

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

IRIS CRUZ PAZ, individually and as next friend of
S.E.V., a minor;

Petitioners/Plaintiffs,

v.

SCOTT LLOYD, 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.

Respondents/Defendants.

Case No.

**PETITION FOR A WRIT
OF HABEAS CORPUS
AND COMPLAINT**

INTRODUCTION

1. This petition seeks the urgent release of a 14-year old girl, S.E.V., to her mother, Iris Cruz Paz. S.E.V. has spent two months detained by the Office of Refugee Resettlement—the agency charged with care and release of immigrant children—despite the availability and eagerness of her mother, who lives in Queens, to care for her. Ms. Cruz Paz, who was granted asylum last year, is fully capable of caring for her daughter, and the Government has not suggested otherwise. Yet ORR has refused to release S.E.V. pursuant to its new policy requiring that to obtain release of their children parents must undergo fingerprinting, a process that significantly extends detention. Ms. Cruz Paz was fingerprinted six weeks ago, yet her daughter’s release remains inexplicably stalled. Now, as Ms. Cruz Paz nears the birth of a new child following a high-risk pregnancy, she is fearful that her daughter may not be released before she gives birth. With a newborn, it will grow even more burdensome for Ms. Cruz Paz to travel to the detention

facility in Dobbs Ferry, New York and to navigate further ORR bureaucratic process. She has also grown increasingly concerned for her daughter's wellbeing, as S.E.V. cries through most of their phone calls and begs her mother to get her out of a custodial setting where she has been hit and groped and says she feels like a prisoner.

2. The Office of Refugee Resettlement's new fingerprinting policy is only the agency's latest action to stymie and delay the release of immigrant children. In June, the agency not only extended its requirement of fingerprinting to parents and their household members but also began sharing information obtained through this process with immigration enforcement authorities, who in turn are now using it to detain and deport potential sponsors. These policies have dramatically increased the length of time that children spend in custody, and have caused the total number of children in ORR custody to balloon to its highest in history.
3. Because ORR's authority extends only to children without a parent available to care for them, the agency has no authority to continue detaining S.E.V. Moreover, its delay of over a month in obtaining the results of a simple fingerprint test also violates the requirements under both the statute governing children's detention and the Flores Settlement that it release children *promptly*. Finally, like the separate policy of forcibly separating families at the border, the lengthy separation of children from available and fit parents impermissibly interferes with a fundamental right: that of parents to the care and custody of their children. The plaintiffs therefore seek immediate release of S.E.V. and further relief remedying the respondents' violations of law.

JURISDICTION AND VENUE

4. 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); 28 U.S.C. § 1361

(mandamus); 28 U.S.C. § 1651 (All Writs Act); the Suspension Clause of Article I of the U.S. Constitution; and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

5. Venue is proper under 28 U.S.C. § 2241(d) because S.E.V. is detained within this district.

Venue is also proper in the Southern District of New York under 28 U.S.C. § 1391(b) and (e)(1) because a substantial part of the events giving rise to these claims occurred in this district and Respondent Valdez's place of business is in this district.

PARTIES

6. S.E.V. is a 14-year-old girl from Honduras who is currently detained by the Office of Refugee Resettlement at Children's Village in Dobb's Ferry, New York. She arrived in the U.S. on or about July 28, 2018 and has been at Children's Village since July 30, 2018.
7. Iris Griselda Cruz Paz is the mother of S.E.V.. Ms. Cruz Paz resides in Queens, New York.
8. Respondent Scott Lloyd is the Director of the Office of Refugee Resettlement ("ORR"). ORR is the government entity directly responsible for the detention of S.E.V. Lloyd is a legal custodian of S.E.V. and is sued in his official capacity.
9. Respondent 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 S.E.V. and is sued in his official capacity.
10. Respondent 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 S.E.V. and is sued in his official capacity.
11. Respondent Elcy Valdez is the Federal Field Specialist for ORR who oversees Children's Village. Her place of business is at 26 Federal Plaza, New York, New York. 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 S.E.V. and is sued in her official capacity.

FACTS AND LEGAL FRAMEWORK

Legal Framework and Policies Governing Custody and Release of Immigrant Children

12. Immigrant children who arrive at the U.S. border seeking refuge without their parents—or children whom immigration authorities have forcibly separated from their parents—are transferred to the care of the Office of Refugee Resettlement (ORR), an agency within the Department of Health and Human Services charged with acting in their best interest and releasing them to adult caregivers. ORR contracts with private organizations throughout the United States to operate approximately one hundred care-provider facilities that house or contract with foster families to house immigrant children, including approximately eleven facilities in the State of New York.
13. ORR is authorized to detain and care for only “unaccompanied” children. “Unaccompanied” child is defined in the Homeland Security Act (HAS) to mean a child who “(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom— (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”
14. ORR’s treatment and release of unaccompanied children in its care is governed by federal statute and a 1997 consent decree entered in a federal lawsuit called *Flores v. Reno*, 85-cv-4555 (C.D. Cal. Jan. 17, 1997) (“Flores Settlement”). The Flores Settlement requires that unaccompanied children shall be released to adult sponsors “without unnecessary delay” and that the Government undertake “prompt and continuous efforts” towards release of children during the pendency of their removal proceedings. Since 2008, the William Wilberforce

Trafficking Victims Protection Reauthorization Act (“TVPRA”) also has tasked ORR with ensuring children are “promptly placed in the least restrictive setting that is in the best interest of the child.”

15. The TVPRA mandates that release decisions consider only a child’s danger to self or the community, risk of flight, and suitability of the sponsor. The text and legislative history of the TVPRA make clear that Congress enacted the statute to facilitate the speedy release and minimally restrictive placement of immigrant children.
16. ORR has never finalized regulations governing the custody and care of children.¹ Instead, the agency publishes its policies on detention and release in an online guide² and distributes an internal operations manual to care providers, contractors, and staff. ORR’s online policies “require the timely release of children and youth to qualified parents, guardians, relatives or other adults, referred to as ‘sponsors.’” Once a sponsor has been identified, he or she must complete an authorization for release of information and a family reunification application and provide documentation of the identity of the child, the 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.”
17. Under ORR policy, what type of background checks a putative sponsor or their household members undergo depends, first, on the sponsor’s relationship to the child and, second, on whether any risk to the child’s safety or unique vulnerability of the child is documented.

¹ On Sep. 7, 2018, the agency proposed regulations governing some aspects of care by children in ORR custody, which are now the subject to a 60-day comment period. The proposed regulations do not mandate that parents undergo fingerprinting.

² See Office of Refugee Resettlement, ORR Guide: Children Entering the United States Unaccompanied, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.

18. Once the necessary documentation and background checks of a potential sponsor are complete, care-provider staff “makes a recommendation for release” to the ORR Federal Field Specialist (FFS), who is an ORR employee assigned to liaise with care-provider facilities. The FFS then either approves or denies release or requests more information. Respondent Elcy Valdez is the FFS who oversees the Children’s Village facility in Dobb’s Ferry, New York.
19. ORR’s internal operations manual sets target times for how long this process should take. For release to a parent, the manual states that care providers should complete the evaluation process within ten calendar days after sending out a reunification packet. For non-parent relatives, the target is 14 days and, for unrelated adult sponsors, 21 days.

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

20. On June 7, 2018, ORR dramatically changed the requirements for all adults, including parents, to sponsor their children for release from custody.
21. First, all parents and their household members are now required to undergo fingerprinting to obtain release of their children—a process that regularly adds a month or more to a child’s detention. Previously, parents, legal guardians and their household members did not have to provide fingerprints to ORR to obtain release of their own children unless there was a documented risk to the safety of the child, the child was considered “especially vulnerable,” or the case was referred for a home study.
22. Second, ORR now shares those fingerprints and other information about *all* putative sponsors and all of their adult household members with Immigration and Customs Enforcement (ICE). Simultaneous to ORR’s new policy of fingerprinting all parents, ICE promulgated regulations

permitting it to use identity information as part of the sponsorship process for immigration enforcement.³

23. In mid-September, an ICE official testified to Congress that since ORR began sharing information with ICE in June, at least 41 putative sponsors or their family or household members have been detained and deported as a result of attempting to sponsor children in ORR custody.⁴

24. Despite the obvious inference that the June changes were intended to facilitate immigration enforcement, ORR has claimed the purpose is to ensure sponsor suitability. In a Memorandum of Agreement signed by the directors of ORR and ICE on April 13, 2018, ORR asserts it would begin sharing sponsor information with ICE and requesting immigration and criminal history information on all sponsors and their household members from ICE, including parents, in order “to fulfill its statutory duty” to determine “the suitability of a potential sponsor.”

25. But ORR has not articulated any plausible child-safety rationale for these changes. Lawful immigration status is not a prerequisite for anyone, much less a parent, to care for his or her child. Nor has ORR identified a single instance in which its previous policy of not requiring that parents be fingerprinted resulted in a threat to child safety. And many parents, like Ms. Cruz Paz, who won asylum from an immigration judge in 2017, may well have easily verifiable

³ See Notice of Modified System of Records, 83 Fed Reg. 20844 (May 8, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-08/2018-09902>.

⁴ Tal Kopan, *ICE Arrested Undocumented Immigrants Who Came Forward to Take In Undocumented Children*, CNN, Sep. 20, 2018, <https://www.cnn.com/2018/09/20/politics/ice-arrested-immigrants-sponsor-children/index.html>, attached as Exhibit C to Austin Decl.; *see also* Testimony of Matthew Albence, Executive Associate Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, Sep. 18, 2018, available at <https://www.hsgac.senate.gov/hearings/the-implications-of-the-reinterpretation-of-the-flores-settlement-agreement-for-border-security-and-illegal-immigration-incentives>.

immigration statuses that require neither a fingerprint-based background check nor a month or more of delay to confirm.

26. The new policy also does not provide relevant new criminal information. Prior to June 7, 2018, non-parent sponsors underwent (and continue to undergo) FBI criminal records check as part of the release process. Unrelated sponsors also undergo state abuse-and-neglect checks. But parents only had to undergo sufficient background checks—including public criminal records checks and sex-offender registry checks—to determine if further investigation was necessary. Only in limited circumstances, such as where a public-records check revealed a safety concern or there was another documented risk to a child’s safety, did parents undergo fingerprinting.
27. Fingerprint-based immigration checks on sponsors and their household members are not necessary to assess sponsor suitability. Immigration status information about sponsors’ household members is manifestly irrelevant to child safety. And to the extent a parent’s immigration status has any connection to child safety, ORR already accounted for that in its prior release procedures, under which ORR care providers inquired into sponsors’ immigration status and conducted immigration status checks for non-parent sponsors. ORR’s policy guide provided, “If a sponsor does not have immigration status, ORR will require the sponsor to ensure that a sponsor care plan is in place in the event that the sponsor needs to leave the United States or is otherwise unable to care for the child.” The goal of the plan was “to ensure an unaccompanied alien child has a caregiver, despite any complications resulting from the sponsor’s immigration situation.” For parents like Ms. Cruz Paz, whose immigration status is easily verifiable, no alternative sponsor care plan would be necessary.
28. Rather than ensuring sponsors are suitable, the new policy impedes reunification for no purpose beyond facilitating immigration enforcement at the expense of children like S.E.V.

Trump Administration Efforts to Vilify Immigrant Children and Obstruct Their Release

29. The changes imposed on June 7 are only the latest in a series of attempts by the Trump Administration to vilify and target immigrant children and their family members for deportation. Administration officials have repeatedly denounced the laws intended to protect these children as “loopholes” and called on Congress to amend or repeal them. At the same time, the administration has worked to undermine these protections—particularly children’s right to prompt release. *See L.V.M. v. Lloyd*, No. ---F.Supp.3d.--, 2018 WL 3133965, at *9 (S.D.N.Y. June 27, 2018) (striking down a policy imposed in March 2017 requiring personal approval by ORR director prior to release); *Flores v. Sessions*, 85-cv-4544, ECF 470 (C.D. Cal. July 30, 2018) (same).
30. Because of this succession of changes, the length of time children spend in ORR custody has risen significantly and the total population of children in ORR custody to balloon to its highest level in history.⁵ So many children are now languishing in ORR custody that the agency has begun transferring them from care providers in the Midwest and New York to a “tent city” set up to accommodate thousands of children in the Texas desert.⁶
31. The fear of immigration enforcement is also driving lengthening periods of detention. Prior to June 2018, ICE had already begun to use the sponsorship process as a tool for immigration enforcement, seemingly through *ad hoc* collaboration with Customs and Border Protection officers who interviewed children at the border. As a result of these raids and threats, civil

⁵ Caitlin Dickerson, *Detention of Migrant Children Has Skyrocketed to Highest Levels Ever*, N.Y. Times, Sep. 12, 2018, <https://www.nytimes.com/2018/09/12/us/migrant-children-detention.html?action=click&module=Top%20Stories&pgtype=Homepage>, attached as Exhibit D to Austin Decl.

⁶ Caitlin Dickerson, *Hundreds of Migrant Children Quietly Moved to a Tent Camp on the Texas Border*, N.Y. Times, Sep. 30, 2018, <https://www.nytimes.com/2018/09/30/us/migrant-children-tent-city-texas.html>, attached as Exhibit E to Austin Decl.

liberties groups warned “children have languished in ORR custody because ICE detained, deported, or frightened their sponsor.”⁷ Now, with the formal sharing of sponsors’ information with ICE since June, and the detention of dozens of people attempting to sponsor children in ORR custody, the deterrent effect on sponsors and delays children suffer have only worsened.

32. For children, the effects of this increasingly prolonged detention are devastating. These effects can include psychological and physiological damage, which increases with any extension of time in custody. Children frequently feel a growing sense of hopelessness and depression as a result of their lengthy detention and separation from family. This is exacerbated by the uncertainty of waiting when neither local staff members nor their parents can explain why children remain detained or how much longer the wait will be.

FACTS PERTAINING TO S.E.V.

33. S.E.V. is a 14-year old girl from Honduras whose mother, Ms. Cruz Paz, resides in Queens, New York and is available, capable, and eager to take her daughter in and care for her.
34. S.E.V. resided with her mother until 2013, when Ms. Cruz Paz fled to the U.S. in fear for her life. After her departure, Ms. Cruz Paz remained in close touch with her daughter. Ms. Cruz Paz was granted asylum by an immigration judge in 2017—a process which necessitates providing fingerprints to the Department of Homeland Security and undergoing a background check. Ms. Cruz Paz listed her two daughters, including S.E.V., on her asylum application, which entitles both to apply to obtain status through her mother now that she has won asylum.

⁷ Letter from Diane Eikenberry, National Immigrant Justice Center, *et al.*, to Cameron Quinn, Officer of Civil Rights & Civil Liberties, Department of Homeland Security; John Kelly Acting Inspector General, Department of Homeland Security (Dec. 6, 2017), available at <https://cliniclegal.org/sites/default/files/pressreleases/Sponsor-Enforcement-OIG-CRCL-Complaint-Cover-Letter-FINAL-PUBLIC.pdf>.

After winning asylum, Ms. Cruz Paz commenced the process of bringing her daughters to the U.S. lawfully.

35. In July 2018, S.E.V. fled Honduras due to fear for her safety. An immigration official called Ms. Cruz Paz on July 28 and advised her that her daughter was at the U.S. border. Ms. Cruz Paz, who believed her daughter to be in Honduras, quickly identified herself as the mother and provided her information. Approximately a week later, Ms. Cruz Paz received a call from a case worker at Children's Village in New York advising her that S.E.V. had been transferred there. The case worker also advised Ms. Cruz Paz of what documents she needed to fill out and provide in order to obtain her daughters release. Ms. Cruz Paz provided all documents requested of her as of August 8, 2018.
36. While making every effort to be reunited with her daughter, Ms. Cruz Paz has visited her at the Children's Village detention facility. On or about August 15, 2018, the case worker informed her that she and any other adults in the home would also need to undergo fingerprinting at an ORR-designated vendor in Manhattan. The case worker made an appointment for Ms. Cruz Paz on September 3, 2018 and for her partner on September 7, 2018. Ms. Cruz Paz responded that she wanted to go earlier, as the appointment was several weeks away, but the case worker told her that September 3 was the first available appointment.
37. On August 21, Ms. Cruz Paz took the subway into Manhattan to visit the fingerprint vendor in person and inquire if there was any possibility of obtaining an earlier appointment. Due to a cancellation, she was able to be fingerprinted that day. She was also able to move her partner's appointment to August 27, due to another cancellation.
38. Since she was fingerprinted six weeks ago, Ms. Cruz Paz has repeatedly inquired of S.E.V.'s case worker what further steps she can take to obtain her daughter's release. At her two in-

- person visits with her daughter, the first on August 15 and the second on September 11, the case worker stated that Ms. Cruz Paz may need to undergo a home study. Ms. Cruz Paz has repeatedly attempted to confirm or schedule such a home study, but the case worker has told her no further action on the case is possible until ORR receives the results of the fingerprinting.
39. Ms. Cruz Paz has repeatedly asked what more she can do to facilitate or expedite this process. The case worker has told her there is “absolutely nothing” that either of them can do aside from wait.
40. Ms. Cruz Paz’s fingerprint results have now been pending for well over a month.
41. Ms. Cruz Paz’s experience illustrates how the change in ORR’s fingerprint requirement has contributed to the mounting delay. Despite identifying herself as S.E.V.’s mother on July 28, and providing all requested documents by August 8, Ms. Cruz Paz was not scheduled for a fingerprinting appointment until over a month after her daughter came into ORR custody. When she pressed for an earlier appointment, she was told none were available. And over a month after she was fingerprinted on August 21 (because she went and managed to be fingerprinted without an appointment), she is still awaiting the results.
42. In the two months that S.E.V. has been in ORR custody, no care provider or government official has ever intimated that her mother is unfit to care for her. Neither Ms. Cruz Paz nor the other adult in her home have ever been arrested or accused of abusing or neglecting children.
43. Since S.E.V. was detained on July 28, Ms. Cruz Paz has grown increasingly concerned for her safety and well-being. S.E.V. frequently cries on the phone or in visits with her mother and begs to go home with her. Her mother describes even speaking with her daughter as painful, because she can do nothing in response to her daughter’s entreaties to get her out of custody.

44. S.E.V. has also confided to her mother that she was hit by another girl, which resulted in a visit to a medical clinic, and that she was groped by a male child. These incidents have heightened her mother's concern that, given her daughter's gender and age, she is particularly vulnerable to abuse.
45. Finally, Ms. Cruz Paz is pregnant and due October 20, 2018. Her doctors have deemed her pregnancy "high risk;" Ms. Cruz Paz has had to stop working and attends multiple doctor appointments a week. Ms. Cruz Paz and her daughter are both worried that the delay in S.E.V.'s release may cause her to miss the birth of her brother, and to remain detained after a point when her mother may not have the wherewithal to travel to Dobb's Ferry or to manage the burdens of dealing with further ORR bureaucracy.
46. S.E.V.'s case worker has not been able to provide Ms. Cruz Paz a timeline or estimate as to how much longer she will have to wait for the fingerprint results necessary to obtain her daughter's release, let alone a timeline for the release itself.

CAUSES OF ACTION

FIRST CLAIM

VIOLATION OF THE HOMELAND SECURITY ACT (HSA) AND THE TVPRA

47. The respondents' actions exceed their statutory authority under the Homeland Security act and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

SECOND CLAIM

VIOLATION OF TVPRA

48. The respondents' actions violate the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

THIRD CLAIM

VIOLATION OF THE *FLORES* SETTLEMENT DECREE

49. The respondents' actions violate the *Flores* settlement decree of 1997.

FOURTH CLAIM
VIOLATION OF THE DUE PROCESS CLAUSE

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

FIFTH CLAIM
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

51. The respondents' actions and new policies violate the Administrative Procedure Act.

PRAYER FOR RELIEF

WHEREFORE Iris Cruz Paz respectfully requests that the Court:

1. Assume jurisdiction over this matter;
2. Order the defendants to release S.E.V. to her mother's custody immediately;
3. Declare that the defendants' actions violate the HSA, TVPRA, the Administrative Procedure Act, the Flores Settlement, and the Due Process Clause;
4. Vacate the ORR policy and practice of requiring parents to undergo fingerprinting to obtain release of their children from ORR custody;
5. Award the plaintiffs damages and reasonable attorneys' fees and costs for this action; and
6. Grant any further relief that the Court deems just and proper.

Respectfully Submitted,



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Dated: October 1, 2018
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