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2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

3 MS. L, et al.,

Case No. 18cv428 DMS MDD

4  
5 Petitioners-Plaintiffs,

**JOINT MOTION REGARDING  
SCOPE OF THE COURT’S  
PRELIMINARY INJUNCTION**

6 vs.

7 U.S. IMMIGRATION AND CUSTOMS  
8 ENFORCEMENT, et al.,

9 Respondents-Defendants.

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11  
12 In accordance with the Court’s orders and with the Court’s July 10, 2018  
13 status conference, the parties respectfully jointly move the Court to enter the  
14 attached Order Regarding Scope of the Court’s Preliminary Injunction. This  
15 Proposed Order addresses compliance with this Court’s preliminary injunction. It  
16 would provide that the Court’s preliminary injunction order in this case, or  
17 subsequent orders implementing that order, does not limit the Government’s  
18 authority to detain adults in the Department of Homeland Security’s (“DHS”)  
19 custody. Accordingly, when DHS would detain a Class Member together with his or  
20 her child in a facility for detaining families, consistent with its constitutional and  
21 legal authorities governing detention of adults and families, but the child may be  
22 able to assert rights under the *Flores* Settlement Agreement to be released from  
23 custody or transferred to a “licensed program” pursuant to that Agreement’s terms,  
24 then this Court’s preliminary injunction and implementing orders permit the  
25 Government to require Class Members to select one of the following two options:  
26 First, the Class Member may choose to remain in DHS custody together with his or  
27 her child, subject to any eligibility for release under existing laws and policies, but  
28

1 to waive, on behalf of the child, the assertion of rights under the *Flores* Settlement  
2 Agreement to be released, including the rights with regard to placement in the least  
3 restrictive setting appropriate to the minor’s age and special needs, and the right to  
4 release or placement in a “licensed program.” By choosing this option, the class  
5 member is waiving the child’s right under the *Flores* Settlement Agreement to be  
6 released, including the rights with regard to placement in the least restrictive setting  
7 appropriate to the minor’s age and special needs, and the right to release or  
8 placement in a “licensed program.” Second, and alternatively, the Class Member  
9 may waive his or her right not to be separated from his or her child under this Court’s  
10 preliminary injunction and assert, on behalf of the Class Member’s child, any such  
11 right under the *Flores* Settlement Agreement for the child to be released from  
12 custody or transferred to a “licensed program” pursuant to that Agreement’s terms—  
13 in which circumstance the child would, consistent with this Court’s orders, be  
14 separated with the parent’s consent. In implementing this release or transfer, the  
15 government could transfer the child to HHS custody for placement and to be  
16 otherwise treated as an unaccompanied child. *See* 6 U.S.C. 279(g)(2).

17 The Proposed Order provides that in neither circumstance do this Court’s  
18 orders create a right to release for a parent who is detained in accordance with  
19 existing law. If a Class Member is provided these two choices and does not select  
20 either one, the Government may maintain the family together in family detention  
21 and the Class Member will be deemed to have temporarily waived the child’s release  
22 rights (including the rights with regard to placement in the least restrictive setting  
23 appropriate to the minor’s age and special needs, and the right to release or  
24 placement in a “licensed program”) under the *Flores* Settlement Agreement until the  
25 Class Member makes an affirmative, knowing, and voluntary decision as to whether  
26 he or she is waiving his or her child’s rights under the *Flores* Settlement Agreement.

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1 The parties further agree that the Court's orders in this case, and the *Flores*  
2 Settlement Agreement, do not in any way prevent the Government from releasing  
3 families from DHS custody. No waiver by any Class Member of his or her rights  
4 under this Court's orders, or waiver by the Class Member of his or her child's rights  
5 under the *Flores* Settlement Agreement, shall be construed to waive any other rights  
6 of the Class Member or Class Member's child to challenge the legality of his or her  
7 detention under any constitutional or legal provisions that may apply.

8 The parties agree a Class Member's waiver under the *Flores* Settlement  
9 Agreement or this Court's injunction can be reconsidered after it is made, but  
10 disagree about whether there are circumstances when such a waiver cannot be  
11 reconsidered. The parties propose to meet and confer regarding this issue, and  
12 provide a joint statement to the Court addressing the results of the meet and confer  
13 and, if necessary, providing statements of their respective positions – by 3:00 p.m.  
14 on July 20, 2018.

15 DATED: July 13, 2018

Respectfully submitted,

16 /s/ Lee Gelernt

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