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

Ms. L.,

Petitioner-Plaintiff,

v.

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

Respondents-Defendants.

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

Date Filed: July 28, 2018

**NOTICE REGARDING
MOTION FOR STAY OF
REMOVAL**

1 Plaintiffs submit this Notice to provide information responsive to issues raised
2 by the Court at oral argument.

3 First, in the last several days, ICE has continued to administer the election
4 form in a way that does not allow Class Members to make a knowing and informed
5 decision. The attached declaration from pro bono attorneys explains that Class
6 Members have been given the election form in a coercive manner, including with the
7 first box *already* checked. *See* Decl. of Laila Arand, Ex. 58, ¶ 8, 15-16, 23.

8 Second, the Court asked Plaintiffs' counsel what decisions reunited families
9 must now make, for which they need time to consult with each other and receive
10 legal advice. As the attached declarations illustrate, Class Members who have final
11 removal orders must choose between at least three options:

12 1. The child may request his or her own Credible Fear Interview—an option
13 that would have been available to the family had it not been separated. If the child
14 passes the Credible Fear Interview, under existing ICE procedures, the entire family
15 will be placed in normal removal proceedings together under Section 240 of the
16 Immigration and Nationality Act. *See* Decl. of Stephen Manning, Ex. 59, ¶ 5-7.

17 2. The parent may seek reconsideration of his or her own credible fear denial.
18 If reconsideration is denied, the parent may be able to file a habeas petition to
19 challenge the credible fear denial in federal court. As Plaintiffs explained at
20 argument, the Ninth Circuit has a case pending that addresses federal jurisdiction
21 over challenges to credible fear denials. *See Thuraissigiam v. DHS*, No. 18-55313
22 (9th Cir. *argued* May 17, 2018).¹

23 3. If the parent is ultimately going to be removed, the family must decide
24 whether the child will remain in the country to pursue the child's own immigration
25 claims, or be removed with the parent. That decision turns on a number of factors,
26 including the nature of the relief available to the child, and the circumstances in

27
28 ¹ Oral argument available at
https://www.ca9.uscourts.gov/media/view.php?pk_id=0000032491.

1 which the child will be living in the United States. *See* Govindaiah Decl., Ex. 40,
2 9 (July 16, 2018) (discussing substantive claims that children may raise).

3
4 Dated: July 28, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 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: May 28, 2018

EXHIBIT 58

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

15 Ms. L., et al.,

16 *Petitioners-Plaintiffs,*

17 v.

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

20 *Respondents-Defendants.*

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

**DECLARATION OF LAILA
ARAND**

CLASS ACTION

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

4 2. I am an Attorney at the law firm Paul, Weiss, Rifkind, Wharton &
5 Garrison LLP. I am a member in good standing of the bars of New York State and
6 the District of Columbia. I am an English speaker, and my conversations with the
7 detained parents reflected below were conducted via interpretation by a native
8 Spanish speaker, Juan Jaramillo, a Staff Attorney at the law firm Paul, Weiss,
9 Rifkind, Wharton & Garrison LLP.

10 3. I, along with other attorneys from our law firm, in collaboration with
11 attorneys at Annunciation House Legal Program (“AHLP”), have been providing
12 pro bono legal services at the Otero County Processing Center in Chaparral, New
13 Mexico (“Otero”) and other detention facilities near El Paso, Texas, where I have
14 been meeting with detained parents who are separated from their children.

15 **F.G.**

16 4. In connection with this work, on July 27, 2018, I met with one such
17 father, F.G., after F.G. placed a call to AHLP that morning. Mr. Jaramillo and I
18 met with F.G. that afternoon at Otero.

19 5. At that meeting, F.G. described an incident that had occurred on the
20 afternoon and evening of July 25, 2018, when he was briefly allowed to spend a
21 few hours with, and then was once again separated from, his 17-year-old son.

22 6. F.G. told us that the first time his son was taken from him was in early
23 June 2018, one day after they came together to this country. He said that at the
24 time of that initial separation, the guards asked his son to come with them but did
25 not tell F.G. or his son that they were being separated.

26 7. F.G. said he did not see his son again after that for over fifty days. On
27 the afternoon of Wednesday, July 25, 2018, they saw each other again for the first
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1 time since their separation at the “*Corralon*”—a commonly used nickname,
2 meaning “corral,” for the El Paso Service Processing Center in El Paso, Texas
3 (“EPSPC”). Along with a group of other parents and their children, F.G. and his
4 son boarded a bus. F.G. told me that the bus then drove away. When F.G. had
5 been on the bus for approximately eight minutes, a female official on the bus
6 received a phone call. The bus turned around and returned to EPSPC.

7 8. F.G. informed us that the parents and their children then boarded a
8 second bus that remained parked at EPSPC, until several uniformed officials
9 approached the bus, carrying forms, which they then distributed to the parents on
10 the bus. F.G. observed that the forms were entirely in English, which he could not
11 read, except for a list of three options written in Spanish at the end of the form,
12 which he recalled were: Option 1: I want to be deported with my children;
13 Option 2: I do not want my child to be deported with me if I lose my case; and
14 Option 3: I want to speak to a lawyer before deciding what to do. F.G. told us that
15 when he received the form, someone had already pre-marked Option 1—I want to
16 be deported with my children—with a handwritten check mark. F.G. was not clear
17 on the exact language of the form, as the form was taken away from him after he
18 signed it, and he was not provided with a copy.

19 9. F.G. said the officials told him that while there were three options on
20 the form, he had to choose Option 1. He refused, and he and a group of other
21 parents that refused to sign Option 1 were taken off the bus.

22 10. F.G. said that he remembers there being six other detained parents—
23 five fathers and one mother—who refused to sign Option 1. F.G. explained to the
24 officials that he wanted his son to be safe in the United States even if he himself
25 had to be deported, and so, between Option 1 and Option 2, he viewed Option 2 as
26 the better choice under the circumstances. F.G. said that when he and the six other
27 parents asked to sign Option 2, the officials became very angry, then talked among
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1 themselves in English before yelling at the parents and insisting in Spanish that
2 they had to sign Option 1.

3 11. F.G. told us that eventually, those parents that refused to sign
4 Option 1 were taken away from their children—who remained behind on the bus—
5 to speak with an official inside the EPSPC. F.G. stated that the official asked him
6 to give his permission for a designated adult in the United States to make medical
7 and educational decisions for his son. F.G. agreed to this. F.G. told us that he
8 asked if he could say goodbye to his son, and was told no. F.G. told us he then
9 asked if he could at least go back to the bus to retrieve his belongings from the
10 storage area underneath the bus, and was told he could do so quickly. He said that
11 when he went to the bus to do so, his son attempted to come outside the bus to see
12 him, but was unable to do so.

13 12. F.G. reported to us that the parents who did sign the form pre-marked
14 with Option 1 were allowed to re-board the bus to join their children and the
15 children of the parents who refused to sign. F.G. said he watched the bus depart
16 with his son on board, while F.G. remained behind at the EPSPC with the other
17 parents that refused to sign Option 1. F.G. said he spent two nights in EPSPC
18 before being returned to Otero, and when he returned to Otero he immediately
19 called AHLP. At the time Mr. Jaramillo and I spoke to F.G., he had not spoken to
20 his son since they were separated at the bus and did not know where he was.

21 13. F.G. memorized the names and countries of origin for four of the
22 other detained parents that refused to sign Option 1, which enabled me to locate
23 and meet with three of those parents at Otero later that afternoon. Those parents
24 are identified here as J.M., C.T., and F.T.

25 **J.M.**

26 14. J.M. is a parent of a 17-year-old son. He recounted the same
27 experience of boarding a bus on the afternoon of July 25, 2018, and the bus turning
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1 back—he recalled that the woman who answered the phone call was a female
2 official he described as approximately 40 to 50 years old, white, and with curly
3 hair. J.M. further recalled that a man he described as large and Hispanic
4 approached the parents shortly after they boarded the second bus and said to them
5 (in Spanish) that he was the “*jefe*” (boss) and that the detained families on the bus
6 would be going to an “*albergue*” (shelter)—a statement that J.M. said initially
7 provided him with comfort that all would be well.

8 15. J.M. told us that sometime after that, however, officials wearing the
9 badge of U.S. Immigration and Customs Enforcement (“ICE”) arrived with forms.
10 J.M. recalled being presented with the same three options in Spanish on a form that
11 was otherwise in English: that if he lost his case and had to be deported, the first
12 option would require his child to be deported with him, the second option would
13 allow him to be deported alone while leaving his child in the United States, and the
14 third option was to consult a lawyer. J.M. confirmed that the forms he received
15 had the first option pre-selected in handwritten ink.

16 16. J.M. noted that it seemed inappropriate to him that ICE officers were
17 asking the parents to sign these forms on a parked bus instead of in a building.
18 J.M. told us that because his son was his priority, he chose the second option, but
19 that he also wanted a judge to hear his own case. J.M. said an ICE officer
20 responded that J.M. had already lost his case when he came into this country, and
21 so there was nothing for a judge to decide. J.M. told us that the ICE officers were
22 shouting and that he felt pressured to sign Option 1. J.M. reported that after that
23 after he signed Option 2, the ICE officer returned with a new copy of the form,
24 again with Option 1 pre-selected, and the ICE officer again insisted that he sign
25 Option 1, which J.M. again refused to do. J.M. added that the ICE officers yelled
26 at him in English, and said to him in Spanish words to the effect of, “what do you
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1 think you are, a lawyer?” J.M. also demonstrated to us a physical gesture used by
2 the ICE officers in which they pointed their finger at him aggressively.

3 17. J.M. further described being taken inside and meeting with an official
4 who collected information about his son. J.M. said he was then permitted to
5 retrieve some items from below the bus, but the children remained on the bus, and
6 had to wave goodbye to their parents through the bus windows.

7 18. J.M. said that after spending two nights at EPSPC, he was handcuffed,
8 chained, and bussed back to Otero even though he had not been handcuffed or
9 chained on the previous trip. J.M. said that he has not been able to speak with his
10 son since they were separated.

11 **C.T.**

12 19. C.T. recounted the same experience of a bus ride with his 17-year-old
13 son that was diverted back to EPSPC, and further recalled being told initially that
14 the bus would take them to the airport for a three-hour airplane ride to an
15 “*albergue*” (shelter). C.T. likewise similarly described ICE officials arriving on a
16 second bus with a form that included an English language portion, and noted that
17 nobody explained the English part of the form to him. He added that of the above-
18 described three options in Spanish, the first one—consent to deportation of his
19 child in the event he is deported—was pre-marked with a “v” shape.

20 20. C.T. also said that the ICE officials’ statements when they insisted
21 that he sign Option 1 included: (1) that he had already lost his case and had to be
22 deported, (2) that if he did not sign a form with Option 1, he would be immediately
23 deported, and (3) that if he did not sign a form with Option 1, he would never see
24 his child again. C.T. recalled that throughout this encounter, the ICE officers were
25 yelling in an angry tone.

26 21. C.T. said that he does not know where his son is or how to contact
27 him now. He said that, at that time, he chose Option 2 because he wanted his son
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1 to be able to stay and be safe from the dangers in his home country, even if C.T.
2 was not allowed to. He said that being separated from his son the first time was
3 hard, but being separated again after seeing his child for only few hours, thinking
4 they were going to be together, was harder.

5 **F.T.**

6 22. F.T. recounted similar facts as the other three detainees—he told us
7 about the aborted bus ride, the initial promise that they were being taken on an
8 airplane to a shelter (F.T. added he heard there may have been a mechanical issue
9 with the plane), the arrival of ICE officials who insisted that he sign a form pre-
10 marked with Option 1 (but who did not explain why he had to choose that option)
11 and who were visibly and audibly angry when he refused. F.T. explained that he
12 selected Option 2 out of the options given to him because he was concerned for the
13 welfare of his 16-year-old son. F.T. added that one ICE official told him in
14 Spanish that although he might want his son to stay here, all of them were going to
15 be deported anyway, and F.T.'s son might be deported first. F.T. also said that ICE
16 agents came back three separate times to try to get him to choose Option 1.

17 23. F.T. told us that several of the other detained parents that did sign a
18 form with Option 1 were crying as they did so because "*se rindieron*" (they gave
19 up), and they just wanted to be with their children. F.T. said he had not spoken
20 with his son since the separation and was not sure where he was.

21 24. None of the four individuals I met with were allowed to keep a copy
22 of the form they signed.
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1 25. I declare under penalty of perjury that the foregoing is true and
2 correct, based on my personal knowledge. Executed in El Paso, Texas on July 28,
3 2018.


4
5 
6 Laila Arand

EXHIBIT 59

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("ICE") et al.

Respondents-Defendants.

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

Date Filed: July 28, 2018

**DECLARATION OF
STEPHEN W. MANNING**

CLASS ACTION

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

4 2. I am an attorney licensed to practice in the State of Oregon and am a
5 member in good standing of the bars of the United States District Court for the
6 District of Oregon, the United States Court of Appeals for the Ninth Circuit, and the
7 Supreme Court of the United States. I am a member of the American Immigration
8 Lawyers Association (“AILA”), a former member of the Board of Governors of
9 AILA, and a former Chair of the Oregon Chapter of AILA.

10 3. I am the Executive Director of the Innovation Law Lab (“the Law Lab”), a
11 nonprofit that I founded to improve the legal rights of immigrants and refugees in
12 the United States. In my role at the Law Lab, I led the organizing of the Dilley Pro
13 Bono Project in 2015, a detention-based project that provides representation to
14 detained families in rapid removal proceedings.

15 4. The Dilley Pro Bono Project, which continues to operate at the South Texas
16 Family Residential Center, has represented more than 40,000 noncitizens during
17 proceedings since its inception in 2015.

18 5. When a family is detained in a family detention center and placed into
19 expedited removal proceedings, every member of the family is entitled to a separate
20 credible fear interview, including the children. If one person in the family passed
21 the credible fear interview, the practice is to issue Notices to Appear for the entire
22 family, placing them in regular removal proceedings under INA Section 240, even
23 those individual family members who did not pass a credible fear interview.

24 6. This is the procedure that would have applied to families had they not been
25 separated. Thus, even if a parent had failed a credible fear interview, the parent’s
26 children would have been entitled to their own credible fear interviews. And if they
27 passed those interviews, the entire family would have been referred for regular
28 removal proceedings under INA Section 240.

1 7. In other words, parents would not have been forced to choose between
2 staying with their child, or allowing their child to pursue an asylum claim – the
3 choice they are facing now. Instead, the parent would have been allowed to remain
4 in the United States with their child while they pursued their asylum applications
5 before the immigration judge.

6 I declare under penalty of perjury that to the best of my knowledge the above
7 facts are true and correct. Executed this 28th day of July, 2018, in Portland, Oregon.

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9 /s/ Stephen W. Manning
10 STEPHEN W. MANNING
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