UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WENDY AMPARO OSORIO-MARTINEZ, individually, on behalf of her minor child, D.S. R.-O, and all others similarly situated;

CARMEN ALEYDA LOBO MEJIA, individually, on behalf of her minor child, A.D.M-L., and all others similarly situated;

MARIA DELMI MARTINEZ NOLASCO, individually, on behalf of her minor child, J.E. L-M., and all others similarly situated;

JETHZABEL MARITZA AGUILAR MANCIA, individually, on behalf of her minor child, V.G. R-A., and all others similarly situated;

PLAINTIFFS,

V.

JEFFERSON BEAUREGARD SESSIONS, III; JOHN F. KELLY; THOMAS D. HOMAN; THOMAS DECKER, DIANE EDWARDS; U.S. DEPARTMENT OF HOMELAND SECURITY; and THE UNITED STATES OF AMERICA,

DEFENDANTS.

CIVIL ACTION NO.

CLASS ACTION

CLASS ACTION COMPLAINT
FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

1. Abused, neglected, or abandoned children who also lack authorization under immigration law to reside in the United States raise complex immigration and child welfare concerns.

2. In 1990, Congress created an avenue for these children to remain in the United States legally and permanently: Special Immigrant Juvenile ("SIJ") status, 8 U.S.C §§

1101(a)(27)(J) & 1255(a); *see also* History of SIJ Status, USCIS[1] ("Special Immigrant Juvenile status allows a child to apply for a green card (that is, lawful permanent residence) **while remaining in the United States**") (emphasis added).

3. Any child or youth under the age of twenty-one who was born in a foreign country; lives without legal authorization in the United States; has experienced abuse, neglect, or abandonment; and meets other specified eligibility criteria may be eligible for SIJ status.

4. As part of his or her application for SIJ status, a child must demonstrate, *inter alia*, that an administrative or judicial proceeding has resulted in a determination that it would not be in his or her best interest to be returned to the child's or the parent's previous country of nationality or country of last habitual residence.

5. Children with SIJ status are "deemed, for purposes of [8 U.S.C. § 1255(a)], to have been paroled in the United States," and are entitled to apply to become legal permanent residents of the United States.

6. At the end of fiscal year 2016, United States Citizenship and Immigration Services ("USCIS") reported that it had received 19,475 applications for SIJ status—15,101 of which were approved and only 594 of which were denied, terminated, or withdrawn.[2]

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[1] https://www.uscis.gov/green-card/special-immigrant-juveniles/history-sij-status

[2] https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-360-petition-special-immigrant-juveniles

7. During the first quarter of 2017, USCIS received another 5,377 applications—4436 of which were approved and only 193 of which were denied terminated, or withdrawn. At last count, 8,674 applications were still awaiting a decision. *Id.*

8. This is an action for declaratory, injunctive, and mandamus relief against certain policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act.

9. In defiance of common sense, clear Congressional intent, applicable case law, and even a mere scintilla of human decency, Defendants, without justification and or authorization, continue to illegally and indefinitely detain SIJ children up to and until the point at which Defendants can ship the kids back "home"—places Defendants previously determined would not be in the children's best interest to be returned to.

10. Plaintiffs seek to enjoin Defendants from continuing these abhorrent, illegal practices, both as to them and all others similarly situated.

PARTIES

11. Plaintiff Wendy Amparo Osorio-Martinez is the mother of D.S R-O., a three-year-old special immigrant juvenile visa recipient with a pending application for legal permanent residence. Both D.S. R-O and Ms. Osorio-Martinez are natives and citizens of Honduras. Three-year old D.S. R-O. and Ms. Osorio-Martinez have been in immigrant detention since October 2015 and have been detained by Defendants at Berks County Residential Center ("BCRC") in Leesport, Pennsylvania since approximately November 2015.

12. Plaintiff Carmen Aleyda Lobo Mejia is the mother of A.D.M-L., a four-year-old special immigration juvenile visa recipient with a pending application for legal permanent residence. Both A.D.M-L. and Ms. Lobo Mejia are natives and citizens of Honduras. Four year old A.D.M-L. and Ms. Lobo Mejia have been held in immigrant detention since October 23, 2015 and have been detained by Defendants at BCRC since approximately November 19, 2015.

13. Plaintiff Maria Delmi Martinez Nolasco is the mother of J.E.L-M., a seven-year-old special immigration juvenile visa recipient with a pending application for legal permanent residence. Both J.E.L-M. and Ms. Martinez Nolasco are natives and citizens of El Salvador. Seven year old A.D.M-L. and Ms. Martinez Nolasco have been held in immigrant detention since September 5, 2015 and have been detained by Defendants at BCRC since approximately October 31, 2015.

14. Plaintiff Jethzabel Maritza Aguilar Mancia is the mother of V.G.R-A., a sixteen-year-old special immigrant juvenile visa recipient with a pending application for legal permanent residence. Both V.G.R-A. and Ms. Aguilar Mancia are natives and citizens of El Salvador. Sixteen-year-old V.G.R-A. and Ms. Aguilar Mancia have been held in immigrant detention since October 15, 2015 and have been detained by Defendants at BCRC since approximately November 7, 2015.

15. Defendant John F. Kelly is named in his official capacity as Secretary of Homeland Security. He oversees U.S. Customs and Border Patrol, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. He is responsible for implementing and enforcing the INA, including by overseeing the issuance and execution of

expedited removal orders, and the detention of families under the INA. He is a legal custodian of the Plaintiffs.

16. Defendant Jefferson B. Sessions, III is named in his official capacity as Attorney General of the United States. He is responsible for the government's interpretation of the INA, including the laws governing expedited removal orders and immigration detention. He is a legal custodian of the Plaintiffs.

17. Defendant Thomas D. Homan is named in his official capacity as Acting Director of ICE. Mr. Homan has direct oversight of ICE programs and operations to arrest, detain, and remove non-citizens from the United States. He is a legal custodian of the Plaintiffs.

18. Defendant Thomas Decker is named in his official capacity as the Field Office Director for ICE's Philadelphia District. He is responsible for the enforcement of immigration laws in the Philadelphia area of responsibility and for the custody of all immigrants detained by ICE at BCRC. He is a legal custodian of the Plaintiffs.

19. Defendant Diane Edwards is named in her official capacity as Executive Director of the Berks County Residential Center. She is legally responsible for the administration of the facility, and acts in a warden-like capacity. She is a legal custodian of the Plaintiffs.

20. Defendant the United States of America includes all government agencies and departments responsible for the implementation of the INA and detention and/or removal of non-citizen immigrants.

21. Defendant U.S. Department of Homeland Security ("DHS") is a federal cabinet agency responsible for implementing and enforcing the Immigration and Nationality Act. DHS is

a Department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f). The U.S. Immigration and Customs Enforcement is an Operational and Support Component agency within DHS. The U.S. Immigration and Customs Enforcement is responsible for detaining and/or removing non-citizen immigrants.

JURISDICTION AND VENUE

22. Jurisdiction is conferred upon this Court by Federal Question Jurisdiction, 28 U.S.C. § 1331, because this action arises under the U.S. Constitution; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.; the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq; and the Foreign Affairs Reform and Restructuring Act ("FARRA") of 1998, 8 U.S.C. § 1231.

23. This Court further has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, because the remedies afforded by the Act are particularly suited for attacking and correcting illegal policies, practices, and rules that harm large numbers of persons. Plaintiffs ask the Court to declare the rights and legal relations of the parties to the instant controversy.

24. This Court further has Mandamus Jurisdiction, 28 U.S.C. § 1361, because Plaintiffs seek to compel federal officers, employees, and/or agencies, all and/or any of whom have gone far beyond any rational exercise of discretion, to perform non-discretionary duties owed to Plaintiffs, all of whom have a clear right to relief.

25. This Court further has jurisdiction under the federal habeas corpus statute, 28 U.S.C. § 2241. All Plaintiffs are detained at BCRC at the direction of Defendants. All Plaintiffs are therefore "in custody" for the purposes of Section 2241.

26. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events giving rise to this claim occurred in this District.

27. Venue is also proper pursuant to 28 U.S.C. § 2241(d) because Plaintiffs are detained at the BCRC in Leesport, Pennsylvania; Defendant Diane Edwards is located in Leesport, Pennsylvania; and Defendant Thomas Decker conducts ICE business from Philadelphia, Pennsylvania.

28. The Court may grant relief pursuant to 28 U.S.C. §§ 1361, 2201-2202, and 2241, and the APA, 5 U.S.C. § 706.

CLASS ALLEGATIONS

29. Plaintiffs bring their claims, below, as a Federal Rule of Civil Procedure 23 class action, on their own behalf and on behalf of a class for which Plaintiffs seek certification.

30. Pending any modifications necessitated by discovery, Plaintiffs preliminarily define this class as: current and future persons with or applying for SIJ status in or potentially subject to expedited removal proceedings and/or subject to a final order of expedited removal.

31. This action is properly brought as a class action for any and all of the following reasons:

a. Plaintiffs' claims concern Defendants' policies, practices, and regulations applicable to all class members. That is, Plaintiffs allege Defendants have acted or refused to act on grounds that apply generally to all class members, such that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

b. Prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants.

c. Adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications and or would substantially impair or impede their ability to protect their interests.

d. Questions of law or fact common to class members predominate over any questions affecting only individual members; as such a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

32. Plaintiffs do not know the exact size of the class since that information is within control of Defendants. However, upon information and belief, Plaintiffs allege that the number of class members could potentially be thousands.[3] Membership in this class is readily ascertainable from Defendants' records.

[3] To date, the Government has limited application of expedited removal to inadmissible noncitizens apprehended within 14 days of their arrival and within 100 miles of an international land border. *See* Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877, 48880 (2004). However, pursuant to Executive Order 13767 § 11(c), the Secretary of Homeland Security has been instructed "to apply expedited removal to the fullest extent of the law." *See* Border Security and Immigration Enforcement Improvements, 82 Fed. Reg. 8793 (2017). The relevant section of the Executive Order states in full: "Pursuant to section 235(b)(1)(A)(iii)(I) of the INA, the Secretary shall take appropriate action to apply, in his sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II)." *Id.* at 8796. If the Secretary expands expedited removal to the full extent

33. The representative Plaintiffs will fairly and adequately protect the interests of the class as a whole because all class members are or could be subject to the same illegal conduct of the Defendants such that the interests of the absent class members are coincident with, and not antagonistic to, those of Plaintiffs, who will litigate the claims fully.

34. The representative Plaintiffs are represented by counsel experienced in immigration-related and class litigation.

LEGAL BACKGROUND

35. In 1990, Congress enacted special protections for abused, abandoned, and neglected children. Under 8 U.S.C. § 1255(h)(1), immigrants who meet the definition of an SIJ under 8 U.S.C. § 1101(a)(27)(J) are "deemed, for purposes of [8 U.S.C. § 1255(a)], to have been paroled in the United States," and are entitled to apply for an adjustment of status to that of an immigrant lawfully admitted for permanent residence.

36. In 2008, Congress amended the SIJ provisions in the INA to broaden their applicability. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, P.L. 110-457 ["TVPRA"].

37. In a section entitled "Permanent Protection for Certain At-Risk Children," the TVPRA amended the definition of Special Immigrant Juvenile under 8 U.S.C. § 1101(a)(27)(J). That section now applies to an immigrant: (a) who is "present in the United States"; (b) who "has

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provided by statute, as the Executive Order 13767 § 11(c) now instructs, immigration officers would be authorized to order removed any noncitizen apprehended anywhere in the United States who is inadmissible under either 8 U.S.C. § 1182(a)(6)(C) or § 1182(a)(7), and who entered without inspection less than two years prior to the date of the expedited removal proceedings.

been declared dependent on a juvenile court located in the United States or whom such a court has ... placed under the custody of . . . an individual . . . appointed by a State or juvenile court located in the United States"; (c) "whose reunification with 1 or both ... parents is not viable due to abuse, neglect, abandonment"; and (d) "for whom it has been determined in ... judicial proceedings that it would not be in the alien's best interest to be returned to the alien's . . . previous country of nationality."

38. Immigrants seeking protection as Special Immigrant Juveniles thus follow a two-step process to obtain SIJ Status. First, the immigrant must obtain a predicate order from a juvenile court. Second, the immigrant must file an I-360 Petition with U.S. Citizenship and Immigration Services.

39. The TVPRA clarified that certain grounds for inadmissibility into the United States do not apply to Special Immigrant Juveniles. The TVPRA amended 8 U.S.C. § 1255(h)(2) to provide that "in determining the alien's admissibility as an immigrant," "paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of [8 U.S.C. § 1182(a)] shall not apply."

40. Because the law makes the child eligible for SIJ status "whose reunification with one or both of the immigrant's parents is not viable," the child whose reunification with one parent is viable but not with the other on account of abuse, neglect, or abandonment may apply for SIJ status, and the parent with whom reunification remains viable may be named the managing conservator.

FACTS SPECIFIC TO PLAINTIFFS

Wendy Amparo Osorio-Martinez and Her Minor Child, Three-Year-Old D.S. R-O.

41. Three-year-old D.S. R-O. and his mother Wendy entered the United States in October 2015.

42. They sought protection from persecution in Honduras—specifically, significant childhood trauma, as well as adult trauma stemming from sexual violence. Moreover, Wendy's life has been threatened by the wife of her son's father, whose family is associated with the Los Cachiros, a notorious transnational criminal organization.

43. Conditions in Honduras reinforce that D.S. R-O. and his mom had good reason to fear for their safety. When an individual challenges the authority of a gang in Honduras, he and his family members are often targeted for retaliation by the gang.[4]

44. Further, reports make clear that Honduran authorities—the government and the police—are unable to provide protection to those targeted by gangs.[5]

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[4] *See* High Comm'r for Refugees, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs 2 (2010), *available at* http://www.refworld.org/pdfid/4bb21fa02.pdf ("Refusals to succumb to a gang's demands and/or any actions that challenge or thwart the gang are perceived as acts of disrespect, and thus often trigger a violent and/or punitive response. [O]nce an individual or family has been targeted for retaliation, the gravity of the threat does not diminish over time.").

[5] *See* United States Conf. of Catholic Bishops, Mission to Central America: The Flight of Unaccompanied Children 8 (Nov. 2013), *available at* http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.Pdf ("[G]angs and other criminal elements are active in many communities and schools, and the government is unable to curb their influence because of corruption, lack of political will, or lack of resources. Law enforcement personnel, low-paid and low-skilled, are compromised by these criminal elements."); Geoffrey Ramsey, *Honduras deploys controversial military police*, The Pan-American Post (Oct. 15, 2013, 9:14 AM), http://www.thepanamericanpost.com/2013/10/honduras-deploys-controversial-

45. Gangs in Honduras also retaliate against individuals or families who report them to the police/authorities or who express opposition to them.[6]

46. Understandably terrified for her life and the life of her then one-year-old son, and unable to gain protection from the police or her family, Wendy and D.S. R-O. fled Honduras to seek protection in the United States.

47. After Wendy and D.S. R.-O. entered the United States by crossing the border, they were apprehended and detained by Customs and Border Protection agents, first at Karnes County Residential Center in Karnes City, Texas, and, then, since November 2015, at Berks Family Residential Center, in Leesport, Pennsylvania, where they remain detained.

48. At the time of their apprehension, Wendy and D.S. R-O. were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Both requested asylum based on, *inter alia*, the reasons stated above, but an asylum officer denied their request. This determination was later affirmed by an immigration judge, and Petitioners are now subject to final expedited removal orders. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

49. Wendy and D.S. R-O. filed habeas petitions in the Eastern District of Pennsylvania seeking judicial review of their expedited removal orders, but those claims were dismissed on jurisdictional grounds.

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military.html (describing the arrest of two former Honduran soldiers accused of providing training to the Mexican drug cartel, which has expanded its reach into Honduras).

[6] *See* Jason Buch, *For Mother from Honduras, a Difficult Decision*, San Antonio Express News (May 19, 2015, 11:51 AM), http://www.expressnews.com/news/local/article/For-mother-from-Honduras-a-difficult-decision-6271658.php ("[Honduras's] criminal groups operate with great impunity . . . and speaking out against the gangs [is] dangerous.").

50. Petitioners then appealed to the Third Circuit Court of Appeals, which granted them stays of removal while it considered their claims, but eventually affirmed the District Court's ruling that it did not have jurisdiction.

51. All the while, Defendants detained Wendy and D.S R-O. at Berks County Residential Center—the place where D.S R-O. has spent nearly half of his life, learning to walk and talk.

52. During their year-and-a-half in detention,[7] Wendy and D.S. R-O. received Custody Review Decisions every sixty to ninety days. Each of these cursory Custody Review Decisions was categorically denied by ICE, in which ICE put forth the same boilerplate language. There was nothing written on any form which would indicate that ICE had taken into account Mother's or Child's individual facts and circumstances before categorically denying their release from detention. To the contrary, given that ICE issued several decisions before the

[7] Most asylum seekers in prolonged detention will experience severe mental health disorders – including suicidal ideation and self-harm, posttraumatic stress disorder, depression, and anxiety. *See, e.g.*, A. Keller, et al., *Mental health of detained asylum seekers*, The Lancet, Vol. 362, 1721-23 (2003) ("Nearly all the detainees [held in Pennsylvania, New York, and New Jersey] in our study had clinically significant symptoms of anxiety, depression, or posttraumatic stress disorder, which worsened with time in detention and improved on release."); Robjant, K., et al., *Mental health implications of detaining asylum seekers: systematic review*, British Journal of Psychiatry ,194, 306-312 (2009) ("Anxiety, depression and posttraumatic stress disorder were commonly reported, as were self-harm and suicidal ideation. Time in detention was positively associated with severity of distress."); Steel, Z., et al. *Impact of immigration detention and temporary protection on the mental health of refugee*s, British Journal of Psychiatry, Vol. 188, 58-64 (2006) ("Longer detention was associated with more severe mental disturbance"), *see also* Human Rights First, Long-Term Detention of Mothers and Children In Pennsylvania (2016).

During Petitioners' detention, Wendy was evaluated by Dr. Jaswinder K. Legha, a licensed medical doctor and medical consultant for the psychiatric wards at Bellevue Hospital on September 16-17, 2016. Dr. Legha diagnosed Mother with Post-Traumatic Stress Disorder ("PTSD") and depression. As stated in Dr. Legha's report: "[Wendy] continues to suffer from psychological symptoms related to her prior trauma. This includes symptoms of PTSD as well as depression. She reports feeling sad and hopeless."

deadline for Petitioners to submit supporting documentation, it seems certain they did not consider any individual facts related to Petitioners.

53. In none of Defendants' perfunctory "custody reviews," did the Defendants ever allege or show that three-year-old D.S. R-O. and his mom are a flight risk, or likely to commit a crime—their prolonged and indefinite detention bears no reasonable relationship to any possible justification for detaining them.

54. On August 24, 2016, D.S. R-O, petitioned USCIS for status as a Special Immigrant pursuant to 8 U.S.C. § 1101(a)(27)(J).

55. On October 3, 2016, D.S. R-O.'s Petition was approved. He has since filed an application for Adjustment of Status with the USCIS. That application is pending.

56. On December 1, 2016, D.S. R-O. requested that ICE join its motion to rescind and reopen his removal proceedings pursuant to paragraph 29 of the *Perez-Olano* Settlement Agreement.

57. In a letter dated, February 14, 2017, ICE rejected D.S. R-O.'s request for relief.

58. Therein, ICE "acknowledge[d] that the referenced minors [D.S. R.-O] fall within the class of juveniles identified in the [*Perez-Olano*] Settlement Agreement."

59. However, ICE declined to grant the relief requested on grounds that paragraph 29 of the Settlement Agreement is inapplicable to persons subject to expedited removal.

60. On or about February 28, 2017, counsel for D.S. R-O. wrote to the Government, setting forth the facts above and requesting that the Government meet and confer regarding, *inter*

alia, "the [Government's] unfounded denial of a request ... to rescind and reopen the final orders of expedited removal issued to the [SIJ] children."

61. Specifically, D.S. R-O. provided notice that "[t]he Government is in noncompliance with the *Perez-Olano* Settlement Agreement," invoking the alternate dispute resolution process described in paragraph 43 of the *Perez-Olano* Settlement Agreement.

62. D.S. R-O. explained in his letter, that once such process is invoked, "removal action[s] shall be stayed and [D.S. R-O.] shall not be removed from the United States unless and until the matter has been resolved in favor of [the Government]."

63. In a letter dated March 6, 2017, the Government acknowledged Plaintiffs' claim that the Government was in violation of the *Perez-Olano* Settlement Agreement, but declined Plaintiffs' request to meet and confer.

64. In so doing, the Government wrote: "Finally, you write that you believe the "Government is in noncompliance with the Perez Olano Settlement Agreement," specifically paragraph 29. But as you know the Government views that settlement as applying only to removal proceedings pursuant to 8 U.S.C. § 1229a. Indeed, paragraph 29, by its own terms makes this clear by providing that, if certain criteria under that paragraph are satisfied, "ICE shall join *motions to reopen removal proceedings* filed by juveniles granted SIJ status." Perez Olano Settlement at ¶ 29 (emphasis added). That phrase alone indicates the agreement contemplated only *removal* proceedings, as opposed to the *expedited removal* proceedings at issue in your clients' case."

Carmen Lobo Mejia and Her Minor Child, Four-Year-Old, A.D.M-L.

65. Four-year-old ADML and his mother Carmen entered the United States in October 2015.

66. They sought protection from persecution in Honduras—specifically, very extensive abuse, including, but not limited to, threats of violence by a known gang member who, after being reported to the police by Carmen, was left free to pursue Carmen throughout Honduras until she fled with her son.

67. Conditions in Honduras reinforce that A.D.M-L. and his mom had good reason to fear for their safety. When an individual challenges the authority of a gang in Honduras, he and his family members are often targeted for retaliation by the gang.

68. Further, reports make clear that Honduran authorities—the government and the police—are unable to provide protection to those targeted by gangs.

69. Gangs in Honduras also retaliate against individuals or families who report them to the police/authorities or who express opposition to them.

70. Understandably terrified for her life and the life of her then four-year-old son, and unable to gain protection from the police or her family, Carmen and A.D.M-L. fled Honduras to seek protection in the United States.

71. After Carmen and A.D.M-L. entered the United States by crossing the border, they were apprehended and detained by Customs and Border Protection agents, first at Karnes County Residential Center in Karnes City, Texas, and, then, since November 2015, at Berks Family Residential Center, in Leesport, Pennsylvania, where they remain detained.

72. At the time of their apprehension, Carmen and A.D.M-L. were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Both requested asylum based on, *inter alia*, the reasons stated above, but an asylum officer denied their request. This determination was later affirmed by an immigration judge, and Petitioners are now subject to final expedited removal orders. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

73. Carmen and A.D.M-L. filed habeas petitions in the Eastern District of Pennsylvania seeking judicial review of their expedited removal orders, but those claims were dismissed on jurisdictional grounds.

74. Petitioners then appealed to the Third Circuit Court of Appeals, which granted them stays of removal while it considered their claims, but eventually affirmed the District Court's ruling that it did not have jurisdiction.

75. All the while, Defendants detained Carmen and A.D.M-L. at Berks County Residential Center.

76. During their year-and-a-half in detention, Carmen and A.D.M-L. received Custody Review Decisions every sixty to ninety days. Each of these cursory Custody Review Decisions was categorically denied by ICE, in which ICE put forth the same boilerplate language. There was nothing written on any form which would indicate that ICE had taken into account Mother's or Child's individual facts and circumstances before categorically denying their release from detention. To the contrary, given that ICE issued several decisions before the deadline for Petitioners to submit supporting documentation, it seems certain they did not consider any individual facts related to Petitioners.

77. Notices of upcoming Custody Reviews told Carmen and A.D.M-L. that "[i]n order to be eligible for release, you must demonstrate to the satisfaction of the Deciding Official that your release will not pose a danger to the community or to the safety of other persons or property or a flight risk." And each Notice purported to set a date by which Carmen and A.D.M-L. could submit documentation in support of their release; however, in certain instances, the "Deciding Official" would render a decision *well* in advance of the deadline.

78. For example, sometime, presumably, in January 2017,[8] the "Deciding Official" issued a Notice of Family Residential Center File Custody Review that purported to give Carmen and A.D.M-L. until January 16, 2017 to submit documentation supporting their release. *Id.* at 28. That Notice was served on Carmen and A.D.M-L. on January 9, 2017—only one day before the "Deciding Official" reached her determination that Carmen and A.D.M-L.'s custody status should not be changed.

79. The Custody Review Results, served upon Carmen and A.D.M-L. on January 12, 2017, gave no reason for Petitioners' continued detention. Rather, like every other Custody Review Results they ever received, Carmen and A.D.M-L. were told only that the "Deciding Official" had "determined that [Carmen and A.D.M-L.'s] custody status should not be changed at this time."

80. On October 25, 2016, A.D.M-L. Petitioned U.S. Citizenship and Immigration Services for status as a Special Immigrant pursuant to 8 U.S.C. § 1101(a)(27)(J), commonly

[8] The exact date upon which this Custody Review Notice was issued is unascertainable because the "Deciding Official" apparently decided not to sign or date the Notice before serving it on Petitioners.

known as Special Immigrant Juvenile Status ("SIJS"), which, if approved, would allow A.D.M-L. to apply for lawful permanent residence in the United States.

81. On November 28, 2016, A.D.M-L.'s Petition was Approved, providing him an avenue to file an adjustment of status application to secure lawful permanent residence in the United States. On December 30, 2016, A.D.M-L. filed an application for Adjustment of Status with the USCIS. That application is currently pending.

82. On or about December 2016, A.D.M-L. requested that ICE join its motion to rescind and reopen his removal proceedings pursuant to paragraph 29 of the Perez-Olano Settlement Agreement..

83. In a letter dated, February 14, 2017, ICE rejected A.D.M-L.'s request for relief.

84. Therein, ICE "acknowledge[d] that the referenced minors [A.D.M-L.] fall within the class of juveniles identified in the [Perez-Olano] Settlement Agreement."

85. However, ICE declined to grant the relief requested on grounds that paragraph 29 of the Settlement Agreement is inapplicable to persons subject to expedited removal.

86. On or about February 28, 2017, counsel for A.D.M-L. wrote to the Government, setting forth the facts above and requesting that the Government meet and confer regarding, inter alia, "the [Government's] unfounded denial of a request ... to rescind and reopen the final orders of expedited removal issued to the [SIJ] children."

87. Specifically, A.D.M-L. provided notice that "[t]he Government is in noncompliance with the *Perez-Olano* Settlement Agreement," invoking the alternate dispute resolution process described in paragraph 43 of the *Perez-Olano* Settlement Agreement.

88. A.D.M-L. explained in his letter, that once such process is invoked, "removal action[s] shall be stayed and [A.D.M-L.] shall not be removed from the United States unless and until the matter has been resolved in favor of [the Government]."

89. In a letter dated March 6, 2017, the Government acknowledged Plaintiffs' claim that the Government was in violation of the Perez-Olano Settlement Agreement, but declined Plaintiffs' request to meet and confer.

90. In so doing, the Government wrote: "Finally, you write that you believe the "Government is in noncompliance with the Perez Olano Settlement Agreement," specifically paragraph 29. But as you know the Government views that settlement as applying only to removal proceedings pursuant to 8 U.S.C. § 1229a. Indeed, paragraph 29, by its own terms makes this clear by providing that, if certain criteria under that paragraph are satisfied, "ICE shall join motions to reopen removal proceedings filed by juveniles granted SIJ status." Perez Olano Settlement at ¶ 29 (emphasis added). That phrase alone indicates the agreement contemplated only removal proceedings, as opposed to the expedited removal proceedings at issue in your clients' case."

Maria Delmi Martinez Nolasco and Her Minor Child, J.E. L-M.

91. Seven-year-old J.E. L.-M. and his mom Maria entered the United States in September 2015.

92. They sought protection from persecution in El Salvador—specifically, threats of physical and sexual abuse at the hands of the MS gang.

93. Understandably terrified for her life and the life of her then seven-year-old son, and unable to gain protection from the police or her family, J.E. L.-M. and his mom fled El Salvador to seek protection in the United States.

94. In September 2015, Maria and J.E. L.-M. entered the United States by crossing the border. After Maria and J.E. L.-M. were apprehended by Customs and Border Protection agents, they were detained at the South Texas Family Residential Center in Dilley, Texas.

95. On or about October 31, 2015, Maria and J.E. L.-M. were transferred, this time to BCRC, in Leesport, Pennsylvania, where they remain detained.

96. At the time of their apprehension, Maria and J.E. L.-M. were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Both requested asylum based on, *inter alia*, the reasons stated above, but an asylum officer denied their request. This determination was later affirmed by an immigration judge, and Maria and J.E. L.-M. are now subject to final expedited removal orders. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

97. Maria and J.E. L.-M. filed habeas petitions in the Eastern District of Pennsylvania seeking judicial review of their expedited removal orders, but those claims were dismissed on jurisdictional grounds.

98. Maria and J.E. L.-M. then appealed to the Third Circuit Court of Appeals, which granted them stays of removal while it considered their claims, but eventually affirmed the District Court's ruling that it did not have jurisdiction.

99. All the while, Defendants detained Maria and J.E. L.-M. at BCRC.

100. During their year-and-a-half in detention, Maria and J.E. L.-M. received Custody Review Decisions every sixty to ninety days. Each of these cursory Custody Review Decisions was categorically denied by ICE, in which ICE put forth the same boilerplate language. There was nothing written on any form which would indicate that ICE had taken into account Maria and J.E. L.-M.'s individual facts and circumstances before categorically denying their release from detention. To the contrary, given that ICE issued several decisions before the deadline for Petitioners to submit supporting documentation, it seems certain they did not consider any individual facts related to Petitioners.

101. On May 27, 2016, J.E. L.-M. Petitioned U.S. Citizenship and Immigration Services for status as a Special Immigrant pursuant to 8 U.S.C. § 1101(a)(27)(J), commonly known as Special Immigrant Juvenile Status ("SIJS"), which, if approved, would allow J.E. L.-M. to apply for lawful permanent residence in the United States.

102. On November 9, 2016, J.E. L.-M.'s Petition was Approved, providing J.E. L.-M. an avenue to file an adjustment of status application to secure lawful permanent residence in the United States. J.E. L.-M. has since filed an application for Adjustment of Status with the USCIS. That application is currently pending.

103. On or about December 2015, J.E. L.-M. requested that ICE join its motion to rescind and reopen his removal proceedings pursuant to paragraph 29 of the Perez-Olano Settlement Agreement.

104. In a letter dated, February 14, 2017, ICE rejected J.E. L.-M.'s request for relief.

105. Therein, ICE "acknowledge[d] that the referenced minors [J.E. L.-M.] fall within the class of juveniles identified in the [Perez-Olano] Settlement Agreement."

106. However, ICE declined to grant the relief requested on grounds that paragraph 29 of the Settlement Agreement is inapplicable to persons subject to expedited removal.

107. On or about February 28, 2017, counsel for J.E. L.-M. wrote to the Government, setting forth the facts above and requesting that the Government meet and confer regarding, inter alia, "the [Government's] unfounded denial of a request ... to rescind and reopen the final orders of expedited removal issued to the [SIJ] children."

108. Specifically, J.E. L.-M. provided notice that "[t]he Government is in noncompliance with the *Perez-Olano* Settlement Agreement," invoking the alternate dispute resolution process described in paragraph 43 of the *Perez-Olano* Settlement Agreement.

109. J.E. L.-M. explained in his letter, that once such process is invoked, "removal action[s] shall be stayed and [J.E. L.-M.] shall not be removed from the United States unless and until the matter has been resolved in favor of [the Government]."

110. In a letter dated March 6, 2017, the Government acknowledged Plaintiffs' claim that the Government was in violation of the Perez-Olano Settlement Agreement, but declined Plaintiffs' request to meet and confer.

111. In so doing, the Government wrote: "Finally, you write that you believe the "Government is in noncompliance with the Perez Olano Settlement Agreement," specifically paragraph 29. But as you know the Government views that settlement as applying only to removal proceedings pursuant to 8 U.S.C. § 1229a. Indeed, paragraph 29, by its own terms

makes this clear by providing that, if certain criteria under that paragraph are satisfied, "ICE shall join motions to reopen removal proceedings filed by juveniles granted SIJ status." *Perez-Olano* Settlement at ¶ 29 (emphasis added). That phrase alone indicates the agreement contemplated only removal proceedings, as opposed to the expedited removal proceedings at issue in your clients' case."

Jethzabel Maritza Aguilar Mancia and Her Minor Child, V.G. R-A.

112. Sixteen-year-old V.G. R.-A. and his mother Jethzabel entered the United States in or around October 2015.

113. They sought protection from persecution in El Salvador—specifically, threats from gang members, including death threats against Jethzabel and her son. Gang members menaced her for reporting a robbery to the police and tried to recruit V.G. R.-A., demanding Jethzabel turn him over to them or be killed. V.G. R.-A. was told there were gang members waiting for him in front of his school. He escaped through a back entrance of the school, and ran home. Two of V.G. R.-A.'s friends had been killed in gang violence. If they stayed in El Salvador, V.G. R.-A.'s only options were to join the gang and risk death by a rival gang, or refuse and risk his and his mother's lives.

114. Conditions in El Salvador reinforce that V.G. R.-A. and his mom had good reason to fear for their safety. When an individual challenges the authority of a gang in El Salvador, he and his family members are often targeted for retaliation by the gang.

115. Further, reports make clear that Salvadoran authorities—the government and the police—are unable to provide protection to those targeted by gangs.

116. Understandably terrified for her life and the life of her then 14-year-old son, and unable to gain protection from the police or her family, Jethzabel and V.G. R.-A. fled El Salvador to seek protection in the United States.

117. After Jethzabel and V.G. R.-A. entered the United States by crossing the border, they were apprehended and detained by Customs and Border Protection agents, first at Karnes County Residential Center in Karnes City, Texas, and, then, since November 2015, at Berks Family Residential Center, in Leesport, Pennsylvania, where they remain detained.

118. At the time of their apprehension, Jethzabel and V.G. R.-A. were put into "expedited removal" proceedings under 8 U.S.C. § 1225(b). Both requested asylum based on, inter alia, the reasons stated above, but an asylum officer denied their request. This determination was later affirmed by an immigration judge, and Petitioners are now subject to final expedited removal orders. See 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

119. Jethzabel and V.G. R.-A. filed habeas petitions in the Eastern District of Pennsylvania seeking judicial review of their expedited removal orders, but those claims were dismissed on jurisdictional grounds.

120. Petitioners then appealed to the Third Circuit Court of Appeals, which granted them stays of removal while it considered their claims, but eventually affirmed the District Court's ruling that it did not have jurisdiction.

121. All the while, Defendants detained Jethzabel and V.G. R.-A. at Berks County Residential Center—the place where V.G. R.-A. has spent nearly the entirety of his adolescence so far, away from peers his own age.

122. During their year and a half in detention,[9] Jethzabel and V.G. R.-A. received Custody Review Decisions every 60 to 90 days. Each of these cursory Custody Review Decisions was categorically denied by ICE, in which ICE put forth the same boilerplate language. There was nothing written on any form which would indicate that ICE had taken into account Mother's or Child's individual facts and circumstances before categorically denying their release from detention. To the contrary, given that ICE issued several decisions before the deadline for Petitioners to submit supporting documentation, it seems certain they did not consider any individual facts related to Petitioners.

123. In none of Defendants' perfunctory "custody reviews" did the Defendants ever allege or show that V.G. R.-A. and his mom are a flight risk, or likely to commit a crime. Their prolonged and indefinite detention bears no reasonable relationship to any possible justification for detaining them.

124. On or about August 24, 2016, V.G. R.-A. petitioned USCIS for status as a Special Immigrant pursuant to 8 U.S.C. § 1101(a)(27)(J).

125. On or about December 2016, V.G. R.-A. requested that ICE join its motion to rescind and reopen his removal proceedings pursuant to paragraph 29 of the *Perez-Olano* Settlement Agreement.

126. In a letter dated February 14, 2017, ICE rejected V.G. R.-A.'s request for relief.

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[9] During Petitioners' detention, V.G. R.-A. was evaluated by Layla Ware de Luria, LCSW. The evaluation, dated April 20, 2016, observed that V.G. R.-A.'s continuing detention was contributing to "significant impairment in socialization" and "daily feelings of hopelessness," and noted the increased risk of suicide attempts.

127. Therein, ICE "acknowledge[d] that the referenced minors [V.G. R.-A.] fall within the class of juveniles identified in the [*Perez-Olano*] Settlement Agreement." .

128. However, ICE declined to grant the relief requested on grounds that paragraph 29 of the Settlement Agreement is inapplicable to persons subject to expedited removal.

129. On or about February 28, 2017, counsel for V.G. R.-A. wrote to the Government, setting forth the facts above and requesting that the Government meet and confer regarding, *inter alia*, "the [Government's] unfounded denial of a request ... to rescind and reopen the final orders of expedited removal issued to the [SIJ] children."

130. Specifically, V.G. R.-A. provided notice that "[t]he Government is in noncompliance with the *Perez-Olano* Settlement Agreement," invoking the alternate dispute resolution process described in paragraph 43 of the *Perez-Olano* Settlement Agreement.

131. V.G. R.-A. explained in his letter, that once such process is invoked, "removal action[s] shall be stayed and [V.G. R.-A.] shall not be removed from the United States unless and until the matter has been resolved in favor of [the Government]."

132. In a letter dated March 6, 2017, the Government acknowledged Plaintiffs' claim that the Government was in violation of the *Perez-Olano* Settlement Agreement, but declined Plaintiffs' request to meet and confer.

133. In so doing, the Government wrote: "Finally, you write that you believe the "Government is in noncompliance with the Perez Olano Settlement Agreement," specifically paragraph 29. But as you know the Government views that settlement as applying only to removal proceedings pursuant to 8 U.S.C. § 1229a. Indeed, paragraph 29, by its own terms

makes this clear by providing that, if certain criteria under that paragraph are satisfied, "ICE shall join *motions to reopen removal proceedings* filed by juveniles granted SIJ status." Perez Olano Settlement at ¶ 29 (emphasis added). That phrase alone indicates the agreement contemplated only *removal* proceedings, as opposed to the *expedited removal* proceedings at issue in your clients' case.

COUNT ONE
VIOLATION OF IMMIGRATION AND NATIONALITY ACT AND IMPLEMENTING REGULATIONS

134. The foregoing allegations are restated and incorporated by reference herein.

135. As a result of Defendants' decision to grant Plaintiffs' I-360 applications for SIJ status, they are "deemed, for purposes of [8 U.S.C. § 1255(a)], to have been paroled in the United States." 8 U.S.C. § 1255(h)(1). Further, 8 U.S.C. § 1182(a)(6)(A), (6)(C), and (7)(A) "shall not apply" to Plaintiffs in determining their admissibility. 8 U.S.C. § 1255(h)(2)(A).

136. Only aliens "who ha[ve] not been admitted or paroled into the United States" can be subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A). *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

137. Moreover, Section 1225 only permits expedited removal based on a determination that an alien "is inadmissible under [8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7)]." *See* 8 U.S.C. § 1225(b)(1)(A)(i).

138. Defendants' execution of expedited removal orders issued to SIJ- beneficiaries, which, after Defendants' decision to grant SIJ status, would be based on inapplicable grounds, would violate the INA.

139. DHS regulations limit the circumstances and manner in which SIJ Status can be revoked. DHS must establish appropriate grounds for revoking SIJ Status, and must give the juvenile notice and an opportunity to be heard before revoking his or her SIJ Status. *See, e.g.,* 8 C.F.R. § 103(a)(5)(ii).

140. Executing a removal order would effectively revoke SIJ status granted to Plaintiffs without an opportunity to be heard, violating DHS regulations.

COUNT TWO
VIOLATION OF EQUAL PROTECTION

141. The foregoing allegations are restated and incorporated by reference herein.

142. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying equal protection of the laws.

143. The policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act target individuals for discriminatory treatment based on their country of origin, religion, and/or nationality, without lawful justification.

144. The policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act are motivated by animus and a desire to harm a particular group.

145. The discriminatory terms and application of Defendants policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the

SIJ provisions of the Immigration and Nationality Act are arbitrary and cannot be sufficiently justified by federal interests.

146. Defendants' violation causes ongoing harm to Plaintiffs and all those similarly situated.

COUNT THREE
VIOLATION OF PROCEDURAL DUE PROCESS

147. The foregoing allegations are restated and incorporated by reference herein.

148. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving individuals of their liberty interests without due process of law.

149. Where Congress has granted statutory rights and authorized procedures applicable to arriving and present non-citizens, minimum due process rights attach to those statutory rights.

150. The policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act conflict with the statutory rights and procedures directed by Congress.

151. Defendants removal of Plaintiffs and those similarly situated would violate the procedural due process guarantees of the Fifth Amendment.

152. Defendants' violation causes ongoing harm to Plaintiffs and those similarly situated.

COUNT FOUR
IMMIGRATION AND NATIONALITY ACT — DISCRIMINATORY VISA PROCEDURES

153. The foregoing allegations are restated and incorporated by reference herein.

154. The Immigration and Nationality Act, 8 U.S.C. § 1152(a)(1)(A), prohibits discrimination in the issuance of immigrant visas on the basis of race, nationality, place of birth, or place of residence.

155. The policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act discriminate on the basis of race, nationality, place of birth, and/or place of residence in the issuance of visas, in violation of the Immigration and Nationality Act.

156. Defendants' violation causes ongoing harm to Plaintiffs and those similarly situated.

COUNT FIVE
FOREIGN AFFAIRS REFORM AND RESTRUCTURING ACT— DENIAL OF CONVENTION AGAINST TORTURE RELIEF

157. The foregoing allegations are restated and incorporated by reference herein.

158. The Foreign Affairs Reform and Restructuring Act of 1998, 8 U.S.C. § 1231, implements the United Nations Convention Against Torture, which the United States ratified in 1994. Pub. L. 105-277, div. G, subdiv. B, title XXII, § 2242. Under the Convention Against Torture, the United States may not involuntarily return any person to a country where there are substantial grounds for believing the person would be in danger of being subjected to torture.

159. The policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act would violate the Convention Against Torture in that Defendants have already

determined that it would not be in Plaintiffs best interest to be returned to their country of prior residence.

160. Defendants' violation causes ongoing harm to Plaintiffs and those similarly situated.

COUNT SIX
PROCEDURAL VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

161. The foregoing allegations are restated and incorporated by reference herein.

162. The Administrative Procedure Act, 5 U.S.C. §§ 553 and 706(2)(D), requires that federal agencies conduct formal rule making before engaging in action that impacts substantive rights.

163. The policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act have changed the substantive criteria by which individuals may enter the United States. Federal agencies did not follow the procedures required by the Administrative Procedure Act before taking action impacting these substantive rights.

164. Through their actions above, Defendants have violated the Administrative Procedure Act.

165. Defendants' violation causes ongoing harm to Plaintiffs and those similarly situated.

COUNT SEVEN
SUBSTANTIVE VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

166. The foregoing allegations are restated and incorporated by reference herein.

167. The Administrative Procedure Act, 5 U.S.C. § 706(2), prohibits federal agency action that is arbitrary, unconstitutional, and contrary to statute.

168. The policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act constitute unconstitutional and unlawful action, as alleged herein, in violation of the Administrative Procedure Act.

169. In implementing Defendants' policies, practices, and regulations promulgated and followed by the Defendants related to their implementation of the SIJ provisions of the Immigration and Nationality Act, federal agencies have applied provisions arbitrarily, in violation of the Administrative Procedure Act.

COUNT EIGHT
BIVENS ACTION—FALSE IMPRISONMENT

170. The foregoing allegations are restated and incorporated by reference herein.

171. Plaintiffs have a constitutionally protected right under the Fifth Amendment to be free of unreasonable and/or illegal detention.

172. In detaining and continuing to detain Plaintiffs, Defendants violated Plaintiffs' constitutionally protected right under the Fifth Amendment to be free of unreasonable and/or illegal detention.

173. Plaintiffs lack a statutory cause of action and/or available statutory causes of action do not provide for monetary compensation against Defendants.

174. No "special factors" suggest that the Court should decline to provide the judicial cause of action and remedy.

175. No appropriate immunity can be raised by Defendants.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following:

1. Declare that Plaintiffs have been paroled into the United States and are exempt from expedited removal because they have been granted Special Immigrant Juvenile status;

2. Declare that Defendants' execution of the expedited removal orders previously issued to Plaintiffs would violate the Constitution and laws of the United States;

3. Declare that Plaintiffs are entitled to remain in the United States pending the outcome of their applications for legal permanent residence;

4. Declare that Defendants' continued detention of Plaintiffs is unauthorized by and contrary to the Constitution and laws of the United States;

5. Issue a writ of habeas corpus or an injunction preventing Defendants from executing the expedited removal orders previously issued to Plaintiffs, or in the alternative, order a hearing for each in accordance with 8 U.S.C. § 1229a;

6. Issue a writ of habeas corpus ordering Defendants to release Plaintiffs immediately from immigration detention;

7. Grant Plaintiffs' reasonable attorney's fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

8. Award such additional relief as the interests of justice may require.

Dated: April 17, 2017

Respectfully submitted,

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