**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| 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,<br><br>Plaintiffs/Petitioners,<br>v.<br><br>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.<br><br>Defendants/Respondents. | Case No. 18-cv-1453 (PAC) |

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION**

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## INTRODUCTION

Across New York, dozens of immigrant children in government custody are facing months or even years of confinement in violation of federal law. In March 2017, the agency responsible for their care instituted a new policy making these children's release contingent on the signoff of the agency director in Washington, D.C. For the vast majority of the children subject to this new requirement, the result has been a slamming of the door. Unlike the majority of children in immigration custody nationwide, who are released to an adult sponsor in under two months, these children languish in the system for many months and even years and suffer all the attendant harms of prolonged detention and family separation.

The plaintiffs are a putative class of immigrant children detained in government-contracted facilities in New York State who, because they are now or have in the past been in a custodial placement with heightened supervision, are subject to the new release policy implemented by the Office of Refugee Resettlement (ORR) last year. The majority are no longer in a heightened-supervision placement. Yet on average, they have been detained over eight months; twenty percent have been detained for over a year. By delaying and even foreclosing these children's release, the government is inflicting irreparable harm. Separated from their families, members of the putative class are at greater risk of psychological and physiological harm with every day that their custody is extended. Because ORR implemented this change with no reasoned explanation and no analysis and because these children's detention violates the federal law calling for their swift release, the plaintiffs now seek preliminary injunctive relief vacating the new release policy and ordering the government to promptly complete the reunification process.

## LEGAL FRAMEWORK

For over fifteen years, the Office of Refugee Resettlement ("ORR") has been responsible for housing unaccompanied immigrant children and facilitating their prompt reunification with loved ones (called "sponsors") in the United States. *See* 6 U.S.C.A. § 279. ORR is an agency within the Department of Health and Human Services ("HHS") and its mission is to incorporate "child welfare values" into the care and placement of unaccompanied immigrant children.[1] According to the Director of ORR Scott Lloyd, approximately 8,500 children are in ORR custody each day. Lloyd Tr. at 68:13-15, attached as Ex. Q to Katovich Decl.[2] While the process of reunifying these children with sponsors is underway, ORR detains children in custodial settings with varying levels of security: foster care placements are akin to home environments, "shelter care" is the least restrictive congregate care placement, "staff-secure" care is the intermediate level, and "secure" care is a maximally restrictive jail-like placement. ORR Policy Guide, Section 1.2.4, attached as Ex. H to Katovich Decl.

The movement of children between these levels of placement and the eventual release of children from ORR custody to an adult sponsor is governed by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") and by a nationwide consent decree, entered in the *Flores v. Reno* case in 1997. The TVPRA grants legal protections to children in ORR custody and tasks the government with ensuring that they are "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). In making these assessments, ORR "may consider danger to self, danger to the

[1] "Unaccompanied Alien Children," Office of Refugee Resettlement, attached as Ex. G to Katovich Decl.
[2] Hundreds of these children are housed with contracted care providers in New York State. *See* United States Government Accountability Office, *Unaccompanied Children: HHS Should Improve Monitoring and Information Sharing Policies to Enhance Child Advocate Program Effectiveness*, April 2016, https://www.gao.gov/assets/680/676937.pdf, at 16. The only staff-secure facility in the state is located at Children's Village in Dobbs Ferry, New York and houses approximately twenty-eight children. Valdez Tr. at 63:7.

community, and risk of flight," *id.*, and may not release a child without first determining that the child's "proposed custodian is capable of providing for the child's physical and mental well-being." *Id.* at § 1232(c)(3)(A).

Under the *Flores* consent decree, which requires the agency to make prompt and continuous attempts to reunify children in ORR custody with sponsors in the United States, the government must afford children a custody hearing before an immigration judge at which the judge can determine if the child poses a danger. Settlement Agreement, *Flores v. Reno*, 85-cv-4544 (C.D.C. Jan. 28, 1997) at ¶ 24A; *Flores v. Sessions*, 862 F.3d 863, 879–80 (9th Cir. 2017) (interpreting consent decree to require custody determination hearings by immigration judges for children in ORR custody).

**FACTS**

In support of their motion for a preliminary injunction, the plaintiffs rely on facts drawn from data provided by the Government, from deposition testimony of defendant ORR Director Scott Lloyd and defendant ORR Federal Field Specialist Elcy Valdez, from the individual ORR case files of 45 class members, from a declaration from a recent director of ORR, from declarations from two experts, from publicly available materials, and from declarations from current and former class members, their family members, and lawyers. This extensive record establishes that ORR long has had a policy and practice for evaluating and releasing children in its custody that resulted in most children being reunified with family members relatively quickly; that in early 2017 newly-arrived Director Lloyd abruptly changed that policy and practice for the plaintiff children and did so without deliberation or analysis; that very few children subject to the new policy are being released to family members and only after unjustified delays; that hundreds of children subject to the policy – including all of the putative class of children in ORR custody

in New York – remain trapped in custody; and that the children subject to the policy are being grievously harmed by their prolonged detention and prolonged separation from family.[3]

## I. ORR Has a Long-Standing Policy Governing the Release of Children that Has Resulted in Most Children Being Released Promptly.

ORR has had a long-standing policy for evaluating and releasing children in its custody to parents, family members, and other responsible adults (collectively referred to as "sponsors" by the agency). Under that scheme, release from detention has been governed by a multi-step process where three to five social work and child welfare professionals assess the suitability of a potential sponsor and the safety of a child's release to that sponsor. *See* ORR Guide 2.7, attached as Ex. L to Katovich Decl.; Valdez Tr. at 75:24-77-19; 87:3-7, attached as Ex. R to Katovich Decl. Once that is completed, a Federal Field Specialist ("FFS"), an ORR official assigned to one or more contracted facilities in a particular region, evaluates the viability of a child's release to a potential sponsor based on recommendations from the child's case manager and a third-party case coordinator. *See* ORR Guide 2.7; Valdez Tr. at 75:16-76:12; Zayas Decl. ¶ 16. The role of the FFS, in line with best practices across human-services organizations, is to coordinate this entire process, determine whether to approve or deny release based on the available information or remand to the case manager and/or case coordinator for more information, evaluate whether to order a report from a home study professional, seek guidance from an FFS supervisor in complex cases, and ultimately, render a final decision regarding release to the sponsor. *See* Valdez Tr. at 79:7-12; Zayas Decl. ¶ 16-17. This practice appears to have been in place since at least 2006. *See* 2006 ORR Annual Report to Congress at 50, attached as Ex. J to Katovich Decl.; 2010 ORR Annual Reports to Congress at 33, attached as Ex. K to Katovich Decl.; Carey Decl. ¶¶ 13-14.

[3] Because preliminary injunction procedure is less formal than trial, this Court may consider hearsay evidence in granting the plaintiffs relief. *See Mullins v. City of N.Y.*, 626 F.3d 47, 52 (2d Cir. 2010).

Under this regime, the average length of time that children were held in ORR custody in 2016, 2015, and 2014 was 45 days, 34 days, and 35 days, respectively, with more than 90% of children being placed with sponsors. *See* Katovich Decl. ¶¶ 3-4 (identifying exhibits). In federal fiscal year 2017 – during which the new policy challenged in this motion was put in place for the plaintiff children – the "typical" length of stay for all children released from ORR custody (most of whom are not covered by the new policy) was 51 days, with 93% of them being placed with sponsors. *See* Testimony of Steven Wagner on Oversight on HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking Abuse (Apr. 26, 2018) at 2, attached as Ex. A to Katovich Decl. So far in fiscal year 2018, the average length of stay for all children released from ORR custody has been 56 days, with 90% of children being released to sponsors. *See id*.[4]

## II. Defendant Lloyd Abruptly and Without Explanation or Analysis Changed ORR Policy When He Became ORR Director in March 2017.

After having served as a "special advisor" for the incoming Trump administration, defendant Scott Lloyd became the ORR Director on Friday, March 24, 2017. *See* Lloyd Tr. at 78:18-22, 84:19-23. At 1:24 p.m. that day an email went to ORR staff informing them that, effective the following Monday (March 27), no child could be released from ORR custody without approval from ORR headquarters if the child was in or ever had been in a secure or staff-secure placement. Email RE: New Secure and Staff-Secure Release Procedure (Mar. 24, 2017, 1:24:14 p.m.), attached as Ex. O to Katovich Decl. Two and a half months later, that directive was added to the online ORR policy guide section governing release decisions as follows: "The

[4] The worrisome increase in the average detention times during fiscal years 2017 and 2018 may be due to the fact that these figures, unlike the average of 41 days that appears on ORR's website for FY 2017, *see* ORR Facts and Data at 2, attached as Ex. B to Katovich Decl., include detention times for children subject to the new policy. Though those children represent a small part of the entire ORR population, their long detentions may be driving up the overall averages.

ORR/FFS elevates release decisions to the ORR Director, or the Director's designee, for any UAC in a secure or staff secure facility, or for any UAC who had previously been in a secure or staff secure facility. The ORR Director or designee makes release decisions for children in these types of facilities." ORR Guide 2.7, attached as Ex L to Katovich Decl.

In his deposition, Mr. Lloyd testified he decided to implement the new policy the same day it was announced. Lloyd Tr. at 149:10-12; 150:4-7. He also testified that, in adopting the policy, he had not reviewed any agency documents or made any assessment of the population of children it would affect, Lloyd Tr. at 156:22-157:3; *id.* at 158:11-15 ("We didn't make any effort" to estimate the number of children who would be subject to the policy), and the plaintiffs' discovery request for all documents that ORR relied upon in developing and adopting the policy yielded none, *see* Katovich Decl. ¶¶ 14-16. Rather, the only documents Mr. Lloyd said he considered were "news reports" about criminal activity involving immigrant minors in Montgomery County, Maryland, and Fairfax County, Virginia. Lloyd Tr. at 151:2-8. Though he did not identify the specific news reports, in the days before Mr. Lloyd started his new position, the *Washington Post* published a story about two minors previously released from HHS custody being charged with raping a Rockville, Maryland high school student and a story about suspected MS-13 gang activity in Fairfax County, Virginia.[5] The rape charges, as Mr. Lloyd acknowledged in his deposition, subsequently were dropped. Lloyd Tr. at 148:15-21.

Mr. Lloyd testified that he is personally reviewing release decisions solely to assess dangerousness, as part of a claimed effort to increase "visibility and accountability" by "put[ting] the program on [] notice of how [the agency is] going to approach the most dangerous or the

[5] Maria Sachetti et al, *Suspects in Rockville High Rape Case Came to U.S. Last Year to Join Relatives*, Washington Post, March 22, 2017, https://wapo.st/2rbthfs; Antonio Olivo, *With Gang Recruitment Increasing, Fairfax Police Say Crime is Up in Every District*, Washington Post, March 21, 2017, https://wapo.st/2I2DODv

potentially most dangerous releases." *Id.* at 147:9-12; 147:24-148:6. Mr. Lloyd has no formal education, training, or expertise in child welfare or social work, *see* Curriculum Vitae of Scott Lloyd, attached as Ex. T to Katovich Decl.; *see also* Lloyd Tr. at 23:25-36:3 (reviewing education and experience), and assesses cases without reference to any particular policy or protocols, *see id*. at 158:16-159:5, 161:20-162:18. Though Mr. Lloyd testified that cases were subject to his review for dangerousness, many of the children subject to the policy already have been determined not to be dangerous either because ORR itself stepped them down to shelter care, which only happens if the agency deems the child not to be dangerous or because an immigration judge has ruled the minor is not dangerous through a *Flores* hearing. ORR FAQ, attached as Ex. N to Katovich Decl.; Lloyd Tr. at 102:2-5 (describing shelter care as "where there's not a – a concern over safety to one's self or to others or a flight risk"); 155:16-156:21; Carey Decl. ¶ 19.

Moving individual child-welfare decisions to an untrained agency head far removed from a child's case marks a significant departure from best practices. As explained by Dr. Luis Zayas—the Dean of the School of Social Work at the University of Texas who has 43 years of experience working with a range of human services institutions including those that treat children and families—it is best practice across social and health institutions to have professionals in direct contact or close proximity to children make the final decision regarding institutionalization and release. Zayas Dec. ¶¶2-7, 14-17.[6] He notes that it is highly unusual for senior leadership of large agencies to play a substantive role in the release decisions of hundreds

[6] In New York, Federal Field Specialist and defendant Ms. Valdez speaks Spanish and regularly meets with children in the shelters she supervises, talking with them for an average of half an hour each. Valdez Tr. at 56:6-24. She is also in regular contact with shelter staff; discusses every case with care provider staff prior to rendering a release decision; and regularly requests additional information or mitigation from care provider staff herself, as necessary. Valdez Tr. at 77:4-24.

of children in the agency's care. *Id.* at ¶14. He also opines that Mr. Lloyd is not qualified to make release decisions, *see id.* at ¶19-21, and the combination of Mr. Lloyd's lack of qualifications and the "distal nature" of his decision-making cause both poor outcomes and significant delays, *see id.* at ¶ 22-27.

Robert Carey, former ORR Director and a predecessor to Mr. Lloyd, explains that the Director-level policy "has undone a system that existed for many years." Carey Dec. ¶ 25. Given the structure of the agency and the lack of clearly specified criteria in the new policy, he explains the policy "will add substantial time [] as a matter of process" and "create additional delays in cases." *See id.* at ¶ 17-18.[7]

## III. Children Subject to the Director-level Review Policy Are Experiencing Prolonged Detention and Significant Delays in Reunification.

The new policy of barring the release of children who are or ever have been in secure or staff-secure placements without Mr. Lloyd's or his deputy's approval has dramatically reduced the number of these children being released. In the year since Mr. Lloyd instituted the policy, 747 children have been subject to it, with 236 of those children being in custody and subject to the policy when it went into effect on March 27, 2017. *See* Response to Discovery Request 5a, attached as Ex. S to Katovich Decl. Over the course of the entire year since then, only 12% of the 747 children (excluding some released by court order or for other reasons outside the Director process), have been approved for release to sponsors, *see* Rafael Decl. ¶ 14, in stark contrast to the over 90% of all children in ORR custody released to sponsors consistently since 2014. *See* Katovich Decl. ¶ 4.

[7] Mr. Carey also expresses deep reservations with this new policy, observing that its imposition without an impact analysis and with a severely curtailed consultative process "is contrary to any notion of responsible agency administration and management," *id.* at ¶ 22-25; it is also "an extraordinarily poor use of an ORR Director's time to be reviewing hundreds of individual cases a year given the broad responsibilities he has an the head of a federal agency with hundreds of professional staff members, hundreds of thousands of clients, and a budget of $1.5 billion," *id.* at ¶ 20.

That so few children have been released reflects the fact that very few children's cases have even made it to Washington. Specifically, in the full year since Mr. Lloyd instituted the policy, only 14% of children subject to the policy have had their cases elevated to ORR headquarters for Director-level review. *See* Rafael Decl. ¶ 15. For that small group of children who made it to Washington before this lawsuit was filed, the Director-level review alone added nearly thirty-five days *after* the release request had been signed-off on by the case manager, the case coordinator, the home study reviewer (where applicable), the FFS, and the FFS's supervisor. *See id.* ¶ 11(b).[8] And some cases remained pending in Washington for significantly longer. *See* Zayas Decl. ¶ 27 (listing cases where the wait time was 86 days, 117 days, and 142 days). Considerable time is also lost as local ORR officials prepare cases for referral on to Washington. Katovich Decl. ¶ 21 (release request not submitted to ORR headquarters for five weeks after care provider completed release recommendation); Francia Decl. ¶ 9 (decision on release request not made for "several months" after care providers recommended release); Zayas Decl. ¶ 24 ("the effort to prepare and submit files for review by such a senior-level actor is undoubtedly a time-consuming process"); *id.* at ¶ 37 (noting that for many children whose case files he reviewed, there was significant delay before their cases were even elevated for the Director' level review); Valdez Tr. at 116:13-21 (referrals require up to a week). By contrast, Federal Field Specialists previously made release decisions in one to three days. Valdez Tr. at 79:21-80:3.

[8] To calculate the average length of time a case was pending for Director Lloyd's decision, only cases that were decided before this lawsuit was filed were considered in the analysis. This is because, as FFS Elcy Valdez testified, the length of time a case was pending at ORR Headquarters appeared to reduce significantly around the same time the lawsuit was filed. *See* Valdez Tr. at 134:16-134:3. If the Director's decisions that post-date the filing of this lawsuit are included, the average length a case was pending for the Director's review is thirty days. Rafael Decl. ¶ 11(b).

The bottleneck created by the Director-level release review policy and the fact that so few cases have been elevated to ORR headquarters means that hundreds of children subject to the policy are simply languishing in custody, a result dramatically illustrated by the experiences of the plaintiffs. As of March 17, 2018 (the government's document production cut-off date), the 45 children in the putative class—only 10 of whom have had their cases elevated to Washington—had been in custody for an average of 8 months and counting, with 22% having been in custody for a year or more and counting; 35% for nine months and counting; 60% for six months and counting; and 86% for three months and counting. *See* Rafael Decl. ¶ 6(c).[9] By contrast, as noted above, the average length of custody for all children released from ORR custody in fiscal year 2018 has been 56 days. *See* Testimony of Steven Wagner at 2, attached as Ex. A to Katovich Decl.[10]

The delays in getting cases to Washington for headquarters review stem from the new policy. *See* Valdez Tr. at 97:24-98:10 (imposition of policy has led to delay in care provider referrals for release); *id.* at 160:19-161:6 (the "overall release process" is now longer). The FFS for Children's Village and immigration lawyers who routinely interact with care providers all testify that there is widespread uncertainty about how and when children can be released and what the Director is looking for in his review. *See* Valdez Tr. at 157:9-157:15 (explaining that care providers have complained to her that the Director-level review policy is delaying children's

[9] These lengthy delays in release cannot be explained through children's lack of sponsor. Children with a category one sponsor had an average length of stay of 263.8 days. Rafael Decl. ¶ 6(d). Additionally, since the defendants only provided class member information for children who were in ORR custody on or after February 16, 2018, and plaintiffs' counsel does not have access to exit data, the plaintiffs are unable to calculate an average length of stay for the plaintiff class. For example, for a class member who entered ORR custody on January 1, 2018, the plaintiffs know how long that class member has been in custody but does not know how long the class member will remain in custody until release.

[10] This comparison actually understates the gap between detention duration for children subject to the policy because the 56 days reflects the length of custody upon release whereas the figures for the plaintiff class reflect running length of custody, as those children remained in custody when the figures were calculated.

release from custody); Corrado Decl. ¶¶ 8-9 (stating that care providers told her that children in staff-secure care "were no longer being released"); Guidone Decl. ¶¶ 7-15 (explaining that her client's case was not elevated for Director-level approval for over five months, though ORR had stipulated to his lack of dangerousness in a custody hearing); *see also* Carey Decl. ¶¶ 17-18 (explaining that additional layers of review and lack of clarity around criteria and timeline are predictable sources of delay).

The time lost to the Director-level review process yields no benefit to the child or the agency. Mr. Lloyd appears to have simply rubber-stamped release decisions supplied to him by the field in 88% of cases referred to him. Rafael Decl. ¶ 11(c); Zayas Decl. ¶ 39. His approvals come with no information communicated to the field, and his infrequent denials —such as one denial for a putative class member for whom he wrote "needs affidavit, STRONG, etc.," Katovich Decl. ¶ 22—offer other ORR staff little to no guidance. The Federal Field Specialist responsible for Children's Village, Elcy Valdez, testified that she has "no idea" what criteria Mr. Lloyd is using nor what he is assessing in his review. *See* Valdez Tr. at 141:6-21.

While the plaintiffs have been able to uncover delays the new policy is producing, ORR itself engages in no reporting or tracking specific to the population of children affected by the new release procedure. The agency produces information on the overall average time children are detained, but this information is not broken out by type of custodial placements. Lloyd Tr. at 57:8-11; 58:10-18. Remarkably, in 2017 ORR actually discontinued the practice of providing a length-of-stay report, which listed all children detained over 30 days and facilitated inquiries by local ORR officials into how a case could be expedited. Valdez Tr. at 29:5-31:3. In the absence of any comparable current reporting, Mr. Lloyd appeared to have no idea that children who

require his approval for release have, since the adoption of the policy, been regularly detained for significantly longer than the rest of the ORR population. Lloyd Tr. at 119:22-120:13.

## IV. Family Separation and Prolonged Detention Caused by the Director-Level Review Inflict Severe and Irreversible Harm on the Plaintiff Class.

As the plaintiffs' experts explain, the overwhelming body of scientific and social scientific literature establishes that youth who are subject to prolonged family separation and detention suffer severe, irreparable psychological and physiological harm, *see* Zayas Decl. ¶¶ 28-36, Fortuna Decl. ¶¶ 11-17, 19-23, and that the putative class members in this case are suffering precisely such harms, *see* Fortuna Decl. ¶¶ 18(a)-(g), 24(a)-(b), Zayas ¶¶ 37(a)-(d). Harm from detention increases with any extension in time in custody, even a few additional days or weeks. Fortuna Decl. at ¶¶ 15-16; Zayas Decl. ¶¶ 32-33.

Dr. Lisa Fortuna, Director of the Child and Adolescent Psychiatry Division at Boston Medical Center describes the harms of detention, which include long-term psychological and physical damage, *see* Fortuna Decl. ¶ 11, as magnified for children who are frequently transferred, *see id.* at ¶ 12, are separated from their families, *see id.* at ¶ 13, and have faced prior trauma or adversity, *see id.* ¶¶ 19-23. In the plaintiff case files she reviewed, "there were several incidences of suicidal ideation and self-harm" and "several incidences of self-injurious behavior and agitation" that are "directly related to frustration and a sense of helplessness created by the long-term detention." *See id.* at ¶ 18(c)-(d). She also explains that "[c]hildren from Central America who have crossed the U.S. border have high rates of exposure to trauma in the form of threat of death, physical and sexual abuse," *see id.* at ¶ 19, and consistent with that general assessment, "[a]ll of the minors whose records [she] reviewed had…at least one traumatic experience including traumatic loss and separations and severe violence exposures (e.g. seeing murders or dead bodies in the street)" and "in at least five cases…youth admitted to histories of

sexual abuse or reported being raped…," *see id.* at ¶ 24(a). She describes an incident involving a child who is a putative class member and who was "crying uncontrollably and breathing hard…stat[ing] he can't stand being in detention anymore and needs his mother" and who later shared that "in his home country he had received threats to his life and so he had to stay inside his home for weeks [and] [b]eing in detention reminded him of that time." *See id.* at ¶ 18(c). Another case file chronicles the child's decomposition over time, where early on in custody he is reported as saying that "every time he sees his family his 'heart rejoices,'" but after months in detention "he was expressing feeling increasingly anxious and distressed about being in detention for so long, away from his family and for an undetermined period." *See id.* at ¶ 18(g); Katovich Decl. ("[m]inor's behavior has been slowly deteriorating… Minor has the potential to do well but he lost hope").

Dr. Zayas's review of putative class member case files reveals a similarly bleak picture, and he explains that "the additional layers of review have contributed to significant delays in the rendering of release decisions," resulting in traumatic incidents and potentially irreversible harm. *See* Zayas Decl. ¶¶ 27, 39. He describes a case where a child in the putative class was recommended for release in December 2017 by "social workers working with him in the residential facility;" his case was elevated for Director level review (which as of January 2018 was described by one ORR employee as "overdue"), and while awaiting the Director's "overdue" decision, the child was subject to sexual abuse by a staff member at the facility where he was housed. *See id.* at ¶ 37(b). In another case, a plaintiff boy who was referred for release in early August 2017 attempted to commit suicide and had to be put into psychiatric hospitalization while still awaiting the Director's decision over a month later. *See id.* at ¶ 22(b).

## ARGUMENT

The petitioners seek preliminary injunctive relief vacating the Director-level review policy and requiring the Government to complete promptly the reunification process for all putative class members. To obtain a preliminary injunction, the petitioners must make a "strong showing" of irreparable harm in the absence of preliminary relief, must demonstrate a "clear or substantial" likelihood of success on the merits, and must show that the balance of equities tips in their favor and the injunction is in the public interest. *See New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015) (citations and internal quotation marks omitted). On the record before this Court, the petitioners satisfy these standards.[11]

### I. THE PLAINTIFFS ARE SUFFERING IRREPARABLE HARM.

In the Second Circuit, a "showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction." *Faiveley Transport Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (internal quotations and citations omitted). Here, as the plaintiffs' experts chronicle in heartbreaking detail, the needless detention of this vulnerable group of children is profoundly injurious and potentially debilitating for the rest of their lives. *See,* supra*,* Facts § IV. Such harms, flowing from the "effects of [a detainee's] confinement," serve as a basis for a finding of irreparable harm. *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996); *see also Abdi v. Duke*, 280 F. Supp. 3d 373, 404-05 (W.D.N.Y. 2017) (finding that adult immigrant detainees had established irreparable harm "through the negative

[11] If the Court has not yet decided the petitioners' pending motion for class certification (ECF. No. 3) by the time this motion is decided, the Court "may conditionally certify the class or otherwise award a broad preliminary injunction, without a formal class ruling, under its general equity powers." *Stroucher v. Shah*, 891 F. Supp. 2d 504, 517 (S.D.N.Y. 2012) (citation and internal quotations omitted). The Court may rely on evidence of likely harm to putative class members in deciding this motion. *See LaForest v. Former Clean Air Holding Co., Inc.*, 376 F.3d 48, 56 (2d Cir. 2004) (holding "that the district court did not abuse its discretion in relying on [six affidavits from putative class members] in concluding that the then-putative class suffered irreparable harm warranting a preliminary injunction").

physical and mental health effects of prolonged detention").[12] Part and parcel of ORR detention is long-term separation from family, which is also particularly devastating for these traumatized young people. *See* Fortuna Decl. at ¶¶ 13-14; Zayas Decl. ¶¶ 28-29; *see also Int'l Refugee Assistance Project v. Trump*, ---F.3d---, 2018 WL 894413, at *18 (4th Cir. Feb. 15, 2018) ("Prolonged and indefinite separation of parents, children, siblings and partners create not only temporary feelings of anxiety but also lasting strains on the most basic human relationships cultivated through shared time and experience.").

Beyond the primary harms of prolonged detention and family separation, children in ORR custody face secondary harms. First, they suffer an ongoing loss of educational opportunity since ORR facilities are not equipped for long-term care as a result of which children are often placed in classrooms with peers of varying educational levels and linguistic backgrounds, and rarely have a regular cohort of classmates with whom they can learn and interact. Carey Decl. ¶¶ 10-11; LVM Decl. ¶ 8 ("they teach us all the same, no matter what age you are"); *see V.W. by & through Williams v. Conway*, 236 F. Supp. 3d 554, 589 (N.D.N.Y. 2017) (finding irreparable harm becuase "deprivation of education services . . . hinders important aspects of their adolescent development"). Second, the prolonged detention of this cohort of children subjects them to a disproportionate risk that they will turn eighteen and "age out" of ORR custody, at which point they will be transferred to adult jails. *Compare* Rafael Decl. ¶ 16 (18% of children subject to Director-level policy had aged out in ORR custody) *with* Lloyd Tr. at 99:15-100:4 (estimating that across the entire ORR population only about ten percent of children age out). At least one other court in reviewing detention by ORR has recognized irreparable harm flows from

[12] The hopelessness and depression that children suffer in the context of prolonged detention, *see* Fortuna Decl. ¶ 15, may also contribute to more children abandoning hope of safety in the U.S. and instead accepting voluntary departure back to a country where they faced persecution. Rafael Decl. ¶ 17 (7% of children subject to the Director-level review gave up and accepted "voluntary departure" to their home countries).

the possibility of transfer to adult detention. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1200 (N.D. Cal. 2017).

## II. THE PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS.

In seeking a preliminary injunction, the plaintiff children contend the Director-level policy and its attendant delays in the release of children from ORR custody violate the TVPRA and further contend that their prolonged detention violates the statute. In addition, they contend the Director-level policy violates the Administrative Procedures Act. On the record before this Court, the plaintiffs are substantially likely to succeed on their TVPRA and APA claims.[13]

### A. The Director-Level Release Review Policy and the Egregious Lengths of Time that Putative Class Members Are Detained Violate the TVPRA.

The TVPRA requires that the plaintiffs be "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).[14] The Director-level review policy and the prolonged detention of the plaintiffs violate this mandate.

As an initial matter, the TVPRA requires that children with safe and viable sponsors be promptly placed with those sponsors, as Mr. Lloyd and his predecessor both recognized, as ORR policy makes clear, and as the legislative history emphasizes. *See* Lloyd Tr. at 135:17-136:9

[13] The plaintiffs have also pled additional claims, which they are not litigating in this motion, given the expedited nature of the proceedings. *See* Compl. ¶¶ 79-81 (Dkt. No. 1).

[14] The court can review the agency's violations of the TVPRA under the APA, *see* 5 U.S.C. § 706(2)(A); *cf. Ramirez v. U.S. Immigration and Customs Enforcement*, ---F. Supp. 3d---, 2018 WL 1882861 at *12 (D.D.C. Apr. 18, 2018) (reviewing and ordering the government, pursuant to Section 706 of the APA, to comply with a provision of the TVPRA not at issue in this case), under the federal habeas statute, s*ee* 28 U.S.C. § 2241(c)(3) (permitting challenge to ongoing "custody in violation of the Constitution *or laws*…of the United States) (emphasis added), and because this is a suit requesting that the Court bar the operation of governmental conduct that violates statutory law, *see Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384-85 (2015) (describing "long history of judicial review of illegal executive action" in equity). Finally—although no court appears to have addressed the issue squarely and this Court need not reach the issue given the three other sources for review—the TVPRA itself provides a private right of action because the plaintiff class are the "intended beneficiaries" of the statute. *McClellan v. Cablevision of Conn.*, 149 F.3d 161, 165 (2d Cir. 1998); *see Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345 (2005) (implying "availability of private securities fraud actions" because statute describes protection of investors). The TVPRA contains several references to children—like the plaintiff class—it intends to protect, *see e.g.,* 8 U.S.C. §§ 1232(a)(1), (b)(1), (c)(1)-(6), (d)(1)-(2).

(explaining that TVPRA requires prompt reunification with sponsors); Carey Decl. ¶ 7 (same); ORR Guide 2.1, attached as Ex. I to Katovich Decl. (ORR's "policies require the timely release of children and youth to qualified parents, guardians, relatives or other adults, referred to as 'sponsors.'"); 154 Cong. Rec. S10886-01, 2008 WL 5169970 (Statement of Sen. Feinstein) (noting that the statute is meant to combat prolonged detention and also that the "legislation [] requires, wherever possible, family reunification or other appropriate placement in the best interest of the unaccompanied alien children").[15]

With neither the statute itself nor any case law of which the plaintiffs are aware defining the term "promptly," it must be given its "ordinary, common-sense meaning." *United States v. Rowland*, 826 F.3d 100, 108 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 1330 (2017) (internal quotation and citation omitted). If nothing else, particularly given the enormous harm that detention and separation from family inflict on children, the "promptly" requirement compels release without unnecessary delay. *See* OXFORD ENGLISH DICTIONARY (defining "promptly" to mean "with little or no delay; immediately"); *Kia P. v. McIntyre*, 235 F.3d 749, 760-61 (2d Cir. 2000) (in finding that government complied with requirement for "prompt" hearing to return child to parent, relying on fact government took action throughout time period).[16]

Under the Director-level policy, the release of children has been the opposite of "promptly," as the policy has injected precisely such unjustified delays into the release and

[15] The TVPRA's requirements are consistent with the recommendations of leading health institutions which urge against family separation and detention of children, stating these are never in the best interest of children. *See* Zayas Decl. ¶ 29; *accord* Fortuna Decl. ¶ 27 ("[C]hildren should be released as soon as possible from [ORR custody], as residing in a home environment affords them the greatest opportunity to recover from the negative effects of trauma and achieve stability."); *id.* ("The children whose files I reviewed would benefit from being released as soon as possible into less restrictive settings than detention—and in community settings where they can establish and maintain supportive relationships, stable school settings and therapeutic supports.").

[16] To be clear, the plaintiffs are not requesting a post-deprivation hearing in the context of the present motion, nevertheless they submit that *Kia P* is instructive for the court's holding that promptness is measured with reference both to the time elapsed and to whether the government utilized the time effectively.

reunification process and has done so at virtually every level—from delays caused by care provider confusion, to delays while cases are pending at the FFS and supervisory staff, to delays while files are pending in Washington D.C. *See supra* Facts, § III. Some of these unjustified delays are easy to segregate and quantify, such as the fact that the few cases that ultimately make it to ORR headquarters are pending there for an average of 35 days. *See e.g.* Rafael Decl. ¶ 11(b). Other delays, because of their diffuse and system-wide nature, are not so easily quantifiable but are self-evident given that only 14% of children subject to the Director-level policy have been elevated to ORR Headquarters in the year that the policy has been in effect, *see id.* at ¶ 15, leaving the rest to languish in custody.

Another compelling piece of evidence that ORR is violating the plaintiffs' TVPRA right to be "promptly" placed lies in the fact that for years ORR has consistently released children in an average of less than 60 days, *see supra* Facts, § I (reporting 56, 51, 35, 34, and 31 days for last five years), an important indicator of how ORR itself construes its mandate to place children with sponsors promptly. *Cf. Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012) (an agency's prior interpretation of a regulation undercuts deference owed to a new, contrary interpretation). The plaintiffs of course have had a very different experience, having been in detention for an average of over 8 months (242 days). *See* Rafael Decl. ¶ 6(b). Simply put, this dramatic departure from ORR's standard practice of discharging its statutory obligation is clear evidence of a violation of the statute.[17]

[17] This difference cannot be justified by the fact that putative class members—a majority of whom are now in shelter care—were in staff-secure care at some point in the past. *See* Valdez Tr. at 72:10-11, 73:12-22 (prior to 2017, a child in staff-secure with a category one sponsor would spend approximately one month longer at Children's Village than a child in shelter care with the same sponsor type); *cf.* ORR Guide 2.7.7, attached as Ex. L to Katovich Decl. (in imposing 30-day deadline for notification of a parent or legal guardian that his or her reunification application has been denied, not setting different time periods based on placement history).

To make matters worse, until recently, the agency had systems in place to track children's length of stay in detention, whereby the agency regularly provided reporting on any child detained over thirty days with a reason provided for the delay. *See* Valdez Tr. at 29:5-31:19. That report enabled the FFSs to monitor and address delays by following up with care providers or expediting ORR processes. *See id.* Inexplicably, however, this crucial length-of-stay reporting has been discontinued in the same period that this new policy has taken effect, and the devastating delays caused by the policy have gone unacknowledged by the agency. *See* Valdez Tr. at 29:5-31:19 Indeed, in his deposition, Mr. Lloyd seemed to have no idea how long children subject to the policy remain detained. *See* Lloyd Tr. at 120:18 (incorrectly estimating children in staff-secure care remain in custody for 60 days).

Because of the delay caused by the Director-level review policy and the unreasonable duration of the plaintiffs' detention, they are entitled to relief. Here there is a "precise section" of the governing statute "establishing a specific principle of temporal priority that clearly reins in the agency's discretion" and the record unequivocally demonstrates a "manifest violation of the principle." *Xie v. Kerry*, 780 F.3d 405, 408 (D.C. Cir. 2015).[18]

**B. The Director-Level Release Review Policy is Arbitrary and Capricious Because the Process ORR Used to Institute This New Policy Was Woefully Inadequate.**

The Director-level review policy also violates the Administrative Procedures Act's prohibition on arbitrary and capricious agency action.[19] One of the fundamentals of

[18] The delay in reunifying children also violates the requirement under the APA that "within a reasonable time, [an] agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). Given that the TVPRA requires prompt adjudication of release requests, which ORR is systemically failing to provide, the court can use its equitable power to order the agency to act. *Cf. Nat. Res. Def. Council, Inc., v. U.S. Food & Drug Admin*., 884 F. Supp. 2d 108, 117–20 (S.D.N.Y. 2012) (agency's repeated instances of "unreasonable delay merits the imposition of a schedule for compliance" with a prior court order).

[19] The Director-level review policy constitutes "final agency action" because it marks both "the consummation of the agency's decisionmaking process," as evidenced by agency practice and publication of the policy in the online ORR guide, and because "legal consequences" for the affected children flow directly from the policy. *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (explaining that agency action is final where these two conditions are satisfied);

administrative law is that an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (quotations omitted). As such, agency action is rendered arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id*.; *see also Yale-New Haven Hosp. v. Leavitt*, 470 F.3d 71, 79 (2d Cir. 2006) (applying *State Farm* analysis and holding that agency manual's new provision was arbitrary and capricious). Particularly when an agency is changing a long-standing policy, it must provide a more detailed explanation than if it were writing on a blank slate—the agency must "display awareness that it is changing position" and "show that there are good reasons for the new policy." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

The process by which the new Director-level policy was instituted bears all the hallmarks of arbitrary and capricious conduct documented in the case law. To begin with, Mr. Lloyd provided startling testimony that he adopted the Director-level review—within hours of becoming ORR director, *see supra* at Facts, § II—without any analysis of the policy's impact on children in his care. Lloyd Tr. at 156:22-157:3 (testifying he did not "make any effort to assess the characteristics of the population at that time who had been in staff secure or secure placements."); *id.* at 158:11-15 ("We didn't make any effort" to estimate the number of children who would be subject to the policy). This lack of analysis violates the APA. *See New England*

*see also Venetian Casino Resort, L.L.C. v. E.E.O.C.*, 530 F.3d 925, 931 (D.C. Cir. 2008) (agency's adoption of a policy "permitting employees to disclose confidential information without notice" is final agency action reviewable under the APA)

*Health Care Employees Union v. N.L.R.B.*, 448 F.3d 189, 196 (2d Cir. 2006) (agency action was arbitrary and capricious because "it failed to acknowledge the natural and logical implications of the facts it credited"); *Regents of Univ. of California v. United States Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1045 (N.D. Cal. 2018) (agency action arbitrary and capricious where "[t]he administrative record includes no consideration to the disruption" it would cause).

Consistent with this remarkable concession by Mr. Lloyd, the plaintiffs' discovery request for documents that ORR considered in adopting the policy produced not a single responsive document. *See* Katovich Decl. ¶¶ 14-16. This is not surprising since Mr. Lloyd testified that, instead of seeking out or relying on any agency documents, he based his decision to adopt this policy on "news reports." Lloyd Tr. at 151:2-8. As the Supreme Court has explained, "[w]here the agency has failed to provide even [a] minimal level of analysis, its action is arbitrary and capricious." *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016). While courts are generally deferential to administrative agencies in recognition of their subject-matter expertise, the presumption of agency expertise evaporates where, as here, "an agency fails or refuses to deploy that expertise." *Vill. of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 660 (D.C. Cir. 2011).

Mr. Lloyd's explanation that the change was meant to increase "visibility and accountability" around dangerous releases, Lloyd Tr. at 147:24-148:6, offered for the first time over a year later in a deposition, was neither reasoned nor sufficiently detailed to justify a significant departure from long-standing agency policy. *See Encino Motorcars*, 136 S. Ct. at 2126 (a "summary discussion" offering "barely any explanation" does not suffice for APA purposes where an agency is overruling a long-held previous policy); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 429 (E.D.N.Y. 2018) (a single "conclusory statement" by the agency is

"too thin a reed to bear the weight" of a significant policy change). The need for analysis and explanation is all the greater here because the previous policy conformed with best practices in the child welfare context, whereas the new policy is at odds with the best practices across other human-services or child-welfare agencies. Zayas Decl. ¶¶ 16-17, *cf. Fox Television Stations*, 556 U.S. at 516 (noting that "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy").[20] "The [agency's] failure even to acknowledge its past practice and formal policies…let alone to explain its reversal of course," is an additional reason the policy is arbitrary and capricious. *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 927 (D.C. Cir. 2017).

In the absence of any reasoned explanation for the policy change, the agency has also failed to articulate "a rational connection between the facts it found and the choice it made." *State Farm*, 463 U.S. at 43 (quotations omitted). Mr. Lloyd testified that he uses his review exclusively to assess a child's dangerousness, Lloyd Tr. at 200:6-201:4, but the universe of children the policy affects includes, at least in New York, a majority for whom there is no heightened risk of dangerousness whatsoever. For instance, many children subject to the policy are already in shelter care, which requires an agency finding that they do *not* pose a danger. Valdez Tr. at 186:4-23; ORR Guide 1.2.4, Ex. H to Katovich Decl. Indeed, among members of the putative class since mid-February, 18 of 35 (51%) children have been stepped down to shelter care. *See* Rafael Decl. ¶ 7. Even among children who remain in a staff secure setting,

[20] Precisely such an analysis, detailed in a Senate investigation report into ORR release practices in 2016, found no fault with the prevailing practice of Federal Field Specialists adjudicating release determinations. *See* Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, 2016, at 26-34, available at https://www.hsgac.senate.gov/imo/media/doc/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses%202016-01-282.pdf.

there is no *per se* basis to conclude they pose a danger.[21] Children are placed in heightened supervision placements for a variety of reasons, including mental health, minor behavioral issues, or a risk of flight. *See* Carey Decl. ¶ 19; ORR Guide 1.2.4, Ex. H to Katovich Decl.; *see also J.M.R.M. v. Lloyd*, 17-cv-07333 (E.D.N.Y. voluntarily dismissed Jan. 3, 2018) (challenging prolonged detention of child who was stepped up to staff secure due to mental health-linked behavior). According to ORR's own FAQ document, even children who are placed in secure or staff-secure because of "incomplete, inaccurate, or erroneous information" are subject to the Director-level release review policy. FAQ: ORR's Director Release Decisions, Ex. N to Katovich Decl. And release decisions must be elevated to Mr. Lloyd even for children found by an immigration judge not to pose a danger—including after a stipulation by ORR that they agree. *Id*. In at least one case where Mr. Lloyd had personally signed a letter addressed to an immigration judge stating that the child was not dangerous, that child was still required to go through the entire Director-level release process. *See* Guidone Decl. ¶¶ 8-9.

## III. THE PETITIONERS SATISFY THE REMAINING ELEMENTS FOR A PRELIMINARY INJUNCTION.

Finally, the balance of equities and the public interest are decidedly in the petitioners' favor. With respect to any harm to the Government, the Government "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The petitioners seek to vacate a policy change that has dramatically prolonged children's detention and to restore an earlier policy which remains in effect for the vast majority of children in ORR custody, and which was, for many years, the policy that was in place for the plaintiff class. The

[21] Under ORR's placement guidelines, even children in staff-secure do not pose a danger. Only secure care is appropriate for children who pose a danger to themselves or others. Children in staff-secure care are simply in need of greater supervision. ORR Policy Guide 1.2.4, Ex. H to Katovich Decl.

consequences of that new policy fly in the face of Congress's intent in enacting the TVPRA. Nor does dramatically prolonging certain children's lengths of detention appear to have been the agency's purpose or even an intended consequence; indeed, Mr. Lloyd's testimony suggests the agency is not even aware of the problem. Lloyd Tr. at 119:22-120:13.

## IV. THE APPROPRIATE REMEDY IS VACATUR OF THE DIRECTOR-LEVEL REVIEW POLICY AND INJUNCTIVE RELIEF TO ENSURE PROMPT RELEASE.

For the reasons set forth above, the court should vacate the Director-level review policy imposed in March 2017 and enjoin the government to take all reasonable measures to expedite the reunification of putative class members consistent with the terms of the TVPRA. "When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989); *National Mining Ass'n v. U.S. Army Corps of Engineers*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (same). The vacatur of an invalid agency action is "compelled by the text of the Administrative Procedure Act," which provides that a reviewing court shall "hold unlawful and set aside agency action" that is arbitrary and capricious. *Earth Island Inst. v. Ruthenbeck*, 490 F.3d 687, 699 (9th Cir. 2007) (quoting 5 U.S.C.§ 706), *aff'd in part, rev'd in part on other grounds by Summers v. Earth Island Inst.*, 555 U.S. 488 (2009). Here, the "disruptive consequences" of an agency-wide vacatur of the director-level release review policy would also be minimal, *see Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014), since the previous release system remains in place for the vast majority of children in ORR custody.[22]

[22] A vacatur limited to New York is also likely to be inadministrable and insufficient to provide relief to the plaintiffs, because children are routinely moved between ORR care providers around the country. Lloyd Tr. 107:19-25 (ORR has unfettered discretion to move children around the U.S.); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 438 (E.D.N.Y. 2018) (vacating an agency policy nationwide where a geographically limited vacatur would be

In addition to enjoining the policy, the plaintiffs also seek preliminary injunctive relief to halt ongoing delays in the release of putative class members from custody. The scope of this Court's "equitable powers…is broad, for breadth and flexibility are inherent in equitable remedies." *Brown v. Plata*, 563 U.S. 493, 538 (2011) (citations and internal quotation marks omitted). Specifically, the plaintiffs ask that this Court order the government to take all reasonable measures to expedite the processing of class members' reunification with sponsors and other relief it deems appropriate to ensure that immigrant children detained in New York are promptly released from custody.

## CONCLUSION

For the foregoing reasons, the petitioners respectfully request that this Court provisionally certify the class and grant a preliminary injunction.

"unworkable, partly in light of the simple fact that people move from state to state and job to job, and would likely create administrative problems for Defendants").

Respectfully Submitted,

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