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6                   UNITED STATES DISTRICT COURT  
7                   FOR THE WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9 J.E.F.M., a minor, by and through his Next Friend,  
10 Bob Ekblad; J.F.M., a minor, by and through his  
11 Next Friend, Bob Ekblad; D.G.F.M., a minor, by  
12 and through her Next Friend, Bob Ekblad; F.L.B.,  
13 a minor, by and through his Next Friend, Casey  
14 Trupin; G.D.S., a minor, by and through his  
15 mother and Next Friend, Ana Maria Ruvalcaba;  
16 M.A.M., a minor, by and through his mother and  
Next Friend, Rosa Pedro; S.R.I.C., a minor, by  
and through his father and Next Friend, Hector  
Rolando Ixcoy; G.M.G.C., a minor, by and  
through her father and Next Friend, Juan Guerrero  
Diaz; on behalf of themselves as individuals and  
on behalf of others similarly situated,

17                   Plaintiffs-Petitioners,  
18                   v.

19 Eric H. HOLDER, Attorney General, United  
20 States; Juan P. OSUNA, Director, Executive  
Office for Immigration Review; Jeh C.  
21 JOHNSON, Secretary, Homeland Security;  
Thomas S. WINKOWSKI, Principal Deputy  
22 Assistant Secretary, U.S. Immigration and  
Customs Enforcement; Nathalie R. ASHER, Field  
23 Office Director, ICE ERO; Kenneth HAMILTON,  
AAFOD, ERO; Sylvia M. BURWELL, Secretary,  
24 Health and Human Services; Eskinder NEGASH,  
Director, Office of Refugee Resettlement,

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26                   Defendants-Respondents.  
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Case No. \_\_\_\_\_

**COMPLAINT—CLASS ACTION**

1       **I. PRELIMINARY STATEMENT**

2       1. Plaintiffs are eight immigrant children, ranging in age from ten to seventeen. The Government  
 3 has begun proceedings to deport each of them; they will soon be called to appear before an Immigration  
 4 Judge. In court, the Department of Homeland Security (“DHS”) will be represented by a trained lawyer  
 5 who will argue for the child’s deportation. But no lawyer will stand with the child. Each will be required  
 6 to respond to the charges against him or her, and, in theory, will be afforded an opportunity to make  
 7 legal arguments and present evidence on his or her own behalf. But in reality those rights will be  
 8 meaningless because children are not competent to exercise them. Each child has attempted to find  
 9 representation through pro bono legal service providers, but none of them have found anyone with the  
 10 resources to take on their cases. Absent this Court’s intervention, these children will be forced to defend  
 11 themselves pro se under the immigration laws – a legal regime that, as the courts have recognized, rivals  
 12 the Internal Revenue Code in its complexity.

13      2. The plight of these eight children is not unique. Plaintiffs seek to represent a class of  
 14 unrepresented children, all of whom face deportation. Each year the Government initiates immigration  
 15 proceedings against thousands of such children, and in each case the purpose of the proceedings is to  
 16 determine whether the child may remain in the United States. Although a remarkable network of pro  
 17 bono service providers, working in concert with (and in some cases funded directly by) the Government,  
 18 has endeavored to represent as many of these children as possible, the majority of children appearing in  
 19 immigration court still do so without an attorney.<sup>1</sup> At the present time, legal service organizations  
 20 representing immigrant children throughout the country have nowhere near the capacity to meet the  
 21 demand. The rising number of children fleeing to this country will likely worsen that shortfall.<sup>2</sup> The  
 22 Government, in contrast, is represented in every case.

23      3. Neither the Constitution nor the immigration laws permit this state of affairs. More than four  
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25      <sup>1</sup> Center for Gender and Refugee Studies & Kids in Need of Defense, *A Treacherous Journey: Child*  
 26 *Migrants Navigating the U.S. Immigration System* at iii-iv (Feb. 2014) [hereinafter “A Treacherous  
 27 Journey”] available at [http://www.uhastings.edu/centers/cgrs-ocs/treacherous\\_journey\\_cgrs\\_kind\\_report.pdf](http://www.uhastings.edu/centers/cgrs-ocs/treacherous_journey_cgrs_kind_report.pdf).

28      <sup>2</sup> *A Treacherous Journey* at 2.

1 decades ago, the Supreme Court recognized that when the Government initiates proceedings against  
 2 children facing juvenile delinquency charges, the Due Process Clause requires the Government to  
 3 provide those children with legal representation to ensure that the proceedings are fundamentally fair. *In*  
 4 *re Gault*, 387 U.S. 1, 41 (1967). The Court held that “[t]he juvenile needs the assistance of counsel to  
 5 cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the  
 6 proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires  
 7 the guiding hand of counsel at every step in the proceedings against him.” *Id.* at 36 (citation and  
 8 quotation marks omitted).. The Constitution guarantees children this safeguard notwithstanding the civil,  
 9 rather than criminal, character of juvenile delinquency proceedings.

10 4. Immigrants, including immigrant children, are also entitled to Due Process when facing  
 11 deportation. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Both the Constitution and the immigration laws  
 12 guarantee all children the right to a full and fair removal hearing, including the opportunity to defend  
 13 against deportation and seek any forms of relief that would enable them to remain in the United States.  
 14 And just as in juvenile delinquency proceedings, children cannot receive that fair hearing without legal  
 15 representation. As the Supreme Court stated in discussing proceedings of similarly “tremendous  
 16 consequences,” for children in immigration proceedings “[t]he right to representation by counsel is not a  
 17 formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.” *Kent v.*  
 18 *United States*, 383 U.S. 541, 554, 561 (1966) (addressing child’s right to appointed counsel in  
 19 proceedings to determine whether juvenile court should waive its jurisdiction in favor of criminal court).

20 5. Yet every day in courts throughout the country, children represent themselves in deportation  
 21 cases that are often more complex and more serious than most juvenile delinquency cases.<sup>3</sup> The resulting  
 22 adjudications are fundamentally unfair. Children are forced to admit or deny allegations against them,

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 24 <sup>3</sup> Julia Preston, *Young and Alone, Facing Court and Deportation*, N.Y. Times, Aug. 25, 2012, at A1,  
 25 available at <http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-deportation.html?pagewanted=all> (describing six-year-old child in removal proceedings without  
 26 counsel); see also Julie Myers Wood & Wendy Young, *Children Alone and Lawyerless in a Strange Land*, The Wall Street Journal, Sept. 22, 2013, available at  
 27 <http://online.wsj.com/news/articles/SB10001424127887324492604579083400349940432> (“We’ve seen  
 28 children as young as 5 facing an immigration judge with no representation.”).

1 compile evidence in support of their claims to remain in the United States, and articulate legal  
 2 arguments on their own behalf, when in reality they “are unlikely to understand the complex procedures  
 3 they face and the options and remedies that may be available to them under the law.”<sup>4</sup>

4 6. To fulfill its statutory and constitutional obligations, the Government must ensure that no child  
 5 faces the life-altering prospect of deportation without legal representation.

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7 **II. JURISDICTION AND VENUE**

8 7. Plaintiffs challenge the federal Government’s failure to provide appointed legal representation  
 9 for children in immigration proceedings on federal statutory and constitutional grounds.<sup>5</sup>

10 8. This court has subject matter jurisdiction pursuant to the general federal question statute, 28  
 11 U.S.C. § 1331, the federal habeas statute, 28 U.S.C. § 2241, et seq., and the All Writs Act, 28 U.S.C. §  
 12 1651.

13 9. This court has personal jurisdiction over the Defendants because of, *inter alia*, the nationwide  
 14 reach of Defendants’ conduct and the presence of courts operated by Defendants within the Western  
 15 District of Washington where immigration proceedings involving members of the Plaintiff Class are  
 16 held.

17 10. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(e)(1) because a  
 18 substantial part of the events or omissions giving rise to this action occurred in this district. Plaintiffs  
 19 F.L.B. and G.D.S. reside in this district, and Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S. all  
 20 have immigration proceedings scheduled to occur in this district. In addition, venue is proper under 28  
 21 U.S.C. §§ 2242-43 because Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S. are in the  
 22 constructive custody of immigration authorities by virtue of immigration proceedings in this district.

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25 <sup>4</sup> *A Treacherous Journey* at iii.

26 <sup>5</sup> Plaintiffs define “immigration proceedings” as any proceeding that occurs before an Immigration  
 27 Judge or the Board of Immigration Appeals (“BIA”). Where the reference is ambiguous, the term  
 28 “Immigration Judges” should be understood to refer to both individual Immigration Judges and  
 members of the BIA.

1           **III. PARTIES**

2           **A. Plaintiffs**

3       11. Plaintiff J.E.F.M. is a 10-year-old native and citizen of El Salvador.<sup>6</sup> He now resides in  
 4 Washington State. He has a removal hearing scheduled for September 2014 in Seattle, Washington, and  
 5 does not have an attorney to represent him in his immigration case. J.E.F.M. appears by his next friend  
 6 Bob Ekblad, a minister who has worked closely with J.E.F.M. and his family.

7       12. Plaintiff J.F.M. is a 13-year-old native and citizen of El Salvador. He is the older brother of  
 8 J.E.F.M. He now resides in Washington State. He has a removal hearing scheduled for September 2014,  
 9 in Seattle, Washington, and does not have an attorney to represent him in his immigration case. J.F.M.  
 10 appears by his next friend Bob Ekblad, a minister who has worked closely with J.F.M. and his family.

11      13. Plaintiff D.G.F.M. is a 15-year-old native and citizen of El Salvador. She is the older sister of  
 12 J.F.M. and J.E.F.M. She now resides in Washington State. She has a removal hearing scheduled for  
 13 September 2014, in Seattle, Washington, and does not have an attorney to represent her in her  
 14 immigration case. D.G.F.M. appears by her next friend Bob Ekblad, a minister who has worked closely  
 15 with D.G.F.M. and her family.

16      14. Plaintiff F.L.B. is a 15-year-old native and citizen of Guatemala. He now resides in Seattle,  
 17 Washington. He has a removal hearing scheduled for September 2014, and does not have an attorney to  
 18 represent him in his immigration case. F.L.B. appears by his next friend Casey Trupin. Mr. Trupin is the  
 19 Project Coordinator for the Children and Youth Project at Columbia Legal Services in Seattle,  
 20 Washington.

21      15. Plaintiff G.D.S. is a 15-year-old native and citizen of Mexico. He has resided in the United States  
 22 since approximately the age of one. He does not have an attorney to represent him in his immigration  
 23 case. G.D.S. appears by his next friend and mother, Ana Maria Ruvalcaba.

24      16. Plaintiff M.A.M. is a 16-year-old native and citizen of Honduras. M.A.M. has resided in the  
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26      <sup>6</sup> To protect the privacy of the child Plaintiffs in this case, this complaint refers to them using their  
 27 initials. See Fed. R. Civ. P. 5.2(a)(3). For the same reason, this complaint also does not provide as much  
 28 detail as is available concerning the harms they have suffered in their home countries, during their  
 journeys here, and since their arrivals in the United States.

1 United States since he was eight years old. M.A.M. resides in Oxnard, California. M.A.M. has a removal  
2 hearing scheduled for August 2014, and does not have an attorney to represent him in his immigration  
3 case. M.A.M. appears by his next friend and mother, Rosa Pedro.

4 17. Plaintiff S.R.I.C. is a 17-year-old native and citizen of Guatemala. S.R.I.C. came to the United  
5 States earlier this year and now resides in Los Angeles, California. S.R.I.C. has a removal hearing  
6 scheduled for January 2015, and does not have an attorney to represent him in his immigration case.  
7 S.R.I.C. appears by his next friend and father, Hector Rolando Ixcoy Ixcoy.

8 18. Plaintiff G.M.G.C. is a 14-year old native and citizen of El Salvador. She came to the United  
9 States earlier this year and now resides in Los Angeles, California. G.M.G.C. has a removal hearing  
10 scheduled for September 2014, and does not have an attorney to represent her in her immigration case.  
11 G.M.G.C. appears by her next friend and father, Juan Guerrero Diaz.

12       **B. Defendants**

13 19. Defendant Eric H. Holder, Jr., is the Attorney General of the United States and the head of the  
14 U.S. Department of Justice (“DOJ”). Mr. Holder shares responsibility for implementing and enforcing  
15 the immigration laws. Mr. Holder is sued in his official capacity.

16 20. Defendant Juan P. Osuna is the Director of the Executive Office for Immigration Review  
17 (“EOIR”), which is the federal agency within DOJ that operates the immigration courts. Mr. Osuna is  
18 responsible for the supervision of the Deputy Director, the Chairman of the Board of Immigration  
19 Appeals (“BIA”), the Chief Immigration Judge, the Chief Administrative Hearing Officer, and all EOIR  
20 agency personnel in the execution of their duties. Mr. Osuna is sued in his official capacity.

21 21. Defendant Jeh C. Johnson is the Secretary of DHS and is the highest-ranking member of DHS,  
22 which is the arm of the federal government responsible for enforcing the immigration laws. Mr. Johnson  
23 is sued in his official capacity.

24 22. Defendant Thomas S. Winkowski is the Principal Deputy Assistant Secretary of DHS, and is the  
25 head of U.S. Immigration and Customs Enforcement (“ICE”), which is the principal investigative,  
26 enforcement, and prosecutorial arm of DHS. ICE attorneys represent the Government in immigration  
27 proceedings. Mr. Winkowski is sued in his official capacity.

28 23. Defendant Sylvia M. Burwell is the Secretary of Health and Human Services (“HHS”) and is the  
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1 highest-ranking member of HHS, which is the arm of the federal Government responsible for the care  
 2 and custody of unaccompanied immigrant minors under the Trafficking Victims Protection  
 3 Reauthorization Act. Ms. Burwell is sued in her official capacity.

4 24. Defendant Eskinder Negash is the Director of the Office of Refugee Resettlement (“ORR”),  
 5 which is the division of HHS directly responsible for the care and custody of unaccompanied immigrant  
 6 minors. Mr. Negash is sued in his official capacity.

7 25. Defendant Nathalie R. Asher is the Field Office Director for the Seattle Field Office of ICE,  
 8 which has custody of Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S., by virtue of immigration  
 9 proceedings in this district. Ms. Asher is sued in her official capacity.

10 26. Defendant Kenneth Hamilton is the Acting Assistant Field Office Director for the Seattle Field  
 11 Office of ICE, which has custody of Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., and G.D.S., by virtue  
 12 of immigration proceedings in this district. Mr. Hamilton is sued in his official capacity.

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#### 14 IV. FACTUAL BACKGROUND

15 A. Children Facing Deportation

16 27. Every year, the Government initiates immigration proceedings to deport thousands of children,  
 17 ranging from toddlers to teenagers.<sup>7</sup> Children enter the immigration enforcement system in several ways.  
 18 Thousands are arrested at or shortly after crossing the United States-Mexico border, often after having  
 19 survived treacherous and difficult journeys from their countries of origin. Many of them have fled  
 20 persecution by their governments or their own families, rising rates of extreme violence (much of it  
 21 caused by the escalating influence of powerful gangs), or economic conditions that make life  
 22 unsustainable in their countries of origin.<sup>8</sup> Some of these children have experienced trauma in the form

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23 <sup>7</sup> See *supra* note 3 (news articles reporting cases of children as young as five or six years old in removal  
 24 proceedings); *Matter of Gomez-Gomez*, 23 I. & N. Dec. 522 (BIA 2002) (en banc) (addressing case of  
 25 eight-year-old child ordered removed in absentia based on report of arresting officer); *Matter of Ponce-Hernandez*, 22 I. & N. Dec. 784, 785 (BIA 1999) (en banc) (describing 15-year-old child charged with  
 26 removability); *A Treacherous Journey* at 11-12 (noting case stories of girls aged 12 and 14 who  
 appeared before Immigration Judges).

27 <sup>8</sup> Women’s Refugee Commission, *Forced from Home: The Lost Boys and Girls of Central America* 7  
 28 (2012). This report found that more than 77% of a sample of 151 children cited violence as their primary  
 (cont'd)

1 of rape, kidnapping, abandonment, or physical abuse inflicted in their home countries or by smugglers  
 2 and traffickers during their journey to the United States.<sup>9</sup>

3 28. Other children are apprehended after spending years in the United States, some having grown up  
 4 almost entirely in this country. Many of them attend school alongside other children in this country,  
 5 speak fluent English, and are fully integrated into their communities. Others are not so lucky, suffering  
 6 abuse, neglect, or abandonment within the United States itself. Some of these children are turned over to  
 7 DHS after contact with the juvenile justice system, while DHS arrests others during general immigration  
 8 enforcement activities.

9 29. Although they have entered the immigration system in different ways, Plaintiffs and the putative  
 10 class they seek to represent share two fundamental characteristics. First, the Government has initiated  
 11 immigration proceedings in order to remove them from the United States and, despite their inability to  
 12 secure counsel, will force them to appear unrepresented in complex, adversarial court proceedings  
 13 against trained ICE attorneys. Second, all of them are under the age of 18, and therefore lack the  
 14 intellectual and emotional capacity of adults.

#### 15       B.     The Structure of Immigration Proceedings for Children

16 30. Immigration proceedings pit the Government against the child in an adversarial process where  
 17 each side is presumed to have the ability to represent its own interests. An attorney trained in substantive  
 18 immigration law and immigration court procedures represents the Government. This attorney acts as a  
 19 prosecutor, and seeks to establish the child's removability. Each side is expected to present facts and  
 20 legal arguments to an Immigration Judge, after which the Judge ultimately makes a determination in  
 21 favor of the Government or the child. Either side can then appeal the decision to the BIA.

22 31. The facts and legal arguments at issue in immigration cases are often complex. The federal

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23 reason for fleeing their countries of origin. See also United Nations High Commissioner for Refugees,  
 24 *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for*  
*25 International Protection* 6 (2014) [hereinafter UNHCR Report] (finding that no less than 58% of the  
 26 children interviewed for the report "were forcibly displaced because they suffered or faced harms that  
 indicated a potential or actual need for international protection").

27       <sup>9</sup> The United States Conference of Catholic Bishops Migration and Refugee Services, *The Changing*  
 Face of the Unaccompanied Alien Child 8 (2012).

1 courts have repeatedly observed that “the immigration laws have been termed second only to the  
 2 Internal Revenue Code in complexity.” *Baltazar-Alcanzar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004)  
 3 (citation and quotation marks omitted); *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (“Immigration  
 4 law can be complex, and it is a legal specialty of its own.”).

5 32. Even identifying defenses or other avenues to relief from removal, let alone prevailing on them,  
 6 often requires substantial factual investigation and legal research. For example, a number of children  
 7 facing removal have fled persecution in their home countries. However, the immigration laws put the  
 8 burden on the child to prove eligibility for asylum. *See* 8 U.S.C. § 1158(b)(1)(B)(i). Establishing such  
 9 eligibility requires the child to present significant amounts of evidence and sophisticated legal  
 10 arguments. As a result, asylum claims brought by pro se children “frequently fail due to burdensome  
 11 legal standards and incorrect application of legal principles . . . even when it has been determined that  
 12 the child suffered egregious harm rising to the level of persecution and is likely to suffer persecution in  
 13 the future.”<sup>10</sup>

14 33. As with asylum, children bear the burden of demonstrating eligibility for other forms of relief  
 15 from deportation. *See* 8 U.S.C. § 1229a(c)(4) (stating that applicant for relief from removal in  
 16 immigration proceedings bears burden to demonstrate both eligibility requirements of the particular  
 17 form of relief, and, if applicable, merits relief as a matter of discretion). These other forms of relief  
 18 include Special Immigrant Juvenile Status (“SIJS”), which is available to a child when a state juvenile  
 19 court declares that the child’s reunification with one or both parents is not viable due to abuse, neglect,  
 20 abandonment, or a similar basis under state law, *see id.* 8 U.S.C. § 1101(a)(27)(J)(i); U-visas, which are  
 21 available to children who have been the victims of certain serious crimes if they would be helpful to the  
 22 authorities in an investigation or prosecution, *see id.* §§ 1101(a)(15)(U)(i)(III), 1184(p)(1); T-visas,  
 23 which protect victims of “severe” forms of human trafficking, *see id.* § 1101(a)(15)(T)(i)(I); family  
 24 visas, where a parent who is a U.S. citizen or lawful permanent resident is able to file a visa petition on  
 25 their child’s behalf, *see id.* §§ 1151-1154, as well as other forms of relief. Meeting the eligibility  
 26 requirements for all of these forms of relief requires the child to carefully marshal both facts and law.

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 28 <sup>10</sup> *A Treacherous Journey* at 20.

1 The child must not only demonstrate substantive eligibility for relief, but also be able to follow  
 2 procedures for submitting the appropriate applications to different agencies of the Government, along  
 3 with the required supporting evidence.

4 34. In addition, some children have procedural defenses against removal, including arguments that  
 5 the immigration proceedings must be terminated because of constitutional or regulatory violations. *See,*  
 6 *e.g., Matter of Mejia-Andino*, 23 I. & N. Dec. 533, 536 (BIA 2002) (en banc) (concluding that  
 7 proceedings against seven-year-old child were properly terminated due to failure to properly serve the  
 8 charging document). However, moving an Immigration Judge to terminate the proceedings on such  
 9 grounds is no small feat. In particular, a suppression motion requires the ability to gather and understand  
 10 facts surrounding one's arrest, the interaction between different state and federal agencies, and complex  
 11 regulatory and constitutional law. Here too, the child bears the burden of establishing that the  
 12 Government obtained its evidence in a manner that requires suppression. *See Matter of Barcenas*, 19 I.  
 13 & N. Dec. 609, 611 (BIA 1988).

14 35. Because of their age, children lack the ability to assert these and other defenses and claims to  
 15 relief by themselves. "A child's age is far more than a chronological fact. It is a fact that generates  
 16 commonsense conclusions about behavior and perception . . . [that] apply broadly to children as a class."  
 17 *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (internal quotation marks and citations omitted).  
 18 These commonsense conclusions are grounded not only in "what any person knows [] about children  
 19 generally," *id.*, but also in scientific studies that "continue to show fundamental differences between  
 20 juvenile and adult minds." *Graham v. Florida*, 560 U.S. 48, 68 (2010) (citing amicus briefs from  
 21 medical and psychological professional associations).

22 36. For example, children possess a reduced capacity to comprehend the consequences of their  
 23 actions and decisions, and they are often more receptive to adult influence, in part because many of them  
 24 have been taught not to challenge authority and to please the adults around them. *See* Dustin Albert &  
 25 Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. Research on Adolescence  
 26 211, 220 (2011) (noting that "adults tend to make more adaptive decisions than adolescents," in part  
 27 because "they have a more mature capacity to resist the pull of social and emotional influences and  
 28 remain focused on long-term goals"). As a result, they are frequently more susceptible to suggestion and

1 leading questions, and at times have difficulty distinguishing between people who are seeking to protect  
 2 their interests and those who are not. What is more, children in the immigration enforcement system are  
 3 often even more vulnerable than other children, since many of them arrive in the United States after  
 4 having experienced serious trauma in their countries of origin or during their journeys to the United  
 5 States.<sup>11</sup>

6 37. The interests at stake in these complex proceedings could scarcely be higher: children face  
 7 expulsion from this country to a land where they often lack family or other support. Many of them fled  
 8 their home countries in order to escape persecution, torture, or death; deportation to the country from  
 9 which the child fled is often not in their best interest.

10 38. Moreover, the civil removal orders issued against children in immigration proceedings bear the  
 11 same consequences as those issued against adults. Those consequences include not only bars to future  
 12 admission to the United States (if the child would otherwise have been eligible for a visa), but also the  
 13 prospect of criminal prosecution should they attempt to reenter the United States.

14 39. Forcing children to appear in immigration court without representation ensures that thousands of  
 15 children are deprived of a full and fair opportunity to identify defenses or seek relief for which they  
 16 qualify. A recent report by the United Nations High Commissioner for Refugees, for example, suggests  
 17 that over half of all unaccompanied children fleeing to the United States from Central America raised  
 18 potential international protection needs, while a slightly older report found that as many as 40% of  
 19 unaccompanied children in removal proceedings were eligible for some form of immigration relief.<sup>12</sup>  
 20 Despite such estimates, only a small number of children actually receive such relief.<sup>13</sup> This gap is likely  
 21 due in large part to the absence of counsel. The presence of counsel makes a real difference for the  
 22 children fortunate enough to receive legal representation. Data from the adult removal hearing context

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23 <sup>11</sup> UNHCR Report at 6 (finding that 48% of children interviewed for study had been “personally affected  
 24 by the augmented violence” in their countries of origin and that 21% had “survived abuse and violence  
 in their homes by their caretakers”).

25 <sup>12</sup> UNHCR Report at 6; Olga Byrne & Elyse Miller, *The Flow of Unaccompanied Children Through the*  
 26 *Immigration System*, Vera Institute of Justice 4 (Mar. 2012).

27 <sup>13</sup> See, e.g., *A Treacherous Journey* at 19 n.94, 38, 48.

1 confirms what common sense and experience strongly suggest: immigrants with lawyers are far more  
 2 likely to identify and prevail on defenses to removal that the law makes available to them.<sup>14</sup>

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4 **C. The Federal Government's Response to the Legal Needs of Children Facing  
 Deportation**

5 40. Although the Government initiates deportation cases against thousands of children each year, it  
 6 does not ensure legal representation for the vast majority of them. Numerous advocates have pointed out  
 7 the injustice of this practice, and called for the Government to provide representation for children facing  
 8 deportation. *See, e.g.*, Wendy Young & Megan McKenna, *The Measure of a Society: The Treatment of*  
*9 Unaccompanied Refugee and Immigrant Children in the United States*, 45 Harv. C.R.-C.L. L. Rev. 247  
 10 (Winter 2010); M. Aryah Somers, *Zealous Advocacy for the Right to Be Heard for Children and Youth*  
 11 *in Deportation Proceedings*, 15 CUNY L. Rev. 189 (Winter 2011); Julie Myers Wood & Wendy Young,  
 12 *Children Alone and Lawyerless in a Strange Land*, *The Wall Street Journal*, Sept. 22, 2013, available at  
 13 <http://online.wsj.com/news/articles/SB10001424127887324492604579083400349940432>;<sup>15</sup> Sonia  
 14 Nazario, *Child Migrants, Alone in Court*, *N.Y. Times*, Apr. 10, 2013, A23, available at  
 15 [http://www.nytimes.com/2013/04/11/opinion/give-lawyers-to-immigrant-children.html?\\_r=0](http://www.nytimes.com/2013/04/11/opinion/give-lawyers-to-immigrant-children.html?_r=0).

16 41. The Government has taken limited steps to afford legal representation to some children facing  
 17 deportation, but its efforts have fallen well short of ensuring representation for every child it seeks to  
 18 deport. For the past couple of years, the Government has funded legal representation for a fraction of the  
 19 children in ORR detention facilities, and more recently has initiated programs in Houston, Texas, and  
 20 Los Angeles, California to afford legal representation to certain children released from ORR custody.  
 21 But these programs fail to provide all children even in those two regions with representation.

22 42. In October 2013, Plaintiffs' counsel sent a letter to Defendants urging them to take additional

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24 <sup>14</sup> One recent study that focused on adults in removal proceedings concluded that they fared  
 substantially better when represented by counsel. *See Accessing Justice: The Availability and Adequacy*  
 25 *of Counsel in Immigration Proceedings*, Study Group on Immigrant Representation 4 (Dec. 2011)  
 (finding that 74% of represented non-detained noncitizens received favorable outcomes, as opposed to  
 26 13% of unrepresented non-detained noncitizens).

27 <sup>15</sup> Ms. Myers Wood was the Assistant Secretary of Homeland Security for Immigration and Customs  
 Enforcement under President George W. Bush.

1 steps to ensure that all children in immigration proceedings are provided legal representation. Ex. A,  
 2 Letter regarding Counsel for Immigrants in Removal Proceedings. In January 2014, Plaintiffs' counsel  
 3 met with officials from DHS, DOJ, and ORR to discuss the concerns expressed in the letter.

4 43. Several weeks ago, the Government announced a new "strategic partnership" to "facilitat[e] the  
 5 effective and efficient adjudication of immigration proceedings involving certain children who have  
 6 crossed the border without a parent or legal guardian." justice AmeriCorps Legal Services for  
 7 Unaccompanied Children, Corporation for Nat'l & Comm. Serv., *available at*  
 8 <http://www.nationalservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-ameri-corps-legal-services> (last visited June 9, 2014). Under this program, the Government has set aside  
 10 \$2 million to partner with legal services providers in order to support living allowances for 100 legal  
 11 fellows who will represent children under 16 in removal proceedings in selected areas of the country.  
 12 See Announcement of Federal Funding Opportunity, Corporation for National and Community Service,  
 13 2014 justice AmeriCorps Legal Services for Unaccompanied Children (June 6, 2014), *available at*  
 14 <http://www.nationalservice.gov/sites/default/files/upload/JusticeAmeriCorpsNOFO.pdf>.

15 44. Assuming that the Government's plan is implemented as announced, it would still fall far short  
 16 of meeting the need created by the Government's policy of deporting children without representation,  
 17 for several reasons. First, the geographic reach of the Government's new program appears to exclude  
 18 certain critical locations, such as Los Angeles, and does not ensure representation for every child even  
 19 for those populations it explicitly targets. *Id.* at 6-7.<sup>16</sup> Second, the Government's new program will fund  
 20 representation only for children younger than 16, thereby excluding a substantial number of children  
 21 who face removal, including several of the Plaintiffs. *Id.* at 31 (defining "[u]naccompanied children" as  
 22 "children under the age of 16"). And finally, this initiative devotes only limited resources to the  
 23 problem. Advocates already have noted that the Government's program "at best [] would only touch a  
 24 fraction of all the unaccompanied minors expected to appear in court in the coming months." Kirk  
 25 Semple, *Youths Facing Deportation to Be Given Legal Counsel*, *N.Y. Times*, June 6, 2014, A11

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26  
 27 <sup>16</sup> The Government's announcement indicates that "[p]riority shall be given to programs" in certain  
 28 immigration court locations. See Announcement of Federal Funding Opportunity at 6-7. But the  
 announcement does not pledge that a provider in each of those locations is certain to receive funding.

1 *available at* [\*http://www.nytimes.com/2014/06/07/us/us-to-provide-lawyers-for-children-facing-\*](http://www.nytimes.com/2014/06/07/us/us-to-provide-lawyers-for-children-facing-deportation.html?_r=0)  
 2 *deportation.html?\_r=0.*

3 45. Several important actors within the Government have also indicated more generally that they  
 4 would support a system that provided representation for all children. In a recent House Committee on  
 5 Appropriations Report, the Committee commented on the existence of pilot programs created “to  
 6 explore ways to better serve vulnerable populations such as children and improve court efficiency  
 7 through pilot efforts aimed at improving their legal representation,” but specified “that such pilots shall  
 8 not require the U.S. Government to bear any expense for legal representation for any alien in removal  
 9 proceedings, except to the extent required by Federal court order.” *See H.R. Rep. 113-448*, at 42  
 10 (2014).<sup>17</sup>

11 46. Defendant Eric Holder, Attorney General of the United States, has also indicated support for the  
 12 relief sought in this case, stating that “[i]t is inexcusable that young kids – . . . six-, seven-year-olds,  
 13 fourteen-year-olds – have immigration decisions made on their behalf, against them, . . . and they’re not  
 14 represented by counsel. That’s simply not who we are as a nation. It’s not the way in which we do  
 15 things.” Senate Judiciary Committee Hearing on Oversight of the Justice Department (Mar. 6, 2013)  
 16 (video available at [\*http://www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice-\*](http://www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice-2013-03-06)  
 17 *2013-03-06*).<sup>18</sup>

18 47. The Administration has also asked Congress, as part of an emergency appropriations request, to  
 19 fund \$15 million for “direct legal representation services to children in immigration proceedings.” Letter  
 20 from President Barack Obama to the Hon. John Boehner, Speaker of the House of Representatives at 6  
 21 (July 8, 2014), [\*http://www.whitehouse.gov/sites/default/files/omb/assets/budget\\_amendments/\*](http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/)

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22 <sup>17</sup> The Administration had previously requested an allocation of \$5,824,000 for EOIR to “develop,  
 23 implement and evaluate a pilot program to provide counsel for unaccompanied alien children.” *See*  
 24 White House Proposed Budget for FY 2015, Department of Justice, General Administration, Federal  
 25 Funds, *available at* [\*http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/jus.html\*](http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/jus.html).

26 <sup>18</sup> The Administration also previously supported Senate Bill S. 744, the bipartisan comprehensive  
 27 immigration reform legislation. That bill includes a provision requiring appointed counsel for a large  
 28 subset of children in the putative class at issue here—all “unaccompanied alien children.” *See S. 744*,  
 13th Cong. § 3502 (2013).

1 emergency-supplemental-request-to-congress-07082014.pdf.<sup>19</sup> It is far from clear that Congress intends  
 2 to act on this request, in whole or in part. Even assuming it does, the Administration has not specified  
 3 how this money will be distributed, or whether these funds will come with the same limitations as the  
 4 Government's recently-announced "strategic partnership" to provide counsel for unaccompanied  
 5 children. Moreover, it is highly unlikely that any approved funds would be sufficient to meet the need.

6 48. In the meantime, the Government continues to send children like the Plaintiffs in this case  
 7 without lawyers to face off against ICE trial attorneys who argue for their deportation before  
 8 Immigration Judges.

9 **D. The Plaintiffs**

10 **J.E.F.M.**

11 49. J.E.F.M. is a 10-year-old boy, and a native and citizen of El Salvador. He presently resides in  
 12 Washington State. He is the youngest of four children born to his parents. His father was a former gang  
 13 member, who then converted to Christianity and later became a pastor. J.E.F.M.'s mother was also a  
 14 pastor. His parents met at church and together they started a rehabilitation center for people leaving  
 15 gangs. Gang members retaliated against the center for housing young people trying to leave the gangs.  
 16 First, they warned J.E.F.M.'s parents to stop assisting former gang members. Then they killed J.E.F.M.'s  
 17 cousin. Two weeks later, gang members murdered J.E.F.M.'s father in the street in front of their house,  
 18 while J.E.F.M. and his siblings watched. J.E.F.M.'s mother continued to be threatened after this  
 19 incident, so she fled the country, leaving her children with their grandmother.

20 50. Approximately seven years later, the children also became targets of gang members in El  
 21 Salvador. Gang members demanded that the children join and threatened them with harm if they did not.  
 22 Rather than enter the gang, J.E.F.M. fled with his two older siblings. At the time he was only nine years  
 23 old.

24 51. J.E.F.M. and his two siblings entered the United States around July 2013, were apprehended by

25  
 26 <sup>19</sup> See also White House Office of the Press Secretary, *FACT SHEET: Emergency Supplemental Request*  
 27 *to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley*  
 28 *Areas of the Southwest Border* (July 8, 2014), available at [http://www.whitehouse.gov/the-press-](http://www.whitehouse.gov/the-press-office/2014/07/08/fact-sheet-emergency-supplemental-request-address-increase-child-and-adu)  
[office/2014/07/08/fact-sheet-emergency-supplemental-request-address-increase-child-and-adu](http://www.whitehouse.gov/the-press-office/2014/07/08/fact-sheet-emergency-supplemental-request-address-increase-child-and-adu).

1 U.S. Customs and Border Protection (“CBP”), and then placed in the custody of ORR. They were  
 2 released to a family member fifteen days later. They have been residing in Washington State since their  
 3 release.

4 52. J.E.F.M. has a removal hearing in September 2014, but has no legal representation in his  
 5 immigration case because he has no resources to hire private counsel and the legal service providers in  
 6 the Seattle area are stretched well beyond capacity to take on the cases of children in removal  
 7 proceedings. J.E.F.M. appears by his next friend, Bob Ekblad. Mr. Ekblad is a minister who has worked  
 8 closely with J.E.F.M. and his family; he is familiar with J.E.F.M.’s immigration case and is truly  
 9 dedicated to his best interests in this case.

10 **J.F.M.**

11 53. J.F.M. is a 13-year-old boy and a native and citizen of El Salvador. He presently resides in  
 12 Washington. He is the older brother of J.E.F.M. He also saw his father killed, was later threatened by  
 13 gang members, and left El Salvador at the same time and for the same reasons as his younger brother.

14 54. J.F.M. has a removal hearing in September 2014, but has no legal representation in his  
 15 immigration case because he has no resources to hire private counsel and the legal service providers in  
 16 the Seattle area are stretched well beyond capacity to take on the cases of children in removal  
 17 proceedings. J.F.M. appears by his next friend, Bob Ekblad. Mr. Ekblad is a minister who has worked  
 18 closely with J.F.M. and his family; he is familiar with J.F.M.’s immigration case and is truly dedicated  
 19 to his best interests in this case.

20 **D.G.F.M.**

21 55. D.G.F.M. is a 15-year-old girl and a native and citizen of El Salvador. She presently resides in  
 22 Washington. She is the older sister of J.E.F.M. and J.F.M. She also saw her father killed, was threatened  
 23 by gang members, and left El Salvador with her two younger brothers at the same time and for the same  
 24 reasons.

25 56. D.G.F.M. has a removal hearing in September 2014, but has no legal representation in her  
 26 immigration case because she has no resources to hire private counsel, and the legal service providers in  
 27 the Seattle area are stretched well beyond capacity to take on the cases of children in removal  
 28 proceedings. D.G.F.M. appears by her next friend, Bob Ekblad. Mr. Ekblad is a minister who has

1 worked closely with D.G.F.M. and her family; he is familiar with D.G.F.M.'s immigration case and is  
2 truly dedicated to her best interests in this case.

3 **F.L.B.**

4 57. F.L.B. is a 15-year-old boy, and a native and citizen of Guatemala. He presently resides in  
5 Seattle, Washington. He is the fourth of six children born to his parents. Throughout F.L.B.'s childhood,  
6 his father, an alcoholic who abused F.L.B. and his siblings, resided in a different city and only visited  
7 occasionally. Moreover, F.L.B.'s father did not make any financial contributions to the home.

8 58. When he was ten years old, F.L.B. dropped out of school to work with his father in order to  
9 provide for himself, his mother, and his two younger siblings. After two years of living and working  
10 with his father, F.L.B. returned to his mother's home because he was no longer able to bear his father's  
11 abuse and excessive drinking. However, after six months at home he had to leave again due to the  
12 family's poor financial situation. F.L.B. moved back to the town where he had worked with his father,  
13 but this time lived with acquaintances. He only ever saw his father by chance, and seldom saw his  
14 mother.

15 59. After more than a year of working and living outside the family's home, F.L.B. set out for the  
16 United States, hoping to be able to support himself and have the opportunity to enroll in school. He  
17 spent approximately one month traveling through Mexico and crossed the United States border in  
18 August 2013, at the age of 14. United States Border Patrol agents apprehended him in the desert and  
19 placed him in the custody of ORR. With no family in the United States, F.L.B. was released to the  
20 custody of a family acquaintance in October 2013. He has been residing in Seattle, Washington, since  
21 his release from ORR custody.

22 60. F.L.B. has a removal hearing in September 2014. However, F.L.B. has no resources to retain  
23 counsel and the legal service providers in the Seattle area are stretched well beyond capacity to take on  
24 the cases of children in removal proceedings. F.L.B. appears by his next friend, Casey Trupin. Mr.  
25 Trupin is the Project Coordinator for the Children and Youth Project at Columbia Legal Services in  
26 Seattle, Washington; he is familiar with F.L.B.'s ongoing immigration proceedings and is truly  
27 dedicated to F.L.B.'s best interests in this case.

1 **G.D.S.**

2 61. Plaintiff G.D.S. is a 15-year old boy and a native and citizen of Mexico who has lived in the  
 3 United States since he was approximately one year old. He is the second youngest in a family of five  
 4 children, all of whom reside in this country. He, his mother, and an older brother all possess U  
 5 nonimmigrant visa status and are now seeking to adjust their status to become lawful permanent  
 6 residents.

7 62. G.D.S. was in ninth grade when he was placed in a juvenile rehabilitation facility after pleading  
 8 guilty to charges in juvenile court. ICE then filed a detainer against him, which advised that he faces  
 9 removal proceedings where the Government will seek to take away his lawful status and deport him  
 10 from his home. He thus faces the threat of permanent separation from his mother and siblings. He and  
 11 his mother cannot afford an attorney to represent him in immigration court, and the legal service  
 12 providers in the Seattle area are stretched well beyond capacity to take on the cases of children in  
 13 removal proceedings.

14 63. G.D.S. appears by his next friend and mother, Ana Maria Ruvalcaba. Ms. Ruvalcaba maintains a  
 15 close personal relationship with G.D.S., is familiar with his immigration matters, and is truly dedicated  
 16 to his best interests in this case.

17 **M.A.M.**

18 64. Plaintiff M.A.M. is a 16-year-old boy, and a native and citizen of Honduras. He presently resides  
 19 in Oxnard, California. M.A.M. has limited communication skills and special education issues, as a result  
 20 of which he has limited ability to recount the suffering that he and his family endured in Honduras.

21 65. M.A.M. spent his first eight years in Honduras, raised primarily by his maternal grandmother.  
 22 During that time, M.A.M.'s mother left him and came to the United States, where she received  
 23 Temporary Protected Status ("TPS"). Although M.A.M.'s grandmother cared for him, she could not  
 24 shield him from life's brutality there. At some point prior to his eighth birthday, someone attacked  
 25 M.A.M.'s father with a machete, leaving him profoundly disabled. M.A.M.'s half-brothers' father was  
 26 kidnapped and murdered during those years as well.

27 66. Eventually, M.A.M.'s grandmother grew elderly and ill. His father was not involved in his life,  
 28 and no one else could care for him. As a result, M.A.M. came to the United States at the age of eight.

1 Since 2006, he has resided with his mother in California. Although she has TPS, the law does not permit  
 2 her to extend that status to her son.

3 67. Despite the lack of an adult conviction, M.A.M. was swept into the net of interior immigration  
 4 enforcement. ICE arrested M.A.M. and took him into custody in September 2011, when he was only 13  
 5 years old and placed him into removal proceedings. Rather than transfer M.A.M. to ORR custody,  
 6 however, ICE retained custody over him until his mother came forward, after which ICE released him  
 7 into her care.

8 68. The Los Angeles Immigration Court already has held multiple hearings where M.A.M. was  
 9 unrepresented by counsel. M.A.M.'s next removal hearing is scheduled for August 2014. He and his  
 10 mother are indigent. They cannot afford to hire private counsel for his upcoming hearing. The Los  
 11 Angeles-based, Government-funded legal representation program rejected M.A.M.'s immigration court  
 12 case because he fell outside their scope of service (because M.A.M. was never in ORR custody).  
 13 M.A.M. appears by his next friend and mother, Rosa Pedro. Ms. Pedro maintains a close personal  
 14 relationship with M.A.M., is familiar with his ongoing immigration proceedings, and is truly dedicated  
 15 to his best interests in this case.

16 **S.R.I.C.**

17 69. S.R.I.C. is a 17-year-old boy, and a native and citizen of Guatemala. He presently resides in Los  
 18 Angeles, California. His father, Hector Rolando Ixcoy Ixcoy, left Guatemala for the United States when  
 19 S.R.I.C. was a young boy. S.R.I.C. lived in Guatemala with his mother and three siblings. Although Mr.  
 20 Ixcoy was in the United States during S.R.I.C.'s childhood, he called the family frequently and sent  
 21 money to support S.R.I.C. and the rest of the family. Mr. Ixcoy became a lawful permanent resident of  
 22 the United States in 2009.

23 70. S.R.I.C. was forced to flee from Guatemala when gang members began attempting to recruit  
 24 him. The gang members would wait outside of his school and threaten S.R.I.C. During one such  
 25 confrontation, one of the gang members cut S.R.I.C.'s leg with a knife. He still has the scars from that  
 26 confrontation. When S.R.I.C. continued to resist their recruitment efforts, the gang threatened to kill  
 27 S.R.I.C. and his family unless S.R.I.C. agreed to join the gang.

28 71. Fearing for his life and for the well-being of his family, S.R.I.C. came to the United States to  
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1 reunite with his father. Several days later, S.R.I.C. left Guatemala for the United States. In February  
 2 2014, CBP apprehended S.R.I.C. and held him in custody near the United States-Mexico border. The  
 3 Government thereafter initiated removal proceedings against him, and he has a removal hearing date in  
 4 January 2015.

5 72. After several days in detention along the border, S.R.I.C. was sent to a shelter in Houston, Texas,  
 6 where he remained until he was sent to Los Angeles, California to reunite with his father in March.  
 7 S.R.I.C. now resides in Los Angeles, where he is currently enrolled in school.

8 73. Since arriving in Los Angeles, S.R.I.C. met with legal services providers and inquired about the  
 9 possibility of obtaining legal representation in his immigration case. However, he was turned away  
 10 because the legal services provider did not have the capacity to take on his case and could not locate pro  
 11 bono representation for him. S.R.I.C. and his father also have reached out to private immigration  
 12 attorneys, but cannot afford to pay the fees charged by such attorneys to take on his immigration case.  
 13 S.R.I.C. therefore remains unrepresented in his immigration case.

14 74. S.R.I.C. appears by his next friend and father, Mr. Ixcoy. Mr. Ixcoy maintains a close personal  
 15 relationship with S.R.I.C. and is truly dedicated to S.R.I.C.'s best interests in this case.

16 **G.M.G.C.**

17 75. G.M.G.C. is a 14-year-old girl, and a native and citizen of El Salvador. She presently resides in  
 18 Los Angeles, California. Her parents left El Salvador when she was a young girl, and she grew up living  
 19 with her grandparents, sisters, and aunts. Although her parents were living in the United States, they  
 20 called frequently and sent money to support the family. Around 2001, her father, Juan Guerrero Diaz,  
 21 received TPS in the United States.

22 76. G.M.G.C. was forced to leave her home of El Salvador after gang members began threatening  
 23 the young women in her family. Her uncle in El Salvador, who is a police officer, refused to provide  
 24 supplies to gang members in their town. In retaliation, the gang members made threats to the young  
 25 women in the family, surveilled the family home, and harassed the young women. On one occasion,  
 26 gang members attacked G.M.G.C. and her older sister while they were out buying dinner. After these  
 27 incidents, the young girls were too scared to leave the family home.

28 77. Fearing for their lives, G.M.G.C., her two sisters, and her young aunt, fled El Salvador and came  
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1 to the United States. Border Patrol agents apprehended G.M.G.C., her sisters, and her aunt in January  
 2 2014. After spending approximately one day at holding facilities near the border, G.M.G.C. was  
 3 transferred to ORR custody. She remained in ORR custody until February 2014, when she was taken to  
 4 Los Angeles, California, to reunite with her father. G.M.G.C. has a removal hearing date in September  
 5 2014.

6 78. After arriving in Los Angeles, G.M.G.C. and her father met with legal services providers and  
 7 inquired about the possibility of obtaining legal representation for her in her immigration case. However,  
 8 they never heard back from the legal services providers, and when they inquired further, were told that  
 9 the legal services providers could not take on G.M.G.C.'s case. G.M.G.C. and her father have also  
 10 reached out to private immigration attorneys, but cannot afford to pay the fees charged by such attorneys  
 11 to take on her immigration case. Therefore, G.M.G.C. remains unrepresented in her immigration case.

12 79. G.M.G.C. appears by her next friend and father, Mr. Guerrero Diaz. Mr. Guerrero Diaz  
 13 maintains a close personal relationship with G.M.G.C., is familiar with her immigration matters, and is  
 14 truly dedicated to her best interests in this case.

15

16 **V. LEGAL BACKGROUND**

17 80. Plaintiffs and the putative class raise statutory and constitutional claims challenging the  
 18 Government's failure to ensure legal representation for them in their immigration proceedings.  
 19 Specifically, Plaintiffs contend that the Immigration and Nationality Act ("INA") and the Due Process  
 20 Clause of the Fifth Amendment mandate that the Government ensure that all children in immigration  
 21 proceedings have legal representation.

22 81. The INA and immigration regulations require that all persons in removal proceedings have "a  
 23 reasonable opportunity" to present, examine, and object to evidence. 8 U.S.C. § 1229a(b)(4)(B); 8  
 24 C.F.R. § 1240.10(a)(4). In addition, all persons in removal proceedings, whatever their age, have the  
 25 right to be advised of the charges against them, 8 U.S.C. § 1229(a)(1)(D); 8 C.F.R. § 239.1, and "the  
 26 privilege of being represented, at no expense to the Government, by counsel of the alien's choosing." 8

1 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. §§ 238.1(b)(2), 1240.10(a)(1).<sup>20</sup>

2 82. Existing regulations address the rights of children in some respects, but do not come close to  
 3 ensuring fair hearings. One regulation precludes Immigration Judges from accepting admissions of  
 4 removability from “an unrepresented respondent who is . . . under the age of 18,” but permits such  
 5 admissions if the child is accompanied by a relative or friend. 8 C.F.R. § 1240.10(c). The BIA has  
 6 undermined even the minimal protection this regulation provides by holding that Immigration Judges  
 7 can accept factual admissions from children that, taken together, are sufficient to prove the child’s  
 8 removability. *See Matter of Amaya*, 21 I. & N. Dec. 583, 587 (BIA 1996). Similarly, another regulation  
 9 requires DHS to serve charging documents for a minor under 14 years of age upon the person with  
 10 whom the minor resides, and “whenever possible,” the minor’s “near relative, guardian, committee, or  
 11 friend.” 8 C.F.R. § 103.8(c)(2)(ii). But this regulation does not impose any obligations on such  
 12 individuals, and the BIA has concluded that these regulations even permit service upon the director of  
 13 the facility where the minor is currently detained. *See Amaya*, 21 I. & N. Dec. at 585.

14 83. At a more general level, the BIA has long interpreted the statutory rights provided in 8 U.S.C.  
 15 §§ 1229, 1229a as creating a general right to a fair hearing in the deportation context. *Matter of Exilus*,  
 16 18 I. & N. Dec. 276, 278-79 (BIA 1982). Similarly, the Ninth Circuit has made clear that “every  
 17 individual in removal proceedings is entitled to a full and fair hearing” of his claims. *Oshodi v. Holder*,  
 18 729 F.3d 883, 889 (9th Cir. 2013) (en banc).

19 84. These statutory rules implement a constitutional command. The Supreme Court held over a  
 20 century ago that the Fifth Amendment guarantees a noncitizen the right to due process in any proceeding  
 21 where the Government seeks his deportation. *See Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903) [“The  
 22 Japanese Immigrant Case”]. And as applied to children, both prior Supreme Court precedent from the

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23 <sup>20</sup> The immigration statutes also contain certain protections specific to “unaccompanied alien children,”  
 24 defined as individuals under the age of 18 without lawful immigration status in the United States “with  
 25 respect to whom: (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal  
 26 guardian in the United States is available to provide care and physical custody.” 6 U.S.C. § 279(g)(2).  
 27 “Unaccompanied alien children” who are not from “contiguous countries” are entitled to additional legal  
 28 protections. *See, e.g.*, 8 U.S.C. § 1232(b)-(c) (custody provisions); 8 U.S.C. § 1232(a)(5)(D)(iii)  
 (regarding counsel); 8 U.S.C. § 1232(c)(5) (directing HHS to ensure unaccompanied children are  
 represented “to the greatest extent practicable”); 8 U.S.C. § 1232(c)(6) (regarding child advocates).

1 juvenile delinquency context and more recent Ninth Circuit precedent involving a child facing  
 2 deportation demonstrate that all children, with their limited capacity to present complex factual and legal  
 3 arguments, are entitled to legal representation in immigration proceedings. *In re Gault*, 387 U.S. at 36;  
 4 *Lin v. Ashcroft*, 377 F.3d 1014, 1030, 1032-34 (9th Cir. 2004). This is all the more true given the  
 5 adversarial nature of the proceedings and the grave interests at stake. *See generally Turner v. Rogers*,  
 6 131 S. Ct. 2507, 2517 (2011).

7

## 8 VI. CLASS ACTION ALLEGATIONS

9 85. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action on behalf of  
 10 themselves and all other similarly situated individuals. Plaintiffs seek injunctive relief that applies  
 11 generally to the Plaintiff Class, as described below.

12 86. The Plaintiff Class consists of:

- 13       • All individuals under the age of eighteen (18) who are or will be in immigration  
 14              proceedings on or after July 9, 2014, without legal representation in their immigration  
 15              proceedings.<sup>21</sup>

16 87. The Plaintiff Class is so numerous that joinder of all members is impracticable. Although the  
 17 number of individuals under the age of 18 who are pro se in immigration proceedings is not known with  
 18 precision, most reports indicate that there are thousands of such children. *See supra* Part IV.A.

19 88. Common questions of law and fact bind the members of the Plaintiff Class. These questions  
 20 include, but are not limited to, the following:

21

22

23

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24       <sup>21</sup> As noted *supra* note 5, Plaintiffs define “immigration proceedings” as any proceeding that occurs  
 25 before an Immigration Judge or the Board of Immigration Appeals. Plaintiffs define “legal  
 26 representation” as representation by a lawyer, a law student or graduate supervised by a lawyer, or a  
 27 BIA-accredited representative. *See Franco-Gonzalez, et al. v. Holder*, 828 F. Supp. 2d 1133, 1147 (C.D.  
 28 Cal. 2011) (defining Qualified Representative for purposes of providing legal representation to mentally  
 incompetent individuals in immigration proceedings as including “(1) an attorney, (2) a law student or  
 law graduate directly supervised by a retained attorney, or (3) an accredited representative, all as defined  
 in 8 C.F.R. § 1292.1”).

- 1       • Whether the Due Process Clause of the U.S. Constitution and/or federal statutory law  
2            requires the Government to provide legal representation for the members of the Plaintiff  
3            Class;
- 4       • Whether existing procedures suffice to protect the Plaintiff Class members' right to a full  
5            and fair hearing as required by the Due Process Clause of the U.S. Constitution and/or  
6            federal statutory law.

7       89. The claims of the named Plaintiffs are typical of the claims of the Plaintiff Class as a whole.  
8       Plaintiffs know of no conflict between their interests and those of the Plaintiff Class. The members of  
9       the Plaintiff Class are ascertainable and can be identified through notice and discovery. In defending  
10      their own rights, the individual Plaintiffs and their next friends will defend the rights of all proposed  
11      Plaintiff Class members fairly and adequately.

12      90. Plaintiffs are represented in this case by counsel with deep knowledge of immigration law and  
13      extensive experience litigating class actions and complex cases, including the only class action that has  
14      secured appointed legal representation for a class of immigrants. Plaintiffs' attorneys have the requisite  
15      level of expertise to adequately prosecute this case on their behalf and on behalf of the Class.

16      91. Defendants have acted or refused to act on grounds generally applicable to each member of the  
17      Plaintiff Class by refusing to recognize that the members of the Plaintiff Class have a statutory and  
18      constitutional right to legal representation in their immigration proceedings, and by refusing to provide  
19      that representation for such individuals.

20      92. A class action is superior to other methods available for the fair and efficient adjudication of this  
21      controversy because joinder of all members of the Plaintiff Class is impracticable. Moreover, members  
22      of the Plaintiff Class remain unrepresented in immigration proceedings and lack the ability to assert the  
23      claims made here. Absent the relief they seek here, there would be no other way for the Plaintiff Class to  
24      individually redress the wrongs they have suffered and continue to suffer.

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1           **VII. CLAIMS FOR RELIEF**

2           **FIRST CAUSE OF ACTION**

3           **Violation of the Immigration and Nationality Act**

4           **(Against All Defendants by All Plaintiffs)**

5       93. Plaintiffs reallege and incorporate by reference each and every allegation contained in the  
6 preceding paragraphs.

7       94. The Immigration and Nationality Act requires that all individuals in removal proceedings be  
8 afforded a reasonable opportunity to, *inter alia*, examine and present evidence and witnesses. *See* 8  
9 U.S.C. § 1229a(b). These provisions require that unrepresented children be provided a fair hearing in  
10 their immigration proceedings. The only way to ensure that these children receive a fair hearing is by  
11 providing them with legal representation.

12      95. Plaintiffs and the Plaintiff Class have suffered and will imminently suffer irreparable injury as a  
13 proximate cause of the Government's failure to provide them with legal representation in their  
14 immigration proceedings, and are therefore entitled to injunctive relief to avoid any injury.

15           **SECOND CAUSE OF ACTION**

16           **Violation of the Due Process Clause of the Fifth Amendment**

17           **(Against All Defendants by All Plaintiffs)**

18       96. Plaintiffs reallege and incorporate by reference each and every allegation contained in the  
19 preceding paragraphs.

20      97. The Due Process Clause requires that unrepresented children in immigration proceedings be  
21 provided legal representation.

22      98. Plaintiffs and the Plaintiff Class have suffered and will imminently suffer irreparable injury as a  
23 proximate cause of the Government's failure to provide them with legal representation in their  
24 immigration proceedings, and are therefore entitled to injunctive relief to avoid any injury.

1           **VIII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- 3           a. Certify a class pursuant to Federal Rule of Civil Procedure 23 in accordance with this  
4           Complaint's allegations and the accompanying Motion for Class Certification;
- 5           b. Declare that the Defendants' failure to ensure legal representation for Plaintiffs and the  
6           Plaintiff Class violates constitutional and statutory law, pursuant to the Court's equitable  
7           powers and the Declaratory Judgment Act, 28 U.S.C. § 2201;
- 8           c. Issue an injunction directing Defendants to ensure that Plaintiffs and other members of  
9           the Plaintiff Class receive legal representation in their immigration proceedings;
- 10          d. Grant any other relief the Court deems just, equitable, and appropriate, including, but not  
11           limited to, fees under the Equal Access to Justice Act, and any other applicable statute or  
12           regulation.

13          Dated this 9th day of July, 2014.

14          Respectfully submitted,

15          s/ Matt Adams

16          Matt Adams, WSBA No. 28287

17          Glenda M. Aldana Madrid, WSBA 46987

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