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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

Ms. L., et al.,

*Petitioners-Plaintiffs,*

v.

U.S. Immigration and Customs Enforcement  
("ICE"), et al.,

*Respondents-Defendants.*

Case No. 18-cv-00428-DMS-MDD

Date Filed: July 16, 2018

**PLAINTIFFS' MOTION FOR  
STAY OF REMOVAL AND  
EMERGENCY TRO PENDING  
RULING ON THE STAY  
MOTION**

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## INTRODUCTION

1  
2 Plaintiffs respectfully request that the Court order Defendants not to remove  
3 parents until one (1) week after they have been reunited with their children given  
4 the persistent and increasing rumors – which Defendants have refused to deny –  
5 that mass deportations may be carried out imminently and immediately upon  
6 reunification.

7 Plaintiffs also request that if the Court is not prepared to issue the 7-day stay  
8 before receiving a response from Defendants, then it issue a TRO to stay removals  
9 while it decides the stay motion, thereby preserving the status quo in the interim.  
10 Defendants oppose this motion. Accordingly, there is no assurance that removals  
11 will not begin as early as Monday, July 16.<sup>1</sup>

12 One of the central premises of this Court’s rulings has been that if a parent  
13 loses his or her case, they be able to make fully informed and voluntary decisions  
14 about whether to leave their children behind in the United States. *See* Dkt. 83 at 24  
15 (enjoining the government “from removing any Class Members without their child,  
16 unless the Class member affirmatively, knowingly, and voluntarily declines to be  
17 reunited with the child prior to the Class Member’s deportation”).

18 As the Court has recognized, it is difficult to imagine a more momentous  
19 decision for any parent. That decision, however, is not only momentous, but  
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21 <sup>1</sup> Defendants stated at the Friday July 13 hearing that they believed the Court  
22 lacked jurisdiction to stay removals. That issue is addressed below. But there can  
23 be no real dispute that this Court has jurisdiction and the power to issue the interim  
24 stay so that it can determine its own jurisdiction to grant the 7-day stay. “[A]  
25 federal court always has jurisdiction to determine its own jurisdiction.” *Bodi v.*  
26 *Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1018 (9th Cir. 2016)  
27 (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)). Courts also have the  
28 authority to grant stays to preserve the status quo while they determine whether  
they have jurisdiction. *United States v. United Mine Workers of Am.*, 330 U.S. 258,  
290 (1947) (“[T]he District Court unquestionably had the power to issue a  
restraining order for the purpose of preserving existing conditions pending a  
decision upon its own jurisdiction.”).

1 exceedingly complex. It cannot be made until parents not only have had time to  
2 fully discuss the ramifications with their children, but also to hear from the child's  
3 advocate or counsel, who can explain to the parent the likelihood of the child  
4 ultimately prevailing in his or her own asylum case if left behind in the U.S. (as  
5 well as where the child is likely to end up living).

6 Moreover, the decision has become much more complex in recent weeks  
7 because the Attorney General has issued a decision that purports to restrict asylum  
8 protection for individuals who fear so-called "private violence," including domestic  
9 violence and violence by brutal gangs. *Matter of A-B-*, 27 I&N Dec. 316 (A.G.  
10 June 11, 2018). As the court is aware, many of the families fled their countries  
11 precisely to escape notorious gangs. As a result of the Attorney General's (patently  
12 unlawful) asylum decision, it will be that much more difficult to advise families  
13 about whether a child will ultimately prevail in his or her asylum claim, or instead  
14 will spend years by themselves in the United States fighting their case in the  
15 immigration courts, only to be removed at the end of the day.

16 After the Court issued its preliminary injunction, Plaintiffs assumed that  
17 there would be sufficient time (and at least a week) for parents to make this  
18 decision after reunifications occurred. But that has apparently changed. In fact,  
19 according to the reunification plan Defendants just presented this afternoon to  
20 Plaintiffs and the Court (Dkt. 109-1), it appears that the government is  
21 contemplating that parents will be forced to make the choice whether to leave their  
22 children behind in advance of seeing their children, even for a few hours. If  
23 Plaintiffs are wrong, and parents will have at least 7 days after reunification to  
24 make the decision as a family, then the 7-day stay will not affect Defendants' plans,  
25 and a stay should be of little consequence to them.

26 At Friday's hearing, Defendants suggested that a stay was beyond the scope  
27 of this case. It is not. It is directly related to effectuating the Court's ruling that  
28 parents make an informed, non-coerced decision if they are going to leave their

1 children behind. Defendants also suggested that the Court lacks authority to issue a  
2 stay of removal. But a court always has jurisdiction and authority to provide relief  
3 necessary to ensure that its orders are properly effectuated. That is particularly so  
4 where the court is exercising its habeas authority to protect liberty.

5 In short, the reason that the 7-day stay is needed is because of the actions of  
6 *Defendants*. Had the families not been separated in the first place, they would have  
7 been together to discuss their options, and their cases would have remained on the  
8 same track, without a separate child advocate assigned to assess the child's case. A  
9 one-week stay is a reasonable and appropriate remedy to ensure that the  
10 unimaginable trauma these families have suffered does not turn even worse because  
11 parents made an uninformed decision about the fate of their child.

12 **I. Class Members and their children face the real risk of deportation,**  
13 **without ever being properly advised as to their rights under this**  
14 **injunction or the effect of a waiver of the rights on their children.**

15 1. This Court has recognized that Class Members' rights to the care and  
16 custody of their children cannot be conditioned on giving up their claims for relief.  
17 It is, in part, for this reason that the Court ordered that counsel be provided with  
18 class lists, ordered the government to provide Class Members with notice of their  
19 rights, and directed that the notice advise Class Members that they have the  
20 opportunity to speak to an attorney before they make a choice under the injunction.

21 Under this Court's injunction, Class Members have the right to be reunified  
22 with their children while they contest their removal and also to be reunified when  
23 they are removed. Parents may waive these rights. Parents can choose to be  
24 separated from their children during the course of their immigration proceedings or  
25 to be removed separately from their children.

26 Critically, a parent is making choices not only for themselves as an  
27 individual, but for their minor children as well. As this Court has recognized, the  
28 separation of Class Members from their children "has [] had a profoundly negative  
effect on the parents' . . . immigration proceedings, as well as the children's

1 immigration proceedings.” Dkt. 83 at 15-16. Because of the government’s decision  
2 to separate families, children and parents’ removal cases have been placed on  
3 separate tracks. Govindaiah Decl., Ex. 40 ¶ 9; Kurzban Decl., Ex. 41 ¶ 11.  
4 Children now have removal cases independent of their parents, and may have  
5 independent defenses to removal. Odom Decl., Ex. 39 ¶¶ 11-13; Govindaiah Decl.,  
6 Ex. 40 ¶ 9 Children also have independent rights under the *Flores* agreement.  
7 Govindaiah Decl., Ex. 40 ¶¶ 10-11.

8 Due to their unlawful separations, parents and children have had no chance to  
9 have meaningful conversations with one another about the family’s collective  
10 options. Odom Decl., Ex. 39 ¶¶ 9, 10; Govindaiah Decl., Ex. 40 ¶ 12. A parent’s  
11 decision to waive any claims for relief that they hold as an individual and to be  
12 deported with their child could extinguish any independent claims under the asylum  
13 statute or under the *Flores* agreement the child may have. Parents cannot make  
14 such momentous decisions on behalf of their families without knowing what claims  
15 their children may have, or even that their children may have independent claims.

16 The Attorney General’s recent decision in *Matter of A-B-*, 27 I&N Dec. 316  
17 (A.G. 2018), makes it more important that class members have sufficient time after  
18 consultation with their child to understand the avenues available for them and their  
19 children. Kurzban Decl., Ex. 41 ¶¶ 17-19; Lee Decl., Ex. 42 ¶¶ 8-9. *A-B-*  
20 overruled an earlier BIA decision, *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA  
21 2014), which had supported asylum claims of certain individuals fleeing domestic  
22 violence. *Id.* And the opinion in *A-B-* more broadly addressed, often in sweeping  
23 terms, numerous legal facets of potential asylum claims, such as which "particular  
24 social groups" should be entitled to protection under the asylum laws, the standards  
25 for assessing claims involving non-governmental persecutors (such as gangs), and  
26 the required evidentiary showing for various prongs of the asylum analysis. USCIS  
27 followed up with final guidance regarding *A-B-* ([https://www.aila.org/infonet/uscis-](https://www.aila.org/infonet/uscis-guidance-processing-fear-matter-of-a-b-)  
28 [guidance-processing-fear-matter-of-a-b-](https://www.aila.org/infonet/uscis-guidance-processing-fear-matter-of-a-b-)) on July 11, and has indicated that *A-B-*

1 will be immediately and fully implemented in the credible fear interviews as part of  
2 the expedited removal system – even if there is contrary circuit precedent. It is  
3 therefore urgent that class members be counseled about the effect of this new  
4 decision on their potential claims – and as importantly are advised of the avenues  
5 for challenging any denials predicated on *A-B-* in federal court.

6 The Class Members’ children have been detained at ORR facilities – some  
7 for months – apart from their parents. During this time, many have received legal  
8 screenings or representation from lawyers. Odom Decl., Ex. 39 ¶ 12; Govindaiah  
9 Decl., Ex. 40 ¶ 13. These lawyers have examined and perhaps even developed the  
10 children’s legal claims during this time. At this point, given the months-long  
11 separations that have occurred, the only way for a parent to understand the choices  
12 available to the family is to have adequate communication with their child and their  
13 child’s lawyer. Odom Decl., Ex. 39 ¶ 12; Govindaiah Decl., Ex. 40 ¶ 15.

14 Volunteer attorneys have organized and are ready to meet with hopefully  
15 every parent to ensure that they are properly informed of their rights under the  
16 Court’s injunction. These lawyers can also talk with the children’s lawyers, and  
17 help the family come to a decision that is best for both parent and child. But this  
18 cannot occur in any meaningful manner until after reunification occurs.

19 2. Moreover, even if were somehow possible prior to reunification for  
20 parents to be properly advised of their rights and their child’s rights, which it is not,  
21 the government has made it exceedingly difficult for even that to occur. First, the  
22 government has delayed giving Plaintiffs usable class lists. Plaintiffs first requested  
23 a class list on July 2. On July 6, the Court ordered it to be provided for the parents  
24 of under-five children by Saturday, July 7. The government did not provide a list  
25 with the names and locations of parents until Sunday, July 8, with the deadline for  
26 reunification only two days later, on July 10.

27 Class counsel still does not have a useable class list of the remaining 2,000  
28 plus class members. While the government provided two lists on July 14, one of

1 adult Class Members and one of children, the lists contain numerous discrepancies  
2 that raise serious questions concerning their completeness and accuracy. For  
3 example, the list of children contains approximately 2,500 names, whereas the  
4 Class Member list contains approximately 1,600. Although it is possible that many  
5 Class Members have multiple separated children, it is equally possible that the  
6 parent and child lists have not been reconciled in key respects. Without accurate  
7 information concerning the Class Members, it is impossible to ensure that they all  
8 can meet with a lawyer, even prior to their reunification.

9 Second, the government has created impediments to lawyers meeting clients  
10 or Class Members that they know of. Many facilities – which otherwise have  
11 limited room for legal visits – have prohibited lawyers from holding group  
12 presentations to class members of their rights. Odom Decl. ¶ 6. Class Members  
13 have been transferred across multiple facilities, sometimes in a matter of days.  
14 These transfers can occur with no prior notice to their counsel.

15 Third, the government has not provided class members with adequate  
16 communication with their children, even by phone, prior to reunification. The  
17 Court ordered that Class Members be allowed to communicate with their children  
18 by July 6, but Plaintiffs still have not been given a formal, adequate assurance that  
19 each child has had contact with his or her parent. Regardless, even if the  
20 government has now provided phone contact to every single child, many parents  
21 have not had more than one phone call with their children, let alone enough  
22 communication to ensure that a fully informed decision can be made to assess both  
23 the parent's and the child's options. Odom Decl. ¶ 10; Govindaiah Decl. ¶ 12.

24 Fourth, many Class Members may have already been misled or misinformed  
25 by the government's previous election form, which presented them with the false  
26 choice to remain separate from their children *or* to be reunified and deported.  
27 Govindaiah Decl, Ex. 40 ¶¶ 5-7. The government has not clarified whether  
28 elections made on its previous flawed form are still honored, or whether Class

1 Members presented with it will be re-canvassed. In either case, in the absence of  
2 further clarification, exposure to the old form may have led many to believe that  
3 they had to waive any defenses to removal for both themselves and their children in  
4 order to be reunified. Plaintiffs have sought to mitigate this risk by requiring the  
5 Government to distribute a new notice form, which allows the Class Member to  
6 express his or her interest in consulting with counsel before making a decision on  
7 reunification. *See* July 10 Hearing Transcript at 4:3-5 (Court “adopt[ing] the  
8 Plaintiffs’ version of the class notice,” and directing that it “issue in accordance  
9 with the Plaintiffs’ proposal”). However, Defendants have not been providing  
10 those completed forms to Plaintiffs’ counsel, so they have no way of knowing  
11 whether or how many Class Members have asked to speak with lawyers.  
12 Moreover, when Plaintiffs proposed these forms, there was no thought that the  
13 government was contemplating the drastic step of removing parents immediately  
14 after reunification, without the parents having even a week to make perhaps the  
15 biggest decision of their lives.

16 Fifth, Plaintiffs have recently received reports that reunifications of children  
17 age five and over has already begun in some cases, and reunification for the  
18 remainder of the Class will begin imminently. But Plaintiffs did not receive the  
19 required warning of this action. In conjunction with the government’s distribution  
20 of misleading information and waiver forms, and the inability of class counsel to  
21 arrange legal consultations with parents, there is a grave risk that families will be  
22 reunited only to be immediately deported, without full information.

23 In short, nothing about this case involves the normal situation where parents  
24 and children remain together, and have time to make profound, potentially life and  
25 death family decisions. Given the fact that parents and children cannot make a fully  
26 informed decision without some time together, a short 7-day stay is necessary and  
27 more than warranted as a remedy to ensure that no further harm occurs to these  
28 families because of the unconstitutional separations carried out by Defendants.



1 **II. The Court has the authority to enter a brief stay to effectuate its orders**  
2 **and ensure that any waivers are knowing, intelligent, and voluntary.**

3 The Court has the authority to issue all orders necessary to ensure the orderly  
4 implementation of its injunction. *See High Sierra Hikers Ass'n v. Blackwell*, 390  
5 F.3d 630, 641 (9th Cir. 2004) (district court has “broad latitude in fashioning  
6 equitable relief when necessary to remedy an established wrong”). The power to  
7 stay government action to preserve the status quo is clearly within the court’s  
8 inherent equitable powers.

9 The Ninth Circuit has specifically affirmed the power of district courts to  
10 enter stays of deportation in order to protect litigants’ rights. *See Barahona-Gomez*  
11 *v. Reno*, 167 F.3d 1228 (9th Cir. 1999), *supplemented*, 236 F.3d 1115 (9th Cir.  
12 2001) (affirming district court’s stay of deportation of class of noncitizens to allow  
13 them to pursue challenges to regulations); *Walters v. Reno*, 145 F.3d 1032, 1053  
14 (9th Cir. 1998) (“because the district court clearly had jurisdiction to hear the  
15 claims regarding constitutional violations . . . it had jurisdiction to order adequate  
16 remedial measures” including a stay of removal for class members).

17 The government, however, will likely argue, as it unsuccessfully has in other  
18 cases, that the court has no power to stay deportations. The government will point  
19 to a subsection of the Immigration and Nationality Act – 8 U.S.C. § 1252(g) – to  
20 argue that Congress has restricted the power of district courts to stay deportation.  
21 However, the Ninth Circuit and district courts have consistently rejected the  
22 government’s argument in this specific context, where the court is acting to ensure  
23 the implementation of a preliminary injunction which it already found it had  
24 jurisdiction to provide. *See, e.g., Sied v. Nielsen*, No. 17-cv-06785, 2018 WL  
25 1142202, at \*21 (N.D. Cal. Mar. 2, 2018) (granting stay of removal, rejecting  
26 government reliance on 8 U.S.C. § 1252(g)); *Chhoeun v. Marin*, No. 17-cv-01898,  
27 2018 WL 566821, at \*8-9 (C.D. Cal. Jan. 25, 2018) (same, for class of Cambodian  
28 nationals).

Section 1252(g) states:

1 Except as provided in this section and notwithstanding any other  
2 provision of law. . . no court shall have jurisdiction to hear any cause  
3 or claim by or on behalf of any alien arising from the decision or  
4 action by the Attorney General to commence proceedings, adjudicate  
5 cases, or execute removal orders against any alien under this chapter.

6 But section 1252(g) does not remove the inherent power of this Court to stay  
7 removal in service of its injunction, for several reasons.

8 First, Plaintiffs' claims do not "arise from" the decision to execute removal  
9 orders, and therefore fall outside the plain terms of Section 1252(g). Plaintiffs'  
10 claims arise from the government's decision to separate them from their children –  
11 a claim over which this court plainly had jurisdiction. The Court's injunction is  
12 designed to remedy that violation. In *Walters v. Reno*, the Ninth Circuit held that  
13 Section 1252(g) did not prevent a court from enjoining the removal of a class of  
14 non-citizens. That case also involved ensuring that noncitizens had proper notice of  
15 their rights. The Ninth Circuit stated that because "the district court clearly had  
16 jurisdiction to hear the claims regarding constitutional violations [that did not arise  
17 from the decision to execute removal orders], it had jurisdiction to order adequate  
18 remedial measures, including injunctive provisions that ensure that the effects of  
19 the violation do not continue." 145 F.3d 1032, 1053 (9th Cir. 1998).

20 Similarly, in *Barahona-Gomez v. Reno*, the Ninth Circuit rejected a  
21 government argument that, under Section 1252(g), a "district court did not have  
22 jurisdiction to order any relief that interferes with its attempt to execute deportation  
23 orders against the class members." 167 F.3d 122, 1234 (9th Cir. 1999),  
24 *supplemented*, 236 F.3d 1115 (9th Cir. 2001). *Barahona-Gomez* concluded that the  
25 case was not brought to obtain judicial review of the merits of their immigration  
26 proceedings, but "rather to enforce their constitutional rights to due process" and  
27 that the district court had authority to enter "injunctive relief staying deportation  
28 pending resolution of their constitutional claims."

Second, at a minimum, Section 1252(g) is not sufficiently clear to eliminate

1 the inherent powers of the Court to implement its orders. Federal courts have  
2 “inherent power” to issue necessary orders in a pending case. *Chambers v. NASCO,*  
3 *Inc.*, 501 U.S. 32, 43 (1991); *see id.* at 58 (Scalia, J., dissenting) (“Some elements  
4 of that inherent authority are so essential to the [Article III] judicial Power, that  
5 they are indefeasible, among which is a court’s ability to enter orders protecting the  
6 integrity of its proceedings.”). As such, Article III courts’ inherent powers can be  
7 limited by only the clearest statutes or rules. *See id.* at 47 (“We do not lightly  
8 assume that Congress has intended to depart from established principles such as the  
9 scope of a court’s inherent power.”); *Califano v. Yamaski*, 422 U.S. 682, 705 (1979)  
10 (“Absent the clearest command to the contrary from Congress, federal courts retain  
11 their equitable power to issue injunctions....”).

12 Third, the Ninth Circuit has instructed (and numerous courts have agreed)  
13 that Section 1252(g) is to be interpreted narrowly to apply only to challenges to the  
14 executive’s *discretion* to execute a removal order. Section 1252(g) ““was directed  
15 against a particular evil: attempts to impose judicial constraints upon prosecutorial  
16 discretion.”” *United States v. Hovsepien*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en  
17 banc) (quoting *Reno v. AADC*, 525 U.S. 471, 485 n. 9 (1999)). Thus, it does not  
18 bar “consideration of a purely legal question, which does not challenge the Attorney  
19 General’s discretionary authority.” *Accord Sied v. Nielsen*, No. 17-cv-06785, 2018  
20 WL 1142202, at \*21 (N.D. Cal. Mar. 2, 2018); *Chhoeun v. Marin*, No. 17-cv-  
21 01898, 2018 WL 566821, at \*8-9 (C.D. Cal. Jan. 25, 2018)). The executive does  
22 not have discretion to remove class members without a knowing and intelligent  
23 waiver of their rights and the rights of their children to pursue relief from removal.

## 24 CONCLUSION

25 For the foregoing reasons, the Court should prohibit Defendants from  
26 removing parents until 7 days after reunification and, if necessary, enter a  
27 temporary restraining order staying such removals until this motion is decided.  
28

1 Dated: July 16, 2018

Respectfully Submitted,

/s/Lee Gelernt

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2018, I electronically filed the foregoing with the Clerk for the United States District Court for the Southern District of California by using the appellate CM/ECF system. A true and correct copy of this brief has been served via the Court’s CM/ECF system on all counsel of record.

/s/ Lee Gelernt  
Lee Gelernt, Esq.  
Dated: July 16, 2018

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*Ms. L. et al., v. U.S. Immigration and Customs Enforcement, et al.*

**EXHIBITS TO PLAINTIFFS' MOTION FOR STAY AND OTHER RELIEF**

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# EXHIBIT 39

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16 **UNITED STATES DISTRICT COURT**  
17 **SOUTHERN DISTRICT OF CALIFORNIA**

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21 U.S. Immigration and Customs Enforcement  
22 ("ICE"), et al.,

23 *Respondents-Defendants.*

Case No. 18-cv-00428-DMS-MDD

**DECLARATION OF MARIA  
ODOM**

**CLASS ACTION**



1 I, Maria Odom, make the following declaration based on my personal  
2 knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that  
3 the following is true and correct:

4 2. I currently serve as Vice President for Legal Services at Kids in Need of  
5 Defense (KIND). KIND is a national non-profit organization with ten field offices  
6 providing free legal services to unaccompanied immigrant children who face removal  
7 proceedings in Immigration Court.

8 3. I have been an immigration attorney for over twenty years and have served in  
9 positions across all sectors, including as Assistant District Counsel for the legacy  
10 Immigration and Naturalization Service (INS), 10 years in private practice, as  
11 Executive Director of the Catholic Legal Immigration Network, and, most recently, as  
12 the appointed Citizenship and Immigration Services Ombudsman at the U.S.  
13 Department of Homeland Security.

14 4. Since June 27, I have supervised teams of KIND attorneys, also in collaboration  
15 with other volunteer attorneys, in locating and counseling parents and children  
16 separated by the government.

17 5. Our work with separated parents focuses on those held by Immigration and  
18 Customs Enforcement (ICE) at Port Isabel Service Processing Center in Texas. Our  
19 teams have met with close to 200 separated parents in Port Isabel. I have personally  
20 met with at least five separated parents held at Port Isabel.

21 6. It has been difficult to locate and meet with parents at Port Isabel, particularly  
22 before the Court began ordering the government to provide lists of Class Members to  
23 Plaintiffs. Without such information, we are unable to obtain a complete list of  
24 separated parents at Port Isabel and have no way of learning of new arrivals. Instead,  
25 we have relied on lists compiled by private and nonprofit attorneys in the area.  
26 Detainees also referred other separated parents to us when they encountered us at the  
27 facility via word of mouth. We also learned of names of separated parents from other  
28

1 advocates and from the media who received phone calls from separated parents held at  
2 Port Isabel looking for assistance.

3 7. The facility did not allow us to hold group meetings or group presentations. I  
4 personally requested the use of space to conduct group orientations and an ICE officer  
5 denied the request. In my experience, legal orientation in the detainee pods is one of  
6 the most effective ways to provide legal orientation, but that legal access is not  
7 permitted at Port Isabel Detention Center. This further slowed down the process of  
8 locating and providing basic information to, these parents.

9 8. Communication between parents and children continues to be limited. While  
10 many parents we met at Port Isabel have had contact with their children since the  
11 Court's preliminary injunction, it is rare that a parent will have had extensive  
12 conversations with the child or multiple calls. Communication is also contingent upon  
13 the children's shelter staff answering their phones, to which there have been barriers.  
14 Other parents with whom we met had yet to have any contact with their children at the  
15 time we spoke to them.

16 9. This limited communication means that parents do not have a meaningful  
17 opportunity to talk to their children or their children's counsel to understand their  
18 cases. After weeks or months of separation, the few minutes they had on the phone  
19 were emotional and not conducive to discussing legal rights and options.

20 10. For parents with small children, a single (or even multiple) phone calls with the  
21 child offers parents little to no understanding of their child's legal options. Small  
22 children likely have very little, if any understanding of their rights, particularly amid  
23 the ongoing harm of being separated from their caretaker.

24 11. Many parents with whom we have met now understand that to the Court has  
25 ordered reunification. However, they often struggle to understand the logistics of how  
26 reunification will occur. They need counsel's assistance to fully understand the rights  
27 of their children or how those rights will be affected by any decisions they may make  
28

1 about reunification. They often lack complete information about whether their child  
2 has a lawyer or has any avenues for relief from removal. Counseling parents on their  
3 rights and options has also been challenging given the lack of information regarding  
4 the government's plans for reunification.

5 12. In addition to counseling separated parents, my team has screened at least 49  
6 separated children in ORR custody in New York in the last few weeks. The majority  
7 are ages 5 to 9. Many of the children we have interviewed are traumatized and unable  
8 to fully comprehend the complicated and shifting options before them. A number of  
9 these children simply expressed a desire to see or be with a parent, while others only  
10 wanted to make a decision after consulting with a parent. Others cried or avoided  
11 discussing their case and were only able to convey concern over their parents'  
12 whereabouts and/or a desire to see or talk to a parent. To be properly counseled about  
13 their options and have meaningful defense of their claims, these children need to be  
14 with their parents.

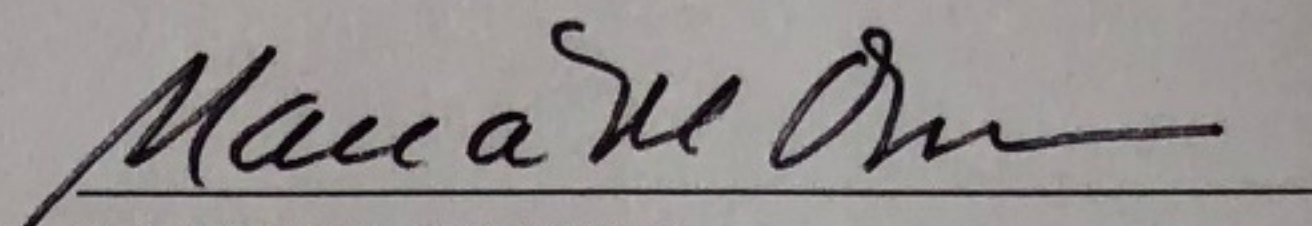
15 13. In order to provide adequate legal representation to children in removal  
16 proceedings, it is important for the attorney to have a thorough understanding of the  
17 child's situation in the country of origin. Attorneys must ask difficult questions about  
18 abuse, abandonment, neglect, violence, persecution, or other harms suffered by  
19 children and their families. Children may qualify for humanitarian protection on  
20 several grounds, and past harm to the child or to family members may support  
21 eligibility for legal relief. A child may have limited memory and understanding of  
22 complex or violent situations, making it important for the attorney to speak with  
23 members of a child's family who may corroborate information, fill in gaps, and  
24 provide additional facts the child might not know or comprehend.

25 14. Separation from parents makes it harder for the child to provide the evidence  
26 necessary to prove their defense from removal. Many times, the parent has important  
27 paperwork, such as notarized affidavits, birth certificates, or police records. Obtaining  
28

1 these documents from a parent who is detained or deported is difficult and resource-  
2 intensive.

3 15. There are instances in which after proper legal screening of the child and  
4 consultation with case workers it may not be appropriate for child's counsel to work  
5 with the parent, often resulting in the bifurcation of cases. However, absent suitability  
6 concerns or other protection needs, parents need some understanding of their  
7 children's legal situation before they make a decision about whether they want to be  
8 deported with or without their children. In some cases, a parent who does not have a  
9 claim to remain in the United States may have a child who does. In others, a parent  
10 may have a claim but incorrectly believe that they have to relinquish their own claims  
11 as well as any independent claims the child may have in order to be reunified. In  
12 order for them to make knowing and voluntary decisions concerning what is best for  
13 their families, these parents need an opportunity to consult with their own counsel,  
14 and meaningful access to their children and potentially their children's lawyers.  
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1 I declare under penalty of perjury that to the best of my knowledge the above  
2 facts are true and correct. Executed this 15th day of July 2018, in New York, NY.  
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7 MARIA ODOM  
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# EXHIBIT 40

1 Lee Gelernt\*  
2 Judy Rabinovitz\*  
3 Anand Balakrishnan\*  
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13 **UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

14 Ms. L., et al.,

15 *Petitioners-Plaintiffs,*

16 v.

17 U.S. Immigration and Customs Enforcement  
18 ("ICE"), et al.,

19 *Respondents-Defendants.*

Case No. 18-cv-00428-DMS-MDD

**DECLARATION OF MANOJ  
GOVINDAIAH**

CLASS ACTION

1 1. I, Manoj Govindaiah, make the following declaration based on my personal  
2 knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that  
3 the following is true and correct:  
4

5 2. I am the Director of Family Detention Services at RAICES, a nonprofit agency  
6 that promotes justice by providing free and low-cost legal services to underserved  
7 immigrant children, families, and refugees in Texas. RAICES is the largest  
8 immigration legal services provider in Texas. As Director of Family Detention  
9 Services, I oversee RAICES' work at Texas' family detention centers—in particular,  
10 its work at the Karnes County Residential Center in Karnes City, Texas.  
11  
12

13 3. Since DOJ's zero tolerance policy began in May 2018, I have also supervised  
14 RAICES' response to family separation, and our work with separated families.  
15 RAICES provides legal services to unaccompanied children at 13 ORR locations in  
16 the San Antonio and Corpus Christi areas. RAICES also provides legal services at  
17 detention centers throughout the State of Texas and has encountered hundreds of  
18 separated parents through our legal services, data processing, and volunteer  
19 coordination efforts with other legal services providers.  
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23 4. I am gravely concerned by the possibility that parents already have or will  
24 unknowingly waive away their rights and the rights of their children in their  
25 desperation be reunified. The grave risk of this occurring is amplified by the  
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1 government's failure to provide any clarity on the process by which reunification is  
2 going to occur.

3  
4 5. My concern begins with the government's use of a waiver form that appeared to  
5 give separated parents incentive to agree to waivers of their own, or their children's,  
6 rights as a way of reuniting with their children. A copy of this form is attached to my  
7 declaration. It is my understanding that separated parents have in the past been asked  
8 by the government to sign a form ("Separated Parent's Removal Form") with two  
9 options: 1) that the parent wishes to be removed from the United States with their  
10 child, or 2) that the parent wishes to be removed from the United States without their  
11 child.  
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14  
15 6. The form was problematic in myriad ways. Although parents may have  
16 "administratively final orders of removal" (as described in the form), those orders can  
17 be held in abeyance when a parent is proceeding through expedited removal  
18 proceedings and the credible fear process, which is the typical process an asylum-  
19 seeker would undergo. If a parent successfully navigates credible fear, they are  
20 eligible for release from detention, and eligible to apply for legal relief in the United  
21 States.  
22  
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24 7. Additionally, the form provided only two options, both of which result in the  
25 deportation of the parent from the United States. The form did not contemplate the  
26 possibility that a parent may ultimately be released from federal custody, even though  
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1 the Department of Homeland Security maintains broad discretion over release from  
2 custody—even of those individuals with administratively final orders of removal.  
3

4 8. Parents generally have authority to make decisions on behalf of their children.

5 However, these decisions must be made with full information as to their children’s  
6 rights. The separated families have unique rights and needs that parents must  
7 understand before making any waivers.  
8

9 9. By separating children from their parents, the government classified the  
10 children as “unaccompanied” and sent them to ORR custody. Unaccompanied  
11 children are afforded certain protections that differ from those of adults or  
12 accompanied children. Among them are the right to apply for asylum affirmatively in  
13 a non-adversarial setting and if denied, the opportunity for an additional review before  
14 an Immigration Judge, the right to removal proceedings in front an immigration judge  
15 (without the need to go through a credible fear hearing). Additionally, children  
16 generally may be eligible for Special Immigrant Juvenile Status under 8 U.S.C. §  
17 1101(a)(27)(J), which is available to certain abused, abandoned, or neglected children.  
18 Many of the unaccompanied children that RAICES works with are eligible for  
19 asylum, Special Immigrant Juvenile Status, other immigration relief, and typically a  
20 combination of forms of relief. Even accompanied children have the right to assert an  
21 independent asylum claim from their parents.  
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1 10. Pursuant to the *Flores* Settlement Agreement, children generally are also  
2 afforded additional rights not available to adults. These rights include the right to  
3  
4 expeditious release from government custody, the right to be placed in a licensed,  
5 non-secure facility, and the right to bond hearings in every case, among others.

6 11. In our recent work with separated parents, it is clear that they do not typically  
7  
8 understand that, their children may have additional rights and legal options available  
9  
10 to them, or that because their children are not yet adults, *Flores* rights may also apply  
11 to them.

12 12. It is also clear that while the parents have had limited chances to communicate  
13  
14 with their children, those conversations have typically been about the child's living  
15 conditions, whether they are eating properly, whether they are having nightmares, etc.  
16 Most of the parents have not discussed with the child the child's legal options or  
17  
18 child's desires with respect to the child's independent immigration case.

19 13. Indeed such conversations are of utmost importance. RAICES is currently  
20  
21 working with approximately 130 separated children that are in ORR custody in the  
22 San Antonio and Corpus Christi area. Of those 130 children, many have independent  
23  
24 claims that they have indicated they may like to pursue. The vast majority of those  
25  
26 children have not yet had an opportunity to discuss their desires with their parents.  
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1 14. Additionally, I do not believe any of the separated parents that RAICES is  
2 working with have had an opportunity to speak with their child's immigration lawyer  
3 regarding the child's legal rights or legal options.  
4

5 15. In my experience working in detention centers for several years, and with  
6 detained families, I do not believe that parents can make informed decisions on behalf  
7 of their families without adequate communication with their children and their  
8 children's representatives. Nor do I think that most separated parents have had  
9 adequate communication. A parent's waiver of their child's rights – whether those  
10 rights arise under *Flores* or the immigration and asylum statutes – without receiving  
11 accurate, effective information on those rights, without discussing those rights with  
12 their child's attorney, or discussing those rights with their child him/herself, cannot be  
13 considered a voluntary, informed, and knowing waiver of the child's rights.  
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17 16. While we at RAICES, along with other advocates, have the resources and  
18 experience necessary to meet with and advise parents upon their reunification, it is  
19 difficult to deploy these resources in the absence of information from the government  
20 as to the logistics of reunification, or without a period of time to ensure we can meet  
21 with parents together with their children.  
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1 17. I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct, based on my personal knowledge.  
3

4 Executed in San Antonio, Texas, on July 15, 2018.  
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6 /s/ Manoj Govindaiah  
7 MANOJ GOVINDAIAH  
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U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations

**Separated Parent's Removal Form**

**Purpose:** This form is for detained alien parents with administratively final orders of removal who are class members in the *Ms. L. v. I.C.E.*, No. 18-0428, (S.D. Cal. Filed Feb. 26, 2018) lawsuit. Class members are entitled to be reunited with their child(ren) and may choose for their child(ren) to accompany them on their removal or may choose to be removed without their child(ren). Any such decision must be made affirmatively, knowingly, and voluntarily.

**Instructions:** This form must be read to the alien parent in a language that he/she understands. The alien parent should indicate which option he/she is choosing by signing the appropriate box below.

**Parent Name / Nombre de Padre:** \_\_\_\_\_

**Parent A # / A # de Padre:** \_\_\_\_\_

**Country of Citizenship / Pais de Ciudadania:** \_\_\_\_\_

**Detention Facility / El Centro de Detención:** \_\_\_\_\_

**Child(ren) Name(s) / Nombre de Hijo:** \_\_\_\_\_

**Child(ren) A # / A # de Hijo:** \_\_\_\_\_

**Shelter / Albergue:** \_\_\_\_\_

**English:** *I am requesting to reunite with my child(ren) for the purpose of repatriation to my country of citizenship.*

**Signature / Firma:** \_\_\_\_\_

**English:** *I am affirmatively, knowingly, and voluntarily requesting to return to my country of citizenship without my minor child(ren) who I understand will remain in the United States to pursue available claims of relief.*

**Signature / Firma:** \_\_\_\_\_

**Certificate of Service**

I hereby certify that this form was served by me at \_\_\_\_\_  
(Location)

on \_\_\_\_\_ on \_\_\_\_\_, and the contents of this  
(Name of Alien) (Date of Service)

notice were read to him or her in the \_\_\_\_\_ language.  
(Language)

\_\_\_\_\_  
Name and Signature of Officer

\_\_\_\_\_  
Name or Number of Interpreter (if applicable)

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# EXHIBIT 41

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12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 Ms. L., et al.,

15 *Petitioners-Plaintiffs,*

16 v.

17 U.S. Immigration and Customs Enforcement  
18 ("ICE"), et al.,

19 *Respondents-Defendants.*

Case No. 18-cv-00428-DMS-MDD

**DECLARATION OF IRA  
KURZBAN**

**CLASS ACTION**



1 I, Ira Kurzban, make the following declaration based on my personal  
2 knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that  
3 the following is true and correct:

4 2. I am the author of *Kurzban's Immigration Law Sourcebook*, the most widely  
5 used one-volume immigration source in the United States that has been cited  
6 authoritatively by numerous Federal Circuit Courts of Appeals, the Board of  
7 Immigration Appeals and state Supreme Courts.

8 3. I am currently and have been a partner in the law firm of Kurzban, Kurzban,  
9 Weinger, Tetzeli, & Pratt P.A. of Miami, Florida for over four decades and I am chair  
10 of the firm's immigration department.

11 4. I am a past-national President and former General Counsel of the American  
12 Immigration Lawyers Association. I am also a Fellow of the American Bar  
13 Association and was the first recipient of the Tobias Simon Award given by the Chief  
14 Justice of the Florida Supreme Court for my pro bono service on behalf of  
15 immigrants. I was also named as an Honorary Fellow of the University of  
16 Pennsylvania School of Law for my work on behalf of Haitians seeking refuge in the  
17 United States.

18 5. I have been named by the National Law Journal as one of the top twenty  
19 immigration lawyers in the United States. I have been listed for over thirty-five years  
20 in the Best Lawyers in America for my work in immigration and employment law,  
21 and Lawdragon has listed me as one of the top 500 lawyers in the United States. I  
22 also have received the Lawyers of the Americas Award for my work on behalf of  
23 human rights in this hemisphere given by the University of Miami, the Jack  
24 Wasserman Award for excellence in federal litigation, the Edith Lowenstein Memorial  
25 Award for excellence in the advancement of immigration law given by the American  
26 Immigration Lawyers Association, and the Carol King Award for my efforts in  
27 immigration law given by the National Lawyers Guild. In 1986, I was selected by  
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1 Newsweek Magazine in their commemorative issue on the hundredth anniversary of  
2 the Statue of Liberty as one of 100 American heroes for my work on behalf of  
3 immigrants. Both myself individually and my firm have been listed in Chambers as  
4 first-tier lawyers in immigration law since 2010.

5 6. I have litigated over fifty federal cases concerning the rights of aliens before the  
6 U.S. Supreme Court, including *Jean v. Nelson*, *Commissioner v. Jean*, and *McNary v.*  
7 *Haitian Refugee Center, Inc.* I have also litigated numerous cases under the Alien  
8 Tort Claims Act and the Torture Victim Protection Act, including one that resulted in  
9 a \$500-million judgment against Jean-Claude Duvalier, the former dictator Haiti.

10 7. In my immigration practice of almost forty years, I have litigated hundreds of  
11 cases before the immigration courts in the United States. I have represented hundreds  
12 of asylum applicants and other applicants seeking relief in the immigration courts.

13 8. I am an adjunct faculty member in Immigration and Nationality Law at the  
14 University of Miami School of Law and have lectured and published extensively in  
15 the field of immigration law, including articles in the *Harvard Law Review*, *San*  
16 *Diego Law Review*.

17 9. I make this affidavit to explain what steps are necessary to ensure that a parent  
18 understands the choices available to them and their families when deciding to be  
19 reunified for removal.

20 10. The government's decision to separate children from their parents and to  
21 declare children as unaccompanied alien children means that parents and children will  
22 have independent immigration proceedings.

23 11. The decision to accept removal or litigate available claims for relief is a  
24 complex one, even for an individual. An asylum-seeking adult placed in expedited  
25 removal proceedings, for example, will have to assess their chances of prevailing at a  
26 credible fear proceeding, and then – when placed in plenary removal proceedings  
27 pursuant to Section 240 of the Immigration and Nationality Act – their chances of  
28

1 prevailing at an asylum hearing and on appeal. Even an individual who may have  
2 received a negative credible fear finding has avenues of relief available: for example,  
3 they can appeal a denial to an Immigration Judge, seek reconsideration, or challenge  
4 the denial in federal court.

5 12. Children will have their own independent claims for relief. Because the  
6 government has rendered them “unaccompanied,” these children are not in expedited  
7 removal proceedings. Instead, they have the opportunity to seek asylum without  
8 going through the credible fear process.

9 13. Children’s asylum claims may overlap with or be independent of those of their  
10 parents. For example, a child may have an asylum claim as a shared victim or witness  
11 to a parent’s persecution. A child may also have asylum claims that arise  
12 independently from the child’s own experiences as a victim of persecution.

13 14. A parent’s decision to be removed with their child will waive two sets of  
14 asylum claims: that of the parent and that of the child.

15 15. In my experience counseling families in this context, it is necessary that  
16 decisions be made together or at least with the benefit of substantial communication.  
17 Parents cannot make a decision without understanding the options available to a child  
18 and without speaking with their children.

19 16. Moreover, because asylum claims rely on the recollection of traumatic events,  
20 children often rely on the support of their parents to help them express a fear of return.

21 17. For many of the Class Members in this case, decisions about removal have  
22 recently become more complex because of the Attorney General’s decision in *Matter*  
23 *of A-B-*, 27 I&N Dec. 316 (A.G. 2018) on June 11 and an implementing guidance  
24 issued by USCIS on July 11.

25 18. *Matter of A-B-* overruled an earlier decision, *Matter of A-R-C-G-*, 26 I&N Dec.  
26 338 (BIA 2014), which had supported asylum claims of certain individuals fleeing  
27 domestic violence. The opinion in *A-B-* more broadly addressed, often in sweeping  
28

1 terms, numerous legal facets of potential asylum claims, such as which “particular  
2 social groups” should be entitled to protection under the asylum laws, the standards  
3 for assessing claims involving non-governmental persecutors, and the required  
4 evidentiary showing for various prongs of the asylum analysis. The July 11 guidance  
5 indicates that *A-B-* will be immediately and fully implemented in the credible fear  
6 interviews as part of the expedited removal system—even where there is contrary  
7 circuit precedent.

8 19. These recent developments increases the importance of families understanding  
9 the options available to them before a parent makes any ultimate choice regarding  
10 removal. Children who have lawyers must be able to communicate with children’s  
11 parents, whether or not they themselves are counseled, to ensure that the parent is  
12 making choices for their child based on a correct understanding of the options  
13 available to their family.  
14

15  
16 I declare under penalty of perjury that to the best of my knowledge the above  
17 facts are true and correct. Executed this 15th day of July 2018, in Miami, Florida.  
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IRA KURZBAN

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# EXHIBIT 42

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13 **UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

14 Ms. L., et al.,

15 *Petitioners-Plaintiffs,*

16 v.

17 U.S. Immigration and Customs Enforcement  
18 ("ICE"), et al.,

19 *Respondents-Defendants.*

Case No. 18-cv-00428-DMS-MDD

**DECLARATION OF EUNICE  
LEE**

**CLASS ACTION**

1 1. I, Eunice Lee, make the following declaration based on my personal knowledge  
2 and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the  
3 following is true and correct:  
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5 2. I am licensed to practice law by the States of New York and California, and am  
6 currently Co-Legal Director of the Center for Gender & Refugee Studies (“CGRS” or  
7 “Center”) at University of California Hastings College of the Law. I have knowledge  
8 of the facts set forth herein, and if called upon to testify as a witness thereto, I could  
9 and would competently do so under oath  
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12 3. CGRS engages in a range of litigation, policy work, and technical assistance in  
13 the area of asylum law, with a core mission of furthering the human rights of refugees  
14 and asylum seekers. We have expertise in U.S. asylum law and international refugee  
15 law particularly with regard to the claims of women, children, and LGBTQ  
16 individuals. CGRS provides technical assistance and training for attorneys  
17 representing asylum seekers at all levels of the immigration system in thousands of  
18 cases each year.  
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22 4. On June 11, 2018, the Attorney General issued a precedential decision, *Matter*  
23 *of A-B-*, 27 I&N Dec. 316 (A.G. 2018). Invoking his certification authority under 8  
24 C.F.R. § 1003.1(h)(1)(i), the Attorney General in *Matter of A-B-* overruled an earlier  
25 Board of Immigration Appeals precedent decision, *Matter of A-R-C-G-*, 26 I&N Dec.  
26 338 (BIA 2014). *Matter of A-R-C-G-* had recognized that individuals fleeing domestic  
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1 violence could establish asylum eligibility via the “particular social group” ground for  
2 asylum. In *Matter of A-B-*, the Attorney General overruled that earlier Board decision  
3 and also addressed—in often sweeping terms—numerous elements of asylum law. For  
4 example, the *A-B-* decision discussed standards for social group claims, the state  
5 action requirement for cases involving non-governmental persecutors, and evidentiary  
6 showings for various aspects of asylum analysis. The Attorney General in *A-B-* also  
7 broadly opined that claims for asylum based on domestic violence and gang violence  
8 (in his view “private violence”) should “generally” not qualify for asylum. 27 I&N  
9 Dec. at 319-20.

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13 5. On July 11, 2018, USCIS issued final guidance regarding *A-B-*. USCIS,  
14 *Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee*  
15 *Claims in Accordance with Matter of A-B-* (July 11, 2018), available at  
16 <https://www.aila.org/infonet/uscis-guidance-processing-fear-matter-of-a-b->. That  
17 guidance indicates that USCIS will immediately and fully implement *A-B-* in credible  
18 fear interviews as part of the expedited removal system—even in the face of contrary  
19 circuit precedent. *See id.* at 8-9. Troublingly, the guidance also appears to codify into  
20 formal agency practice numerous aspects of the *A-B-* decision that were merely  
21 conjecture or dicta  
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26 6. My office, CGRS, currently represents Ms. *A-B-* in her case for asylum and  
27 related relief, and also represented her before the Attorney General, together with  
28



1 other co-counsel. In her case before the Attorney General, we as counsel for Ms. A-B-  
2 argued that the invocation of certification procedures was improper, and also  
3  
4 addressed why and how domestic violence claims should be recognized as a basis for  
5 asylum under prevailing case law, statutory standards, and international guidance.  
6 Following the Attorney General's decision, Ms. A-B- has retained our office to  
7  
8 continue litigating her case in subsequent stages as necessary, including before the  
9 Fourth Circuit. We have every intention to challenge the Attorney General's adverse  
10 decision and seek its overruling on behalf of our client.  
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12 7. Moreover, in our Center's view, the decision in *Matter of A-B-* was flawed and  
13 erroneous in numerous ways. In our view, it gives rise to strong legal arguments for  
14 overturning by the federal courts not just in Ms. A-B-'s case but in other cases,  
15 including but not limited to arguments against *Chevron* deference to the agency. We  
16 are aware of numerous cases arising in jurisdictions across the United States for other  
17 asylum seekers in which attorneys are advancing, or anticipate advancing, arguments  
18 for overruling *Matter of A-B-*.  
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21 8. The *A-B-* decision also injects considerable confusion into settled areas of  
22 asylum law. Our Center has seen this confusion firsthand. In the weeks since issuance  
23 of *Matter of A-B*, CGRS has fielded hundreds of requests from attorneys for our  
24 technical assistance and resources. Attorneys have expressed to us serious difficulty in  
25 parsing both the language of the *A-B-* decision and its ramifications.  
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1 9. I anticipate that that *A-B-* decision, as implemented via USCIS formal guidance,  
2 will result in erroneous negative credible fear findings as well as erroneous asylum  
3 denials. It will likely have an especially broad impact on individuals raising claims  
4 related to domestic violence and gang violence, including many asylum seekers from  
5 Central America. In my view, asylum seekers facing credible fear interviews impacted  
6 by *A-B-* should be advised of their rights and should have an opportunity to consult  
7 with an attorney about the ramifications of the decision on their case, especially in the  
8 event of an adverse credible fear finding. Attorney advice on the potential impact of  
9 *A-B-* on individuals' claims is especially essential given that the law in this area is  
10 now in a considerable state of confusion and flux.  
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1 10. I declare under penalty of perjury under the laws of the United States of America  
2 that the foregoing is true and correct, based on my personal knowledge.

3 Executed in San Diego, CA, on July 15, 2018.

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7 EUNICE LEE  
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