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

17 Ms. L., et al.,

*Petitioners-Plaintiffs,*

18 v.

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

21 *Respondents-Defendants.*

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

Date Filed: June 6, 2019

**MEMORANDUM IN SUPPORT  
OF MOTION TO ALLOW  
PARENTS DEPORTED  
WITHOUT THEIR CHILDREN  
TO TRAVEL TO THE UNITED  
STATES**

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**INTRODUCTION**

1  
2 Plaintiffs respectfully request that the Court order the government to allow  
3 21 parents who were separated from their children and deported to travel to the  
4 United States to obtain an opportunity to reunify with their children, who remain in  
5 the United States. Each parent has submitted an application under the Settlement  
6 Agreement seeking to return to the United States, and the return of each of the 21  
7 parents can be accomplished either by enforcing the Settlement Agreement or by an  
8 order of this Court requiring the government to provide travel documents to permit  
9 return to the United States.

10 The 21 parents were separated from their children and deported without  
11 receiving a meaningful opportunity to seek asylum. The relief they seek is limited:  
12 they need a pathway to legally travel to the United States, where Defendants can  
13 then either provide them with a de novo credible fear interview (“CFI”) or simply  
14 place them in regular section 240 removal proceedings.

15 These 21 deported parents are part of the larger group of more than 470  
16 parents deported without their children. Plaintiffs, the ACLU Steering Committee,  
17 and other NGOs carefully screened deported parents to determine which parents (1)  
18 were deprived of a meaningful opportunity to seek asylum, (2) are currently in  
19 danger, and (3) have bona fide asylum claims. Plaintiffs concluded that 51 parents  
20 fit that description and gave the 51 cases, with affidavits, to the government as part  
21 of the procedures set forth in Settlement Agreement. The government rejected all  
22 51 applications without any individualized explanation.

23 Subsequently, thirty of the 51 managed to make their way to the U.S.-  
24 Mexican border and sought asylum. Notably, all 30 either passed their CFIs or were  
25 placed directly into 240 proceedings. Yet all 30 were previously rejected by the  
26 government under the settlement agreement. The remaining 21 are no different  
27 from these 30 but are stranded in their home countries, either because of the danger  
28 or prohibitive cost of undertaking the journey without travel documents, or for

1 other reasons. Had they been given a meaningful opportunity to seek asylum  
2 before being deported, they would almost certainly have passed their CFI and  
3 would have been reunified with their children in the United States under the *Ms. L.*  
4 injunction.<sup>1</sup>

5 These parents are in serious danger in their home countries and cannot safely  
6 remain there. For the same reason, they cannot be reunited with their children in  
7 their home countries. Without further relief, these 21 parents have no meaningful  
8 redress for the injury Defendants' inflicted. They were separated from their  
9 children and then coerced or misled into losing the meaningful opportunity to seek  
10 asylum to which they were entitled. The only path they have to reunify with their  
11 children is in the United States itself. Accordingly, to obtain the *Ms. L.* relief of  
12 reunification, these 21 parents should be permitted to return to exercise their right  
13 to apply for asylum.

## 14 **I. Background**

### 15 **A. The Settlement Agreement**

16 On November 15, 2018, the Court granted final approval of the Class Action  
17 Settlement ("Settlement Agreement") of claims arising in several different lawsuits:  
18 *M.M.M. v. Sessions*, Case No. 3:18-cv-1832-DMS (S.D. Cal.), *M.M.M. v. Sessions*,  
19 Case No. 1:18-cv-1835-PLF (D.D.C.), *Ms. L. v. ICE*, Case No. 3:18-cv-428-DMS  
20 (S.D. Cal.), and *Dora v. Sessions*, Case No. 18-cv-1938 (D.D.C.).

21 The Settlement Agreement requires Defendants to review the "rare and  
22 unusual" cases "in which Plaintiffs' counsel believes the return of a particular  
23 removed Ms. L. class member may be warranted" to determine if further relief is  
24 due. Specifically, as part of that Agreement, the Parties agreed to the following  
25 language in a section entitled "The return of removed parents to the United States":  
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27 <sup>1</sup> For the Court's reference, the applications of the 21 parents seeking return are  
28 included under seal as Addendum 1, Ex. D. The applications of the 30 parents who  
have returned are included under seal as Addendum 2, Ex. E.

1 The government does not intend to, nor does it agree to, return any  
2 removed parent to the United States or to facilitate any return of such  
3 removed parents. The classes agree not to pursue any right or claim  
4 of removed parents to return to the United States other than as  
5 specifically set forth in this paragraph. Plaintiffs' counsel may raise  
6 with the government individual cases in which plaintiffs' counsel  
7 believes the return of a particular removed *Ms. L* class member may  
8 be warranted. Plaintiffs' counsel represent that they believe that such  
9 individual cases will be rare and unusual and that they have no basis  
10 for believing that such individual cases will be other than rare and  
11 unusual. Plaintiffs' counsel agree to present any such cases, including  
12 all evidence they would like considered by the government within 30  
13 days of the approval of this agreement. *In light of plaintiffs' counsel's  
representation that such cases will be rare and unusual, Defendants  
agree to provide a reply to any case presented by Plaintiffs within 30  
days of receiving Plaintiffs' request to consider the case.* Except as  
specifically set forth herein, the classes agree that existing law,  
existing procedures, and the Court-approved reunification plan  
address all interests that such parents or their children may have.

14 Agreement at 6 (emphasis added), ECF No. 220-1. The Court understood that the  
15 Settlement Agreement “speaks to the possibility of those parents being returned to  
16 the United States” and provide that Defendants would “consider [Plaintiffs’]  
17 requests in good faith.” 11/15/18 Tr. at 41.

18 **B. Plaintiffs Presented 51 Cases to Defendants Under the Terms of the  
19 Agreement**

20 Plaintiffs, the ACLU Steering Committee, and NGOs thoroughly vetted the  
21 deported parents from the original *Ms. L*. class to identify parents who were  
22 deprived of a meaningful ability to seek asylum, who have bona fide asylum claims,  
23 and who cannot reunify with their children in their home countries because of the  
24 danger to them and their children. Beginning in August 2018, after the Court  
25 approved the Reunification Plan, the *Ms. L*. Steering Committee began the process  
26 of contacting each deported parent and screening them for these criteria. Herzog  
27 Dec., Ex. A ¶¶ 5-7. Volunteer attorneys then continued the work of screening  
28 cases, both by reviewing all available records and through additional phone and in-  
person interviews with deported parents in Guatemala, Honduras, and El Salvador.

1 Herzog Dec. ¶ 7; Pinheiro Dec., Ex. B ¶¶ 8-11. These attorneys also spoke to  
2 federal defenders' offices who had represented separated parents in their illegal  
3 entry prosecutions and legal services organizations to identify parents who had  
4 expressed a fear of persecution. Pinheiro Dec. ¶ 8.

5 Through this vetting process, Plaintiffs identified 51 deported parents who  
6 they believed warranted return under the Settlement.<sup>2</sup> On December 15, 2018,  
7 Plaintiffs submitted applications for return for these 51, with declarations attesting  
8 to the trauma of separation and the coercion that prevented the parent from applying  
9 for, or pursuing, legitimate asylum claims. *See generally* Pinheiro Dec., Ex. B, ¶¶  
10 12-23 (summarizing testimony of 43 applicants). Most of the parents never  
11 received a credible fear hearing, despite explaining that they feared return to their  
12 home countries. Many were actively misled by government officials to  
13 unknowingly sign away relief. Others simply gave up, because they were separated  
14 and did not think they would ever be reunited in the United States.

15 Plaintiffs explained in their submission to the government that:

16 Under the Settlement, Plaintiffs are required to submit "all evidence  
17 they would like considered by the government." As previously noted,  
18 given that the relief being sought is a renewed opportunity to apply for  
19 asylum, many details of the parents' claims for protection are not  
20 included in these declarations. Instead, the focus [is] on the ways in  
21 which these parents were denied a fair opportunity to pursue their  
22 claim to such protection.

23 . . .

24 We look forward to the Government's reply, and would request the  
25 opportunity to discuss any case the government believes does not  
26 warrant return.

27 *See* December 15, 2018 Email, attached as Ex. 1 to Galindo Dec., Ex. C.

28 On February 20, 2019,<sup>3</sup> Defendants denied all the applications Plaintiffs

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29 <sup>2</sup> Of this initial group of 51 parents, 4 are members of the expanded *Ms. L.* class, as  
30 their children had been released from ORR custody before June 26, 2018.

<sup>3</sup> Defendants' deadline to respond to the applications was reset in light of the

1 submitted in a single email that stated only that the applications were “insufficient.”  
2 The response provided no explanation as to what further evidence would be  
3 sufficient, or what standard the Defendants used in screening these applications for  
4 return. Defendants wrote:

5 As of the deadline of December 15, 2018, the Department of Justice  
6 (DOJ) had received the affidavits (and, where provided, supporting  
7 materials) submitted for 52 [sic] individuals (“Applicant Pool”),  
8 which it subsequently provided to ICE. ICE has now reviewed all  
9 materials submitted and advised that the documents submitted for the  
10 Applicant Pool did not provide sufficient information to permit  
11 adjudication. In keeping with the spirit of the Agreement, ICE is  
12 offering members of the Applicant Pool the opportunity to submit  
13 additional information in support of their respective requests for  
14 parole.

15 *See* Feb. 20, 2019 Email, attached as Ex. 2 to Galindo Dec, Ex. C. Defendants  
16 invited Plaintiffs to apply for further relief under the humanitarian parole process,  
17 pursuant to 8 U.S.C. § 1182(d)(5). *Id.*

18 Plaintiffs asked Defendants to clarify why the applications were deemed  
19 “insufficient” and how to cure that alleged insufficiency. Plaintiffs further objected  
20 to Defendants’ proposal that Plaintiffs apply for parole as inconsistent with the  
21 terms of the Agreement. The parole statute provides the Attorney General authority  
22 to “parole [a noncitizen applying for admission] into the United States temporarily  
23 under such conditions as he may prescribe only on a case-by-case basis for urgent  
24 humanitarian reasons or significant public benefit. . . .” 8 U.S.C. § 1182(d)(5). But  
25 the humanitarian parole process is extremely burdensome, was not referenced in the  
26 Settlement, and was never mentioned to Plaintiffs when they were compiling the 51  
27 affidavits. More fundamentally, the parole application process is not designed to  
28 account for the unique circumstances of the government’s unlawful practice of  
separating immigrant families, or to provide the relief to members of the *Ms. L.*  
class to which they are specifically entitled pursuant to this action.

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government shutdown and stay of pending *Ms. L.* deadlines.

1           Despite Plaintiffs’ blanket objection to Defendants’ referral to the parole  
2 process, three deported Class members who had attorneys with sufficient resources  
3 to submit parole applications did so pursuant to the government’s new request.<sup>4</sup>  
4 Each was summarily denied without individualized explanation. Addendum 3, Ex.  
5 F at 25, 30, 31.

6           **C. Thirty Applicants Return To The United States And Are Now Reunited  
7 With Their Children.**

8           Thirty of the 51 applicants returned to the United States. The majority of the  
9 30 did so with the aid of lawyers. These 30 undertook the same perilous journey  
10 that they took months before, this time in order to reunify with the children who  
11 had been taken from them. *See* Pinheiro Dec. ¶¶ 23-26 (describing return and  
12 reunification of 28 deported clients). With the exception of one as yet unresolved  
13 case, Defendants either placed these parents directly in full removal proceedings  
14 and released them from detention, or, in the majority of cases, gave them new  
15 credible fear interviews. *Every parent* who received a CFI passed and was then  
16 placed into full removal proceedings. *Id.* ¶ 26. In other words, those parents whose  
17 return requests were summarily rejected by the government as “insufficient” under  
18 the settlement showed—when not misled or under coercion—that they merited  
19 release and a full asylum hearing before an immigration judge.<sup>5</sup> *Id.* ¶ 27.

20           Twenty-nine of the thirty returnees have been reunified with their children.  
21 The sole exception is a mother who traveled from Central America to the Mexican  
22 border, by land, and arrived the day after her son had been deported.

23           Accordingly, only 21 deported parents of the original group of 51 remain  
24 who have not been able to make the difficult journey to the U.S.-Mexican border.

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26 <sup>4</sup> Excerpts from these three parole applications are included as Addendum 3, Ex. F.

27 <sup>5</sup> In one case, a parent was released from detention but has neither been provided  
28 with a new CFI nor issued a notice to appear in 240 proceedings.

1 **II. The Twenty-One Deported Parents Should Be Allowed To Return To**  
2 **The United States, Either Under the Settlement Or By Court Order.**

3 Without further relief, the right to reunify will be a hollow one for the 21  
4 deported parents. They cannot bring their children back to face the violence and  
5 persecution that they fled. But without the ability to travel legally to the United  
6 States, they have no opportunity to present the asylum claims that they could not  
7 meaningfully present when they were previously in the United States, and separated  
8 from their children by Defendants.

9 The experience of the 30 parents who returned to the United States—most  
10 notably, their uniform success at credible fear hearings—underscores the bona fides  
11 of these parents’ asylum claims and the dangers that prevent reunification abroad.  
12 It also demonstrates Defendants’ failure to meaningfully review their settlement  
13 submissions. Indeed, after categorically deeming their applications “insufficient,”  
14 Defendants own officers later found their claims for asylum were legitimate.

15 Defendants’ family separation policy created the dual injuries these parents  
16 are facing: their separation from their children and their unlawful removal to the  
17 violence they fled. The relief they need to remedy this harm is limited: a legal path  
18 to travel back to the United States. Once in the United States, Defendants can  
19 choose what immigration process to provide them, as they did for those who  
20 already returned: either issue them Notices to Appear, or provide them with new  
21 credible fear hearings.

22 **A. The Twenty-One Applicants Are “Rare and Unusual” Under the**  
23 **Settlement Agreement And Warrant Relief.**

24 The 21 deported parents who are seeking further relief are “rare and unusual”  
25 by any definition of those terms. Plaintiffs screened hundreds of known deported  
26 Class Members to presented only those cases that meet three specific criteria: First,  
27 they present a bona fide claim for asylum; second, their asylum claim was  
28 abandoned or lost due to coercion or trauma inflicted by the family separation  
policy; and third, they are unable to reunify in their home country because of their



1 fear of harm to themselves and their children.<sup>6</sup> Herzog Dec. ¶¶ 7-9.

2 These 21 parents' declarations and additional evidence demonstrates that  
3 these three criteria are met. For example:

- 4 • B.L.S.P. traveled to the United States with her son, after she suffered  
5 severe sexual abuse and they were both threatened with death. After she  
6 was separated in November of 2017, she believed she would never be  
7 allowed to see her son again. After her separation, she began to suffer  
8 episodes of facial paralysis. Despite the trauma, she passed a credible fear  
9 interview. However, she was told she would have to wait nearly a year  
10 for her asylum hearing, and that she would be detained, without her child,  
11 through that process. She withdrew her claim for relief on May 23, 2018,  
12 and was deported on June 18, 2018. A former asylum officer describes  
13 her as "one of the most traumatized and vulnerable persons that I have  
14 ever interviewed." Since her deportation, she freezes in public and cannot  
15 leave her house unaccompanied. *See* Application of B.L.S.P, Addendum  
16 1, Ex. D at 6-10.
- 17 • D.J.M.C. came to the United States with his then four-year old son from  
18 Honduras after being threatened by gangs; his brother was shot, his cousin  
19 was murdered, and he feared for his life, and the life of his son. When he  
20 was separated from his son, his son "cried because in Honduras police  
21 take people and kill them." He was never told where his son went and  
22 never spoke to his son after he was deported. Though he expressed a fear  
23 of persecution in Honduras, he never received a fear hearing, and was  
24 deported in June 2018. Since then, he has been living in hiding; his  
25 family home has been shot at; and another relative has been murdered.  
26 An assessment of his child by the Young Center states that he "remains  
27 scared" and now blames his father for the separation, thinking his father  
28 abandoned him. *See* Application of D.J.M.C., Addendum 1, Ex. D at 31-  
42, 57-62.
- D.X.C. is from an indigenous community in Guatemala and traveled with  
his eight year old child to flee a gang who had threatened him and his  
family, and assaulted and tortured him. When he was separated from his  
child, he was told that if he persisted in his asylum claim, he would spend  
two years in detention apart from his son. He never received a credible  
fear interview despite expressing a fear of return. Since his deportation,

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<sup>6</sup> And the deported Class Members are, of course, a subset of the overall number of more than 2700 parents who were separated.

1 he continues to live in hiding from the gang that threatened him. *See*  
2 Application of D.X.C., Addendum 1, Ex. D. at 71-79. His son spent over  
3 a year in an ORR shelter, because D.X.C. did not have relatives in the  
4 U.S. to sponsor his son, but also could not have his son returned to face  
5 threats. *See* Cohen Dec., Ex. G, at ¶ 12. His son was eventually released  
6 to non-family sponsors in late April, but has been struggling emotionally  
7 and psychologically in the absence of his father. *See* Cohen Dec., Ex. G,  
8 at ¶¶ 23-28 (describing continuing psychological and developmental harm  
9 to child after release to sponsors).

- 10 • O.U.R.M. fled Guatemala with his son after he and his family were  
11 targeted for assaults, death threats, and kidnappings. After separating him  
12 from his son, immigration officials repeatedly told him to sign papers in  
13 English, even though he cannot read or understand the language.  
14 Depressed, and feeling like he had no choice, he did so. At the time of his  
15 deportation, he had still not spoken to his son. The first time he spoke to  
16 him was after his deportation. Since his deportation, he has been  
17 threatened, and has had to move away from his home to protect  
18 himself and his family. *See* Application of O.U.R.M., Addendum 1, Ex.  
19 D at 126-128.

20 The 21 declarations reflect a consistent pattern of coercion and  
21 misinformation that accompanied the underlying trauma of separation. Parents  
22 were separated from their children without any warning or explanation.<sup>7</sup> They were  
23 provided little to no information as to where their children were, or what would  
24 happen to them.<sup>8</sup> They were then transferred between multiple detention centers.  
25 They started in border facilities, where they slept on the floor with dozens of other

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26 <sup>7</sup> *See, e.g.*, Appendix 1 at 104 (E.L.D.H. Application ¶5) (“officers came in and  
27 took my son while I was sleeping. I woke up and called out to my son and looked  
28 around the room, but I did not see my son. Other people in the room told me that  
my son was taken while I was sleeping.”); *Id.* at 112 (J.A.A. Application ¶5) (“I did  
not have a chance to say goodbye. I felt a weight in my chest that was so heavy I  
could barely breathe. I was in shock because I did not expect to be separated from  
my daughter.”)

<sup>8</sup> *See, e.g.*, Appendix 1 at 12 (C.A.C. Application ¶10) (“I constantly asked the  
officers where my child was, and if he was ok; they dismissed my requests and  
would always answer that they didn’t know. I was desperate to find out where he  
was.”)

1 adults.<sup>9</sup> All were transferred multiple times, between facilities for weeks or  
2 months, before they were deported, some without warning. Some parents never  
3 spoke to their children until after they were deported. The separation, confusion,  
4 and fear took a psychological and physical toll on the parents.<sup>10</sup>

5 In some cases, officials told parents that they had no right to asylum.<sup>11</sup> Other  
6 parents were told that seeking asylum would only extend their separation from their  
7 children.<sup>12</sup> Many signed papers given to them by officials that they could not  
8 understand simply because of confusion, coercion, or a sense of futility.<sup>13</sup> Few  
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10 <sup>9</sup> See, e.g., Appendix 1 at 93 (E.C.C. Application ¶6) (“I was held in a cell with  
11 about 50 other men. We were not able to bathe or brush our teeth for days, and we  
12 were not given enough food or water to be comfortable. I did not know what was  
13 happening and I had no idea where my son was”); *Id.* at 131 (R.A.R.A. Application  
14 ¶6) (“The cell where I was held was crowded with about 90 men. We slept on the  
15 floor and I was not able to bathe or brush my teeth the entire time I was held there.  
16 I felt afraid and did not know what would happen to me”).

17 <sup>10</sup> See, e.g., Appendix 1 at 65 (D.P.F. Application ¶10) (“I was frustrated from  
18 feeling I could not help or protect [my daughter]. I got sick for a couple of days;  
19 my blood pressure dropped and I had to get medical attention”); *Id.* at 123-24  
20 (M.L.D.A. Application ¶11) (a mother describes how “being separated from my  
21 daughter caused me to suffer epileptic seizures. I suffer from epilepsy, and did not  
22 have any seizures for 3 years—until I came to the detention center”).

23 <sup>11</sup> See, e.g., Appendix 1 at 113 (J.A.A. Application ¶7) (“The official told me there  
24 was a new policy of zero tolerance towards migrants and that they were no longer  
25 giving out asylum); *Id.* at 137 (S.A.C. Application ¶8) (Officer “told me that there  
26 was no asylum for Central Americans in the U.S.”).

27 <sup>12</sup> See, e.g., Appendix 1 at 104 (E.L.D.H. Application ¶6) (“The officer told me that  
28 if I were to stay in the United States and fight for asylum that I could be in  
detention without my son for over a year.”)

<sup>13</sup> See, e.g., Addendum 1 at 29 (D.J.M. Application ¶11) (describing signing  
document he could not read or understand because “I do not understand what other  
options I had and I did not think I had a choice”); *Id.* at 93 (E.C.C. Application ¶9)  
 (“officials asked me to sign some documents in English that I could not read or  
understand. I do not speak or read English. They wanted me to hurry and they were  
very aggressive. I was afraid to ask these officials to help me understand the  
documents, and I felt I had no choice but to sign. I was exhausted and confused”).

1 recall being provided a fear interview, even though they fled to the United States to  
2 seek asylum and expressed a fear of return to officials.

3 Absent the coercion and trauma of separation, these parents would have  
4 passed their CFIs and remained in the United States, with their children. The  
5 experience of the 30 parents who returned to the United States demonstrate this  
6 clearly.

7 **B. The Court Should Provide Relief Either Through the Settlement**  
8 **Agreement Or Ordering Parents' Return.**

9 The Court has authority to provide relief for the twenty-one parents through  
10 the Settlement Agreement, or by ordering that Defendants provide parents with a  
11 pathway to travel legally to the United States.

12 The Court can order Defendants to meaningfully comply with the Settlement  
13 Agreement and allow the 21 class members to return, since there is no good faith  
14 basis for concluding that these 21 cases do not fit the criteria. *See Nehmer v. U.S.*  
15 *Dep't of Veterans' Affairs*, 494 F.3d 846, 856 (9th Cir. 2007) (“[W]hen a district  
16 court incorporates the terms of a settlement agreement or a stipulation into an order,  
17 it retains subject matter jurisdiction to interpret and enforce the contents of that  
18 order.”). This is simply an application of the Court’s broad inherent authority “to  
19 ensure obedience to [its] orders.” *F.J. Henshaw Enters., Inc. v. Emerald River*  
20 *Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001).

21 Alternatively, the Court should order the relief that the parents are seeking.  
22 That is fully consistent with the Court’s remedial authority to effectuate its  
23 injunction and ensure a meaningful opportunity for reunification. Such relief is  
24 well within the “court’s equitable powers to remedy past wrongs” and its “broad  
25 discretion to fashion a remedy.” *Swann v. Charlotte-Mecklenburg Bd. of Educ.*,  
26 402 U.S. 1, 14 (1971); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th  
27 Cir. 1990). As this Court has already recognized, it has substantial “authority to  
28 issue orders necessary to ensure implementation of its injunction.” *M.M.M. Dkt.*  
55, at 6 (rejecting jurisdictional objections to order staying removals).

1 Facilitating parents' return to the United States is fully consistent with this  
2 Court's remedial authority. The Ninth Circuit has repeatedly upheld orders to  
3 return injured parties to the United States. In *Walters v. Reno*, 145 F.3d 1032 (9th  
4 Cir. 1998), for instance, the district court had ordered the government to parole  
5 removed class members into the United States, because they had been subjected to  
6 procedures that violated due process. *Id.* at 1050-51. The Ninth Circuit affirmed  
7 the return order, explaining that parole was necessary "to permit an alien to take  
8 advantage of procedures to which [he] was entitled." *Id.* at 1051. Similarly, in  
9 *Mendez v. INS*, 563 F.2d 956, 959 (9th Cir. 1977), the Ninth Circuit ordered the  
10 INS to "admit appellant into the United States [and] grant[] him the same status he  
11 held prior to his . . . deportation," because "he was deported without notice to  
12 counsel." And in *Singh v. Waters*, 87 F.3d 346, 350 (9th Cir. 1996), the Ninth  
13 Circuit ordered the government to "permit Singh to return to the United States for  
14 the purpose of appearing at a hearing before the immigration judge." *Cf. Estrada-*  
15 *Rosales v. INS*, 645 F.2d 819, 820-22 (9th Cir. 1981) (ordering return); *Grace v.*  
16 *Sessions*, 2018 WL 3812445, at \*1 (D.D.C. Aug. 9, 2018) (same); *Ying Fong v.*  
17 *Ashcroft*, 317 F. Supp. 2d 398, 404-05, 408 (S.D.N.Y. 2004) (same); *Dennis v.*  
18 *I.N.S.*, No. CIV.A. 301CV279SRU, 2002 WL 295100, at \*4 (D. Conn. Feb. 19,  
19 2002) (same).

## 20 CONCLUSION

21 For the foregoing reasons, the Court should order Defendants to provide a  
22 pathway for the 21 deported class members to return to the United States to seek  
23 asylum.  
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1 Dated: June 6, 2019

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2019, 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: June 6, 2019