

1 AMERICAN CIVIL LIBERTIES UNION  
2 FOUNDATION OF NORTHERN CALIFORNIA  
3 WILLIAM S. FREEMAN (SBN 82002)  
4 SEAN RIORDAN (SBN 255752)  
5 39 Drumm Street  
6 San Francisco, CA 94111  
7 Telephone: (415) 621-2493  
8 Facsimile: (415) 255-8437  
9 Email: wfreeman@aclunc.org  
10 sriordan@aclunc.org

11 COOLEY LLP  
12 MARTIN S. SCHENKER (SBN 109828)  
13 ASHLEY K. CORKERY (SBN 301380)  
14 EVAN G. SLOVAK (SBN 319409)  
15 101 California Street, 5<sup>th</sup> Floor  
16 San Francisco, CA 94111  
17 Telephone: (415) 693-2000  
18 Facsimile: (415) 693-2222  
19 Email: mschenker@cooley.com  
20 acorkery@cooley.com  
21 eslovak@cooley.com

22 LAW OFFICES OF HOLLY S. COOPER  
23 HOLLY S. COOPER (SBN 197626)  
24 P.O. Box 4358  
25 Davis, CA 95617  
26 Telephone: (530) 574-8200  
27 Facsimile: (530) 752-0822  
28 Email: hscooper@ucdavis.edu

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Ilsa Saravia, as next friend for A.H., a  
minor, and on behalf of herself individually  
and others similarly situated,

Plaintiff,

v.

William Barr, Attorney General, et al.,

Defendants.

ACLU FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
STEPHEN B. KANG (SBN 292280)  
39 Drumm Street  
San Francisco, CA 94111  
Telephone: (415) 343-0770  
Facsimile: (212) 395-0950  
E-mail: skang@aclu.org

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION  
CHRISTOPHER DUNN  
AMY BELSHER  
JESSICA PERRY  
125 Broad Street, 19<sup>th</sup> Floor  
New York, NY 10004  
Telephone: (212) 607-3300  
Facsimile: (212) 607-3318  
Email: dcunn@nyclu.org  
abelser@nyclu.org  
jperry@nyclu.org

Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria

**PLAINTIFF'S UNOPPOSED  
MOTION FOR PRELIMINARY  
APPROVAL OF PROPOSED CLASS  
SETTLEMENT**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

I. INTRODUCTION ..... 1

II. BACKGROUND ..... 2

    A. Procedural History ..... 3

    B. Settlement Negotiations ..... 5

    C. Material Terms of the Proposed Settlement..... 6

III. LEGAL STANDARD..... 8

IV. ANALYSIS..... 9

    A. The Requirements of Rule 23(a) Are Satisfied..... 9

    B. The Requirements of Rule 23(b)(2) Are Satisfied..... 13

    C. The Proposed Settlement Falls Well Within the Range of Possible Approval..... 14

    D. The Proposed Notice Form and Notice Plan Is Appropriate. .... 16

V. CONCLUSION..... 18

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**Cases**

*Al-Harbi v. Immigration & Naturalization Serv.*,  
284 F.3d 1080 (9th Cir. 2002) .....9

*Amchem Prods., Inc. v. Windsor*,  
521 U.S. 591 (1997).....9, 13

*Armstrong v. Davis*,  
275 F.3d 849 (9th Cir. 2001) .....11

*Arnott v. U.S. Citizenship & Immigration Servs.*,  
290 F.R.D. 579 (C.D. Cal. 2012).....10

*Class Plaintiffs v. City of Seattle*,  
955 F.2d 1268 (9th Cir. 1992) .....8

*Ellis v. Costco Wholesale Corp.*,  
657 F.3d 970 (9th Cir. 2011) .....11

*Gray v. Golden Gate Nat’l Rec. Area*,  
279 F.R.D. 501 (N.D. Cal. 2011).....14

*Hanlon v. Chrysler Corp.*,  
150 F.3d 1011 (9th Cir. 1998) .....9, 11

*Hanon v. Dataprods. Corp.*,  
976 F.2d 497 (9th Cir. 1992) .....12

*Kamakahi v. Am. Soc’y for Reprod. Med.*,  
305 F.R.D. 164 (N.D. Cal. 2015).....9, 10, 12

*Lilly v. Jamba Juice Co.*,  
No. 13-cv-2998, 2015 WL 1248027 (N.D. Cal. Mar. 18, 2015) .....14, 16

*Lynch v. Rank*,  
604 F. Supp. 30 (N.D. Cal. 1984), *aff’d* 747 F.2d 528 (9th Cir. 1984) .....12

*Mazza v. Am. Honda Motor Co., Inc.*,  
666 F.3d 581 (9th Cir. 2012) .....11

*Nwabueze v. AT&T Inc.*,  
No. 09-cv-1529, 2013 WL 6199596 (N.D. Cal. Nov. 27, 2013) .....8

**TABLE OF AUTHORITIES**  
**(cont'd)**

**Page(s)**

1  
2  
3 *Pecover v. Elec. Arts Inc.*,  
4 No. 08-cv-2820, 2010 WL 8742757 (N.D. Cal. Dec. 21, 2010).....13

5 *Perez-Funez v. Dist. Dir., I.N.S.*,  
6 611 F. Supp. 990 (C.D. Cal. 1984) .....10

7 *Reed v. Gen. Motors Corp.*,  
8 703 F.2d 170 (5th Cir. 1983) .....15

9 *Saravia for A.H. v. Sessions*,  
10 905 F.3d 1137 (9th Cir. 2018) .....4

11 *Saravia v. Sessions*,  
12 280 F. Supp. 3d 1168 (N.D. Cal. 2017) ..... *passim*

13 *Stott v. Capital Fin. Servs., Inc.*,  
14 277 F.R.D. 316 (N.D. Tex. 2011) .....17

15 *In re Tableware Antitrust Litig.*,  
16 484 F. Supp. 2d 1078 (N.D. Cal. 2007) .....9, 14, 15

17 *Wal-Mart Stores, Inc. v. Dukes*,  
18 564 U.S. 338 (2011).....10

19 *Walters v. Reno*,  
20 145 F.3d 1032 (9th Cir. 1998) .....14

21 **Statutes**

22 5 U.S.C. § 706

23 § 706(2).....4

24 § 706(2)(A), (D).....5

25 8 U.S.C. § 1232

26 § 1232(b)(3) & (c)(2)(A) .....3

27 § 1232(c)(2)(A).....5

28 Equal Access to Justice Act .....9

28 U.S.C. § 2412(d)(2)(G).....9

United States Constitution, Fourth Amendment.....4

United States Constitution, Fifth Amendment.....4, 5, 11

**TABLE OF AUTHORITIES**  
**(cont'd)**

**Page(s)**

Trafficking Victims Protection Reauthorization Act.....2, 4, 5

**Other Authorities**

Fed.R.Civ.P.

Rule 23 .....2, 9  
 Rule 23(a)..... *passim*  
 Rule 23(a)(1).....10  
 Rule 23(a)(2).....10  
 Rule 23(a)(2).....11  
 Rule 23(a)(3).....11  
 Rule 23(a)(4).....12  
 Rule 23(b) .....9, 13, 14  
 Rule 23(b)(2).....1  
 Rule 23(b)(2).....9, 13, 14, 18  
 Rule 23(b)(3).....13  
 Rule 23(c)(2)(A) .....17  
 Rule 23(e).....1, 8

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

PLEASE TAKE NOTICE that on October 15, 2020 at 10:00am, or soon thereafter in accordance with General Order No. 72-5, Plaintiff will and hereby does move the Court for an order granting preliminary approval of the settlement negotiated with Defendant in this Action.

Plaintiff requests that the Court: (1) find it will likely approve the settlements; (2) find it will likely certify the settlement classes for settlement purposes; (3) appoint Plaintiff as the class representative for the settlement classes for purposes of disseminating notice; (4) appoint Martin Schenker, Ashley Corkery, and Evan G. Slovak (Cooley LLP); Stephen Kang (ACLU Immigrants' Rights Project); William S. Freeman and Sean Riordan (ACLU Northern California); Holly Cooper (Law Offices of Holly Cooper); Amy Belsher and Jessica Perry (NYCLU) (collectively, "Class Counsel") as counsel for the settlement classes; (5) direct notice to the settlement classes in connection with the settlements, and approve the form and manner thereof; (6) approve of Plaintiff's proposed notice methods; and (7) set a schedule for final approval of the settlements and Plaintiff's request for attorneys' fees and expenses. This motion is supported by the memorandum of points and authorities, all papers and records on file in this matter, and such other matters as the Court may consider.

**I. INTRODUCTION**

Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (e), Plaintiff respectfully requests that the Court: (i) preliminarily approve the proposed class-wide injunctive relief settlement (the "Settlement") set forth in the attached settlement agreement (the "Agreement") (Exh. 1); (ii) certify the proposed class of immigrant minors described in the Agreement for settlement purposes (the "Settlement Class" or "Class Members"); (iii) approve the proposed form and plan of notice (Exh. 1); and (iv) schedule a final fairness hearing, as set forth in the attached stipulated order ("Proposed Order"). As set forth herein, the Settlement is more than fair and reasonable to Class Members and therefore plainly warrants approval by this Court.

Plaintiff Ilsa Saravia ("Plaintiff") brought this class action lawsuit as next friend for A.H., a minor at the time suit was filed, to protect the constitutional and statutory rights of immigrant children who came to this country as unaccompanied minors, were detained by the United States Government

1 (the “Government”), released by the Office of Refugee Resettlement (“ORR”) to a parent or sponsor  
2 (“Sponsored UCs”), and subsequently rearrested and detained by the Government on allegations of  
3 gang affiliation. On November 20, 2017, this Court issued an order (the “Order,” ECF No. 100),  
4 granting preliminary injunctive relief to a provisionally certified nationwide class of Sponsored UCs  
5 who were rearrested by the Government based on allegations of gang affiliation. The Order required  
6 that the Government provide these minors with a hearing before a neutral immigration judge to  
7 determine whether changed circumstances or dangerousness justified the rearrest (“*Saravia*  
8 Hearings”). The vast majority of Class Members were released following their *Saravia* Hearings,  
9 proving the necessity of requiring the Government to present facts supporting its rearrests to a neutral  
10 decisionmaker.

11 The Settlement retains the protections contained in the Court’s preliminary Order, adds  
12 procedural protections related to *Saravia* Hearings, and ensures that the Government will not deny  
13 immigration benefits (including Special Immigrant Juvenile (“SIJ”) status) based on gang allegations.  
14 The Settlement was reached after vigorous litigation, two in-person settlement conferences with the  
15 Honorable Magistrate Judge Laurel Beeler, and extensive direct negotiations between counsel for the  
16 parties. The Settlement meets the requirements for judicial approval under Rule 23 and should be  
17 approved by the Court.

## 18 **II. BACKGROUND**

19 This lawsuit began with 2017 Government operations to detain undocumented Central  
20 American immigrants allegedly involved with gangs and transport them to high-security detention  
21 centers, often far away from their homes. Many of the targets of these operations were children,  
22 mostly boys aged 15 to 17, who had entered the United States as unaccompanied minors, had been  
23 previously apprehended by the Department of Homeland Security (“DHS”) and transferred to the  
24 custody of the Office of Refugee Resettlement of the Department of Health and Human Services  
25 (“HHS”), and later released to live with a parent or other sponsor while they contested removal. These  
26 Sponsored UCs were entitled to special protections pursuant to the Trafficking Victims Protection  
27 Reauthorization Act (the “TVPRA”), including that a UC detained by federal immigration authorities  
28

1 be “placed in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(b)(3)  
2 & (c)(2)(A).

3 Despite these statutory protections, ICE rearrested dozens of Sponsored UCs without notice to  
4 their parents or immigration attorneys. The “evidence” forming the basis for these rearrests consisted  
5 almost entirely of uncorroborated, multiple-hearsay statements from unidentified local law  
6 enforcement personnel. Typical were allegations that a child had been seen in an area “frequented by  
7 gang members,” had worn clothing purportedly associated with gang membership, had allegedly “self-  
8 admitted” gang membership, or had written the country code for El Salvador into a school  
9 notebook. Whenever any allegation of gang affiliation was made, ORR consistently overrode its own  
10 decision matrix and automatically placed the child in secure facilities, without notice, hearing or other  
11 opportunity to rebut the allegations.

#### 12 **A. Procedural History**

13 This case was originally brought by Plaintiff Saravia on behalf of a single minor, A.H., on June  
14 22, 2017. *See* Pl. Pet., ECF No. 3. At a hearing on A.H.’s motion for a temporary restraining order,  
15 the Court observed that ORR had fallen short of its obligation to investigate information it had received  
16 about A.H. before placing him in a secure facility. *See* 6/29/2017 Hr’g Tr., ECF No. 22, at 5:11-6:4.  
17 Shortly thereafter, Plaintiff’s counsel discovered that the Government’s conduct extended far beyond  
18 A.H.’s individual case and that the Government was systematically re-arresting unaccompanied  
19 children based on gang allegations. On August 11, 2017, Plaintiff filed an amended petition, which  
20 added two named Plaintiffs, and sued on behalf of three minor children and sought to represent a  
21 putative class challenging the Government’s above-described practices.<sup>1</sup> *See* Pls. First Am. Pet., ECF  
22 No. 31. The Parties engaged in expedited discovery, including the production of a significant volume  
23 of documents by the Government. *See* Joint Disc. Br., ECF No. 36.

24 Plaintiff moved for a preliminary injunction and provisional class certification on September  
25 25, 2017, after which the Court held two hearings during which the Government presented witnesses  
26 and Plaintiffs had the opportunity for cross-examination. *See* Pl. Mot., ECF No. 61; *see also*

27 \_\_\_\_\_  
28 <sup>1</sup> The other two named Plaintiffs were later dismissed. As used hereinafter, “Plaintiff” refers to Ilsa Saravia, suing as next friend for A.H.



1 10/27/2017 Hr’g Tr., ECF No. 98; 11/1/2017 Hr’g Tr., ECF No. 170. On November 20, 2017, the  
2 Court issued an order granting a class-wide preliminary injunction for a provisionally certified class  
3 of Sponsored UCs requiring that the Government establish changed circumstances or dangerousness  
4 at a *Saravia* Hearing to justify the Sponsored UC’s rearrest and to support continued detention. *See*  
5 *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197-98 (N.D. Cal. 2017). A series of *Saravia* Hearings  
6 were held following the issuance of the Court’s Order. **Nearly 90%** of Sponsored UCs who were  
7 detained at the time of the Order prevailed at their hearings and were released to their prior  
8 sponsors. *See* Defs. Chart re: *Saravia* Hearings, ECF No. 124-1. The Government appealed the Order,  
9 and, on October 1, 2018, the Ninth Circuit affirmed the Court’s preliminary injunction. *See Saravia*  
10 *for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

11 On November 15, 2018, Plaintiff filed a Second Amended Petition (the “SAP”), which, among  
12 other things, added new factual allegations based on information that Plaintiff learned through  
13 discovery and other events following the Court’s Order. *See* SAP, ECF No. 164. The SAP, which is  
14 the operative pleading, sets forth four claims for class-wide relief:

15 **Claim 1** challenges the rearrest of Sponsored UCs based on allegations of gang affiliation in  
16 violation of the Fourth Amendment, the TVPRA, and the Administrative Procedure Act (5 U.S.C.  
17 § 706(2)). *See* SAP, ¶¶ 108-116. The rearrests of Sponsored UCs are not (and do not purport to be)  
18 based on cause that the UCs have committed any federal crime. *See id.* ¶¶ 47-49, 65. Instead, they  
19 are styled as administrative arrests relying on the UCs’ status as a non-citizen and purported  
20 “removability.” *See id.* This claim alleges that, because Class Members were already arrested for  
21 their alleged removability at the time they first came to the United States (in many cases years prior  
22 to the rearrest at issue), it is unreasonable and unlawful for the Government to rearrest them based on  
23 the same removability charge absent changed circumstances or dangerousness. *See id.* ¶¶ 112-13.

24 **Claim 2** challenges the Government’s systematic violation of the procedural due process  
25 clause of the Fifth Amendment. *See* SAP, ¶¶ 117-23. As this Court held, and the Ninth Circuit  
26 affirmed, “due process requires the government to give the minor a prompt hearing before an  
27 immigration judge or other neutral decision-maker, where the government must set forth the basis for  
28 its decision to rearrest the minor, and where the minor and his sponsor may seek to rebut the

1 government's showing." *Saravia*, 280 F. Supp. 3d at 1194. The results of *Saravia* Hearings to date  
2 further validate this holding and demonstrate the importance of the procedural safeguards sought by  
3 this claim. *See* SAP, ¶ 94; *see also* Defs. Chart re: *Saravia Hearings*, ECF No. 124-1. There can be  
4 no dispute that Class Members have weighty liberty interests in freedom from confinement and family  
5 unity, which are encroached by the challenged rearrests. *See* SAP, ¶¶ 105, 119-20.

6 **Claim 3** challenges the conditions of Class Members' confinement under the substantive Due  
7 Process Clause and the TVPRA. *See* SAP, ¶¶ 124-30. This claim alleges that, given the flimsiness  
8 and unreliability of the Government's allegations of gang affiliation, holding Class Members in secure  
9 (or, in most cases, any) confinement was unreasonable. *See id.* ¶¶ 127-29. Indeed, ORR regularly  
10 overrode the recommendations of its own placement matrix to place Class Members in secure  
11 facilities, rather than in the less restrictive facilities the matrix advised based on these Class Members'  
12 circumstances. *See id.* ¶ 41. Detaining these minors in secure facilities violates the Due Process  
13 Clause because it is a "punitive" restriction on liberty that bears no reasonable relationship to any  
14 legitimate governmental purpose. *See id.* ¶ 129. The Government's detention practices also violates  
15 the TVPRA, which requires that children be placed in the "least restrictive setting that is in the best  
16 interest of the child." 8 U.S.C. § 1232(c)(2)(A).

17 **Claim 4** challenges the Government's policy or practice to deny, revoke, and obstruct UCs'  
18 access to immigration benefits on the basis of alleged gang affiliation, in violation of the APA and the  
19 Due Process Clause of the Fifth Amendment. *See* SAP, ¶¶ 131-35; 5 U.S.C. § 706(2)(A), (D); U.S.  
20 Const. Am. V. The Government acts arbitrarily in violation of the APA by considering allegations of  
21 gang affiliation in determining immigration benefit eligibility, acts in excess of its statutory authority  
22 in violation of the APA by rejecting the state court factual determinations in denying benefits based  
23 on allegations of gang affiliation, and violates procedural due process by failing to provide procedural  
24 safeguards when denying or revoking immigration benefits to eligible unaccompanied minors on the  
25 basis of gang allegations. *See* SAP, ¶¶ 132-34.

## 26 **B. Settlement Negotiations**

27 On January 29, 2019, counsel for the Government reached out to class counsel to discuss the  
28 possibility of mediation. The parties engaged in initial negotiations for several months, and also

1 engaged in settlement discovery through the summer of 2019.

2 The parties participated in a settlement conference before Judge Beeler on July 16, 2019. *See*  
 3 Minute Order dtd. 7/17/19, ECF No. 226. Following the settlement conference, the parties exchanged  
 4 several draft settlement agreements and participated in numerous conference calls. . On December 9,  
 5 2019, the parties participated in a second settlement conference before Judge Beeler. *See* Minute  
 6 Order dtd. December 9, 2019, ECF No. 231. Additional settlement negotiations ensued over several  
 7 months, involving telephone conversations and the exchange of roughly a dozen complete drafts of a  
 8 proposed settlement agreement. The negotiations were at times difficult, with the respective parties  
 9 asserting competing proposals and expressing strongly held and divergent views. After many months  
 10 of back-and-forth, the parties subsequently reached an agreement in principle in early 2020, and  
 11 finalized the agreement on September 15, 2020.

### 12 C. Material Terms of the Proposed Settlement

13 The Agreement defines two classes, one of which is a subset of the other. First, the Agreement  
 14 defines the following class of Sponsored UCs who will receive relief pursuant to Claims 1-3 of (the  
 15 “Claims 1-3 Settlement Class”):

16 [A]ll noncitizen minors<sup>2</sup> meeting the following criteria: (1) the noncitizen minor  
 17 came to the United States as an unaccompanied minor; (2) the noncitizen minor  
 18 was previously detained in ORR custody and then released by ORR to a sponsor;  
 19 and (3) the noncitizen minor has been or will be rearrested by DHS<sup>3</sup> on the basis of  
 20 a removability warrant based in whole or in part on allegations of gang affiliation.  
 This class expressly excludes arrests of noncitizen minors who already are subject  
 to final orders of removal.

21 The Agreement then includes a sub-class specific to Claim 4 (the “Claim 4 Benefits Subclass”), which  
 22 is defined as follows:

23 \_\_\_\_\_  
 24 <sup>2</sup> The parties agree that the Settlement Class includes any children designated as “accompanied  
 25 children” (“ACs,” also referred to herein as “UCs”) at the time of rearrest, as long as such children  
 otherwise meet the class definition.

26 <sup>3</sup> Most Class Members to date have been rearrested by ICE, and the parties anticipate that ICE will  
 27 remain the principal component within DHS that conducts rearrests. In the event a Class Member is  
 28 rearrested by United States Custom and Border Protection (“CBP”), a component agency of DHS, the  
 provisions of Section II.J will apply. The Settlement Class expressly excludes individuals entering  
 the United States whom CBP encounters or apprehends at or near the border as a result of routine  
 patrol or checkpoint operations.

1 [This class includes] all Settlement Class Members who also applied for asylum,  
2 SIJ status, T or U nonimmigrant status, or a waiver of inadmissibility or application  
3 for adjustment of status that is related to such an application for asylum, SIJ status  
4 or T or U nonimmigrant status, before the age of 21, and had or will have an  
5 application for asylum, SIJ status, T or U nonimmigrant status, or a waiver of  
inadmissibility or adjustment of status that is related to such an application denied  
by USCIS [U.S. Citizenship and Immigration Services] when any information that  
the noncitizen is or may have been affiliated with a gang is a basis for the denial.

6 The sections of the Agreement then describe in detail the benefits afforded to the members of each  
7 class.

8 For the Claims 1-3 Benefit Class, the Agreement sets forth the policies and procedures the  
9 Government will follow when it seeks to rearrest or detain a nonimmigrant minor on allegations of  
10 gang affiliation. One such requirement obligates ICE officers to determine in advance whether  
11 someone they intend to rearrest on suspicion of gang membership or affiliation is also a Sponsored  
12 UC (a material “pre-deprivation” benefit to Class Members that extends beyond the relief afforded by  
13 the preliminary injunction Order). ICE officers are obligated to contact other ICE officers and lawyers  
14 for guidance regarding the legal requirements applicable to Class Members, and to determine whether  
15 the targeted UC’s circumstances have sufficiently changed since release such that rearrest is justified.  
16 If the individual Class Member’s circumstances had not changed between their rearrest and their most  
17 recent release from ORR custody, the Class Member will not be rearrested.

18 If the Government determines that changed circumstances exist and proceeds to rearrest the  
19 Class Member, the Agreement affirms the Class Member’s right to a *Saravia* Hearing and lays out  
20 detailed procedures governing the hearing. Among other things, the Agreement provides that the  
21 Government must give notice to the Class Member or his or her counsel within 48 hours of rearrest;  
22 that the Government must provide the Class Member with information explaining the purpose and  
23 nature of the proceedings; and that the *Saravia* Hearing must occur within ten days of rearrest (though  
24 the Class Member may request additional time to prepare or seek out a lawyer). Further, the  
25 Agreement provides that *Saravia* Hearings cannot occur at inconvenient or overly burdensome  
26 locations, and provides Class Members with some choices regarding venue. At *Saravia* Hearings, the  
27 Government has the burden to show changed circumstances or dangerousness since the Class Member  
28 was last released to their sponsor. If the Class Member prevails, they must be released to their prior

1 sponsor within three calendar days. New protections and procedures also govern situations where the  
2 Class Member's prior sponsor is no longer available, the Government has evidence of abuse neglect,  
3 or other facts indicate that the Class Member's safety is in jeopardy.

4 For the Claim 4 Benefits Subclass, the Agreement limits the ability of USCIS to deny specified  
5 immigration benefits based on allegations of gang membership or affiliation, and includes important  
6 programmatic changes particularly with respect to USCIS's consideration of gang allegations in  
7 applications for SIJ Status. Class Members who are denied immigration benefits will receive the  
8 evidence underlying the Government's decision to deny benefits, and will be entitled to respond to  
9 that evidence with arguments and evidence of their own. Furthermore, any Subclass Member who  
10 was previously denied one of the applicable immigration benefits because of purported gang affiliation  
11 may apply for a review of the decision.

12 If the proposed Agreement becomes final, Class Members will be prohibited from pursuing  
13 any "causes of action for declaratory or equitable relief, including injunctive relief, known or  
14 unknown, that . . . relate[s] to any alleged unlawful rearrest of Class Members on the basis of  
15 allegations of gang affiliation" that existed prior to the preliminary approval of this Agreement and  
16 which were or could have been alleged in this action." The proposed Agreement does not release  
17 claims for money damages, nor does it release claims for injunctive, declaratory, or equitable relief  
18 that are not immigration- or asylum-related, nor claims that are not based on the allegations made in  
19 this action.

### 20 **III. LEGAL STANDARD**

21 The Ninth Circuit has a "strong judicial policy that favors settlements, particularly where  
22 complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276  
23 (9th Cir. 1992) (citations omitted). Under Rule 23(e) of the Federal Rules of Civil Procedure, a class  
24 action settlement that is binding on absent class members requires court approval. "Court approval  
25 requires a two-step process: (1) preliminary approval of the settlement; and (2) following a notice  
26 period to the class, final approval of the settlement at a fairness hearing." *Nwabueze v. AT&T Inc.*,  
27 No. 09-cv-1529, 2013 WL 6199596, at \*3 (N.D. Cal. Nov. 27, 2013) (citation omitted). By this  
28

1 motion, Plaintiff seeks to complete the first step.<sup>4</sup>

2 As part of the preliminary approval process, the Court determines whether the class is proper  
 3 for settlement purposes, and, if so, preliminarily certifies the class. *See Amchem Prods., Inc. v.*  
 4 *Windsor*, 521 U.S. 591, 620 (1997). To support certification, a court must find each of Rule 23(a)'s  
 5 requirements (*i.e.*, numerosity, commonality, typicality, and adequacy of representation) satisfied. In  
 6 addition, the party seeking certification must show that the proposed class satisfies “one of the  
 7 subsections of Rule 23(b)”—here, Rule 23(b)(2), which “permits certification where ‘the party  
 8 opposing the class has acted or refused to act on grounds that apply generally to the class, so that final  
 9 injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.’”  
 10 *Kamakahi v. Am. Soc’y for Reprod. Med.*, 305 F.R.D. 164, 175 (N.D. Cal. 2015) (quoting Fed. R. Civ.  
 11 P. 23(b)(2)). In conducting the certification analysis, “a district court need not inquire whether the  
 12 case, if tried, would present intractable management problems . . . for the proposal is that there be no  
 13 trial.” *Amchem Prods.*, 521 U.S. at 620.

14 In deciding on preliminary approval, the Court determines whether the proposed settlement  
 15 warrants consideration by members of the class and a later, full examination by the Court at a final  
 16 approval hearing. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). This does not  
 17 require the Court to perform a fulsome analysis of the settlement at this time, but rather merely to  
 18 determine whether the settlement falls “within the range of possible approval.” *In re Tableware*  
 19 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

## 20 IV. ANALYSIS

### 21 A. The Requirements of Rule 23(a) Are Satisfied.

22 Rule 23(a) provides four baseline requirements for certifying a class: numerosity,  
 23 commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23. The Court already found that all four  
 24

---

25 <sup>4</sup> Counsel for Plaintiff will seek attorneys’ fees and costs under the Equal Access to Justice Act  
 26 (“EAJA”), which provides that a prevailing party may file its motion for attorneys’ fees within 30 days  
 27 of a “final judgment,” which is defined as “a judgment that is final and not appealable, and includes  
 28 an order of settlement.” 28 U.S.C. § 2412(d)(2)(G). *See also Al-Harbi v. Immigration &*  
*Naturalization Serv.*, 284 F.3d 1080, 1082 (9th Cir. 2002) (holding that “final judgment” under EAJA  
 is “the date on which a party's case has met its final demise, such that there is no longer any possibility  
 that the district court's judgment is open to attack”) (quotation marks and citation omitted).



1 requirements were satisfied with respect to the provisional class. *Saravia*, 280 F. Supp. 3d at 1202-05  
 2 (holding that all four requirements of Rule 23(a) were met with respect to the provisional class). As  
 3 discussed below, they are likewise satisfied here.

4 **Numerosity.** Rule 23(a)(1) requires the class to be “so numerous that joinder of all members  
 5 is impracticable.” Fed. R. Civ. P. 23(a)(1). The plaintiff need not state the exact number of potential  
 6 class members; nor is a specific minimum number required. *Perez-Funez v. Dist. Dir., I.N.S.*, 611 F.  
 7 Supp. 990, 995 (C.D. Cal. 1984). Where a plaintiff seeks injunctive and declaratory relief, the  
 8 numerosity “requirement is relaxed and plaintiffs may rely on [] reasonable inference[s] arising from  
 9 plaintiffs’ other evidence that the number of unknown and future members of [the] proposed  
 10 []class . . . is sufficient to make joinder impracticable.” *Arnott v. U.S. Citizenship & Immigration*  
 11 *Servs.*, 290 F.R.D. 579, 586 (C.D. Cal. 2012) (citation omitted).

12 As the Court previously held with respect to the provisional class, the numerosity requirement  
 13 is readily satisfied, because the protections afforded under the Agreement extend to hundreds if not  
 14 thousands of Sponsored UCs.<sup>5</sup> See *Saravia*, 280 F. Supp. 3d at 1203. Indeed, over forty children have  
 15 received *Saravia* Hearings to date while countless others have been spared an unlawful rearrest by the  
 16 deterrent effect of these hearings and the Court’s Order. See *Kamakahi*, 305 F.R.D. at 183 (“[C]ourts  
 17 have routinely found the numerosity requirement satisfied when the class comprises 40 or more  
 18 members.”) (citation omitted). Moreover, “[i]n light of the tens of thousands of undocumented minors  
 19 released to sponsors and currently living in the United States” the class will only continue to grow as  
 20 the government learns of, and contemplates acting on allegations of gang affiliation to justify rearrest.  
 21 *Saravia*, 280 F. Supp. 3d at 1203. Accordingly, the numerosity requirement is satisfied.

22 **Commonality.** The second element of Rule 23(a) requires the existence of “questions of law  
 23 or fact common to the class[.]” Fed. R. Civ. P. 23(a)(2). Commonality is satisfied where the plaintiff  
 24 alleges the existence of a “common contention” that is “capable of classwide resolution[.]” *Wal-Mart*  
 25 *Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The commonality requirement has “been construed

26 \_\_\_\_\_  
 27 <sup>5</sup> According to ORR published data, there are tens of thousands of Sponsored UCs living in the custody  
 28 of a parent or other sponsor. See *Saravia*, 280 F. Supp. 3d at 1203. Any number of these Sponsored  
 UCs are at risk of rearrest and transfer to a detention center, thus benefitting from the policies and  
 procedures due to them as Class Members.

1 permissively,’ and ‘[a]ll questions of fact and law need not be common to satisfy the rule.’” *Ellis v.*  
2 *Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011) (citation omitted). Indeed, “commonality  
3 only requires a single significant question of law or fact[,]” *Mazza v. Am. Honda Motor Co., Inc.*, 666  
4 F.3d 581, 589 (9th Cir. 2012) (citation omitted), and that is particularly so where a suit “challenges a  
5 system-wide practice or policy that affects all of the putative class members.” *Armstrong v. Davis*,  
6 275 F.3d 849, 868 (9th Cir. 2001) (citation omitted).

7         The proposed Settlement Class presents claims that raise common questions of fact and law.  
8 With respect to the Claims 1-3 Settlement Class, the claims raise the common question of whether the  
9 Government violates the Due Process Clause of the Fifth Amendment and other federal laws when it  
10 seeks to rearrest a Sponsored UC in whole or in part on allegations of gang affiliation. This claim is  
11 common to all Class Members. This Court previously concluded as much, explaining that the basic  
12 question undergirding Plaintiff’s allegations is whether “DHS and ORR policies violate[d] class  
13 members’ rights in a systemic way.” *Saravia*, 280 F. Supp. 3d at 1204 (quoting *Parsons v. Ryan*, 754  
14 F.3d 657, 675 (9th Cir. 2014) (“Where the circumstances of each particular class member vary but  
15 retain a common core of factual or legal issues with the rest of the class, commonality exists.”  
16 (alteration and citation omitted))). Accordingly, the claims underlying the Claims 1-3 Settlement  
17 Class are sufficiently common to satisfy Rule 23(a)(2)’s permissive commonality standard.

18         Likewise, the central legal question presented by Claim 4 is common to the entire class. The  
19 Government policies at issue resulted in the same injury to all Class Members, and the Agreement  
20 redresses this injury by instituting a uniform set of procedures. *See Parsons*, 754 F.3d at 678 (finding  
21 commonality and noting “although a presently existing risk may ultimately result in different future  
22 harm for different inmates—ranging from no harm at all to death—every inmate suffers exactly the  
23 same constitutional injury when he is exposed to a single statewide [] policy or practice that creates a  
24 substantial risk of serious harm” (citations omitted)). Commonality is therefore satisfied.

25         **Typicality.** The next requirement of Rule 23(a) is typicality, which focuses on the relationship  
26 between the facts and issues of the class relative to the representatives of that class. Fed. R. Civ. P.  
27 23(a)(3). “[R]epresentative claims are ‘typical’ if they are reasonably co-extensive with those of  
28 absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. “The test



1 of typicality ‘is whether other members have the same or similar injury, whether the action is based  
2 on conduct which is not unique to the named plaintiffs, and whether other class members have been  
3 injured by the same course of conduct.’” *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir.  
4 1992) (citation omitted).

5 The typicality requirement will occasionally merge with the commonality requirement, see  
6 *Parsons*, 754 F.3d at 687, which is met for the Settlement Class. This Court previously found the  
7 typicality element was satisfied for purposes of the provisionally certified class because: (1) the named  
8 Plaintiff and proposed Class Members were noncitizen minors who came to the United States  
9 unaccompanied and were subjected to the same practice; (2) the due process and other federal claims  
10 raised by Plaintiff and the proposed Class Members were the same; and (3) Plaintiff and proposed  
11 Class Members suffered the same or similar injury. *Saravia*, 280 F. Supp. 3d at 1204. These same  
12 elements apply to the Claims 1-3 Settlement Class, and the Court’s prior analysis demonstrates that  
13 the typicality requirement is satisfied. Similarly, the typicality requirement is also met for the Claim  
14 4 Benefits Subclass. Plaintiff is typical of the members of the Claim 4 Benefits Subclass because he  
15 applied for immigration benefits prior to turning 21, USCIS unlawfully withheld approval of his SIJ  
16 Status Petition and indicated an intent to deny the benefit based on alleged gang affiliation. See SAP,  
17 ¶¶ 65, 68, 72, 79, 82.

18 **Adequacy.** The final requirement of Rule 23(a) is adequacy. Rule 23(a)(4) requires a showing  
19 that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R.  
20 Civ. P. 23(a)(4). The adequacy requirement is satisfied “if the proposed representative plaintiffs do  
21 not have conflicts of interest with the proposed class and are represented by qualified and competent  
22 counsel.” *Kamakahi*, 305 F.R.D. at 184. Class counsel are deemed qualified when they can establish  
23 their experience in previous class actions and cases involving the same area of law. *Lynch v. Rank*,  
24 604 F. Supp. 30, 37 (N.D. Cal. 1984), *aff’d* 747 F.2d 528 (9th Cir. 1984).

25 Here, Plaintiff has fairly and adequately protected the interests of the proposed Settlement  
26 Class, and will continue to do so. Plaintiff was rearrested by the Government on allegations of gang  
27 affiliation and USCIS unlawfully withheld approval of his SIJ Status Petition and indicated an intent  
28 to deny the benefit based on alleged gang affiliation. See SAP, ¶¶ 65, 68, 72, 79, 82. As a result,

1 Plaintiff's interests are aligned with the remaining putative class. *See Saravia*, 280 F. Supp. 3d at  
2 1204-05.

3 Likewise, class counsel are attorneys from a prominent law firm and with expertise in class  
4 actions, together with attorneys from non-profit organizations that specialize in civil rights and  
5 immigration law. *See J. Mass Decl. ISO Provisional Class Certification*, ECF No. 61-4 (detailing  
6 William S. Freeman's qualifications and experience); *M. Schenker Decl. ISO Provisional Class*  
7 *Certification*, ECF No. 61-5 (detailing Martin Schenker's, Nate Cooper's, and Ashley Corkery's  
8 qualifications and experience); *S. Kang Decl. ISO Provisional Class Certification*, ECF No. 61-6  
9 (detailing Stephen Kang's qualifications and experience). Collectively, these attorneys have extensive  
10 background in litigating class actions, and have extensive experience in the underlying issues of  
11 immigration law, constitutional law, and administrative law. *See Saravia*, 280 F. Supp. 3d at 1205  
12 (acknowledging counsel's "experience litigating complex civil actions and cases involving" similar  
13 issues). This is sufficient to meet the adequacy requirement. As described above, counsel negotiated  
14 aggressively and at great length with counsel for Defendants to achieve a settlement that they believed  
15 to be highly beneficial to the Class.

16 **B. The Requirements of Rule 23(b)(2) Are Satisfied.**

17 The next issue for the Court is whether Plaintiff has shown that at least one of the requirements  
18 of Rule 23(b) is met. *See Amchem Prods.*, 521 U.S. at 614-15. Under Rule 23(b)(2), class certification  
19 may be appropriate where the defendant "has acted or refused to act on grounds that apply generally  
20 to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting  
21 the class as a whole." *Parsons*, 754 F.3d at 688-89 (citations omitted). "That inquiry does not require  
22 an examination of the viability or bases of the class members' claims for relief, does not require that  
23 the issues common to the class satisfy a Rule 23(b)(3)-like predominance test, and does not require a  
24 finding that all members of the class have suffered identical injuries." *Id.* at 688 (citations omitted).

25 Thus, "'Rule 23(b)(2)'s requirement that a defendant have acted consistently towards the class  
26 is plainly more permissive than 23(b)(3)'s requirement that questions common to the class  
27 predominate over individual issues.'" *Pecover v. Elec. Arts Inc.*, No. 08-cv-2820, 2010 WL 8742757,  
28 at \*14 (N.D. Cal. Dec. 21, 2010) (citation omitted). It is "'almost automatically satisfied in actions

1 primarily seeking injunctive relief.” *Gray v. Golden Gate Nat’l Rec. Area*, 279 F.R.D. 501, 520 (N.D.  
2 Cal. 2011) (citation omitted). It is well-settled that “[e]ven if some class members have not been  
3 injured by the challenged practice, a class may nevertheless be appropriate” under Rule 23(b)(2).  
4 *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998).

5 Rule 23(b)(2) is met here for the Settlement Class. Plaintiff has sought injunctive relief from  
6 the Government’s policy and practice of rearresting Sponsored UCs based on unfounded gang  
7 allegations, referring them to secure custody, and subjecting them to extended incarceration without  
8 notice or a right to be heard. Plaintiff has further sought relief from the denial of immigration benefits  
9 protected by statutes and federal law on the basis of such unfounded gang allegations. The  
10 Government has thus acted on grounds that “apply generally to the class.” Fed. R. Civ. P. 23(b)(2).  
11 Plaintiff sought to enjoin the Government from further unlawful interference with Plaintiff’s and the  
12 absent Class Members’ due process right to, *inter alia*, hearings before a neutral factfinder. The  
13 proposed settlement plan resolves these claims for the class “as a whole” by addressing the  
14 Government’s authority to rearrest or detain Class Members based in any part on allegations of gang  
15 affiliation. “Because a single injunction can protect all class members’ procedural due process rights,  
16 the requirements of Rule 23(b)(2) are satisfied.” *Saravia*, 280 F. Supp. 3d at 1205 (citation omitted).

17 **C. The Proposed Settlement Falls Well Within the Range of Possible Approval.**

18 “Preliminary approval of a settlement [that meets the requirements of Rules 23(a) and 23(b)]  
19 is appropriate if the proposed settlement appears to be the product of serious, informed, non-collusive  
20 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class  
21 representatives or segments of the class, and falls within the range of possible approval.” *Lilly v.*  
22 *Jamba Juice Co.*, No. 13-cv-2998, 2015 WL 1248027 at \*7 (N.D. Cal. Mar. 18, 2015) (internal  
23 quotation and citations omitted). In considering whether the settlement falls within the range of  
24 possible approval, courts look to “plaintiffs’ expected recovery balanced against the value of the  
25 settlement offer,” as well as the “risk and [ ] anticipated expense and complexity of further litigation.”  
26 *Tableware*, 484 F. Supp. 2d at 1080. The proposed settlement here easily satisfies this requirement.  
27 As explained above, the proposed Agreement has played, and will continue to play, a critical role in  
28 protecting the constitutional rights of current or prospective Class Members who face potential rearrest

1 or denial of immigration benefits.

2 First, the Agreement is the product of hard-fought, non-collusive negotiations between the  
3 Government and Plaintiff. Prior to the parties' extensive negotiations, Plaintiff vigorously litigated a  
4 petition for writ of habeas corpus and a motion for preliminary injunction, including defeating the  
5 Government's appeal to the Ninth Circuit Court of Appeals, in order to bring the case to a position  
6 where settlement negotiations were appropriate. Following the determination of the appeal, as set  
7 forth above, Class Counsel engaged in difficult, protracted arms-length negotiations with Defendants  
8 and their counsel to obtain the settlement embodied in the Agreement. The parties' negotiations  
9 included roughly a dozen exchanges of settlement agreement drafts and two full-day in-person  
10 settlement conferences with the Honorable Judge Laurel Beeler in July and December 2019. This  
11 litigation, the views expressed by this Court and the Ninth Circuit, and the able assistance of Judge  
12 Beeler informed those arm's-length negotiations.

13 Moreover, when considering a proposed settlement, "the value of the assessment of able  
14 counsel negotiating at arm's length cannot be gainsaid." *Reed v. Gen. Motors Corp.*, 703 F.2d 170,  
15 175 (5th Cir. 1983). Here, counsel for all parties are well versed in class actions and immigration law  
16 and are fully capable of weighing the facts, law, and risks of continued litigation. Thus, "[e]xperienced  
17 counsel on both sides, each with a comprehensive understanding of the strengths and weaknesses of  
18 each party's respective claims and defenses, negotiated this settlement over an extended period of  
19 time[.]" *Tableware*, 484 F. Supp. 2d at 1080. No evidence suggests the proposed settlement is  
20 collusive and, indeed, the extensive negotiation process—which included *two* in-person mediation  
21 sessions attended by numerous out-of-state attorneys before Judge Beeler—would disprove any such  
22 claim.

23 Additionally, the "substantive fairness and adequacy of the settlement confirms this view of  
24 the fair procedures used to reach the settlement." *Id.* The proposed Settlement provides for fair and  
25 meaningful procedures the Government must follow regarding how ICE may arrest a minor suspected  
26 of being gang members or affiliates. Under the proposed Settlement, ICE will be required to determine  
27 in advance of any rearrest whether the potential rearrestee is a minor, alert ICE officers and lawyers  
28 for guidance should ICE arrest a minor, and ensure any arrested Class Member receives a *Saravia*

1 Hearing. This is significant and meaningful relief. Similarly, the proposed Settlement ensures that all  
2 proposed Class Members who applied for asylum, SIJ, T or U nonimmigrant status, or a waiver of  
3 inadmissibility or application for adjustment of status related to those benefits before the age of 21,  
4 and who had their application revoked or denied by USCIS at least in part on the basis of gang  
5 affiliation, will have an opportunity to re-open those benefit applications and have them re-adjudicated  
6 pursuant to the procedures specified in the proposed Settlement. This, too, is significant relief and  
7 provides for protections that were not guaranteed should the parties have continued with litigation.  
8 Finally, the settlement “protects the rights of class members by ensuring that class members retain  
9 their individual damages claims.” *Lilly*, 2015 WL 2062858, at \*7.

10 Further litigation would have presented significant risks and burdens to both sides. Defendants  
11 contested the merits of Plaintiff’s claims, and heavily disputed whether Plaintiff’s requested relief is  
12 an appropriate remedy for the harms alleged. While Plaintiff enjoyed early successes securing  
13 injunctive relief and prevailing after Defendants’ appeal, the Plaintiff Class still would have assumed  
14 a degree of risk by continuing to litigate these claims through trial, including on Claims 1, 3 and 4,  
15 which were not subject to the preliminary injunction contained in this Court’s Order.

16 In contrast, the proposed Settlement provides significant, meaningful relief to Class Members.  
17 Plaintiff’s Settlement Class is comprised of vulnerable noncitizen minors who have been, or will be,  
18 rearrested by the Government. And members of the Claim 4 Benefits Subclass are noncitizen minors  
19 who applied for certain immigration benefits but who have been or will be denied such benefits  
20 (without an opportunity to review and challenge the Government’s evidence) because of alleged gang  
21 affiliation. The protections afforded in the proposed Settlement are the result of a detailed and  
22 intensive negotiation process, and was secured after extensive discovery and litigation. As a result,  
23 Plaintiff has a powerful interest in obtaining the relief the Agreement affords. By any measure, it is  
24 sufficiently fair to warrant preliminary approval.

25 **D. The Proposed Notice Form and Notice Plan Is Appropriate.**

26 The parties have agreed to provide notice to the Settlement Class through several methods.

27 *First*, within fourteen days of preliminary approval, Defendants will compile and provide  
28 Plaintiff’s counsel a list of all known Class Members. This list is to include, *inter alia*, the Class

1 Member's name and the last known address of any attorney who is currently entered as counsel before  
2 DHS, USCIS, or EOIR for the class member. Defendants will then directly notify (via U.S. Mail) the  
3 Settlement Class Members who are within the United States by providing them or their counsel with  
4 the attached notice form in English and Spanish and obtaining any waiver as appropriate.

5 *Second*, because many of the Settlement Class Members are or recently have been represented  
6 by counsel in connection with their immigration proceedings, Plaintiff's counsel will coordinate the  
7 dissemination of the attached notice form and the Agreement via electronic mail to list-servs of  
8 attorneys who provide immigration legal services to children. Plaintiff's counsel will do so within  
9 seven days of preliminary approval.

10 *Third*, notice will be disseminated within fourteen days of the Court's preliminary approval of  
11 the proposed settlement by publication through the follow means:

- 12 • Electronic postings on the websites of the National ACLU, ACLU of Northern  
13 California, and New York Civil Liberties Union Foundation in accessible formats in  
14 English and Spanish;
- 15 • Hard copy postings of the Class Notice in all ORR secure, staff-secure facilities, and  
16 residential treatment centers, and any DHS facilities where Settlement Class Members  
17 are reasonably likely to be held after rearrest; and
- 18 • Electronic postings in a reasonably accessible location on a website controlled by  
19 Defendants in accessible formats in English and Spanish.

20 All notices posted on websites shall remain available for a minimum of sixty days.

21 *Fourth*, the parties have engaged in extensive outreach to interested persons and organizations  
22 as part of the process of reaching the Agreement, and have had ample communication with these  
23 interested persons and organizations since the Agreement was reached.

24 Additionally, the content of the proposed notice form is appropriate. The form explains the  
25 basis of the lawsuits, the contours of the Settlement Class, the relief to which Settlement Class  
26 Members are entitled, the rights of Settlement Class Members (including the right to object), the date  
27 for submitting such objections, and the date for the fairness hearing. *See, e.g., Stott v. Capital Fin.*  
28 *Servs., Inc.*, 277 F.R.D. 316, 342 (N.D. Tex. 2011) (notice was appropriate under Rule 23(c)(2)(A))

1 where, as here, it “clearly provided the nature of the action, the definition of the Settlement Class, the  
2 terms of the settlement, the class members’ options, including the fact that they could not exclude  
3 themselves, the claims, defenses, and the procedures surrounding the settlement”; “[c]lass members  
4 were further provided with the date of the fairness hearing and were given the opportunity to object to  
5 the settlement, which was described in clear terms”; and “[t]he scope of the class and effect of the  
6 Court’s potential approval of the settlement were clearly explained to the recipients of the notice”).

7 The proposed notice plan thus easily satisfies the Advisory Committee’s standards for effecting  
8 class notice under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

9 **V. CONCLUSION**

10 For the foregoing reasons, Plaintiff respectfully requests that the Court enter the attached  
11 proposed order preliminarily approving the Agreement, preliminarily certifying the proposed  
12 Settlement Class, and approving the proposed notice form and notice plan.

13 Dated: September 17, 2020

COOLEY LLP

14 /s/ Martin S. Schenker

Martin S. Schenker  
15 Ashley K. Corkery  
16 Evan G. Slovak

17 Dated: September 17, 2020

AMERICAN CIVIL LIBERTIES UNION  
18 FOUNDATION OF NORTHERN CALIFORNIA

19 /s/ William S. Freeman

William S. Freeman  
20 Sean Riordan

21  
22 Dated: September 17, 2020

AMERICAN CIVIL LIBERTIES UNION  
23 IMMIGRANTS’ RIGHTS PROJECT

24 /s/ Stephen B. Kang

Stephen B. Kang  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 17, 2020

LAW OFFICES OF HOLLY COOPER

*/s/ Holly S. Cooper*

\_\_\_\_\_  
Holly S. Cooper

Dated: September 17, 2020

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION

*/s/ Jessica Perry*

\_\_\_\_\_  
Jessica Perry  
Amy Belsher

*Attorneys for Plaintiff*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ATTESTATION**

I hereby attest that concurrence in the filing of this document has been obtained from the Signatory of this document, pursuant to L.R. 5-1(i)(3).

/s/ Martin S. Schenker  
Martin S. Schenker

# **EXHIBIT 1**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

<b>ILSA SARAVIA, as next friend for A.H., a</b>	)	<b>Case No.: 3:17-cv-03615</b>
<b>minor, and on her behalf,</b>	)	
<b>Plaintiff/Plaintiff,</b>	)	
<b>vs.</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
	)	<b>RELEASE</b>
<b>WILLIAM BARR, U.S. Attorney General,</b>	)	
<b>et al.,</b>	)	<b>Honorable Vince Chhabria</b>
<b>Respondents/Defendants.</b>	)	
	)	
	)	
	)	
	)	
	)	

**SETTLEMENT AGREEMENT AND RELEASE**

1  
2 This Settlement Agreement and Release (“Agreement”) is entered into by and  
3 between Plaintiff, Ilsa Saravia, as next friend for A.H., a minor at the time Saravia filed the  
4 above-captioned matter (“Plaintiff”), on behalf of themselves and all Class Members, and  
5 Defendants William P. Barr, Attorney General of the United States; Chad F. Wolf, Acting  
6 Secretary of Homeland Security; U.S. Department of Homeland Security (“DHS”); Tony H.  
7 Pham, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs  
8 Enforcement (“ICE”); Alex M. Azar II, Secretary of Health and Human Services; U.S.  
9 Department of Health and Human Services (“HHS”); Lynn A. Johnson, Assistant Secretary  
10 for the Administration for Children and Families; Heidi H. Stirrup, Acting Director of the  
11 Office of Refugee Resettlement (“ORR”); Elicia Smith, Federal Field Specialist of the  
12 Office of Refugee Resettlement of the United States; Joseph B. Edlow, Deputy Director for  
13 Policy, U.S. Citizenship and Immigration Services (“USCIS”); and James McHenry,  
14 Director of the Executive Office for Immigration Review (“EOIR”) (collectively, the  
15 “Parties”), by and through their attorneys. This Agreement is effective as of the date it is  
16 executed by all Parties and upon final approval of the Court pursuant to Rule 23 of the  
17 Federal Rules of Civil Procedure, as set forth below.

18 **RECITALS**

19 On June 22, 2017, Plaintiff filed a petition for writ of habeas corpus against HHS.  
20 On August 11, 2017, Plaintiff filed a first amended petition for writ of habeas corpus and  
21 class action complaint for injunctive and declaratory relief to add additional substantive  
22 claims, parties and class allegations, and to seek additional relief (“FAC”).

23 On September 25, 2017, Plaintiff filed a motion for a preliminary injunction and for  
24 provisional class certification.

25 On November 20, 2017, the United States District Court for the Northern District of  
26 California granted Plaintiff’s motion for preliminary injunction and provisionally certified a  
27 class under Federal Rule of Civil Procedure 23(b)(2) with regard to Claim 2 of the FAC.

1 The Court defined the provisionally certified class as: “a class of noncitizen minors meeting  
2 the following criteria: (1) the noncitizen came to the country as an unaccompanied minor;  
3 (2) the noncitizen was previously detained in ORR custody and then released by ORR to a  
4 sponsor; (3) the noncitizen has been or will be rearrested by DHS on the basis of a  
5 removability warrant on or after April 1, 2017, on allegations of gang affiliation.”

6 The Court’s preliminary injunction required DHS to establish at a hearing before an  
7 immigration judge “to ensure that changed circumstances indeed justify the rearrest” (  
8 “*Saravia Hearings*”). *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197-98 (N.D. Cal.  
9 2017).

10 In January 2018, Defendants appealed the preliminary injunction order to the U.S.  
11 Court of Appeals for the Ninth Circuit. The District Court stayed proceedings pending the  
12 appeal. On October 1, 2018, the Ninth Circuit affirmed the preliminary injunction order.  
13 *See Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

14 Plaintiff moved to clarify the class definition on November 9, 2018. The Court  
15 granted Plaintiff’s motion, in part, and clarified the definition of the provisionally certified  
16 class on December 3, 2018. The Court stated the “provisional class” respecting Claim 2 “is  
17 not limited to minors who are taken into DHS custody solely on allegations of gang  
18 affiliation (and who otherwise meet the class definition), but rather includes those minors  
19 taken into custody based partly on allegations of gang affiliation.” December 3, 2018 Order,  
20 ECF No. 173, at 1.

21 On November 15, 2018, Plaintiff filed a Second Amended Complaint (“SAC”),  
22 which, among other things, added new factual allegations based on information learned  
23 through discovery and events that had occurred following the Court’s issuance of a  
24 preliminary injunction. *See SAC*, ECF No. 164. On November 29, 2018, Defendants  
25 moved to dismiss the SAC. The Court has not ruled on Defendants’ motion to dismiss the  
26 SAC.

1 Plaintiff believes that the claims in the SAC have merit and that Plaintiff and the  
2 Class Members would be entitled to permanent relief at least as protective as that which is  
3 currently available under the preliminary injunction, as affirmed by the Ninth Circuit.

4 Defendants deny any and all liability of any kind to the Plaintiff or the Class  
5 Members. Defendants further make no admission that any Class Member suffered any harm,  
6 let alone harm from the actions of Defendants.

7 The Parties, however, have concluded that further litigation would be protracted and  
8 expensive for all Parties. After taking into account these factors, as well as the risks of  
9 further litigation, the Parties agreed to settle in the manner and upon the terms set forth in  
10 this Agreement.

11 The Parties believe this Agreement is a fair, adequate, and reasonable settlement of  
12 the Action and have arrived at this Agreement after extensive arms-length negotiations,  
13 including through two Settlement Conferences with the Honorable Judge Laurel Beeler,  
14 which took place on July 16, 2019, and December 9, 2019.

15 Considering the benefits that Plaintiff and the Class Members will receive from  
16 settlement of the Action and the risks of litigation, Class Counsel have concluded that the  
17 terms and conditions of this Agreement are fair, reasonable, and in the best interests of  
18 Plaintiff and the Class Members. Plaintiff has agreed that Defendants shall be released from  
19 the Released Equitable Claims pursuant to the terms and provisions of this Agreement and  
20 has agreed to the dismissal with prejudice of this Action and all Released Equitable Claims,  
21 as defined in Section I.R.

22 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among  
23 the Parties, through their respective attorneys, subject to the final approval of the Court  
24 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the  
25 benefits flowing to the Parties from the Agreement, that the Released Equitable Claims shall  
26 be compromised, settled, forever released, barred, and dismissed with prejudice, upon and  
27 subject to the following terms and conditions:

1 **I. DEFINITIONS**

2 Wherever used in this Agreement, the following terms have the meanings set forth  
3 below:

- 4 **A.** “**Action**” means the lawsuit captioned *Saravia v. Barr, et al.*, Case No. 3:17-  
5 cv-03615 (VC) (LB) (N.D. Cal.).
- 6 **B.** “**Claim 4 Benefits Subclass**” means the class for purposes of Plaintiff’s  
7 Claim 4 shall be defined to include all Settlement Class Members who also  
8 applied for asylum, SIJ status, T or U nonimmigrant status, or a waiver of  
9 inadmissibility or application for adjustment of status that is related to such  
10 an application for asylum, SIJ status or T or U nonimmigrant status, before  
11 the age of 21, and had or will have an application for asylum, SIJ status, T or  
12 U nonimmigrant status, or a waiver of inadmissibility or adjustment of status  
13 that is related to such an application denied by USCIS when any information  
14 that the noncitizen is or may have been affiliated with a gang is a basis for the  
15 denial.
- 16 **C.** “**Class Counsel**” means counsel for Plaintiff and Class Members in this  
17 action, Martin S. Schenker, Ashley K. Corkery, and Evan G. Slovak (Cooley  
18 LLP); William Freeman and Sean Riordan (ACLU Foundation of Northern  
19 California); Stephen B. Kang (ACLU Immigrants’ Rights Project); Holly S.  
20 Cooper (Law Offices of Holly Cooper); and Amy Belsher and Jessica Perry  
21 (New York Civil Liberties Union Foundation), and their successors.
- 22 **D.** “**Class Members**” means members of the Settlement Class.
- 23 **E.** “**Classwide Settlement**” means the settlement of the claims asserted by  
24 Plaintiff, on behalf of herself and others similarly situated, in the SAC, as  
25 reflected in this Agreement.
- 26 **F.** “**Defendants**” means William P. Barr, Attorney General of the United States;  
27 Chad R. Wolf, Acting Secretary of DHS; Tony H. Pham, Senior Official  
28

1 Performing the Duties of the Director; Alex M. Azar II, Secretary of HHS;  
2 Lynn A. Johnson, Assistant Secretary for the Administration for Children and  
3 Families; Heidi H. Stirrup, Acting Director of ORR; Elicia Smith, Federal  
4 Field Specialist of the ORR; Joseph B. Edlow, Deputy Director for Policy,  
5 USCIS; and James McHenry, Director of EOIR, and their successors.

6 **G. “Effective Date”** means the date the Court issues an order finally approving  
7 this Agreement.

8 **H. “Final Fairness Hearing”** means the hearing at which the Court decides  
9 whether to approve the Classwide Settlement as being fair, reasonable and  
10 adequate.<sup>1</sup>

11 **I. “Government”** means the United States federal government agencies whose  
12 heads are named Defendants in the Action, including DHS, ICE, USCIS,  
13 HHS, ORR and EOIR.

14 **J. “Minor”** means any person under the age of 18 years. The term “minor”  
15 shall not include an emancipated minor or a person who has been  
16 incarcerated due to a conviction for a criminal offense as an adult.  
17 Defendants shall treat all persons who are under the age of 18 but not  
18 included within the definition of “minor” as adults for all purposes, including  
19 release on bond or recognizance.

20 **K. “Orders”** means Judge Chhabria’s November 20, 2017 order granting  
21 Plaintiff’s motion for a preliminary injunction (ECF No. 100) and December  
22 3, 2018 order clarifying the class definition (ECF No. 173).

23 **L. “Party or Parties”** means, in the singular one of and in the plural all of  
24 Plaintiff and Defendants.

25 **M. “Plaintiff”** means Ilsa Saravia, as next friend for A.H., a minor at the time

26  
27 <sup>1</sup> Counsel for Defendants shall not travel to San Francisco for the Fairness hearing, due to the inherent risks of  
28 travel related to the current COVID-19 pandemic.



1 Saravia filed the above-captioned matter.

2 **N. “Plaintiff’s Claims 1 and 2”** means Plaintiff’s First Claim for Relief in the  
3 SAC, which challenges the Government’s allegedly unlawful arrest of  
4 unaccompanied alien children (“UACs”) released to a sponsor in violation of  
5 the Fourth Amendment and Plaintiff’s Second Claim for Relief, which  
6 challenges the Government’s alleged systematic deprivation of the liberty and  
7 family integrity rights of these sponsored UACs in violation of the Fifth  
8 Amendment and the Trafficking Victims Protection Reauthorization Act (  
9 “TVPRA”).

10 **O. “Plaintiff’s Claim 3”** means Plaintiff’s Third Claim for Relief in the SAC,  
11 which challenges the Government’s alleged restrictive placement of Class  
12 Members in secure and staff secure ORR facilities in violation of substantive  
13 due process.

14 **P. “Plaintiff’s Claim 4”** means Plaintiff’s Fourth Claim for Relief in the SAC,  
15 which challenges the Government’s alleged denial of immigration benefits  
16 based on unsubstantiated gang allegations, in violation of the Fifth  
17 Amendment and Administrative Procedure Act.

18 **Q. “Released Equitable Claims”** includes all claims, demands, rights, liabilities  
19 and causes of action for declaratory or equitable relief, including injunctive  
20 relief, known or unknown, that:

- 21 **1.** Relate to any alleged unlawful rearrest of Class Members on the basis  
22 of allegations of gang affiliation; and
- 23 **2.** Existed prior to the Preliminary Approval of this Agreement, and  
24 which were or could have been alleged in the Action based on the  
25 same common nucleus of operative facts alleged and the arguments  
26 made by Plaintiff in the Action.

27 **R. “Released Parties”** means Defendants in their official capacities, as well as  
28

1 their past, present, or future department heads, inferior officers, employees,  
2 agents, representatives, or contractors.

3 **S.** “*Saravia Flowchart*” means the document attached as Appendix A, which  
4 ICE has committed to employ in determining Class Member eligibility in  
5 complying with the Orders and this Agreement.

6 **T.** “**Settlement Class**” means the class for purposes of Plaintiff’s Claims 1-3,  
7 which shall be defined to include all noncitizen minors<sup>2</sup> meeting the  
8 following criteria: (1) the noncitizen minor came to the United States as an  
9 unaccompanied minor; (2) the noncitizen minor was previously detained in  
10 ORR custody and then released by ORR to a sponsor; and (3) the noncitizen  
11 minor has been or will be rearrested by DHS<sup>3</sup> on the basis of a removability  
12 warrant based in whole or in part on allegations of gang affiliation. This class  
13 expressly excludes arrests of noncitizen minors who already are subject to  
14 final orders of removal.

15 **U.** “**Subclass Member(s)**” means the members of the Claim 4 Benefits  
16 Subclass.

17 **II. SETTLEMENT RELIEF FOR PLAINTIFF’S CLAIMS 1 AND 2**

18 **A.** The components of the settlement relief to be provided to the Class Members  
19 in connection with Plaintiff’s Claims 1 and 2, including the continued  
20 implementation of the Orders, are set forth in this Section II and are to be  
21 provided by Defendants DHS, ICE, EOIR, HHS, and ORR.

22 <sup>2</sup> The Parties agree that the Settlement Class includes any children designated as  
23 “accompanied children” (“ACs”) at the time of rearrest by Defendants, as long as such  
children otherwise meet the class definition.

24 <sup>3</sup> Most Class Members to date have been rearrested by ICE, and the Parties anticipate that  
25 ICE will remain the principal component within DHS that conducts rearrests. In the event a  
26 Class Member is rearrested by United States Custom and Border Protection (“CBP”), a  
27 component agency of DHS, the provisions of Section II.J will apply. The class expressly  
excludes individuals entering the United States who CBP encounters or apprehends at or  
near the border as a result of routine patrol or checkpoint operations.

1           **B.**     ICE agrees to implement, or continue to implement, the following:

2           **1.**     *Saravia* Flowchart

3           **a.**     Prior to effectuating an arrest of a noncitizen minor, or as  
4                   proximate to the time of the arrest as possible due to exigent  
5                   circumstances or encountering a minor in other circumstances  
6                   outside of a law enforcement operation, Enforcement and  
7                   Removal Operations (“ERO”) and Homeland Security  
8                   Investigations (“HSI”) personnel will refer to the *Saravia*  
9                   Flowchart, attached as Appendix A, to determine Class  
10                  Member eligibility in complying with the Orders.<sup>4</sup>

11           **b.**     ERO and HSI shall make available a version of the *Saravia*  
12                  Flowchart accessible to ICE law enforcement personnel for  
13                  their review and use in the field.

14           **c.**     Nothing in this Agreement shall be construed as a concession  
15                  by Plaintiff that the Flowchart’s interpretation and application  
16                  of the TVPRA, 8 U.S.C. 1232, is correct, including a  
17                  concession that a given child is properly designated  
18                  “accompanied” or “unaccompanied” under the Flowchart.

19           **2.**     Guidance/Broadcasts

20           **a.**     ICE agrees to continue to provide *Saravia* job-aids, including  
21                  a case summary, class definition, and resulting impact, to  
22                  ICE’s personnel and will update these job-aids consistent with  
23                  this Agreement.

24           **b.**     ICE agrees to update the *Saravia* broadcast that was provided

25 \_\_\_\_\_  
26 <sup>4</sup> By way of clarification, if the *Saravia* Flowchart directs either “Case referred to ORR for  
27 placement” or “ICE custody,” the decision maker will proceed to the specified steps to  
28 determine “Does *Saravia* apply?”

1 to the field with the terms of this Agreement and provide it to  
2 its workforce.

3 **3. Training**

4 **a.** ICE agrees to continue to provide *Saravia* training to ICE's  
5 workforce and will update the training consistent with this  
6 Agreement.

7 **b.** HSI also agrees to include *Saravia* settlement requirements  
8 and the *Saravia* Flowchart in its advanced gang training at the  
9 Federal Law Enforcement Training Center. HSI further agrees  
10 to provide its National Gang Unit group supervisors  
11 informative training about guidelines implementing this  
12 Agreement.

13 **c.** ERO and HSI will provide Plaintiff's counsel with copies of  
14 all materials used in conjunction with the trainings referenced  
15 in (i) and (ii) above, subject to any privileges ERO and/or HSI  
16 may assert for the materials. Any invocation of privilege under  
17 this subparagraph shall be accompanied by a privilege log  
18 completed in a manner consistent with the Federal Rules of  
19 Civil Procedure.<sup>5</sup> The parties agree that any exchange of  
20 information will be governed by the provisions of the  
21 protective order entered in this case.

22 **4. HSI (or its successor organization) Operations**

23 **a.** HSI agrees to include the following language in all operations  
24 plans generated through the Investigative Case Management  
25 system:

---

26 <sup>5</sup> These privilege logs will include, at minimum, custodian, date, to/from information,  
27 document description, document type, and privilege claim.

1 OPERATIONAL CONSIDERATIONS UNDER *SARAVIA v.*  
2 *BARR* SETTLEMENT AGREEMENT: *Saravia* class  
3 members include any noncitizen minor who (1) came to the  
4 United States as an unaccompanied alien child; (2) was  
5 previously in Department of Health and Human Services  
6 Office of Refugee Resettlement (ORR) custody and then  
7 released by ORR to a sponsor; and (3) has been or will be  
8 rearrested by ICE on the basis of a removability warrant based  
9 in whole or in part on allegations of gang affiliation. HSI must  
10 contact their local OPLA field office as soon as operationally  
11 possible when there is a probability of targeting or arresting a  
12 *Saravia* class member, or if a *Saravia* class member is  
13 identified after arrest. Under the terms of the settlement  
14 agreement, *Saravia* class members are entitled to expedited  
15 custody hearings and the government is required to prove that  
16 there has been change of circumstances to justify ICE's  
17 rearrest of the minor.

18 **b.** Pre-operation briefings/teleconferences held prior to  
19 operations will include:

20 (1) A notice for the briefing/teleconference sent to all HSI  
21 law enforcement participants, including the name, start  
22 date, and location of the operation, along with JFRMU  
23 and OPLA *Saravia* settlement agreement subject  
24 matter expert contact information.

25 (2) A copy of the *Saravia* Flowchart.

26 (3) ICE Headquarters and field personnel will participate  
27 in the briefings and/or teleconferences and *Saravia*  
28 subject matter experts will be available to field  
questions.

(4) OPLA will provide guidance regarding UACs who  
may be encountered as part of the operation and this  
Agreement.

**5. ERO Operations**

**a.** ERO will include in its operations plan guidance that discusses  
or summarizes *Saravia* and the requirement in identifying

1 Class Members and complying with the terms of this  
2 Agreement.

3 (1) The *Saravia* Flowchart and JFRMU subject matter  
4 expert contact information will be presented to ICE  
5 personnel participating in an operation.

6 b. ERO will include and abide by the following language in its  
7 operation plans:

8 During enforcement actions, officers may encounter minors  
9 who are unaccompanied alien children (UAC) or accompanied  
10 children (AC). If a minor is a UAC upon encounter the law  
11 requires that ICE notify ORR within 48 hours of the encounter  
12 and transfer the minor to Office of Refugee Resettlement  
13 (ORR) within 72 hours. AC's would be subject to ICE custody  
14 but only in very limited circumstances. However, specific  
15 requirements apply to minors who are *Saravia* class members.  
16 Any minor is potentially a *Saravia* class member and subject  
17 to the terms of the *Saravia* settlement agreement. The *Saravia*  
18 settlement may apply to all minors, not just UAC, if they had a  
19 prior encounter with DHS as a UAC and they were previously  
20 in ORR custody. (*See Saravia Settlement Agreement*, dated  
21 \_\_\_\_\_, 2020.) To the extent possible, officers should  
22 determine whether a minor is a *Saravia* class member prior to  
23 encounter. Upon encountering a minor, the local FOJC shall  
24 be contacted for guidance. If this person is unavailable,  
25 contact the local Office of the Principal Legal Advisor for  
26 guidance regarding the applicability of the TVPRA and to  
27 verify potential *Saravia* class membership. Prior to arresting  
28 the minor – or as close to the time of arrest as possible if  
exigent circumstances apply or if the encounter took place  
outside of a law enforcement operation – refer to the *Saravia*  
Flowchart to determine class member eligibility. *Saravia* class  
members whose circumstances have not changed since their  
last release from ORR, including UACs and ACs, will be  
placed by ERO officers in the care of an available sponsor to  
whom the UAC or AC was previously released, or to  
immediate family members who have no ascertainable  
criminal history and/or are not targets of the operation. If the  
minor is a UAC, officers should notify ORR at 202-401-5709  
that the UAC was encountered within 48 hours of the  
encounter even if they cannot be apprehended due to *Saravia*  
requirements. If a UAC is placed under arrest, officers/agents  
should contact ORR upon completion of processing.

26 C. After a Class Member is rearrested, ICE will issue a notice (or the equivalent)  
27 of a *Saravia* Hearing (a “*Saravia* Notice”). Service and contents of the  
28

1 *Saravia* Notice shall include the following:

- 2 **1.** ICE shall serve by U.S. mail, e-mail, or in person, the *Saravia* Notice  
3 on the Class Member's sponsor of record.
- 4 **2.** ICE shall provide the *Saravia* Notice to Class Counsel and the Class  
5 Member's immigration counsel, if any, at the time it is served on the  
6 Class Member's sponsor, or as soon as possible thereafter.
- 7 **3.** This *Saravia* Notice shall specify that the class member may select the  
8 venue where the *Saravia* Hearing is to take place: either jurisdiction  
9 of arrest, jurisdiction of residence, or jurisdiction of detention.
- 10 **4.** The *Saravia* Notice shall include the nature of the proceedings, the  
11 legal authority under which the proceedings are conducted, and the  
12 specific acts or conduct alleged that provide the authority for the  
13 rearrest.
- 14 **5.** The *Saravia* Notice will be served on the minor and his or her  
15 counsel, if any within 48 hours of rearrest.

16 **D.** ICE will file the Class Members' *Saravia* Notice with the immigration court  
17 in the jurisdiction of the Class Member's rearrest pursuant to Section II.C as  
18 soon as practicable. A Class Member who receives a *Saravia* Notice will be  
19 entitled to *Saravia* Hearing within ten (10) calendar days of rearrest, unless a  
20 continuance is granted or venue is changed as described in Section II.C.3  
21 above and Section II.E below.

22 **E.** A Class Member who receives a *Saravia* Notice may request a continuance  
23 from the court presiding over the Class Member's docketed *Saravia* Hearing,  
24 including a request for an extension of time before the commencement of the  
25 hearing or following the conclusion of the Government's presentation of its  
26 evidence at the *Saravia* Hearing. ICE will not oppose the initial request for a  
27 continuance.

1           **1.** Notwithstanding the foregoing, a Class Member may also request a  
2           subsequent continuance or continuances for good cause shown. ICE  
3           may oppose a subsequent continuance or continuances.

4           **2.** If a scheduled *Saravia* Hearing must be postponed on the day of the  
5           proceeding by no fault of the Class Member, such as due to inclement  
6           weather, judicial adjournment (e.g., illness or sickness of the judge),  
7           or other similar situations, ICE will not oppose a continuance.

8           **F.** The venue for *Saravia* Hearings shall be as follows:

9           **1.** The *Saravia* Hearing will take place in the immigration court closest  
10           to the location of the Class Member's rearrest unless, within five days  
11           of receiving the notice of *Saravia* Hearing, the Class Member elects to  
12           have the hearing take place in the immigration court closest to the  
13           location of the Class Member's current detention or the location of the  
14           Class Member's residence. The noncitizen minor's filing of any such  
15           motion will restart the 10-day clock for conducting the *Saravia*  
16           Hearing.

17           **2.** If the noncitizen is in HHS custody, the noncitizen minor may select  
18           whether the *Saravia* Hearing will take place in the immigration court  
19           closest to the location of the care provider (current detention), in the  
20           immigration court closest to the location of rearrest, or in the  
21           immigration court closest to the location the minor's residence, except  
22           that a hearing will not be required to be held in the immigration court  
23           closest to the location or residence of rearrest if ORR certifies that  
24           there is no care provider willing to accept the noncitizen that is  
25           located within a three hours' drive of the immigration court for  
26           those jurisdictions.

27           **3.** All *Saravia* Hearing proceedings prior to the in-person *Saravia*  
28



1                   Hearing, such as requests for continuances, may be conducted by  
2                   video teleconferencing (“VTC”), or teleconference.

3           **G.**     The burden of proof at *Saravia* Hearings is on ICE to establish the  
4           circumstances have changed such that the Class Member now presents a  
5           danger to the community or is a flight risk, as defined by the Board of  
6           Immigration Appeals.

7           **H.**     ICE shall have a procedure whereby the name and identifying information of  
8           any noncitizen minor detained by DHS, or who is a target for rearrest, is  
9           promptly queried against the appropriate databases of all sponsored  
10          noncitizen minors to determine whether the noncitizen minor was previously  
11          released to a sponsor by ORR, and otherwise qualifies as a Class Member,  
12          and should be entitled to a *Saravia* Hearing under the terms of this  
13          Agreement.

14          **I.**     ICE agrees to ongoing, timely, and accurate reporting to Class Counsel  
15          regarding the rearrest of Class Members is required, including by serving any  
16          *Saravia* Notice at or immediately after the time it is issued, and promptly  
17          responding to Class Counsel’s requests for information regarding the  
18          scheduling, status, or outcome of any *Saravia* Hearing.

19          **J.**     In the event a Class Member is rearrested by CBP, CBP shall transfer any  
20          unaccompanied Class Member to ORR consistent with the provisions of the  
21          TVPRA, 8 U.S.C. 1232(b)(3). If the Class Member is accompanied, CBP  
22          shall transfer the Class Member to ICE within seventy-two hours, absent  
23          exceptional circumstances. The term “exceptional circumstances” as used in  
24          this paragraph shall have the same meaning as in 8 U.S.C. 1232(b)(3). The  
25          time for ICE or ORR to perform the obligations set forth in this Agreement  
26          shall begin to run from when the Class Member enters the custody of ICE or  
27          HHS (ORR).

1 **III. SETTLEMENT RELIEF FOR PLAINTIFF'S CLAIM 3**

2 **A.** The components of the settlement relief to be provided to the members of the  
3 Settlement Class in connection with Plaintiff's Claim 3 are set forth in this  
4 Section III and are to be provided by Defendant ORR.

5 **B.** Where a prior sponsor is willing to resume custody over a Class Member who  
6 prevailed at a *Saravia* Hearing, and that Class Member was rearrested prior to  
7 the *Saravia* Hearing, that Class Member must be released to his or her  
8 sponsor within three (3) calendar days, except under circumstances described  
9 in Section III.C below.

10 **C.** ORR will not release a Class Member who prevailed at the *Saravia* Hearing  
11 to the previous sponsors, where:

12 **1.** The sponsor is physically not available anymore (e.g., removed or  
13 imprisoned or cannot be located or is not willing to take the minor  
14 back);

15 **2.** ORR has evidence that the prior sponsor, or individuals in the  
16 sponsor's household, are abusing or neglecting the Class Member or  
17 other child in the sponsor's home; or

18 **3.** The Class Member was previously released to a Category 2b or  
19 Category 3 sponsor but the Class Member was not living with his or  
20 her Category 2b or Category 3 sponsors immediately prior to arrest.  
21 For Class Members who are rearrested by ICE after serving time in a  
22 local jail, ORR will release to the previous Category 2b or Category 3  
23 sponsor if the UAC was living with the Category 2b or Category 3  
24 sponsor immediately prior to their arrest by local authorities.

25 **D.** For a Class Member who prevailed at the *Saravia* Hearing, but who is not  
26 released to the prior sponsor pursuant to Section III.C above, ORR will  
27 conduct sponsorship determination proceedings pursuant to the requirements  
28

1 of the TVPRA and its policies for release to a sponsor, and any other  
2 applicable law. In connection with this process, ORR shall not use  
3 allegations of gang affiliation that served as a basis for arrest as a basis to  
4 deny the Class Member's release to a sponsor.

5 **E.** A Class Member who prevails at his or her *Saravia* Hearing, but who cannot  
6 be released to the prior sponsor pursuant to Section III.C above, will be  
7 placed in a shelter if there is placement available in a shelter where the care  
8 provider is willing and able to accept the child. This Agreement does not  
9 affect ORR's ability to place Class Members in influx facilities if it has  
10 limited space available, and/or ORR's ability to place Class Members in  
11 RTCs if a licensed psychiatrist or psychologist has found that the child poses  
12 a danger to self or others. This Agreement similarly does not affect any Class  
13 Member's rights to challenge their placement in an influx facility or  
14 Residential Treatment Center (RTC) under any applicable law.

15 **F.** For three years after the Effective Date of the Agreement, whenever ORR  
16 concludes that a Class Member cannot be returned to a prior sponsor, ORR  
17 will inform Class Counsel of the reasons why the sponsor cannot be returned  
18 within seventy-two (72) hours of reaching that conclusion, for the purpose of  
19 monitoring compliance with this Agreement.

20 **G.** If the Class Member prevails at the *Saravia* Hearing, ORR cannot conclude  
21 that the Class Member's prior sponsor is no longer suitable, or is neglecting  
22 or abusing the child, based on the rationale that the prior sponsor is unable to  
23 prevent the Class Member from associating or affiliating with alleged gang  
24 members.

25 **IV. SETTLEMENT RELIEF FOR PLAINTIFF'S CLAIM 4**

26 **A.** The components of the settlement relief to be provided to the members of the  
27 Claim 4 Benefits Subclass are set forth in this Section IV and are to be  
28

1 provided by Defendant USCIS.

2 **B.** Programmatic Changes - SIJ Petitions

3 **1.** USCIS agrees it will not refuse its consent to a request for SIJ  
4 classification based in whole or in part on the fact that the state court  
5 did not consider or sufficiently consider evidence of the petitioner's  
6 gang affiliation when making its determination that it was not in the  
7 best interest of the child to return to his or her home country.

8 **2.** USCIS agrees that it will not revoke a petition for SIJ classification  
9 based in whole or in part on the fact that the state court's best interest  
10 determination was not made with consideration of the petitioner's  
11 gang affiliation.

12 **3.** USCIS agrees that it will not use its consent authority to reweigh the  
13 evidence the juvenile court considered when it issued the predicate  
14 order.

15 **4.** USCIS agrees that it will not refuse consent for SIJ classification on  
16 the basis that:

17 **a.** the state court did not consider allegations of gang affiliation  
18 in deciding whether to issue a predicate order, or the  
19 application does not disclose sufficient information concerning  
20 whether the state court considered allegations of gang  
21 affiliation;

22 **b.** the applicant did not present evidence of his gang affiliation to  
23 the state court, where gang-related issues were never raised to  
24 the state court and gang-related issues did not form a basis for  
25 any of the state court's findings in issuing the predicate order;

26 **c.** USCIS considers the state court's evidentiary record  
27 incomplete, or cannot determine whether the state court's  
28

1 evidentiary record was complete, on the subject of gang  
2 affiliation (for example, where the petitioner raised fear of  
3 gangs as a partial basis for the best interests finding, but the  
4 state court did not consider any evidence of petitioner’s gang  
5 affiliation); and

6 **d.** the state court issued a predicate order after expressly  
7 considering evidence of the applicant’s alleged gang  
8 affiliation, but USCIS deems that evidence was incomplete or  
9 cannot determine whether the state court record was complete  
10 (for example, where USCIS believes the applicant should have  
11 disclosed additional evidence of gang affiliation to the state  
12 court than is apparent in the record).

13 **5.** This section will apply prospectively to all SIJ petitions, including  
14 those re-adjudicated pursuant to Section IV.C.1. below.

15 **C.** The substantive eligibility criteria for immigration benefits shall be as  
16 follows:

17 **1.** Special Immigrant Juvenile (“SIJ”) Classification

18 **a.** USCIS agrees to adjudicate SIJ petitions in accordance with  
19 provisions herein.

20 **b.** For any Subclass Members (as defined above) who identify  
21 themselves to USCIS by filing a no-cost motion to reopen that  
22 includes in bold on the I-290B “Saravia Class Member – FEE  
23 EXEMPT” or who the Parties jointly identify as qualifying  
24 Subclass Members as having received a SIJ revocation or  
25 denial, USCIS agrees to:

26 **(1)** set aside the SIJ revocations and denials to the extent  
27 USCIS’s decision to withhold or revoke its consent to  
28

1 grant SIJ classification was based at least in part on  
2 alleged gang affiliation; and

3 (2) to adjudicate their SIJ classification applications  
4 pursuant to the procedures set forth above.

5 2. Other immigration benefits shall be as follows:

6 a. An agreement from USCIS that it will not consider allegations  
7 of gang affiliation in determining Subclass Members' statutory  
8 eligibility for asylum, T or U nonimmigrant status, or waiver  
9 of inadmissibility or adjustment of status that is related to such  
10 an application for asylum, SIJ status or T or U nonimmigrant  
11 status, except to the extent permitted by the INA and other  
12 applicable law.

13 b. An agreement that when USCIS determines whether to grant,  
14 deny, or revoke a particular benefit to a Subclass Member as a  
15 matter of statutory eligibility (pursuant to the enumerated  
16 circumstances above) or in the exercise of discretion, and  
17 concludes that it intends to deny the benefit based at least in  
18 part on alleged gang affiliation, it will use the procedural  
19 requirements set forth herein before denying or revoking the  
20 benefit.

21 c. Subclass Members (as defined above) whose applications  
22 were denied or revoked at least in part due to allegations of  
23 gang affiliation prior to the Claim 4 Implementation Date may  
24 submit a no-cost motion to reconsider that includes in bold on  
25 the I-290B "Saravia Class Member – FEE EXEMPT." For  
26 these Subclass Members, USCIS agrees to re-open and  
27 adjudicate their benefits pursuant to the procedures set forth  
28

1                   herein.

2           **3.**     The procedures for when USCIS seeks to use allegations of gang  
3           affiliation to deny or revoke immigration benefits shall be as follows:

4           **a.**     No conclusory third-party statement of a petitioner’s gang  
5           membership or affiliation without additional evidence will be  
6           deemed sufficient evidence upon which USCIS will base a  
7           decision.

8           **b.**     Adequate notice shall be provided to the applicant before  
9           USCIS denies an immigration benefit partially or entirely on  
10          the basis of suspected gang affiliation.

11          **(1)**     An agreement from USCIS that if USCIS intends to  
12          deny or revoke a Subclass Member’s application for an  
13          application for asylum, T or U nonimmigrant status, or  
14          a waiver of inadmissibility or application for  
15          adjustment of status that is related to such an  
16          application for asylum, SIJ status or T or U  
17          nonimmigrant status based even partially on suspected  
18          gang affiliation, USCIS must provide adequate notice  
19          of the basis of the denial or revocation and a  
20          meaningful opportunity to be heard before denying or  
21          revoking the benefit.

22          **(2)**     Adequate notice shall include, at a minimum, the  
23          following:

24          **(a)**     USCIS will send a Request for Evidence (   
25                  “RFE”), Notice of Intent to Deny (“NOID”), or  
26                  Notice of Intent to Revoke (“NOIR”) to the  
27                  applicant informing them of the agency’s intent  
28

1 to deny or revoke the benefit. If allegations of  
2 gang affiliation are even a partial basis for the  
3 denial or revocation, the agency will articulate  
4 the factual basis for the allegations of suspected  
5 gang affiliation at the time it issues the RFE,  
6 NOID, or NOIR.

7 **(b)** USCIS will provide the applicant to the  
8 maximum extent possible all evidence in  
9 USCIS's possession concerning gang  
10 allegations that it was aware of and relied on in  
11 its determination to issue said RFE, NOID, or  
12 NOIR to the extent allowed by 8 C.F.R.  
13 § 103.2 (b)(16)(iii)-(iv). This evidence may  
14 include, but is not limited to the following:

15 **(i)** Gang memoranda in the applicant's A-  
16 file;

17 **(ii)** Any I-213s that reference gang  
18 affiliation; and

19 **(iii)** Documentary evidence in DHS's  
20 possession concerning the alleged gang  
21 affiliation.

22 **(c)** Where USCIS relies on evidence, documentary,  
23 recorded, or otherwise, to determine that the  
24 applicant is affiliated with a gang, but declines  
25 to produce the underlying evidence or records it  
26 has relied on to make that determination  
27 pursuant to 8 C.F.R. §§ 103.2 (b)(16)(iii)-(iv),  
28 USCIS shall provide, to the maximum extent



1 possible, a detailed description of that evidence  
2 in a manner sufficient to clearly identify the  
3 derogatory information and allow the applicant  
4 to rebut it. That description shall include, if  
5 appropriate: descriptions of the source, agency,  
6 or officer that provided the information;  
7 descriptions of any incidents of alleged conduct  
8 or criminal activity described in the evidence,  
9 and the dates they took place; and, to the extent  
10 possible, any indications as to whether the  
11 preparer of the evidence is making statements  
12 based on personal knowledge or that the  
13 evidence was based on the knowledge of  
14 people other than the preparer.

15 (d) The applicant may then respond to the evidence  
16 USCIS presents with rebuttal evidence  
17 sufficient to demonstrate, by a preponderance  
18 of the evidence, statutory eligibility or  
19 entitlement to a positive exercise of discretion  
20 to receive the benefit. The applicant will be  
21 given 87 days to respond to an RFE, 33 days to  
22 respond to a NOIR, and 33 days to respond to a  
23 NOID. Where the applicant may require  
24 additional time to respond due to circumstances  
25 beyond the applicant's control, such as  
26 obtaining evidence from a separate state or  
27 federal governmental agency, the applicant  
28 may apply to administratively close the case for

1 six months, and request that USCIS re-issue the  
2 RFE, NOID, or NOIR after the six months has  
3 elapsed.

4 **(e)** USCIS procedures for making a discretionary  
5 decision shall provide for the weighing of all  
6 positive and negative factors. A notice of  
7 intent to deny or revoke a benefit on the basis  
8 of discretion will provide the analysis of such  
9 positive and negative factors that could assist or  
10 potentially assist the applicant in rebutting the  
11 gang allegation.

12 **(f)** Examples of relevant, probative, and credible  
13 rebuttal evidence include, but are not limited to:

14 **(i)** Credible testimony that the applicant is  
15 not a gang member, which may be  
16 provided in the form of an interview  
17 with USCIS;

18 **(ii)** Family and community support in the  
19 United States;

20 **(iii)** Participation in secondary or post-  
21 secondary education;

22 **(iv)** Existence of value and service to the  
23 community;

24 **(v)** Proof of genuine rehabilitation (if the  
25 applicant was previously affiliated with  
26 a gang).

27 **(g)** USCIS will review the applicant's rebuttal  
28

1 evidence. If USCIS concludes that the  
2 applicant rebutted the gang allegations by a  
3 preponderance of the evidence, it will proceed  
4 with processing the benefit application.

5 **(h)** If USCIS concludes that the applicant did not  
6 rebut the gang allegations by a preponderance  
7 of the evidence, USCIS’s decision will include  
8 an explanation of the basis for its conclusion in  
9 detail addressing each piece of rebuttal  
10 evidence that the applicant submits, and explain  
11 why that rebuttal evidence was insufficient to  
12 meet the applicant’s burden.

13 **(i)** Any denial based at least in part upon evidence  
14 of gang affiliation will undergo secondary  
15 review before issuance.

16 **(j)** The applicant may then appeal the agency’s  
17 denial of a petition for T or U nonimmigrant  
18 status, or adjustment of status for T or U  
19 nonimmigrants to the Administrative Appeals  
20 Office (“AAO”) for appellate review. An  
21 applicant whose asylum application is referred  
22 to the Immigration Judge will have the  
23 opportunity for a de novo review of the  
24 application for asylum and any related  
25 adjustment and waiver applications over which  
26 the IJ has jurisdiction in removal proceedings.

27 **(k)** The RFE, NOID, or NOIR provided to any  
28 identified Subclass Member should inform the

1 applicant of the specific procedural rights  
2 granted under this settlement. A denial or  
3 revocation by USCIS will summarize the  
4 appropriate USCIS appeals process.

5 **V. RELEASE OF CLAIMS AND PRESERVATION OF DEFENSES**

6 **A. Release.** Upon final approval of this Agreement by the Court, Plaintiff and all  
7 Class Members and Subclass Members waive and release all Released Parties  
8 from the Released Equitable Claims. Nothing in this Agreement shall have  
9 any preclusive effect on any damages claim by Plaintiff or any Class Member  
10 or Subclass Member, or any claim by Plaintiff or any Class Member or  
11 Subclass Member concerning any individualized challenges to their custody  
12 or denial/revocation of benefits.

13 **B. Preservation of Defenses.** By agreeing to this Agreement and the releases  
14 contained herein, Defendants do not waive any defenses available to any  
15 Defendant or the United States in any other pending or future action to claims  
16 that were or could have been made in the Action that arise from the same  
17 common nucleus of operative facts alleged by Plaintiff in his pleadings and  
18 the arguments made in the Action.

19 **VI. RETENTION OF JURISDICTION AND DISMISSAL**

20 **A.** This Agreement shall become effective upon final court approval (the  
21 “Effective Date”). Promptly following the Effective Date, Plaintiff shall file  
22 a stipulated request for dismissal and judgment. This Action shall be  
23 dismissed upon the Court’s approval of the stipulated request for dismissal  
24 and entry of judgment (the “Dismissal Date”).

25 **B.** Notwithstanding such dismissal, the Court will retain jurisdiction following  
26 the Dismissal Date to interpret or enforce this Agreement and all terms of this  
27 Agreement shall remain in full force and effect for five (5) years following  
28

1 the Dismissal Date, except as expressly provided in Section VI.C, below. The  
2 parties agree that the Agreement terminates at the conclusion of the five (5)  
3 year term. The Parties further agree that they shall jointly request that the  
4 stipulated request for dismissal and judgment shall provide as follows:

5 The Court shall retain jurisdiction over all disputes  
6 between and among the Parties arising out of the  
7 Agreement, including but not limited to interpretation and  
enforcement of the terms of the Agreement, except as  
otherwise provided in the Agreement, for a term of five (5)  
years.

8 **C.** For three (3) years following the Dismissal Date, Defendants will continue to  
9 provide the notices to Class Counsel required by Sections II.I and III.F.  
10 Thereafter, the *Saravia* Notice shall only be provided to the attorney or  
11 accredited representative identified on a properly executed and filed Form  
12 EOIR 28 or G-28 Notice of Entry of Appearance as Attorney or Accredited  
13 Representative and sponsor. Any attorney or accredited representative  
14 appearing on behalf of a class member at the *Saravia* Hearing or in  
15 connection with an appeal to the Board of Immigration Appeals must also  
16 comply with all requirements for filing a Notice of Entry of Appearance with  
17 the Immigration Court or Board of Immigration Appeals as appropriate.

18 **VII. DISPUTE RESOLUTION PROCEDURES.**

19 **A. Disputes Regarding Implementation.** The Government will implement the  
20 terms laid out in Claims 1-3 of this Agreement within thirty (30) days of the  
21 Effective Date (the “Implementation Date”). USCIS will implement the  
22 terms laid out in Claim 4 within sixty (60) days of the Effective Date (the  
23 “Claim 4 Implementation Date”). Within ten (10) days of the  
24 Implementation Date and the Claim 4 Implementation Date, respectively, the  
25 Government will provide written reports confirming that it has implemented  
26 the terms of this Agreement and detailing the steps the Government has taken  
27  
28

1 to do so (the “Implementation Report”). For the purposes of Claim 4,  
2 implementation refers to the programmatic change outlined in Section IV.B,  
3 the acceptance of requests to re-open Class Member cases upon request as  
4 provided above, and the ability to adjudicate Class Member applications per  
5 the procedures outlined above. All Class Member applications will be  
6 adjudicated in the normal course of business and will not be given special  
7 priority over applications by non-Class Members.

8 **1.** If, after receiving an Implementation Report (or in the event the  
9 Government fails to timely provide an Implementation Report on  
10 either the Implementation Date or the Claim 4 Implementation Date),  
11 Plaintiff believes that any part of this Agreement has not been  
12 implemented or lacks sufficient information to determine whether the  
13 Agreement has been implemented, Plaintiff will provide the  
14 Government with written notice and an opportunity to cure any such  
15 failure within thirty (30) days of such written notice (the “Cure  
16 Period”). The Parties may agree to extend the Cure Period in writing.

17 **2.** If, after the expiration of the Cure Period (and any mutually agreed  
18 extensions thereof), Plaintiff believes that the Government has still  
19 failed to implement the terms of this Agreement or to provide the  
20 Implementation Report, either Party may seek review from Judge  
21 Beeler (or her successor, hereinafter, the “Mediator”). The Mediator  
22 shall be empowered to issue binding decisions and to order the  
23 Government to take specific measures necessary to implement the  
24 terms of this Agreement.

25 **3.** Notwithstanding the foregoing, if before the Cure Period Expires,  
26 Plaintiff has a good faith belief that immediate, irreparable harm to a  
27 Class Member or members is imminent and cannot be resolved within  
28

1 the thirty (30) day time frame specified in Section VII.A.1, the Parties  
2 agree that Plaintiff need not wait for the expiration of the Cure Period  
3 and may seek the Mediator's immediate review.

4 **B. Disputes Regarding Compliance.** The Parties also acknowledge that  
5 disputes may arise as to the interpretation or scope of, or the Government's  
6 compliance with, the Agreement (or which otherwise arise out of or related to  
7 the Agreement), after the Implementation Date (a "Dispute").

8 **1.** If either Party has a good faith belief that the other Party is not in  
9 compliance with the requirements of this Agreement, the complaining  
10 Party shall promptly notify the other Party, in writing, of the specific  
11 grounds upon which noncompliance is alleged (the "Notice of  
12 Dispute"). The Notice of Dispute setting forth the disputed issue(s)

13 shall be served on Plaintiff to:

14 STEPHEN KANG  
15 ACLU IMMIGRANTS' RIGHTS PROJECT  
16 39 Drumm Street  
San Francisco, CA 94111  
skang@aclu.org

17 And on Defendants to:

18 NICOLE N. MURLEY  
19 Senior Litigation Counsel  
20 Department of Justice  
Civil Division  
21 Office of Immigration Litigation  
District Court Section  
22 P.O. Box 868  
Washington, D.C. 20044  
23 Tel: (202) 616-0473  
Email: Nicole.Murley@usdoj.gov

24 **2.** The Parties shall promptly meet and confer in a good faith effort to  
25 informally resolve the Dispute. Additionally, at any time upon or  
26 after serving a Notice of Dispute, either Party may reserve with the  
27

1 Mediator a date for the telephonic mediation of the dispute (“Dispute  
2 Mediation”). The Dispute Mediation shall take place no fewer than  
3 ten (10) business days after the service of the Notice of Dispute,  
4 unless the Parties agree otherwise.

5 **3.** If the Dispute cannot be resolved within twenty (20) business days of  
6 the Notice of Dispute or the Mediator agrees that the Parties have  
7 reached a stalemate, then either Party may move to enforce the  
8 Agreement in the United States District Court for the Northern  
9 District of California. Notwithstanding the foregoing, the Parties may  
10 agree to extend the informal and formal mediation periods when  
11 appropriate.

12 **4.** The Parties agree that the statements or conduct occurring at or in  
13 conjunction with the mediation process described in Section VII.B.1-3  
14 of the Agreement shall be confidential and that no public disclosure  
15 shall be made regarding statements made or conduct occurring in the  
16 mediation process at any time before, during, or after the mediation  
17 process. All documents and information disclosed by either Party  
18 during the mediation process shall not be admissible in any judicial  
19 proceeding. All statements or conclusions of the mediator shall not be  
20 admissible in any subsequent judicial proceeding. The parties may  
21 disclose the issues presented and, following the mediation, the final  
22 result may be disclosed.

23 **5.** If Plaintiff has a good faith belief that immediate, irreparable harm to  
24 a Class Member or Members is imminent and cannot be resolved  
25 within the time frames specified in Section VII.B—after first  
26 providing notice of harm to Defendants’ Counsel—the Parties agree  
27 that Plaintiff may make an immediate application for relief to the  
28



United States District Court for the Northern District of California.

**VIII. CLASSWIDE SETTLEMENT PROCEDURES**

**A. Cooperation to Obtain Court Approval.** The Parties shall jointly make reasonable and good faith efforts to secure the Court's approval of the Classwide Settlement.

**B. Preliminary Approval and Provisional Class Certification.** Plaintiff shall prepare and file a motion seeking preliminary approval of the Classwide Settlement and provisional class certification no later than September 25, 2020, and set the preliminary approval hearing for October 15, 2020, at 10:00 a.m., or as soon thereafter as may be convenient for or directed by the Court. The motion for preliminary approval of the Classwide Settlement and provisional class certification must request the Court to:

1. Preliminarily approve the Classwide Settlement as being within the range of a fair, reasonable, and adequate settlement within the meaning of Federal Rule of Civil Procedure 23 and applicable law, and consistent with due process;
2. Preliminarily approve the certification of the Settlement Class and the Claim 4 Benefits Subclass;
3. Appoint Plaintiff as class representative;
4. Appoint Martin S. Schenker, Ashley K. Corkery, and Evan G. Slovak (Cooley LLP), William Freeman and Sean Riordan (ACLU Foundation of Northern California), Stephen B. Kang (ACLU Immigrants' Rights Project), Holly S. Cooper (Law Offices of Holly Cooper), and Amy Belsher and Jessica Perry (New York Civil Liberties Union Foundation) as Class Counsel;
5. Approve the Notice Plan set forth in Section VIII.C;
6. Set the date and time of the Final Fairness Hearing; and

1           7. Stay all proceedings in the Action against Defendants until the Court  
2           renders a final decision on approval of the Classwide Settlement.

3           **C. Notice.** The Parties will propose to the Court that the Class Notice shall be  
4           given to the Class Members upon preliminary approval of the Settlement via  
5           the following means:

6           **1.** The Class Notice shall be substantially in the form of **Exhibit A** to  
7           this Agreement.

8           **2.** Within fourteen (14) days of the Court’s preliminary approval of the  
9           Settlement:

10           **a.** Defendants shall compile a list of the following individuals:  
11           all existing Settlement Class Members who are under 18 years  
12           of age at the time the Class Notice is sent; all Claim 4 Benefits  
13           Subclass Members, and all children who Defendants  
14           previously identified as Class Members (“Class List”). This  
15           List will contain the following information: the Class or  
16           Subclass Member’s name; last known address (if any); last  
17           known address of the Class or Subclass Member’s sponsor (if  
18           any); and last known address of any attorney who is currently  
19           entered as counsel before DHS, USCIS, or EOIR for the Class  
20           or Subclass Member.

21           **b.** Defendants will send a copy of the Class Notice directly via  
22           U.S. Mail to the last known address (if any), or to the last  
23           known address of the sponsor (if any), of all individuals on the  
24           Class List, as well as the last known address of any attorney  
25           who is currently entered as counsel before DHS, USCIS, or  
26           EOIR for an individual on the Class List.<sup>6</sup>

---

27           <sup>6</sup> All mailed and posted Class Notices shall include the Spanish translations provided by  
28

1           c. Defendants will provide Plaintiff with a copy of the Class List.

2           **3.** In addition, the Class Notice shall be distributed by publication as  
3 follows, within seven (7) days of preliminary approval of the  
4 Settlement:

5           **a.** Defendants shall post a copy of the Class Notice in a  
6 reasonably accessible location on a website controlled by  
7 Defendants in accessible formats in English and Spanish.

8           **b.** Defendants shall post a copy of the Class Notice in a  
9 reasonably accessible location in all ORR secure, staff-secure  
10 facilities, and residential treatment centers, and any DHS  
11 facilities where Settlement Class Members are reasonably  
12 likely to be held after rearrest. Within seven (7) days of  
13 preliminary approval, Defendants shall provide Plaintiffs with  
14 a list of all ORR and DHS facilities where they have posted  
15 the Class Notice. Plaintiff may then propose other ORR and  
16 DHS facilities they reasonably believe are likely to hold  
17 Settlement Class Members after rearrest, and the parties will  
18 meet and confer concerning whether the Class Notice should  
19 be posted in those additional facilities.

20           **c.** Plaintiff shall post a copy of the Class Notice on the websites  
21 of the National ACLU, ACLU of Northern California, and  
22 New York Civil Liberties Union Foundation in accessible  
23 formats in English and Spanish;

24           **d.** Plaintiff shall disseminate the Class Notice and Agreement to  
25 all attorneys who have previously represented children at  
26 Saravia Hearings, and are known to Class Counsel. Plaintiff

---

27 Plaintiff and agreed to by the Parties.

1 will also disseminate the Class Notice and Agreement via  
2 electronic mail list-servs of attorneys who provide  
3 immigration legal services to children. Any notices posted on  
4 websites shall remain posted for no less than sixty (60) days.  
5 The Parties will advise the Court as part of the motion for  
6 Final Approval confirming that notice has been issued  
7 according to this Section.

8 **4.** The Parties will make best efforts to agree to amend the Class Notice  
9 and notice procedures as required by the Court in order to obtain  
10 Court approval and adoption of the terms of this Agreement in a final  
11 order in this case.

12 **5.** Nothing in this paragraph or this Agreement shall prevent Class  
13 Counsel from further disseminating the Class Notice to, *inter alia*,  
14 other non-profit organizations and/or legal services providers.  
15 Additionally, nothing in this paragraph or this Agreement shall  
16 prevent Class Counsel from issuing any press release regarding this  
17 Agreement or otherwise obtaining press attention for the Agreement.

18 **D. Objections.** Any Class Member who wishes to object to the fairness,  
19 reasonableness or adequacy of the class relief set forth in Sections II-IV of  
20 this Agreement must mail them to the Class Action Clerk, United States  
21 District Court for the Northern District of California, San Francisco Division,  
22 or file them in person at any location of the United States District Court for  
23 the Northern District of California within forty-five (45) calendar days after  
24 the date the Notice mailing described in Section VIII.C.3.b is complete. The  
25 delivery date is deemed to be the date the objection is deposited in the U.S.  
26 Mail or international mail as evidenced by the postmark. Written objections  
27 must be verified by a declaration under penalty of perjury or a sworn affidavit  
28

1 and must include: (a) the name and case number of the Action, (b) the full  
2 name, address, and telephone number of the person objecting; (c) a statement  
3 of each objection; and (d) a written brief detailing the specific reasons, if any,  
4 for each objection, including any legal and factual support the objector  
5 wishes to bring to the Court's attention and any evidence the objector wishes  
6 to introduce in support of the objection(s). Any Class Member who submits a  
7 written objection, as described in this paragraph, has the option to appear at  
8 the Final Fairness Hearing, either in person or through counsel hired at the  
9 Class Member's expense, to object to the fairness, reasonableness, or  
10 adequacy of the Classwide Settlement. If a Class Member makes an  
11 objection through an attorney, the Class Member shall be responsible for his  
12 or her personal attorneys' fees and costs.

13 **E. Final Order Approving Classwide Settlement.** Before the Final Fairness  
14 Hearing, Plaintiff must apply for Court approval of a proposed Final Order.  
15 In support of the Final Approval Order, the parties shall provide the Court  
16 with declarations attesting to the notice procedures utilized.

17 **F. Notice of Final Approval.** Upon Final Approval of the Settlement, the  
18 Parties shall provide notice of Final Approval to the Class by the following  
19 means:

- 20 **1.** Meeting and conferring concerning language for a final Class Notice  
21 (in English and Spanish), and a shortened version of that Notice for  
22 posting in ORR and DHS facilities, within seven (7) days of Final  
23 Approval;
- 24 **2.** Posting Updated Class Notice (in English and Spanish), to the same  
25 websites and distribution lists as set forth in Section VIII.C.3
- 26 **3.** Within 30 days from the date of Final Approval of the Settlement,  
27 Defendants will mail the Updated Class Notice (in English and  
28

1 Spanish) to each individual on the Class List, and the last known  
2 address of any attorney who is currently entered as counsel before  
3 DHS, USCIS, or EOIR for the Class or Subclass Member.  
4 Defendants will confirm to Class Counsel via email that such mailing  
5 has been sent within five (5) business days of mailing.

- 6 **4.** Defendants will also post and make available the shortened version of  
7 the Updated Class Notice in all facilities described in Section  
8 VIII.3.C.b. Should the Parties become aware of other facilities that  
9 are reasonably likely to hold Class Members, the Parties will meet and  
10 confer on an ongoing basis concerning posting the updated Class  
11 Notice in those facilities.

12 **IX. ADDITIONAL PROVISIONS**

13 **A. No Admission of Wrongdoing.** This Agreement, whether or not executed,  
14 and any proceedings taken pursuant to it:

- 15 **1.** shall not be offered or received against the Defendants as evidence of,  
16 or construed as or deemed to be evidence of, any presumption,  
17 concession, or admission by any of the Defendants of the truth of any  
18 fact alleged by the Plaintiff or the validity of any claim that had been  
19 or could have been asserted in the Action or in any litigation, or the  
20 deficiency of any defense that has been or could have been asserted in  
21 the Action, or of any liability, negligence, fault, or wrongdoing of the  
22 Defendants; or any admission by the Defendants of any violations of,  
23 or failure to comply with, the Constitution, laws or regulations; and  
24 **2.** shall not be offered or received against the Defendants as evidence of  
25 a presumption, concession, or admission of any liability, negligence,  
26 fault, or wrongdoing, nor shall it create any substantive rights or  
27 causes of action against any of the parties to this Agreement, in any  
28

1 other civil, criminal, or administrative action or proceeding, other than  
2 such proceedings as may be necessary to effectuate the provisions of  
3 this Agreement; provided, however, that if this Agreement is  
4 approved by the Court, Defendants may refer to it and rely upon it to  
5 effectuate the liability protection granted them hereunder.

6 **B. Real Parties in Interest.** In executing this Agreement, the Parties warrant  
7 and represent that they, including Plaintiff in her representative capacity on  
8 behalf of the Class Members and Subclass members, are the only persons  
9 having any interest in the claims asserted in this Action. Neither these  
10 claims, nor any part of these claims, have been assigned, granted, or  
11 transferred in any way to any other person, firm, or entity.

12 **C. Voluntary Agreement.** The Parties executed this Agreement voluntarily and  
13 without duress or undue influence.

14 **D. Binding on Successors.** This Agreement binds and benefits the Parties'  
15 respective successors, assigns, legatees, heirs, and personal representatives,  
16 including those which may result from a reorganization of the relevant  
17 Government agencies.

18 **E. Authorization.** Each Party warrants and represents that each Party is fully  
19 entitled and duly authorized to give this complete and final release and  
20 discharge.

21 **F. Entire Agreement.** This Agreement and attached exhibits contain the entire  
22 agreement between the Parties and constitute the complete, final, and  
23 exclusive embodiment of their agreement with respect to the Action. This  
24 Agreement is executed without reliance on any promise, representation, or  
25 warranty by any Party or any Party's representative other than those expressly  
26 set forth in this Agreement.

27 **G. Exhibits.** The exhibits to this Agreement are integral parts of the Agreement  
28

1 and the settlement and are incorporated into this Agreement as though fully  
2 set forth in the Agreement.

3 **H. Modifications and Amendments.** No amendment, change, or modification  
4 to this Agreement shall be valid unless in writing signed by the Parties or  
5 their counsel.

6 **I. Governing Law.** This Agreement is governed by federal law and must be  
7 interpreted under federal law and without regard to conflict of laws  
8 principles.

9 **J. Further Assurances.** The Parties must execute and deliver any additional  
10 papers, documents and other assurances, and must do any other acts  
11 reasonably necessary, to perform their obligations under this Agreement and  
12 to carry out this Agreement's expressed intent.

13 **K. Execution Date.** This Agreement is deemed executed on the date the  
14 Agreement is signed by all of the undersigned.

15 **L. Counterparts.** This Agreement may be executed in counterparts, each of  
16 which constitutes an original, but all of which together constitute one and the  
17 same instrument. Several signature pages may be collected and annexed to  
18 one or more documents to form a complete counterpart. Photocopies or PDFs  
19 of executed copies of this Agreement may be treated as originals.

20 **M. Recitals.** The Recitals are incorporated by this reference and are part of the  
21 Agreement.

22 **N. Severability.** If any provision of this settlement is declared by the Court to  
23 be invalid, void, or unenforceable, the remaining provisions of this Settlement  
24 shall continue in full force and effect, unless the provision declared to be  
25 invalid, void, or unenforceable is material, at which point the Parties shall  
26 attempt in good faith to renegotiate the provision of this Settlement that was  
27 declared invalid, void or unenforceable.



1           **O. Deadlines.** All deadlines in this Agreement will be calculated in accordance  
2 with the guidelines set forth in Federal Rule of Civil Procedure 6(a).

3           **P. Force Majeure.** Any Defendant(s) shall be excused from compliance with  
4 the terms and conditions of this Agreement and required by the  
5 Implementation Date to the extent and for such time that performance is  
6 impossible or impracticable by circumstances that it either could not have  
7 reasonably anticipated or is beyond its reasonable control, including, but not  
8 limited to, any act of God, pandemic disease, fire, flood, earthquake,  
9 explosion, war, or terrorist attack (a “Force Majeure Event”). Any Defendant  
10 seeking an extension from compliance due to the occurrence of a Force  
11 Majeure Event must notify Plaintiff by email as soon as reasonably possible  
12 (but in all events no later than three business days) after the occurrence of the  
13 Force Majeure Event, specifying the nature and extent of the Force Majeure  
14 Event, the anticipated duration of such Defendant(s)’s inability to fully  
15 perform hereunder as a result of such Force Majeure Event, and the efforts  
16 such Defendant(s) is undertaking to mitigate the impact of the Force Majeure  
17 Event. A Defendant(s) whose performance hereunder is impacted by a Force  
18 Majeure event must undertake diligent efforts to minimize the impact of such  
19 Force Majeure Event on its performance. Performance hereunder shall not be  
20 excused for delays to the extent they have occurred regardless of a Force  
21 Majeure Event.

22           The undersigned, by their signatures on behalf of Plaintiff and Defendants, warrant  
23 that upon execution of this Agreement in their representative capacities, their principals,  
24 agents, assignees, employees, successors, and those working for or on behalf of Defendants  
25 and Plaintiff shall be fully and unequivocally bound hereunder to the full extent authorized  
26 by law.

1 Dated: \_\_\_\_\_, 2020

COOLEY LLP

2  
3 By: \_\_\_\_\_  
4 Martin S. Schenker

5 Dated: \_\_\_\_\_, 2020

AMERICAN CIVIL LIBERTIES UNION  
IMMIGRANTS' RIGHTS PROJECT

6  
7 By: \_\_\_\_\_  
8 Stephen B. Kang

9 Dated: \_\_\_\_\_, 2020

10 AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA

11  
12 By: \_\_\_\_\_  
13 William S. Freeman

14 Dated: \_\_\_\_\_, 2020

LAW OFFICES OF HOLLY COOPER

15  
16  
17 By: \_\_\_\_\_  
Holly S. Cooper

18 Dated: \_\_\_\_\_, 2020

19 NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION

20  
21 By: \_\_\_\_\_  
22 Amy Belsher  
23 *Attorneys for Petitioner/Plaintiff*

Dated: \_\_\_\_\_, 2020

UNITED STATES DEPARTMENT OF JUSTICE

By: \_\_\_\_\_

Nicole N. Murley  
*Counsel for Respondents/Defendants*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit A**

## **SARAVIA V. BARR – NOTICE OF PROPOSED SETTLEMENT**

**If you are a non-citizen minor who came to the United States as an unaccompanied child, was released from government custody, and then re-arrested by immigration authorities under suspicion of gang membership, your rights may be affected by a proposed class action settlement.**

A proposed settlement has been reached in a class action lawsuit called *Saravia v. Barr*, Case No. 3:17-cv-03615 (N.D. Cal.). This lawsuit is about the rights of noncitizen minors who were once detained in U.S. government custody by the Office of Refugee Resettlement (“ORR”), released to parents or other sponsors in the United States, and then re-arrested by the government based on allegations of gang membership or affiliation. The parties in the lawsuit have proposed to settle the case, and a federal court must decide whether to approve the settlement.

This Notice will tell you about your rights under this proposed settlement. You are not being sued, and this is not an advertisement. If you think this Settlement relates to you, please read.

### **What is the lawsuit about?**

*Saravia v. Barr* is a federal court case brought on behalf of a class of noncitizen minors who entered the United States as unaccompanied minors, were detained by ORR, were released to a parent or other sponsor, and were later rearrested by immigration officials based on allegations of gang affiliation. A case like this is brought on behalf of a whole group of people who are alleging similar legal disputes.

The case alleges that the rearrest and detention of, and denial of immigration benefits to, these minors violates the U.S. Constitution, the Trafficking Victims Protection Reauthorization Act (“TVPPRA”), and other laws. In November 2017, a federal Judge issued an order requiring that the government provide Class Members with a hearing before an immigration judge within seven days of their rearrest (called a “Saravia Hearing”). See *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197-98 (N.D. Cal. 2017).

After additional litigation, Plaintiff and the government subsequently agreed to a settlement, which will (1) provide Class Members with the right to a Saravia Hearing pursuant to certain procedures, and (2) provide certain rights to Class Members with respect to their applications for certain immigration benefits, including applications for asylum, Special Immigrant Juvenile (“SIJ”) status, or T or U nonimmigrant status.

The government denies any wrongdoing, but is settling the case in order to avoid the expense and resources to keep fighting the case. The Plaintiff and their attorneys believe that the Settlement provides important rights and benefits for the Class, and that it is in the best interests of the Class to settle the case, while avoiding the expense and delay of continuing to litigate the case.

### **Who is included?**

There are two groups of people who will have rights under this Settlement. You may be a “Class Member,” and you may also be a “Subclass Member.”

You may be a Class Member if you:

- Are a noncitizen minor;
- Came to the United States as an unaccompanied minor;
- Were previously detained in Office of Refugee Resettlement (“ORR”) custody and then released to a parent or other sponsor;
- Were rearrested by the Department of Homeland Security (“DHS”) based, in whole or in part, on allegations of gang affiliation; and
- were not subject to a final order of removal.

You may also be a Subclass Member if you:

- Are or were a Class Member as described above; and
- Applied for asylum, Special Immigrant Status (“SIJ”), T or U nonimmigrant status, or a waiver of inadmissibility or application for adjustment of status that is related to an application for asylum, SIJ status, or T or U nonimmigrant status, before the age of 21; and
- Your application was denied by United States Citizenship and Immigrant Services (“USCIS”) when any information that you are or may have been affiliated with a gang is the basis for the denial.

### **What rights does the settlement provide?**

This is only a summary of the Settlement. If you want to know more, you should read the Settlement or talk to your lawyer to learn more about it.

The Settlement affects the U.S. government’s authority to arrest or detain the Class Members. Among other things, the Settlement Agreement requires that the U.S. government will:

- Adopt policies and procedures for how ICE arrests minors who are suspected of being gang members or affiliates. These policies require ICE to follow guidance in determining before any operation whether any unaccompanied alien children (“UAC”) may be encountered. If ICE arrests a UAC, ICE must contact other ICE officers and lawyers for guidance concerning the legal requirements that apply to the arrest or detention of Class Members. If the Class Member’s circumstances have not changed since their last release from ORR, the Class Member will be released to the prior sponsor they were released to, or to immediate family members who have no ascertainable criminal history and/or were not targets of the operation.
- Ensure that ICE officers are trained on the procedures and policies for arresting Class Members.

If a Class Member is arrested, the Settlement ensures that he or she will get a hearing before an immigration judge where they can argue that he or she should not be detained. The Settlement requires that the hearing will follow these rules:

The hearing must take place within ten days of the rearrest, unless the Class Member wants more time to get ready for the hearing or find a lawyer for the hearing.

The government will give the Class Member notice and information explaining the nature of the proceedings. This notice must be given to the Class Member and his or her counsel within 48 hours of the rearrest.

The Class Member will also have the right to select where the hearing will take place.

- If the Class Member is in ICE detention, the hearing will take place in the place of the immigration court nearest to the Class Member's rearrest, unless within five days, the Class Member chooses to have the hearing take place in the immigration court nearest to where they are currently detained, or the place where they lived before they were arrested.
- If the Class Member is in ORR detention, the Class Member can choose whether to have the hearing in the immigration court nearest to the place they are currently detained, or where they were rearrested, or where the Class Member was living before they were rearrested, unless there is no ORR facility willing to accept the minor within three hours' drive of the immigration court where the Class Member was rearrested or living before they were rearrested.

At this hearing, the government has the burden to show how the circumstances have changed since the Class Member was released to his or her sponsor such that the Class Member is either a danger to the community or is a flight risk justifying his/her detention. The Class Member has the right to hire a lawyer for that hearing, or to ask for time to find a lawyer.

If a Class Member wins their hearing, the Class Member must be released to their previous sponsor, or if in ICE's custody a parent or legal guardian, within three (3) calendar days, except where the sponsor is either unable or unfit to reassume custody.

If the previous sponsor is not available anymore, or ORR has evidence that the prior sponsor, or others in the sponsors household, are abusing or neglecting the Class Member or other children living with them, or (in some cases) the child was not living with the prior sponsor before rearrest, ORR will evaluate whether the child can be released to a new sponsor.

Any Class Member who is not released within three (3) days will be put in a shelter if there is one available to take the child.

The Settlement also sets procedures for Subclass Members who applied for certain immigration benefits before USCIS, and were denied those benefits because the government accused them of being gang members or affiliates.

The benefits at issue are Special Immigrant Juvenile Status, T-visas, U-visas, and asylum. The Settlement does not involve other immigration benefits, and does not involve immigration benefits that you apply for in immigration court.

The Settlement requires the government to:

Adopt policies and procedures for Subclass Members who apply for Special Immigration Juvenile Status, which affects USCIS's ability to rely on allegations of gang affiliation or membership to deny immigration benefits.

Give Subclass Members notice and evidence, or a summary of evidence, if the government wants to deny immigration benefits based on allegations of gang affiliation.

Give Subclass Members the chance to respond with their own arguments and evidence.

Give any Subclass Member who was previously denied an immigration benefit based on allegations of gang affiliation the chance to apply for a new decision.

The Settlement Agreement does not provide any monetary payments to Class Members, but also does not prevent Class Members from filing other lawsuits seeking money for harms they may have suffered due to the facts in the lawsuit.

If the Settlement Agreement is approved, Class Members will settle the legal claims identified in the Agreement and agree to stop fighting this lawsuit. All of the terms of the proposed Settlement are subject to Court approval at a "Final Approval Hearing" which is explained below. A copy of the Settlement Agreement is available at [REDACTED], or, if this Notice was mailed, is enclosed.

### **You have the right to object to the Settlement.**

If you like the Settlement's terms, you don't have to do anything.

If you are not satisfied with the Settlement, you do not have the right to opt out of it. But you do have the right to ask the Court to deny approval for the Settlement by filing an objection. If the Court denies approval, the lawsuit will continue. If that is what you want to happen, you must object. You may object to the proposed settlement in writing. If you object in writing, you may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must:

Clearly identify the following case name and number: *Saravia v. Barr*, Case No. 3:17-cv-03615 (N.D. Cal.);

Be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and

Be filed or postmarked on or before [REDACTED], 2020.

### **When and where will the Court decide whether to approve the Settlement?**

The Final Approval Hearing will be held on [REDACTED], 2020, at [REDACTED] AM/PM at Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, to determine the fairness,



reasonableness, and adequacy of the proposed Settlement. The date may change without further notice to the class.

### **Where can I get more information?**

This notice summarizes the proposed settlement. For the full terms of the settlement, please see the attached Settlement Agreement. You should feel free to talk to your lawyer if you want to know more about the Settlement.

The Settlement Agreement is also available at the following websites: **WEBSITES**

You can also contact Class Counsel at these mail or email addresses:

Stephen Kang  
ACLU IMMIGRANTS' RIGHTS PROJECT  
39 Drumm Street  
San Francisco, CA 94111  
skang@aclu.org

Ashley Corkery  
COOLEY LLP  
101 California St., 5th Floor  
San Francisco, CA 94111  
acorkery@cooley.com

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Francisco Division, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.**

**Class Counsel**

Proposed Class Counsel for Settlement Class:

Martin S. Schenker  
Ashley K. Corkery  
Evan G. Slovak  
COOLEY LLP  
101 California St., 5th Floor  
San Francisco, CA 94111

Stephen B. Kang  
AMERICAN CIVIL LIBERTIES UNION  
IMMIGRANTS' RIGHTS PROJECT  
39 Drumm Street  
San Francisco, CA 94111

William S. Freeman  
Sean Riordan  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA  
39 Drumm Street  
San Francisco, CA 94111

Holly S. Cooper  
LAW OFFICES OF HOLLY COOPER  
P.O. Box 4358  
Davis, CA 95617

Amy Belsher  
Jessica Perry  
NEW YORK CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 19<sup>th</sup> Floor  
New York, NY 10004

1 AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA  
2 WILLIAM S. FREEMAN (SBN 82002)  
SEAN RIORDAN (SBN 255752)  
3 39 Drumm Street  
San Francisco, CA 94111  
4 Telephone: (415) 621-2493  
Facsimile: (415) 255-8437  
5 Email: wfreeman@aclunc.org  
sriordan@aclunc.org

6 COOLEY LLP  
7 MARTIN S. SCHENKER (SBN 109828)  
ASHLEY K. CORKERY (SBN 301380)  
8 EVAN G. SLOVAK (SBN 319409)  
101 California Street, 5<sup>th</sup> Floor  
9 San Francisco, CA 94111  
Telephone: (415) 693-2000  
10 Facsimile: (415) 693-2222  
Email: mschenker@cooley.com  
11 acorkery@cooley.com  
eslovak@cooley.com

12 LAW OFFICES OF HOLLY S. COOPER  
13 HOLLY S. COOPER (SBN 197626)  
P.O. Box 4358  
14 Davis, CA 95617  
Telephone: (530) 574-8200  
15 Facsimile: (530) 752-0822  
Email: hscooper@ucdavis.edu

16 Attorneys for Plaintiff

17  
18  
19 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

21 Ilsa Saravia, as next friend for A.H., a  
minor, and on behalf of herself individually  
22 and others similarly situated,

23 Plaintiff,

24 v.

25 William Barr, Attorney General, et al.,

26 Defendants.  
27  
28

ACLU FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
STEPHEN B. KANG (SBN 292280)  
39 Drumm Street  
San Francisco, CA 94111  
Telephone: (415) 343-0770  
Facsimile: (212) 395-0950  
E-mail: skang@aclu.org

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION  
CHRISTOPHER DUNN  
AMY BELSHER  
JESSICA PERRY  
125 Broad Street, 19<sup>th</sup> Floor  
New York, NY 10004  
Telephone: (212) 607-3300  
Facsimile: (212) 607-3318  
Email: dcunn@nyclu.org  
abelser@nyclu.org  
jperry@nyclu.org

Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF  
PROPOSED CLASS SETTLEMENT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff Ilsa Saravia has filed a Motion for Preliminary Approval of the class action settlement reached with Defendant William Barr (“Government”), a hearing on which was held on October 15, 2020. The Court has carefully considered the Settlement Agreement together with all exhibits thereto, all the filings related to the Settlement, the arguments of counsel, and the record in this case. The Court hereby gives its preliminary approval of the Settlement; finds that the Settlement and Settlement Agreement are sufficiently fair, reasonable and adequate to allow dissemination of notice of the Settlement to the Settlement Class and to hold a Fairness Hearing; orders the Class Notice be sent to the Settlement Class in accordance with the Settlement Agreement and this Order; and schedules a Fairness Hearing to determine whether the proposed Settlement is fair, adequate and reasonable.

**IT IS HEREBY ORDERED THAT:**

1. The Settlement Agreement is hereby incorporated by reference in this Order, and all terms or phrases used in this Order shall have the same meaning as in the Settlement Agreement.

2. The Court preliminarily approves the Settlement and Settlement Agreement, finding that the terms of the Agreement are fair, reasonable, and adequate, and within the range of possible approval and sufficient to warrant providing notice to the Settlement Class.

3. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), and (e), the Court certifies, for settlement purposes only, the following Settlement Classes comprised of Unaccompanied minors who were detained by the Government, released by the Office of Refugee Resettlement (“ORR”) to a parent or sponsor (“Sponsored UCs”), and subsequently rearrested and detained by the Government on allegations of gang affiliation:

- a. “[A]ll noncitizen minors meeting the following criteria: (1) the noncitizen minor came to the United States as an unaccompanied minor; (2) the noncitizen minor was previously detained in ORR custody and then released by ORR to a sponsor; and (3) the noncitizen minor has been or will be rearrested by DHS on the basis of a removability warrant based in whole

1 or in part on allegations of gang affiliation. This class expressly excludes  
2 arrests of noncitizen minors who already are subject to final orders of  
3 removal.

4 4. The Court finds, for settlement purposes only, that the Action may be maintained  
5 as a class action on behalf of the Settlement Class because:

- 6 a. Numerosity: Class Counsel estimates that over forty children have received  
7 *Saravia* hearings and many others have benefitted from the deterrent effect  
8 of the hearings. This satisfies the Rule 23(a)(1) numerosity requirement.
- 9 b. Commonality: The threshold for commonality under Rule 23(a)(2) is not high  
10 and a single common issue will suffice. Plaintiff alleges, among other things,  
11 that the Claims 1-3 Settlement Class raises a common question of whether  
12 the Government violates the Fifth Amendment's Due Process Clause and  
13 other applicable federal laws when it seeks to rearrest Sponsored UCs based  
14 in whole or in part on allegations of gang affiliation. Similarly, the Claim 4  
15 Subclass turned on whether the Government uniformly applied government  
16 policies to all Class Members. These issues are common to the Settlement  
17 Class.
- 18 c. Typicality. All class members are at risk of the same injury and the action  
19 is not based on conduct unique to the named Plaintiff. Therefore  
20 Plaintiff's claims are typical of the claims of the Settlement Class  
21 Members and satisfy Rule 23(a)(3).
- 22 d. Adequacy: There are no conflicts of interest between Plaintiff and Settlement  
23 Class members and Plaintiff has retained competent counsel to represent the  
24 Settlement Class. Class Counsel regularly engage in complex litigation  
25 similar to the present case and have dedicated substantial resources to the  
26 prosecution of this matter. The adequacy requirement is satisfied.
- 27 e. Predominance and Superiority: There is predominance and superiority. A  
28

1 class action is superior to other available methods for the fair and efficient  
2 adjudication of this controversy. The common legal and factual issue listed  
3 in the preliminary approval papers predominate over all other issues.  
4 Resolution of the common question constitutes a significant part of Plaintiff's  
5 and Settlement Class Members' claims.

6 5. The Court appoints as class representatives, for settlement purposes only, Plaintiff  
7 Ilsa Saravia. The Court finds, for settlement purposes only, that Plaintiff will adequately represent  
8 the Settlement Class.

9 6. Pursuant to Federal Rule of Civil Procedure 23(g), and for settlement purposes only,  
10 the Court designates as Class Counsel the law firm of Cooley LLP. The Court preliminarily finds  
11 that, based on the work Class Counsel have done identifying, investigating, and prosecuting the  
12 claims in this action; Class Counsel's experience in handling class actions and claims of this type  
13 asserted in this Action; Class counsel's knowledge of the applicable law; and the resources Class  
14 Counsel have and will commit to representing the class, that Class Counsel have represented and  
15 will represent the interests of the Settlement Class fairly and adequately.

16 7. The Court finds that the proposed Class Notice and the proposed plan of  
17 distribution of the Class Notice meets the requirements of Federal Rule of Civil Procedure  
18 23(c)(2)(B), and hereby directs Plaintiff to proceed with the notice distribution in accordance with  
19 the terms of the Agreement.

20 8. Any Settlement Class Members who wishes to opt out from the Agreement must  
21 do so within 60 days of the Mailed Notice Date and in accordance with the terms of the Agreement.

22 9. Any Settlement Class Members who wishes to object to the Agreement must do so  
23 within 60 days of the Mailed Notice Date and in accordance with the terms of the Agreement.

24 10. The Court finds that the Notice plan, including the form, content, and method of  
25 dissemination of the Class Notice to Settlement Class Members as described in the Settlement  
26 Agreement, (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances,  
27 to apprise Settlement Class Members of the pendency of the lawsuit and the Settlement and of  
28

1 their right to object to or exclude themselves from the proposed Settlement;

2 (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled  
3 to receive notice; and (iv) meets all applicable requirements of Federal Rule of Civil Procedure 23  
4 and due process.

5 11. The Court approves the procedures set forth in the Settlement Agreement and the  
6 Notice of Settlement of Class Action for exclusions from and objections to the Settlement.

7 12. The Court directs that a hearing be scheduled on \_\_\_\_\_, 2020 at  
8 \_\_\_\_\_ a.m./p.m. (the "Fairness Hearing") to assist the Court in determining whether the  
9 Settlement is fair, reasonable and adequate; whether Final Judgment should be entered dismissing  
10 with prejudice Defendants in the above-captioned action. Plaintiff shall file a motion for final  
11 approval of the Settlement no later than 14 days before the Fairness Hearing.

12 13. Plaintiff may file motions for attorneys' fees and costs and has represented that  
13 the parties intend to negotiate fees and costs without the need for motion practice. Should motion  
14 practice prove necessary, Plaintiff's motion for fees and costs shall be filed at a date and time  
15 consistent with the deadlines set forth in the Equal Access to Justice Act. *See* 28 U.S.C. § 2412(d).

16 14. Neither the Settlement, nor any exhibit, document or instrument delivered  
17 thereunder shall be construed as or deemed to be evidence of an admission or concession by  
18 Defendants of an interpretation of, any liability or wrongdoing by Defendants, or of the truth of  
19 any allegations asserted by Plaintiff, Settlement Class Members or any other person.

20 15. If the Settlement is not finally approved, or the Effective Date does not occur, or the  
21 Settlement is terminated under its terms, then (a) all parties will proceed as if the Settlement (except  
22 those provisions that, by their terms, expressly survive disapproval or termination of the  
23 Settlement) had not been executed and the related orders and judgment had not been entered,  
24 preserving in that event all of their respective claims and defenses in the action; and (b) all releases  
25 given will be null and void. In such an event, this Court's orders regarding the Settlement, including  
26 this Preliminary Approval Order, shall not be used or referred to in litigation for any purpose.  
27 Nothing in the foregoing paragraph is intended to alter the terms of the Settlement Agreement with  
28

1 respect to the effect of the Settlement Agreement if it is not approved.

2 16. Plaintiff's Motion for Preliminary Approval of Proposed Class Settlement  
3 ("Motion") is hereby GRANTED. The Court hereby preliminarily approves the proposed class-  
4 wide injunctive relief settlement set forth in the Settlement Agreement (attached to Plaintiff's  
5 Motion), hereby certifies the proposed class of immigrant minors described in the Settlement  
6 Agreement for settlement purposes, hereby approves the proposed form and plan of notice  
7 (attached to Plaintiff's Motion), and hereby schedules a final fairness hearing for \_\_\_\_\_,  
8 2020.

9  
10 **IT IS SO ORDERED.**

11  
12 Date: \_\_\_\_\_, 2020

13  
14 \_\_\_\_\_  
15 The Honorable Vince Chhabria  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28