aim at laws that protect immigrant children. In his most recent State of the Union Address, President Trump described immigrant children as

violent gang members who "took advantage of glaring loopholes in our laws to enter the country as unaccompanied alien minors." Just this week, the Department of Homeland Security issued a statement denouncing the TVPRA and the *Flores* Settlement as two such "loopholes."

29. In a rally held in Long Island in July 2017, President Trump declared that the "laws are stacked against us" and called out "aliens minors" as responsible for gang-related killings in the United States, referring to immigrant children accused of being gang members as "animals." "They're going to jails," he yelled, "and then they're going back to their country."

30. Attorney General Sessions has also furthered this narrative, alleging that certain immigrant children who come to this country are "wolves in sheep's clothing." In an interview with Fox News broadcast on August 3, 2017, Sessions said: "[W]e need to be able to deport people rapidly who enter the country illegally, and we have to end this policy of taking unaccompanied minors…and turning them over to the Department of Health and Human Services [the agency within which ORR is located], and then they take them to their 'destination city'…So this is a very bad and dangerous policy and it can be ended and it must be ended." On February 15, 2017, the Department of Homeland Security released a statement describing the *Flores* settlement and the TVPRA as "loopholes" that invite illegal immigration and fuel gangs.

31. In addition to publicly denouncing protections for immigrant children, the Trump administration has called on Congress to amend the TVPRA and to strip children of many of the protections they are afforded under this legislation.

32. Though the TVPRA remains fully in place, the Trump Administration has actively worked to subvert its requirements in furtherance of its rhetoric portraying immigrant children as dangerous criminals and gang members. One such new policy ORR instituted under Lloyd's leadership was to place all children with gang allegations in secure care. Many of these children

entered ORR custody after being detained during two Long-Island centered crackdowns against alleged gang members: Operation Matador, in May and June 2017, and Operation Raging Bull, in October and November 2017. But the gang allegations upon which the agency relied in making these placements have been debunked by virtually everyone who has reviewed them, both inside and outside ORR.

33. In late 2017, a federal court in San Francisco ordered that immigrant children previously released from ORR custody as unaccompanied minors, subsequently detained for alleged gang involvement and placed back in ORR custody receive hearings before immigration judges to determine if they truly pose a danger. In *nearly every hearing* (27 of 29), immigration judges found the government's claim of dangerousness unfounded and ordered the child's release. But children in the plaintiff class here, like L.V.M., who are not class members in the San Francisco case, still do not have any mechanism available to challenge their detention, even after they are stepped down from secure custody.

34. In spring 2017, Lloyd instituted a new policy that indefinitely stalls the reunification of children like L.V.M. with their families. That policy, reflected in a revision to the online ORR guide on June 12, 2017, imposes a new requirement for the release of children who are currently or have ever been held in secure or staff-secure facilities within ORR: personal approval by Scott Lloyd, or his designee, Deputy Director, Jonathan White. Lloyd is not a social worker, psychologist, or educator. Before being appointed as ORR director in March 2017, a position that does not require Senate approval, Lloyd was an attorney for the Knights of Columbus and served on the board of a crisis pregnancy center in Virginia. Yet, upon information and belief, nearly all of the requests for release elevated to headquarters for approval are personally decided by Lloyd. The result is that after a child's release is

recommended by the shelter staff; a third-party case coordinator; a home-study worker, if applicable; and the FFS, with voluminous accompanying documentation, that request is now forwarded to Washington D.C., where it languishes with defendants White and Lloyd, often for months.

35. Since the requirement of director approval for release was imposed, the release of children who are or have previously been in secure or staff-secure confinement has virtually ground to a halt. Prior to 2017, children in staff-secure custody typically remained detained for 30 to 90 days. Yet in the last eight months, it has become rare for children who require Lloyd's approval to be released at all (other than children ordered released as a result of litigation like the San Francisco case). In the six months after the requirement of Director-level approval was added to ORR's online guide, only four out of dozens of children at Children's Village impacted by the new requirement were released absent either judicial intervention or the threat of litigation. Most other children either turned 18 and were transferred to ICE custody or remain in ORR custody today. As of the week of the filing of this complaint, at least eleven children who, like L.V.M., have been stepped down to shelter care at Children's Village remain detained despite having spent an average of over seven months in ORR custody.

36. In nearly every case, once defendant Lloyd finally acts on a release recommendation, it is only to request additional information, services or evaluations from care providers. The requests from the ORR director are unguided by any policy or fixed set of criteria and amount to constantly moving targets. In many cases, the care providers, who have already completed the full panoply of release procedures, believe these further requests or requirements are unnecessary and in some cases even harmful. Once care providers collect and relay the requested information, children again have to wait lengthy periods for yet another response.

37. The requirement of Director-level review has also slowed other stages in the reunification process. For instance, case managers for class members in ORR shelters substantially delay forwarding release recommendations because they believe, given their experience with this new level of review, that they may need to collect information that is otherwise extraneous to the ultimate decision or even harmful to the child or may need to await developments (like *Flores* hearings) that should not otherwise delay the reunification process.

38. The stepdown of children from staff-secure care to shelter care, often an essential precursor to release, has also slowed dramatically. Particularly for children alleged to have gang involvement, transfer to a less restrictive form of care often takes months longer than care providers believe necessary. This is true even if shelter staff or an immigration judge have already rejected the gang allegations against a particular child. On information and belief, this delay in stepdown is also the result of policies or practices put in place by ORR's leadership.

39. For children, the devastating effect of these delays can include depression, deterioration in mental health, and behavioral problems associated with prolonged detention. Children like L.V.M. feel a sense of hopelessness stemming from their indefinite detention, particularly once they know that every ORR staff member or field professional with whom they have had contact has recommended release or stepdown and yet they remain detained in a highly restrictive environment. In some cases, children respond by misbehaving in ways that cause them to face progressively more restrictions on their movement in custody, exacerbating their already significant depression and hopelessness. In other cases, children who fear persecution in their home countries nonetheless opt to accept removal and return there, rather than endure further detention.

40. The indefinite wait times for release approval from Lloyd also render release plans and post-release services put in place by shelter staff obsolete, as the availability of those resources is often time-limited.

Lack of Reasoned Explanation for Change in Policy and Resulting Delay

41. ORR's online guide gives no explanation for the new requirement that Scott Lloyd or his designee personally approve the release of all children currently or formerly in placements with heightened security, nor any information about the criteria used by the director or his designee or a timeline for completion of their review.

42. To the extent that ORR has offered any public explanation for this policy, those explanations have—like statements by the President and Attorney General—focused entirely on the specter of allegedly gang-affiliated youth. In Congressional testimony provided in June 2017, Director Lloyd stated that because of gang concerns and the Administration's prioritization of safety, he had instituted "major policy changes" with a goal of ensuring that children "needing heightened supervision or that present a danger to other UAC[s] are appropriately placed," particularly those alleged to have admitted gang involvement. As part of this process, he explained, "[s]enior ORR leadership now reviews all releases from secure and staff-secure facilities, and I make the final release decision." He explained, in justifying this change, that he views "homeland security and juvenile justice" as areas within ORR's "mission." This is a far cry from the "child welfare values" intended to govern ORR's treatment of children in its care.

43. Contrary to Lloyd's testimony suggesting that only those children currently in secure or staff-security facilities were subject to his review, the requirement for director approval now applies not only to those children but also to children who have *ever* been placed in those facilities,

even if subsequently stepped down to shelter care because ORR itself has recognized they pose no threat.

44. In August 2017, ORR sent an "Information Memo" to the President's Domestic Policy Council regarding its "Community Safety Initiative for the Unaccompanied Alien Children Program." The memo asserts that a review in June found a quarter of children in secure or staff-secure custody were "involved with gangs" and that, as a result, ORR has instituted a new requirement that defendants White and Lloyd now "review and approve releases from secure or staff secure facilities."

45. In addition to its inaccurate statement of current policy, the August 2017 memo fails to offer any explanation of how ORR's "review" was conducted; what criteria were used to establish gang involvement; and what steps if any were taken to verify the underlying allegations, which—when the injunction in the San Francisco case was issued months later—immigration judges rejected as to dozens of children whom ORR had labeled gang-involved. The memo also offers no explanation for how review of a release recommendation by defendants Lloyd or White will supplement or differ from the review by the numerous local officials whose release recommendations already include an assessment of dangerousness and have previously been deemed adequate. Finally, the memo fails to acknowledge or address the impact of the Director-level review requirement on the large number of children currently or previous in secure or staff-secure custody who, by ORR's own estimation, have no alleged gang involvement. For instance, in December 2017 the New York Civil Liberties Union challenged the four-year-long detention of a 15-year old boy, JMRM, whose release from ORR was stalled because he had spent time in a staff-secure facility a year and a half earlier; his placement there

was the result of behavioral issues that stemmed from poorly managed mental health and past trauma. Shortly after the NYCLU filed its lawsuit, ORR released him.

46. In May 2017, ORR's online policy guide was amended to provide for the possibility of an "appeal" to the Assistant Secretary of ORR if a reunification request is denied. But this process—at which sponsors have no right to call witnesses, includes no requirement of a reasoned decision, and uses a politically-appointed official as an adjudicator—is available only once a final decision is rendered on a reunification request.

FACTS PERTAINING TO L.V.M.

L.V.M's Arrival in the United States and Subsequent Arrest

47. L.V.M. is a 17-year-old citizen of El Salvador who came to the U.S. in May 2016 with his mother and younger brother. The family fled El Salvador after L.V.M. was targeted and threatened by gang members. Since their arrival in the United States, the family has retained immigration counsel, applied for asylum and attended all immigration proceedings at the New York Immigration Court in Manhattan.

48. L.V.M. and his mother, Edith Esmeralda Mejia de Galindo, have an extremely close relationship. Prior to L.V.M.'s July 2017 detention, he had never spent a night apart from his mother. L.V.M. has no relationship with his biological father, and Ms. Mejia describes herself as having been both his mother and his father throughout his life.

49. L.V.M. has never been arrested or charged with a crime. Prior to coming to the United States at the age of 15, he had never had any disciplinary issues at school.

50. In April 2017, while in the ninth grade and his first year at Bellport High School on Long Island, L.V.M. was suspended after he was alleged to have flashed "gang signs" in the hallway.

L.V.M. has never had any gang affiliation and did not use a gang sign but acknowledges raising both middle fingers towards another student, after the other student did the same.

51. L.V.M. was suspended for 39 days after a hearing at which he and his mother were not represented by counsel and not permitted to be accompanied by a relative whom Ms. Mejia had brought to translate. The only allegation of gang-related activity in the paperwork the family received from the school was that L.V.M. had made the hand gesture towards another student in the hallway.

52. On July 6, 2017, L.V.M. was arrested at home by law enforcement agents who did not identify themselves. Ms. Mejia, phoned by a relative, rushed home in time to find her son being detained in the front yard. The agents would not give her any information except that her son was being arrested because he is "illegal." Ms. Mejia told them that she and her sons had been attending immigration court, but the agents detained L.V.M. regardless.

53. Ms. Mejia did not know what government agency had taken her son. She desperately sought help in locating him—including from two immigration attorneys, an education attorney, and the New York Civil Liberties Union—and went herself to the federal courthouse in Central Islip. One of the attorneys was able to confirm late the next day that L.V.M. had been arrested by Immigration and Customs Enforcement ("ICE") as part of a large-scale raid called "Operation Matador," conducted in Suffolk County targeting immigrant children, and that he was already being transported to an ORR-contracted facility, the Shenandoah Valley Juvenile Center, in Virginia.

L.V.M's Detention by ORR

54. L.V.M. has remained in ORR custody ever since. From July 7 to August 18, he was detained in a secure facility in Virginia. During his time at the facility in Virginia, ORR Director Scott

Lloyd personally interviewed L.V.M., questioning him as to the reason for his detention and whether he planned to stay in the U.S.

55. L.V.M.'s behavior in Virginia was described as "excellent" and a dangerousness assessment on August 8 resulted in a recommendation he be stepped down to shelter care. On August 18, he was transferred to the staff-secure facility at Children's Village in Dobbs Ferry, New York, reflecting that shelter staff did not believe he posed a danger. After approximately a month and a half in staff-secure custody, his case manager informed L.V.M. that although his behavior has been "exemplary" and staff wanted to step him down to shelter-level care—meaning that he posed no danger and was not in need of close supervision—they could not because L.V.M. had been detained as part of ICE's Operation Matador. The source and scope of this prohibition or policy by ORR are not identified in L.V.M.'s records. On November 22, 2017, L.V.M. was finally stepped down to a shelter facility, the lowest level of security at Children's Village.

56. During his more than seven months in government custody, L.V.M. has never had a single disciplinary incident. In fact, L.V.M.'s ORR records describe him as "polite and soft spoken," and a psychologist who evaluated him in August 2017 noted that he is an "unusually nice kid." His behavior in ORR custody is variously described as "exemplary" and "excellent."

57. L.V.M.'s separation from his mother—with whom he had lived his entire life—has caused him significant anxiety and sadness. While L.V.M. was detained in Virginia, a caseworker there noted that most of his phone calls with Ms. Mejia devolved into tears and that L.V.M. often began crying when discussing his separation from his mother.

58. Since L.V.M. returned to New York, his mother has visited him every other week for visits of approximately two hours. To do so, she pays a private taxi company $150 to drive her the two hours from Bellport to Dobbs Ferry and back. L.V.M. is allowed only two outgoing phone

calls of twenty minutes each a week. His mother calls him daily, during which they are allowed to speak for ten minutes. But since one line is shared by all 16 children in the unit, the two are at times unable to speak. Family visits are also not always possible due to lack of available staff to supervise them.

59. L.V.M. has experienced bullying and social isolation while in ORR custody.

60. L.V.M. and his mother believe he is receiving a lower standard of education than he would receive in regular school. The classes at Children's Village are not part of a district-accredited program, and all children in a unit are taught together, regardless of age or grade level.

Ms. Mejia and L.V.M's Attempts to Reunite

61. Under the *Flores* Settlement, ORR is supposed to facilitate L.V.M.'s access to a custody hearing, upon his request, to determine whether he poses a danger or a flight risk. Yet it took L.V.M. and his attorney four months of effort to succeed in scheduling such a hearing. After L.V.M. was detained, his attorney filed multiple motions for a bond hearing to the immigration court, beginning as early as August 2, and called the court on numerous occasions to follow up. In early October, L.V.M. also requested a *Flores* custody hearing directly via his case manger at Children's Village, who then sought to schedule such a hearing through ORR. In mid-December, the hearing was finally scheduled for December 18, 2017.

62. At that hearing, ORR filed two pages from his ORR file as evidence to justify L.V.M's detention; L.V.M. via his attorney filed over 100 pages from the same file. ORR's submission consisted only of DHS's referral notes from when L.V.M. was initially detained, which stated that L.V.M. has been "identified as an MS-13 gang member" by DHS Homeland Security Investigations based on his identification as such by Suffolk County Police Department; his suspension from high school for "gang related activities;" his appearance in a video "flashing

gang signs" (also the cause of his suspension); and his use of apparel and clothing associated with MS-13. The apparel and clothing are not described. On the second page, the form indicates L.V.M.'s gang affiliation was determined by "self-admission," "gang tattoos" and the summary appearing on the previous page. L.V.M. and his mother first learned of these allegations at the December 18 hearing.

63. L.V.M. has no tattoos and has never admitted to gang membership. He has never been arrested or had any contact with the Suffolk County Police Department. Neither he nor his mother has any idea what the offending clothing or apparel were that L.V.M. wore. In fact, other than the alleged gang sign he flashed in the hallway, it appears as though the form simply copies and pastes allegations made against other immigrant children alleged to be gang members.

64. At the custody hearing on December 18, after review of both parties' submission and testimony from L.V.M. and his mother, an immigration judge ruled that L.V.M. did not pose a danger or a flight risk.

65. Despite the fact that an immigration judge ruled L.V.M. not to be a flight risk or danger to the community, ORR continues to refuse to release him to his mother. ORR has no legal justification for refusing to release him unless it is continuing to evaluate the suitability of his mother as his custodian, a process that should have begun over seven months ago when L.V.M. was detained and should have been long since completed.

66. Since her son's detention, Ms. Mejia has complied with every requirement ORR has made to evaluate her suitability as her son's custodian—an issue that has never before been questioned, as she has had custody of her son since his birth. Ms. Mejia and her husband were fingerprinted on July 19, 2017. The other adults in the home were fingerprinted on August 7, 2017. All four adults provided valid government-issued identifications and release and background forms. Ms.

Mejia also provided L.V.M's birth certificate; her birth certificate and marriage certificate—which she had to ask a relative in El Salvador to get for her—and a completed and signed version of every form sent to her by case workers at ORR, including an Application for Family Reunification.

67. Ms. Mejia submitted the final set of documents—including the birth certificate and marriage license which she had to obtain through a relative in El Salvador—on August 30, 2017.

68. Since August 30, Ms. Mejia was asked numerous times by ORR personnel to provide additional copies of documents provided earlier, such as her birth certificate, and to provide further documents, such as a letter from the Southport Country Central School District documenting L.V.M.'s enrollment. On February 15, Ms. Mejia was asked to provide school records for L.V.M., although she already gave permission for ORR to request those records itself over six months ago.

69. On January 2, 2018, a home study was conducted to assess Ms. Mejia's suitability to resume custody of her son. The home study resulted in a positive recommendation on January 17, 2018.

70. On information and belief, L.V.M.'s release to his mother has now been recommended by his case manager at Children's Village, a third-party case coordinator, a home study worker, and the local Federal Field Specialist, defendant Elcy Valdez, and has now been pending with Lloyd for several weeks. Also, on information and belief, staff at Children's Village believed L.V.M. to be ready for reunification several months ago but were hampered in their ability to step him down to shelter-level care and to formally recommend his reunification due to barriers to stepdown and release that are applicable only to this class of children and due to shelter staff's knowledge of the prolonged and arbitrary nature of case file review at ORR headquarters.

CLASS ACTION ALLEGATIONS

71. The case is brought as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), or in the alternative, as a representative habeas action on behalf of

> all children who are or will be in the custody of ORR in New York State and who are currently housed in a staff-secure facility or have ever been housed in a staff-secure or secure facility.

72. The proposed class is sufficiently numerous so as to render joinder impracticable. Upon information and belief, the class consists of at least 40 children. Moreover, additional children will enter the class in the future.

73. Joinder is also impracticable because the proposed class consists of children who are separated from their families and other adult caretakers, many of whom are indigent, have limited English proficiency, and/or have a limited understanding of the U.S. judicial system.

74. Common questions of law and fact affect class members, including (a) whether the Government is in compliance with its obligation under the TVPRA to promptly place children in the least restrictive setting possible; (b) whether the Government's practice of subjecting children to prolonged separation from their families or guardians and in overly restrictive placements in violation of its own policies and without adequate procedures violates the plaintiffs' right to due process; (c) whether substantial delays in deciding whether to reunify children with their families or sponsors are unreasonable under the APA; and (d) whether the change in ORR policy to require the ORR Director or his designee to approve release decisions for children in or previously in secure or staff-secure custody, a process that contains no known criteria or timeline and has resulted in delays throughout the ORR system, is arbitrary, capricious and not in accordance with law under the APA.

75. L.V.M.'s claims are typical of those of the class with respect to the legality of the Government's policies and practices at issue. L.V.M. will fairly and adequately protect the interests of the class. He is unaware of any conflicts that would preclude fair and adequate representation.

76. The prosecution of individual actions against the defendants will enable their practices to evade judicial review.

77. Proposed class counsel have experience litigating similar matters.

78. The defendants' policy or practice of subjecting class members to prolonged detention without adequate process in violation of the TVPRA, the due process clause, and the Administrative Procedure Act apply to the entire class, making class-wide injunctive and declaratory relief appropriate.

CAUSES OF ACTION

FIRST CLAIM
VIOLATION OF TVPRA (ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

79. The defendants' actions violate the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

SECOND CLAIM
VIOLATION OF THE DUE PROCESS CLAUSE (ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

80. The defendants' actions violate the plaintiffs' rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

THIRD CLAIM
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

81. The defendants' actions violate the Administrative Procedure Act.

PRAYER FOR RELIEF

WHEREFORE L.V.M. through his next friend Edith Esmeralda Mejia de Galindo respectfully requests that the Court:

82. Assume jurisdiction over this matter;

83. Order the defendants to release L.V.M. to his mother's custody immediately;

84. Certify the proposed class;

85. Declare that the defendants' actions, including the prolonged detention of plaintiff class members, violate the TVPRA, the Administrative Procedure Act, and the Due Process Clause;

86. Order the defendants to promptly reunify the plaintiff class members with their families and/or sponsors or, where appropriate, promptly place them in the otherwise least restrictive setting;

87. Order the defendants to provide prompt decisions about applications for reunification of plaintiff class members and to provide a constitutionally adequate process to review denials of reunification, including a reasoned explanation for any denial and a hearing before a neutral adjudicator with the opportunity to call witnesses.

88. Set aside the ORR policy of requiring approval of class members' reunification applications by the ORR Director or his designee;

89. Award the named plaintiff and other members of the proposed class reasonable attorneys' fees and costs for this action; and

90. Grant any further relief that the Court deems just and proper.

Respectfully Submitted,

/s/ Paige Austin

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New York, NY