

Lee Gelernt*
 Judy Rabinovitz*
 Anand Balakrishnan*
 AMERICAN CIVIL LIBERTIES
 UNION FOUNDATION
 IMMIGRANTS' RIGHTS PROJECT
 125 Broad St., 18th Floor
 New York, NY 10004
 T: (212) 549-2660
 F: (212) 549-2654
 lgelernt@aclu.org
 jrabinovitz@aclu.org
 abalakrishnan@aclu.org

Bardis Vakili (SBN 247783)
 ACLU FOUNDATION OF SAN
 DIEGO & IMPERIAL COUNTIES
 P.O. Box 87131
 San Diego, CA 92138-7131
 T: (619) 398-4485
 F: (619) 232-0036
 bvakili@aclusandiego.org

Attorneys for Petitioners-Plaintiffs
Additional counsel on next page

**Admitted Pro Hac Vice*

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

Ms. L. and Ms. C.,

Petitioners-Plaintiffs,

v.

U.S. Immigration and Customs Enforcement
 ("ICE"); U.S. Department of Homeland Security
 ("DHS"); U.S. Customs and Border Protection
 ("CBP"); U.S. Citizenship and Immigration
 Services ("USCIS"); U.S. Department of Health
 and Human Services ("HHS"); Office of
 Refugee Resettlement ("ORR"); Thomas
 Homan, Acting Director of ICE; Greg
 Archambeault, San Diego Field Office Director,
 ICE; Joseph Greene, San Diego Assistant Field
 Office Director, ICE; Adrian P. Macias, El Paso
 Field Director, ICE; Frances M. Jackson, El Paso
 Assistant Field Office Director, ICE; Kirstjen
 Nielsen, Secretary of DHS; Jefferson Beauregard
 Sessions III, Attorney General of the United
 States; L. Francis Cissna, Director of USCIS;
 Kevin K. McAleenan, Acting Commissioner of
 CBP; Pete Flores, San Diego Field Director,
 CBP; Hector A. Mancha Jr., El Paso Field
 Director, CBP; Alex Azar, Secretary of the
 Department of Health and Human Services;
 Scott Lloyd, Director of the Office of Refugee
 Resettlement,

Respondents-Defendants.

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

Date Filed: March 9, 2018

**AMENDED COMPLAINT
 FOR DECLARATORY AND
 INJUNCTIVE RELIEF WITH
 CLASS ACTION
 ALLEGATIONS**

CLASS ACTION

1 Spencer E. Amdur (SBN 320069)
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
3 IMMIGRANTS' RIGHTS PROJECT
4 39 Drumm Street
5 San Francisco, CA 94111
6 T: (415) 343-1198
7 F: (415) 395-0950
8 *samdur@aclu.org*
9
10
11
12
13
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INTRODUCTION

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2 1. This case challenges the United States government's forcible
3 separation of parents from their young children for no legitimate reason and
4 notwithstanding the threat of irreparable psychological damage that separation has
5 been universally recognized to cause young children.

6 2. Plaintiff Ms. L. is the mother of a seven (7) year-old daughter, who
7 was ripped away from her, and then sent halfway across the country to be detained
8 alone. Plaintiff Ms. C. is the mother of a fourteen (14) year-old son, who was also
9 forcibly separated from his mother and detained more than a thousand miles away.

10 3. Ms. L. and Ms. C. bring this action to have the government reunite
11 them with their young children, from whom they have been separated now for more
12 than four and five months respectively.

13 4. They also bring this action on behalf of the hundreds of other parents
14 whom the government has forcibly separated from their children and continues to
15 separate. Like Ms. L. and Ms. C., almost all of these individuals have fled
16 persecution and are seeking asylum in the United States. Without any assertions of
17 abuse, neglect, or parental unfitness, and with no hearings of any kind, the
18 government is detaining these young children, alone and frightened, in facilities
19 often thousands of miles from their parents.

20 5. Forced separation from parents causes severe trauma to young
21 children, especially those who are already traumatized and are fleeing persecution
22 in their home countries. The resulting cognitive and emotional damage can be
23 permanent.

24 6. Defendants have ample ways to keep Plaintiffs together with their
25 children. There are shelters that house families (including asylum-seekers) while
26 they await the final adjudication of their immigration cases. If, however, the
27 government feels compelled to continue detaining these parents and young children,
28

1 it must at a minimum detain them together in one of its immigration family
2 detention centers.

3 7. The Due Process Clause of the Fifth Amendment does not permit the
4 government to forcibly take young children from their parents, without justification
5 or even a hearing. That separation also violates the asylum statutes, which
6 guarantee a meaningful right to apply for asylum, and the Administrative Procedure
7 Act (APA), which prohibits arbitrary government action.

8 **JURISDICTION**

9 8. This case arises under the Fifth Amendment to the United States
10 Constitution, federal asylum statutes, and the APA. The court has jurisdiction
11 under 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas
12 jurisdiction); and Art. I., § 9, cl. 2 of the United States Constitution (“Suspension
13 Clause”). Plaintiffs are in custody for purposes of habeas jurisdiction.

14 **VENUE**

15 9. Venue is proper under 28 U.S.C. § 1391 because Ms. L. was detained
16 within this District when this action commenced and a substantial portion of the
17 relevant facts occurred within this District, including the separation of Ms. L. and
18 her daughter.

19 **PARTIES**

20 10. Plaintiff Ms. L. is a citizen of the Democratic Republic of the Congo
21 (the “Congo” or “DRC”). She is the mother of 7 year-old S.S.

22 11. Plaintiff Ms. C. is a citizen of Brazil. She is the mother of 14 year-old
23 J.

24 12. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is the
25 sub-agency of DHS that is responsible for carrying out removal orders and
26 overseeing immigration detention.

27 13. Defendants U.S. Department of Homeland Security (“DHS”) has
28 responsibility for enforcing the immigration laws of the United States.

1 14. Defendant U.S. Customs and Border Protection (“CBP”) is the sub-
2 agency of DHS that is responsible for the initial processing and detention of
3 noncitizens who are apprehended near the U.S. border.

4 15. Defendant U.S. Citizenship and Immigration Services (“USCIS”) is
5 the sub-agency of DHS that, through its Asylum Officers, conducts interviews of
6 certain individuals apprehended at the border to determine whether they have a
7 credible fear of persecution and should be permitted to apply for asylum.

8 16. Defendant U.S. Department of Health and Human Services (HHS) is a
9 department of the executive branch of the U.S. government which has been
10 delegated with authority over “unaccompanied” noncitizen children.

11 17. Defendant Office of Refugee Resettlement (“ORR”) is the component
12 of HHS which provides care of and placement for “unaccompanied” noncitizen
13 children.

14 18. Defendant Thomas Homan is sued in his official capacity as the
15 Director of ICE, and is a legal custodian of Plaintiffs.

16 19. Defendant Greg Archambeault is sued in his official capacity as the
17 ICE San Diego Field Office Director, and is a legal custodian of Plaintiff L.

18 20. Defendant Joseph Greene is sued in his official capacity as the ICE
19 San Diego Assistant Field Office Director for the Otay Mesa Detention Center, and
20 is a legal custodian of Plaintiff L.

21 21. Defendant Adrian P. Macias is sued in his official capacity as the ICE
22 El Paso Field Office Director, and is a legal custodian of Plaintiff C.

23 22. Defendant Frances M. Jackson is sued in his official capacity as the
24 ICE El Paso Assistant Field Office Director for the West Texas Detention Facility,
25 and is a legal custodian of Plaintiff C.

26 23. Defendant Kirstjen Nielsen, is sued in her official capacity as the
27 Secretary of the Department of Homeland Security. In this capacity, she directs
28 each of the component agencies within DHS: ICE, USCIS, and CBP. As a result,

1 Respondent Nielsen has responsibility for the administration of the immigration
2 laws pursuant to 8 U.S.C. § 1103, is empowered to grant asylum or other relief, and
3 is a legal custodian of the Plaintiffs.

4 24. Defendant Jefferson Beauregard Sessions III is sued in his official
5 capacity as the Attorney General of the United States. In this capacity, he has
6 responsibility for the administration of the immigration laws pursuant to 8 U.S.C. §
7 1103, oversees the Executive Office of Immigration Review, is empowered to grant
8 asylum or other relief, and is a legal custodian of the Plaintiffs.

9 25. Defendant L. Francis Cissna is sued in his official capacity as the
10 Director of USCIS.

11 26. Defendant Kevin K. McAleenan is sued in his official capacity as the
12 Acting Commissioner of CBP.

13 27. Defendant Pete Flores is sued in his official capacity as the San Diego
14 Field Director of CBP.

15 28. Defendant Hector A. Mancha Jr. is sued in his official capacity as the
16 El Paso Field Director of CBP.

17 29. Defendant Alex Azar is sued in his official capacity as the Secretary of
18 the Department of Health and Human Services.

19 30. Defendant Scott Lloyd is sued in his official capacity as the Director of
20 the Office of Refugee Resettlement.

21 **FACTS**

22 31. Over the past year, the government has separated hundreds of migrant
23 families for no legitimate purpose.

24 32. Almost all of these migrant families fled persecution and are seeking
25 asylum. Although there are no allegations that the parents are unfit or abusing their
26 children in any way, the government has forcibly separated them from their young
27 children and detained the children, often far away, in facilities for “unaccompanied”
28 minors.

1 33. There is overwhelming medical evidence that the separation of a
2 young child from his or her parent will have a devastating negative impact on the
3 child's well-being, especially where there are other traumatic factors at work, and
4 that this damage can be permanent.

5 34. The American Association of Pediatrics has recently denounced the
6 Administration's practice of separating migrant children from their parents, noting
7 that: "The psychological distress, anxiety, and depression associated with
8 separation from a parent would follow the children well after the immediate period
9 of separation—even after the eventual reunification with a parent or other family."

10 33. Prior Administrations detained migrant families, but did not have a
11 practice of forcibly separating fit parents from their young children.

12 34. According to reports, the government may soon adopt a formal
13 national policy of separating migrant families, and placing the children in
14 government facilities for unaccompanied minors.

15 35. There are non-governmental shelters that specialize in housing and
16 caring for families—including asylum seeking families—while their immigration
17 applications are adjudicated.

18 36. There are also government-operated family detention centers where
19 parents can be housed together with their children, should the government decide
20 not to release them.

21 37. Ms. L. and her daughter S.S. are one of the many families that have
22 recently been separated by the government.

23 38. Ms. L. and her daughter are seeking asylum in the United States.

24 39. Ms. L. is Catholic and sought shelter in a church until she was able to
25 escape the Congo with S.S.

26 40. Upon reaching the United States, Ms. L. and S.S. presented themselves
27 at the San Ysidro, California Port of Entry on November 1, 2017. Although their
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1 native language is Lingala, they were able to communicate to the border guards that
2 they sought asylum.

3 41. Based on her expression of a fear of returning to the Congo, Ms. L.
4 was referred for an initial screening before an asylum officer, called a “credible fear
5 interview.” She subsequently passed the credible fear screening but, until March 6,
6 2018, remained detained in the Otay Mesa Detention Center in the San Diego area.

7 42. On or about November 5, immigration officials forcibly separated 7-
8 year-old S.S. from her mother and sent S.S. to Chicago. There she was housed in a
9 detention facility for “unaccompanied” minors run by the Office of Refugee
10 Resettlement (ORR).

11 43. When S.S. was taken away from her mother, she was screaming and
12 crying, pleading with guards not to take her away from her mother. That was the
13 last time Ms. L. saw her daughter. During the few times Ms. L. was able to speak
14 to her daughter on the phone, her daughter was crying and scared. Although her
15 daughter was terrified for herself, she was also frightened for her mother, always
16 asking how her mother was doing in “prison.”

17 44. Ms. L. and her daughter have been separated now for more than four
18 months. Seven-year-old S.S. is alone in a facility in Chicago.

19 45. While detained, Ms. L. spoke to her daughter approximately 6 times
20 by phone, never by video. For months she has been terrified that she would never
21 see her daughter again.

22 46. S.S. is scared and misses her mother, and wants to be reunited with her
23 as soon as possible. In December, S.S. turned 7 and spent her birthday in the
24 Chicago facility, without her mother.

25 47. Every day that S.S. is separated from her mother causes her greater
26 emotional and psychological harm and could potentially lead to permanent
27 emotional trauma.

1 48. Ms. L. is distraught and depressed because of the separation from her
2 daughter. In detention, she did not eat properly, lost weight, and was not sleeping
3 due to worry and nightmares.

4 49. In one moment of extreme despair and confusion, Ms. L. told an
5 immigration judge that she wanted to withdraw her application for asylum,
6 realizing her mistake only a few days later. Her application to reopen her asylum
7 case is pending before the immigration judge.

8 50. The government has no legitimate interest in separating Ms. L. and her
9 child.

10 51. There has been no evidence, or even accusation, that S.S. was abused
11 or neglected by Ms. L.

12 52. There is no evidence that Ms. L. is an unfit parent or that she is not
13 acting in the best interests of her child.

14 53. After Ms. L. filed this lawsuit and moved for a preliminary injunction,
15 Defendants abruptly released her from custody on March 6, 2018. Defendants
16 informed her that she would be released mere hours in advance, with no
17 arrangements for where she would stay. They have not reunited her with her
18 daughter, who remains detained at an ORR facility halfway across the country.

19 54. Ms. C. and her 14 year-old son, J., are another one of the families who
20 have been separated by the government. Like Ms. L. and her daughter, Ms. C. and
21 her son are seeking asylum in the United States.

22 55. Ms. C. and J. fled Brazil and came to the United States to seek asylum.
23 A few feet after Ms. C. entered the United States, a border guard approached her,
24 and she explained that she was seeking asylum. Ms. C. subsequently passed a
25 credible fear interview, and was put in removal proceedings, where she is applying
26 for asylum.

1 56. Despite having communicated her fear of persecution to border guards,
2 the government prosecuted Ms. C. for entering the country illegally, took her son J.
3 away from her, and sent him to a facility for “unaccompanied” children in Chicago.

4 57. The government continued to separate Ms. C. from her son even after
5 she completed serving her 25-day criminal misdemeanor sentence on September 22,
6 2017, and was sent to an immigration detention facility, the El Paso Processing
7 Center. In early January 2018, she was transferred again, to another immigration
8 facility, the West Texas Detention Facility (also known as Sierra Blanca), but still
9 not reunited with her son.

10 58. Ms. C. has not seen her son since he was taken from her in the more
11 than 5 months since she was placed into an immigration detention facility. She is
12 desperate to be reunited with him. She worries about him constantly and does not
13 know when she will be able to see him. They have only spoken on the phone a
14 handful of times since they were forcibly separated by Defendants.

15 59. J. has been having a difficult time emotionally since being separated
16 from his mother.

17 60. Every day that J. is separated from his mother causes him greater
18 emotional and psychological harm and could potentially lead to permanent
19 emotional trauma.

20 61. The government has no legitimate interest in separating Ms. C. and her
21 child.

22 62. There has been no evidence, or even accusation, that J. was abused or
23 neglected by Ms. C.

24 63. There is no evidence that Ms. C. is an unfit parent or that she is not
25 acting in the best interests of her child.

CLASS ALLEGATIONS

64. Plaintiffs bring this action under Federal Rule of Civil Procedure 23(b)(2) on behalf of themselves and a nationwide class of all other persons similarly situated.

65. Plaintiffs seek to represent the following nationwide class:

All adult parents nationwide who (1) are or will be detained in immigration custody by the Department of Homeland Security, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, absent a demonstration in a hearing that the parent is unfit or presents a danger to the child.

66. Plaintiffs Ms. L. and Ms. C. are each adequate representatives of the proposed class.

67. The proposed class satisfies the requirements of Rule 23(a)(1) because the class is so numerous that joinder of all members is impracticable.

68. There are hundreds of parents that fit within the class and many more that will become separated from their young children.

69. The class meets the commonality requirements of Federal Rule of Civil Procedure 23(a)(2). The members of the class are subject to a common practice: forcibly separating detained parents from their minor children. By definition, all class members have experienced that practice, and none has been given an adequate hearing regarding the separation. The lawsuit raises numerous questions of law common to members of the proposed class, including: whether Defendants' family separation practice violates class members' substantive due process right to family integrity; whether the practice violates class members' procedural due process rights; whether the practice violates the federal asylum statute; and whether these separations are arbitrary and capricious under the APA.

70. The proposed class meets the typicality requirements of Federal Rule of Civil Procedure 23(a)(3), because the claims of the representative Plaintiffs are typical of the claims of the class. Ms. L., Ms. C., and the proposed class members

1 are all individuals who have had or will have their children forcibly taken away
2 from them despite there being no proven allegations of abuse, neglect, or any other
3 danger or unfitness. Plaintiffs and the proposed class also share the same legal
4 claims, which assert the same substantive and procedural rights under the Due
5 Process Clause, the asylum statute, and the APA.

6 71. The proposed class meets the adequacy requirements of Federal Rule
7 of Civil Procedure 23(a)(4). The representative Plaintiffs seek the same relief as
8 the other members of the class—namely, an order that they be reunified with their
9 children, whether through release or in family detention facilities. In defending
10 their own rights, Ms. L. and Ms. C. will defend the rights of all proposed class
11 members fairly and adequately.

12 72. The proposed class is represented by counsel from the American Civil
13 Liberties Union Immigrants' Rights Project and the American Civil Liberties Union
14 of San Diego and Imperial Counties. Counsel have extensive experience litigating
15 class action lawsuits and other complex cases in federal court, including civil rights
16 lawsuits on behalf of noncitizens.

17 73. The members of the class are readily ascertainable through
18 Defendants' records.

19 74. The proposed class also satisfies Federal Rule of Civil Procedure
20 23(b)(2). Defendants have acted on grounds generally applicable to the class by
21 unlawfully separating parents from their young children. Injunctive and declaratory
22 relief is thus appropriate with respect to the class as a whole.
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CAUSES OF ACTION

COUNT I

(Violation of Due Process)

75. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

76. The Due Process Clause of the Fifth Amendment applies to all “persons” on United States soil and thus applies to Ms. L. and her daughter, Ms. C. and her son, and all proposed class members.

77. Ms. L., Ms. C., their children, and all class members have a liberty interest under the Due Process Clause in remaining together as a family.

78. The separation of the class members from their children violates substantive due process because it furthers no legitimate purpose, not to mention a compelling governmental interest.

79. The separation of the class members from their children also violates procedural due process because it was undertaken without any hearing.

COUNT II

(Administrative Procedure Act—Arbitrary and Capricious Practice)

80. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.

81. The APA prohibits agency action that is arbitrary and capricious.

82. Defendants’ separation of Ms. L., Ms. C., and the other class members from their children without a legitimate justification is arbitrary and capricious and accordingly violates the APA. 5 U.S.C. § 706.

COUNT III

(Violation of Asylum Statute)

83. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.

84. Under United States law, noncitizens with a well-founded fear of persecution shall have the opportunity to obtain asylum in the United States. 8 U.S.C. § 1158.

85. Defendants' separation of Ms. L., Ms. C., and the other asylum-seeking class members from their children violates federal asylum law, because it impedes their ability to pursue their asylum claims.

PRAYER FOR RELIEF

Petitioners-Plaintiffs request that the Court enter a judgment against Respondents-Defendants and award the following relief:

- A. Certify a class of all adult parents nationwide who (1) are or will be detained in immigration custody by the Department of Homeland Security, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, absent a demonstration in a hearing that the parent is unfit or presents a danger to the child.
- B. Name Ms. L. and Ms. C. as representatives of the class, and appoint Petitioners' counsel as class counsel;
- C. Declare the separation of Ms. L., Ms. C., and the other class members from their children unlawful;
- D. Preliminarily and permanently enjoin Defendants from continuing to separate Ms. L., Ms. C., and the other class members from their children;
- E. Order defendants either to release class members along with their children, or to detain them together in the same facility;
- F. Enjoin defendants from removing Ms. L., Ms. C., and the other class members from the country until they are reunited with their children, in the event that they are not permitted to remain in the United States;
- G. Require Defendants to pay reasonable attorneys' fees and costs;
- H. Order all other relief that is just and proper.

1 Dated: March 9, 2018

Respectfully Submitted,

2 Bardis Vakili (SBN 247783)
3 ACLU FOUNDATION OF SAN
4 DIEGO & IMPERIAL COUNTIES
5 P.O. Box 87131
6 San Diego, CA 92138-7131
7 T: (619) 398-4485
8 F: (619) 232-0036
9 *bvakili@aclusandiego.org*

10 Spencer E. Amdur (SBN 320069)
11 AMERICAN CIVIL LIBERTIES
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13 IMMIGRANTS' RIGHTS PROJECT
14 39 Drumm Street
15 San Francisco, CA 94111
16 T: (415) 343-1198
17 F: (415) 395-0950
18 *samdur@aclu.org*

/s/Lee Gelernt

Lee Gelernt*

Judy Rabinovitz*

Anand Balakrishnan*

AMERICAN CIVIL LIBERTIES

UNION FOUNDATION

IMMIGRANTS' RIGHTS PROJECT

125 Broad St., 18th Floor

New York, NY 10004

T: (212) 549-2616

F: (212) 549-2654

lgelernt@aclu.org

jrabinovitz@aclu.org

abalakrishnan@aclu.org