The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

J.E.F.M., a minor, by and through his Next Friend, Bob Ekblad; J.F.M., a minor, by and through his Next Friend, Bob Ekblad; D.G.F.M., a minor, by and through her Next Friend, Bob Ekblad; F.L.B., a minor, by and through his Next Friend, Casey Trupin; G.D.S., a minor, by and through his mother and Next Friend, Ana Maria Ruvalcaba; M.A.M., a minor, by and through his mother and Next Friend, Rosa Pedro; S.R.I.C., a minor, by and through his father and Next Friend, Hector Rolando Ixcoy; G.M.G.C., a minor, by and through her father and Next Friend, Juan Guerrero Diaz; on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs-Petitioners,

v.

Eric H. HOLDER, Attorney General, United States; Juan P. OSUNA, Director, Executive Office for Immigration Review; Jeh C. JOHNSON, Secretary, Homeland Security; Thomas S. WINKOWSKI, Principal Deputy Assistant Secretary, U.S. Immigration and Customs Enforcement; Nathalie R. ASHER, Field Office Director, ICE ERO; Kenneth HAMILTON, AAFOD, ERO; Sylvia M. BURWELL, Secretary, Health and Human Services; Eskinder NEGASH, Director, Office of Refugee Resettlement,

Defendants-Respondents.

Case No. 2:14-cv-01026-TSZ

MOTION FOR PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR:

August 22, 2014

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Six children ranging in age from ten to seventeen now come before this Court seeking preliminary relief. These children are all scheduled to appear shortly before an Immigration Judge with the power to order them deported – most of them within the next six weeks. The Government will pay for a prosecutor to advocate for deportation in each case, but no lawyer will represent the children.

Although Plaintiffs filed the complaint in this case three weeks ago, their need for this Court's immediate intervention arose last week, when the Government began implementing a program to expedite the deportation of children. In response to requests from Plaintiffs' counsel, Defendants would not assure counsel either that the Named Plaintiffs' particular cases would be continued until they could secure representation, or that the Immigration Judges hearing their cases would not order them deported despite their lack of representation. Declaration of Stephen Kang ("Kang Decl."), Exh. F.

Each of these children desperately fears deportation, and each of them has a colorable defense. But they do not know how to defend themselves under the immigration laws. Therefore, they seek an order from this Court requiring the Government either to permit them as much time as needed to find legal representation, or to provide them with representation if it wishes to proceed against them expeditiously.[1]

II. FACTUAL AND PROCEDURAL BACKGROUND

The six Plaintiff children who seek preliminary relief through this motion have compelling but complex defenses against deportation. All of them fled conditions of extreme violence, but, as explained below, this by itself is insufficient to avoid deportation under our immigration laws.

[1]Because the Government's program to speed the deportation of children also affects many un-named putative class members, Plaintiffs are also now seeking to have their Motion for Class Certification heard as soon as possible after August 22, as explained in a filing occurring concurrently herewith. Plaintiffs intend to seek relief for all children facing possible deportation (or voluntary departure) under the Government's expedited procedures if and when the Court certifies a class. *See Zepeda v. INS*, 753 F.2d 719, 729 n.1 (9th Cir 1983).

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Three siblings – J.E.F.M., J.F.M., and D.G.F.M. – are ten, thirteen, and fifteen years old, respectively. Declaration of Glenda M. Aldana Madrid ("Aldana Madrid Decl."), Exhs. A-C. They are scheduled to appear in immigration court on September 4, 2014, in Seattle, Washington. Declaration of D.G.F.M. ("D.G.F.M. Decl'), ¶4. They were born in El Salvador, where their parents ran a ministry and rehabilitation center for former gang members. These activities drew retaliation from local gangs. They killed the children's cousin and then their father: the children watched as gang members murdered him in the street. Several years later, the children themselves became the targets of gangs that threatened them with harm if they refused to join. D.G.F.M. Decl., ¶¶3-4; Complaint, ¶¶49-50.

Although horrific, it is not at all clear that these facts entitle the three siblings to protection under our complex asylum laws. Indeed, the violent murder of a father and threats of harm by gang members alone will not qualify them for asylum unless they also can demonstrate, among other things, that the Salvadoran government is unable or unwilling to protect them from the gangs and that gang members will persecute them "on account of" a protected ground that is specifically enumerated in the asylum statute. *See* 8 U.S.C. § 1101(a)(42)(A); 8 U.S.C § 1158(b)(1)(A) -(B)(i) (requiring a nexus between the feared harm and an applicant's "race, religion, nationality, membership in a particular social group, or political opinion"). Without evidence and legal argument on these and other requirements, gang-based asylum claims typically fail despite a showing of past violence and a serious future risk of harm. *See, e.g.*, *Santos-Lemus v. Mukasey*, 542 F.3d 738, 740-46 (9th Cir. 2008) (denying asylum claim of young Salvadoran man whose brother was murdered by gang because he did not show that harm was on account of membership in a "particular social group"), *overruled in part by Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1093 (9th Cir. 2013) (en banc).

In contrast to the lack of clarity in the asylum law governing these children's cases, it is perfectly clear that the children lack the ability to understand that law and use it to defend themselves against deportation. As D.G.F.M. has explained regarding herself and her two younger brothers:

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> I do not know anything about immigration law. I have been told that I might have the chance to stay in the United States because my life is in danger in El Salvador. But I do not know how to defend my case so that I have the chance to stay. I do not know what to say to the government to help me stay here. My brothers know even less. They do not even understand what is going on.

D.G.F.M. Decl., ¶7.

Similarly, G.M.G.C. is a 14-year-old girl who is scheduled to appear on September 9, 2014, in Harlingen, Texas. Aldana Madrid Decl., Exh. D. She fled El Salvador after gang members began threatening the young women in her family. Gang members first targeted G.M.G.C. and her family because her uncle, a police officer, refused to provide supplies to the gang members in their town. In retaliation, the gang threatened and harassed the young women in the family, surveilled their home, and finally attacked G.M.G.C. and her older sister. Fearing for their lives, G.M.G.C., her two sisters, and her young aunt fled El Salvador and came to the United States. Here, G.M.G.C. reunited with her father, who has Temporary Protected Status and now lives in Los Angeles, California. Declaration of Juan Pablo Guerrero Diaz ("Guerrero Diaz Decl."), ¶¶3-4; Complaint, ¶75.[2]

Again, while it is unclear whether these facts will suffice to establish G.M.G.C.'s eligibility for asylum for the reasons set forth above, G.M.G.C. has no understanding even of the charges against her, let alone of how to establish her eligibility for asylum. Moreover, G.M.G.C. has received a notice to appear in immigration court in Harlingen, Texas. Guerrero Diaz Decl., ¶5. Thus, G.M.G.C.'s first task must be to make a motion to change venue in her immigration case. But she is no more capable of accomplishing this task than she is of defending herself. *Id.*, ¶¶5-8. If she fails, she could be ordered removed *in absentia* with no further process, a fate that a number of children in Texas suffered just last week. *See* Kang Decl., Exh. L (*Dallas Morning News* article reporting that six children were ordered removed *in absentia*).

S.R.I.C., a 17-year-old boy from Guatemala, is scheduled to appear slightly later, on January 29, 2015, in Los Angeles, California. *See* Aldana Madrid Decl., Exh. E. He also fled persecution from gangs that had aggressively tried to recruit him. A gang member once cut his leg with a knife,

[2] Temporary Protected Status ("TPS") grants temporary legal status and work authorization to individuals from designated countries. *See generally* 8 U.S.C. § 1254a.

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leaving a scar he still bears today. *See* Declaration of S.R.I.C. ("S.R.I.C. Decl."), ¶¶3-4. When S.R.I.C. persisted in refusing to join them, the gang warned that they would kill S.R.I.C. and his family. Fearing for his life, S.R.I.C. came to the United States to reunite with his father, who is a lawful permanent resident. S.R.I.C. now lives with his father in Los Angeles. *See id.*, ¶4.

S.R.I.C.'s case presents all the complexity described above concerning gang-related asylum claims, but with an additional wrinkle. Because his father is a lawful permanent resident who is shortly eligible to naturalize, S.R.I.C. will soon be eligible to legalize through an immediate relative family petition as the minor child of a U.S.-citizen parent. 8 U.S.C. § 1151(b)(2); Complaint, ¶69; *see infra*, Part III.A.1.b. However, the laws prevent S.R.I.C. from legalizing through a family petition within the United States. *See* 8 U.S.C. § 1255(a) (requiring an applicant for adjustment of status to have been "inspected and admitted or paroled into the United States"). S.R.I.C. can apply to legalize through "consular processing" from abroad, but he would need to return to the country he fled from to do so (unless he could somehow obtain a visa to travel somewhere else). Moreover, in navigating the consular process, he must decide at what point to leave his father and return to Guatemala, putting his life at risk in the short term for a chance at permanent security. He must make that decision soon, because he will turn 18 early next year and if he remains in the United States for more than six months following his birthday he will lose the opportunity to legalize for at least several years. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II) (barring an individual unlawfully present in the United States for more than 180 days from seeking admission within three years of departure, and for ten years if individual was unlawfully present for more than a year); 8 U.S.C. § 1182(a)(9)(B)(iii)(I) (exempting individuals under the age of eighteen from the unlawful presence bars).

Yet even that does not fully describe S.R.I.C.'s legal options, because there are waivers available to overcome the aforementioned grounds of inadmissibility that he could pursue at the consulate. *See* 8 U.S.C. § 1182(a)(9)(B)(v). In addition, under recently-enacted rules there is also a "stateside waiver" or "Provisonal Unlawful Presence Waiver" for persons in removal proceedings, which would allow the applicant to move to terminate the removal proceedings in order to submit

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the consular processing paperwork, along with the waiver application, before leaving the country. *See* http://www.uscis.gov/family/family-us-citizens/provisional-waiver/provisional-unlawful-presence-waivers.

Thus, S.R.I.C. must determine whether to stay and apply for asylum, leave within six months of turning 18 in order to avoid becoming inadmissible, or remain here and trigger the bar to admissibility, but seek a stateside waiver concurrently with a motion to terminate removal proceedings in order to seek it. Unsurprisingly, S.R.I.C. lacks the knowledge and ability even to determine his best course of action, let alone to defend himself under these complex rules. *See* S.R.I.C. Decl., ¶5-7.

The last Named Plaintiff seeking relief by this motion is F.L.B., whose hearing is set for September 17, 2014, in Seattle, Washington. *See* Aldana Madrid Decl., Exh. F. He is a 15-year-old boy originally from Guatemala whose father abused him and his siblings. When he was ten years old, F.L.B. dropped out of school to work so that he could support himself, his mother, and his two younger siblings. After years of trying to eke out a living, F.L.B. set out for the United States, hoping to support himself and further his interrupted education. F.L.B. Decl., ¶¶3-4; Complaint, ¶¶57-59.

With no family in the United States, F.L.B. was released to the custody of a family acquaintance and now lives in Seattle, Washington. He could have multiple bases on which to defend himself in immigration court, but his defense is perhaps the most complex of all. In addition to a possible asylum claim based on the violence he suffered at the hands of his father, F.L.B. is a strong candidate for Special Immigration Juvenile ("SIJ") status. SIJ is available for a child under the jurisdiction of a state juvenile court where that court has found that reunification with one or both parents is not viable due to abuse, neglect, or abandonment, and that it is not in the child's best interests to be returned to the home country. *See* 8 U.S.C. § 1101(a)(27)(J). Although F.L.B. has a viable SIJ claim, to qualify he would have to obtain continuances in his immigration proceedings, then, somehow, obtain the prerequisite orders from a state juvenile court, and finally submit an

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application to U.S. Citizenship and Immigration Services (USCIS) or the Immigration Judge. It is inconceivable that F.L.B. can do this on his own. F.L.B. Decl., ¶5-8.[3]

The named Plaintiffs' need for legal representation has become more dire in the last week. The Government has recently announced plans to institute expedited juvenile dockets throughout the country. The goal of these expedited dockets is to prioritize the cases of children in immigration proceedings and move them swiftly through the system. News reporting as well as firsthand accounts suggest that such dockets are being implemented in immigration courts throughout the country. *See* Kang Decl., Exh. L. For example, the Los Angeles immigration court has already begun hearing dozens of children's immigration cases per day. See Declaration of Justine Schneeweis ("Schneeiweis Decl."), ¶¶3-4, 6; Declaration of Stacy Tolchin ("Tolchin Decl."), ¶¶3-4.

Evidence indicates that these dockets are moving on unusually fast timetables. In the past, IJs granted children months to find legal representation when they appeared pro se, on the understanding that children need significant time in order to secure counsel given that existing legal services providers are already over capacity. But on these expedited dockets, children are being granted continuances for approximately six weeks in the courts about which Plaintiffs have information. *See* Declaration of Jon Connolly ("Connolly Decl."), ¶¶5-6; Schneeweis Decl., ¶¶4-8.

The Government's refusal to provide a guarantee to the six Plaintiffs seeking relief here – either that they will receive the continuances needed to secure legal representation or, at a minimum, that they will not be ordered removed if they appear unrepresented at their upcoming court hearings – makes clear that the new policy applies to them as well. *See* Kang Decl., ¶¶7-11 & Exhs. D-G; *see also* Tolchin Decl., ¶¶4-5; Connolly Decl., ¶15.

III. LEGAL ARGUMENT

To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are likely to

[3] The other two Named Plaintiffs, M.A.M. and G.D.S., do not seek preliminary relief at this time because neither is likely to be forced to represent themselves at a hearing in the immediate future. M.A.M. has a hearing in two weeks, but is scheduled to remain in state custody at that time and therefore will presumably have his hearing scheduled to a later (as yet unknown) date. G.D.S. is also in state custody at this time and has not received a hearing notice. Plaintiffs will seek preliminary relief for either or both of these children if and when they face a risk of immediate irreparable harm.

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succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Even if Plaintiffs only raise "serious questions going to the merits," the Court can grant relief if the balance of hardships tips "sharply" in Plaintiffs' favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

Plaintiffs are likely to succeed on their legal representation claim for two independent but related reasons. First, they are likely to prevail under the framework set forth by the Supreme Court for determining when the Due Process Clause requires appointed counsel in civil cases. Given the profound interests at stake in deportation cases, their complexity, and the fact that the Government is represented in every case, the Due Process Clause likely requires legal representation for these children. Second, if the Court finds that Plaintiffs' Due Process claim presents a serious constitutional problem, it should avoid resolving the issue by ruling that Plaintiffs are entitled to legal representation because, without it, they cannot have the full and fair hearing guaranteed them under the immigration laws.

1. The Due Process Clause Requires Defendants to Ensure Legal Representation for Plaintiffs under the Supreme Court's Civil Appointed Counsel Cases.

Plaintiffs' likelihood of success under the Supreme Court's doctrine addressing the right to appointed counsel in civil proceedings rests primarily on two cases: *In re Gault*, 387 U.S. 1, 17-18, 27-28 (1967), in which the Supreme Court held that the Due Process Clause requires children to be appointed counsel in juvenile delinquency proceedings, despite the civil nature of those proceedings; and *Turner v. Rogers*, 131 S. Ct. 2507, 2513-14 (2011), in which the Court found no categorical right to appointed counsel for adults facing civil contempt proceedings, but largely based that finding on two critical factors: that the proceedings involved very simple issues (concerning the detainee's ability to pay a sum certain), and that the *state is unrepresented* in such proceedings. Here, the claim for appointed counsel in deportation cases involving children is at least as strong as

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the claim the Supreme Court accepted in *Gault*. Moreover, the two critical factors in *Turner* favor appointed counsel here: removal proceedings involve the application of a complex set of laws, and the Government pays a trained lawyer to represent its own interests in every deportation hearing.[4]

Under the Supreme Court's doctrine regarding the appointment of counsel in civil cases, this Court must apply the familiar three-part procedural due process test to determine whether the Due Process Clause requires appointed counsel. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (requiring court to balance (i) the private interest affected by the government action; (ii) "the risk of erroneous deprivation of [the] interest through the procedures used," including the "probable value" of any alternative safeguards; and (iii) the governmental interests at stake); *see also Turner*, 131 S. Ct. at 2517-18 (describing and applying three-part *Mathews* test); *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27 (1981) (applying *Mathews* to appointed counsel claim and requiring appointment on a case-by-case basis for some parental termination proceedings); *Vitek v. Jones*, 445 U.S. 480, 492-96 (1980) (weighing interests at stake and necessity of procedural safeguards in determining whether due process was satisfied in proceedings to determine whether prisoner should be transferred to mental hospital). Application of the *Mathews* balancing test makes clear that, as children, Plaintiffs are entitled to legal representation in their deportation cases.

a. Plaintiffs' Private Interests Are Weighty.

There can be no serious question that Plaintiffs have an overwhelming interest in securing legal representation in their immigration proceedings. For asylum-seekers, like most of the children here, "the private interest could hardly be greater. If the court errs, the consequences for the applicant could be severe persecution, torture, or even death." *Oshodi v. Holder*, 729 F.3d 883, 894 (9th Cir. 2012) (en banc); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987) ("Deportation is always a harsh measure; it is all the more replete with danger when the alien makes a claim that he

[4] Federal and state statutes implement *Gault* by providing appointed counsel for children in juvenile delinquency proceedings. *See, e.g.*, 18 U.S.C. § 3006A(a)(1)(B) (2012); Cal. Wel. & Inst. Code § 634 (2014); Md. Code Ann., Courts and Judicial Proceedings § 3-8A-20 (2014); Rev. Code Wash. § 13.40.140(2) (2013).

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or she will be subject to death or persecution if forced to return to his or her home country.").[5] In addition, for some Plaintiffs, the risk of persecution upon return will come with the trauma of separation from their families. S.R.I.C. and G.M.G.C., for example, face potentially permanent separation from parents who lawfully reside here. Complaint, ¶¶69-79; S.R.I.C. Decl., ¶¶5-7; Guerrero Diaz Decl., ¶¶6-8; *see Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (describing as "weighty" the possibility of losing "the right to rejoin [one's] immediate family, a right that ranks high among the interests of the individual") (internal quotation marks and citation omitted).

The Supreme Court has long recognized that deportation involves a drastic loss of liberty, even for adults. *See, e.g.*, *Bridges v. Wixon*, 326 U.S. 135, 164 (1945) ("The impact of deportation upon the life of an alien is often as great if not greater than the imposition of a criminal sentence. . . . Return to his native land may result in poverty, persecution, even death."); *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010) (holding that criminal defense counsel must provide accurate advice concerning immigration consequences of convictions in part because of "the severity of deportation – the equivalent of banishment or exile") (internal quotation marks and citation omitted).

Thus, the first factor of the *Mathews* test weighs heavily in Plaintiffs' favor.

b. Without Legal Representation in Plaintiffs' Immigration Cases, the Risk of Error Is Overwhelming.

The second factor – the likely risk of error created by the absence of counsel – also strongly favors Plaintiffs. Immigration Judges simply cannot provide a fair hearing to these children and accurately resolve the complex legal issues in their cases when they come to court without legal representation. As explained in more detail *infra* Part III.A.2, children cannot be expected to perform tasks, make judgments, and fashion arguments required to represent themselves at hearings where they face deportation. *See Gault*, 387 U.S. at 40 (quoting with approval New York Family Court Act provision stating that "counsel is often indispensable to a practical realization of due process of law

[5] Multiple courts have recognized the "common sense proposition" that children are even more vulnerable to persecution than adults. *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045-46 (9th Cir. 2007); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006) (holding that agency was required to analyze persecution from perspective of "small child totally dependent on his family and community").

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and may be helpful in making reasoned determinations of fact and proper orders of disposition"); *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948) (noting that "a lad of tender years . . . needs counsel and support if he is not to become the victim first of fear, then of panic").

Defendants may argue that counsel is not required because immigration proceedings are "informal" and the Immigration Judge can suffice to protect the child's interests. But *Gault* rejected similar arguments. The proceedings there were constructed as informal hearings designed to benefit the child, with the probation officer (along with the parents) serving to protect the child's interests, *Gault*, 387 U.S. at 35, and the judge acting as a "fatherly" figure. *Id*. at 26. Nonetheless, the Court held that for children, their special vulnerabilities rendered the assistance of counsel a necessity:

> The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him.

Id. at 36 (internal quotation marks and citations omitted).[6] If children need counsel to cope with the problems of law and fact arising in delinquency proceedings, which were designed to protect the child's interests, they surely need counsel to deal with immigration law, which is not designed for pro se children. Even for adults, the immigration system forms "a labyrinth almost as impenetrable as the Internal Revenue Code." *Escobar-Grijalva v. INS*, 206 F.3d 1331, 1335 (9th Cir. 2000).

Turner's more recent analysis of an appointed counsel claim in civil contempt proceedings also strongly supports Plaintiffs' argument that the risk of error is unacceptably high without counsel. In reaching the conclusion that the Due Process Clause does not always require appointed counsel to render South Carolina's civil contempt proceedings fundamentally fair, the Court emphasized three factors: (i) the generally uncomplicated question at issue in such cases – whether

[6] *See also In re Roger S.*, 569 P.2d 1286, 1296 (Cal. 1977) (determining that for child in proceedings to ascertain whether he should be committed to mental hospital, counsel is required "[i]nasmuch as a minor may be presumed to lack the ability to marshal the facts and evidence, to effectively speak for himself and to call and examine witnesses, or to discover and propose alternative treatment programs"); *Shioutakon v. Dist. of Columbia*, 236 F.2d 666, 670 (D.C. Cir. 1956) (holding, in predecessor to *Gault*, that counsel is required in juvenile delinquency proceedings because "an intelligent exercise of the juvenile's rights . . . clearly requires legal skills not possessed by the ordinary child under 18").

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the contemnor has the ability to pay his or her child support; (ii) the "asymmetry of representation" created by the fact that *the state is unrepresented* in South Carolina contempt cases, *Turner*, 131 S. Ct. at 2519; and (iii) the fact that certain "substitute procedural safeguards," including notice of the central issue in the proceeding, a form eliciting relevant information, and questioning based on that form, could suffice to satisfy due process. *Id.*

In stark contrast to the proceedings at issue in *Turner*, immigration cases are far too complex to be reduced to a set of forms that children can understand and fill out in order to facilitate the process of adjudicating their cases. The cases of the Named Plaintiffs plainly demonstrate this fact.

Each Plaintiff here has a viable claim to asylum, *see supra* Part II, but it is virtually impossible for pro se children to establish eligibility given the complexity of the asylum laws. *Cf. Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009) (explaining in the context of an asylum claim that "'aliens appearing pro se often lack the legal knowledge to navigate their way successfully through the morass'") (quoting *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002)).

Three aspects of asylum law illustrate the complexity of litigating asylum claims. First, as with all applications for relief, each child will bear the burden of proof. 8 U.S.C. § 1229a(c)(4). If the Immigration Judge doubts their credibility, the judge may insist that the child produce corroborating evidence to carry their burden. *See* 8 U.S.C. § 1158(b)(1)(B)(i)-(ii); *see also Ali v. Holder*, 637 F.3d 1025, 1029 (9th Cir. 2011) (applicant bears the burden of establishing his eligibility for asylum). But children like 10-year-old J.E.F.M. or 14-year-old G.M.G.C. obviously cannot gather corroborating evidence for their asylum claims.

Second, applicants must demonstrate that the harm has a nexus to discrete qualifying factors. *See* 8 U.S.C. § 1158(b)(1)(A)-(B)(i); *see also* 8 C.F.R. § 1208.13(b) (setting forth multiple factors an applicant must establish in order to qualify for asylum, including a well-founded fear of persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion"). This requires complex legal argument that none of the Plaintiffs can even understand, let alone persuasively present without legal representation.

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Third, establishing that nexus is especially complex where the claims involve fear of harm by non-government actors (such as gangs) and rely on the "ambiguous" particular social group ground of asylum law. *See Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013) (en banc); *see also Madrigal v. Holder*, 716 F.3d 499, 506-07 (9th Cir. 2013) (addressing agency's error in analyzing claim involving Mexican government's inability to control violence perpetrated by Zeta drug cartel). The case law in this context is replete with examples of individuals facing significant harm who lose due to these complicated requirements. *See, e.g.*, *Santos-Lemus*, 542 F.3d at 740-46 (denying asylum claim of young Salvadoran man whose brother was murdered by gang because he did not show that harm was on account of group membership), *abrogated in part by Henriquez-Rivas*, 707 F.3d at 1093; *Ramos-Lopez v. Holder*, 563 F.3d 855, 862 (9th Cir. 2009) (same for Honduran man threatened with death for refusing to join a gang), *abrogated in part by Henriquez-Rivas*, 707 F.3d at 1093. It is inconceivable that these children will be able to explain why they qualify for asylum under the complex rules these cases establish.

Plaintiffs eligible for other forms of relief face different insurmountable hurdles. S.R.I.C. can defend against removal by applying for lawful residence through his father, but to do so he must arrange for consular processing of his application from abroad before his unlawful presence triggers the three or ten year bars to re-admission, or instead wait to apply for the provisional unlawful presence waiver, which would afford him the opportunity to terminate the removal proceedings initiated against him. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II). Alternatively, he can remain here and pursue his asylum claim. But he does not even *understand* the legal rules he must evaluate in order to choose his best course of action, let alone have the capacity to pursue them. F.L.B.'s best defense is likely an application for SIJ status, but to pursue it he would have to articulate to the Immigration Judge that he believes himself to be eligible, and then continue the case (often for a prolonged period) in order to pursue state juvenile court proceedings in Washington so that he can obtain the prerequisite orders from that court. Once that is done, F.L.B. would have to file his SIJ application before USCIS. Then, if it is granted, he would have to file an application to adjust status to lawful permanent residence either before the Immigration Court or before USCIS. 8 U.S.C. §

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1101(a)(27)(J); *see supra* Part II. Lawyers handle such cases as a matter of course, but F.L.B. has no hope of accomplishing these tasks without legal representation.

Statistical analysis confirms that immigration proceedings for children are sufficiently complex that, absent legal representation, the risk of error is unacceptably high. The most comprehensive and recent statistical study on children in the immigration court system to date shows that the presence of counsel dramatically improves success rates. Over the course of almost 60,000 cases, Immigration Judges permitted 47% of children with legal representation to stay in the United States, whereas they permitted only 10% of unrepresented children to remain. *See* Kang Decl., Exh. M (data compilation from Transactional Records Access Clearinghouse).

Thus, the complexity of immigration law and, relatedly, the sharply different results created by the asymmetry of representation establish that the risk of error is exceedingly high unless both sides are represented in a child's deportation case. Under *Turner*, the Due Process Clause requires a level playing field in this context.

c. Defendants' Competing Interests Do Not Outweigh Plaintiffs' Interest in Securing Legal Representation.

The final factor this Court must consider is the Government's competing interests in denying legal representation to Plaintiffs, which here is insufficient to defeat Plaintiffs' claim. As an initial matter, the provision of legal representation would *advance* two important governmental interests. First, the Government shares Plaintiffs' interest in the improved decisionmaking that would accompany legal representation. *Cf. Lassiter*, 452 U.S. at 27 ("[T]he State . . . shares the parent's interest in an accurate and just decision. For this reason, the State may share the indigent parent's interest in the availability of appointed counsel."). The Government itself appears to have recognized this by stating its intention to pay for legal representation for a limited number of children in immigration proceedings. *See* Kang Decl. Exh. N (announcing "justice Americorps" program to "facilitat[e] the effective and efficient adjudication of immigration proceedings involving certain children who have crossed the border without a parent or legal guardian"); *id.* Exh O at 3-7 (stating that purpose of justice Americorps program is to provide legal services to unaccompanied children

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under the age of 16 in certain geographic locations). Second, the Government has an interest in ensuring that children appear for their court hearings – another interest that would be dramatically advanced by the relief Plaintiffs seek. Recent data shows that over 93 percent of represented children appear for their court proceedings, compared to only 42 percent of unrepresented children. *See* Kang Decl. Exh. P (American Immigration Council fact sheet).

The Government will no doubt cite budgetary constraints as a basis for opposing Plaintiffs' claim. While the relief that Plaintiffs seek will likely require more funds, at least if the government insists on conducting hearings in an expedited fashion, that concern cannot suffice to defeat Plaintiffs' claim. *Cf. Lassiter*, 452 U.S. at 28 ("[T]hough the State's pecuniary interest is legitimate, it is hardly significant enough to overcome private interests as important as those here, particularly in light of the concession . . . that the 'potential costs of appointed counsel in termination proceedings . . . is [sic] admittedly de minimis compared to the costs in all criminal actions.'").[7]

For all these reasons, the Fifth Amendment requires that Plaintiffs be provided with legal representation in their immigration proceedings.

2. The INA's Full and Fair Hearing Requirement Demands that Plaintiffs Be Appointed Legal Representation in Their Immigration Proceedings.

If the Court believes that Plaintiffs' Due Process claim as described above "would raise serious constitutional problems," it is obligated to construe the immigration laws to avoid that problem if such a construction is "fairly possible." *INS v. St. Cyr*, 533 U.S. 289, 299-300 (2001). Here, the Court can construe the immigration laws to require legal representation for Plaintiffs consistent with a long line of immigration caselaw that has read the statutes to create unenumerated procedural protections where needed to ensure basic fairness. The Ninth Circuit strongly suggested that the fair hearing requirement demands counsel for children when it stated in a deportation case involving ineffective assistance of counsel that "minors are 'entitled to trained legal assistance so

[7] Providing legal representation would also increase immigration court efficiency, thereby offsetting the initial cost. *See* Kang Decl., Exh. S at 2-4 (NERA Economic Consulting report describing potential cost savings that may be generated by providing appointed legal representation in immigration proceedings).

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their rights may be fully protected.'" *Jie Lin v. Ashcroft*, 377 F.3d 1014, 1033 (9th Cir. 2004) (quoting *Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997)). This Court should now construe the immigration laws to require that result.

a. All Noncitizens in Immigration Proceedings, Including Children, Have a Right to a Full and Fair Hearing.

It is well-settled that all noncitizens have a right to a full and fair hearing in their immigration proceedings. The immigration statute explicitly imposes that obligation in the form of certain specified procedural safeguards, including the rights to be advised of the Government's charges, present evidence, examine witnesses, and cross-examine opposing witnesses. *See* 8 U.S.C. § 1229a(b)(4)(B); 8 C.F.R. § 1240.10(a)(4). However, the statute's protection is not limited to those rights specifically enumerated. On the contrary, the agency itself has long read the statute to also protect other rights where necessary to ensure that the specifically enumerated rights can be meaningfully exercised. Thus, the agency has found denials of the statutory right to a fair hearing in cases where Immigration Judges failed to provide procedural protections beyond those specified in the statute. *See, e.g.*, *Matter of Tomas*, 19 I. & N. Dec. 464, 465-66 (BIA 1987) (finding that immigration judge's denial of interpreter violated statutory requirement that asylum seeker have reasonable opportunity to present evidence, and that "[t]he presence of a competent interpreter is important to the fundamental fairness of a hearing"); *see generally Matter of Exilus*, 18 I. & N. Dec. 276, 278 (BIA 1982).[8]

[8] This statutory mandate that the removal hearing comport with basic standards of fairness arises from a constitutional rule that is more than one hundred years old. The Supreme Court has long recognized that the Due Process Clause requires noncitizens to have "all opportunity to be heard upon the questions involving [their] right to be and remain in the United States." *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); *see also Oshodi*, 729 F.3d at 889 ("It is well established that the Fifth Amendment guarantees non-citizens due process in removal proceedings.") (citations omitted); *Garcia-Jaramillo v. INS*, 604 F.2d 1236, 1239 (9th Cir. 1979) ("In a deportation hearing, an alien is entitled to the guaranty of due process which is satisfied only by a full and fair hearing.") (citations omitted). This guarantee, which protects children no less than adults, *see Reno v. Flores*, 507 U.S. 292, 306 (1993); *Jie Lin*, 377 F.3d at 1032-34, has been incorporated into the immigration laws for decades. Indeed, the very power to hold deportation hearings at all was exercised for over a decade without any specific statutory authorization. *Compare Yamataya*, *supra* at 100-01 (describing deportation hearing), *with* An Act to Regulate the Immigration of Aliens into the United States, ch. 1012, sec. 25, 32 Stat. 1213 (1903) (Immigration Act of 1903 authorizing officers to conduct exclusion hearings, but not deportation hearings). Thus, this Court would follow in a venerable

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Similarly, the federal courts have consistently required the agency to provide certain procedural safeguards beyond those enumerated in the statute in order to ensure the statute's broader purpose of guaranteeing a fundamentally fair removal process. For example, in *Bondarenko v. Holder*, 733 F.3d 899 (9th Cir. 2013), the Ninth Circuit held that an immigrant facing removal had a right to pre-hearing disclosure of evidence used against him at the hearing. *Id*. at 907. Although the statute by its terms contains no discovery rule, *Bondarenko* found that "[t]he due process right, incorporated into 8 U.S.C. § 1229a(b)(4)(B)" included a disclosure obligation in order to vindicate the enumerated statutory right to "a reasonable opportunity to examine the evidence against the alien." *Id.* (internal quotation marks and citation omitted).

Perhaps the clearest expression of this principle comes from the law governing interpretation in immigration proceedings. The statute creates no explicit obligation to provide interpretation where the immigrant does not speak English, and the provision of interpretive services undoubtedly imposes a substantial burden on the Government. Nonetheless, federal courts have uniformly held that the government must provide competent translation in immigration proceedings. *See*, *e.g.*, *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000) (citing both the Due Process Clause and *Matter of Tomas*, *supra*, in holding that the fair hearing requirement dictates that "[i]f an alien does not speak English, deportation proceedings must be translated into a language the alien understands").

b. Children Cannot Receive a Full and Fair Hearing Without Legal Representation.

Children, by reason of the level of their cognitive and psychological development, cannot exercise the rights needed to have a full and fair hearing when they are forced to represent themselves. As the Supreme Court has explained, a child's age "generates commonsense conclusions about behavior and perception" that "apply broadly to children as a class." *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (internal quotation marks and citation omitted). These conclusions "are self-evident to anyone who was a child once himself, including any police officer or judge." *Id.* "The

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tradition were it to read the immigration laws to provide for protections not specifically enumerated in the statute.

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law has historically reflected the . . . assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them." *Id.*; *see also Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982) ("Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults."); *Graham v. Florida*, 560 U.S. 48, 68 (2010) ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."). "[T]he legal disqualifications placed on children as a class . . . exhibit the settled understanding that the differentiating characteristics of youth are universal." *J.D.B.*, 131 S. Ct. at 2403-04.

Thus, both decades of precedent and scientific consensus confirm that children have a categorically diminished competency to engage in the very activities that are critical to self-representation. Those activities include, for example, exercising the right to "testify fully as to the merits" of an application for relief, *Oshodi*, 729 F.3d at 890; *see also Kerciku v. INS*, 314 F.3d 913, 918 (7th Cir. 2003). A child's susceptibility to influence by adults, including Immigration Judges and Government prosecutors, puts the child at an obvious and serious disadvantage as to this task. *See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 459, 476 (2009) (describing previous study that "suggest[ed] a much stronger tendency for adolescents [including 16- and 17-year olds] to make choices in compliance with the perceived desires of authority figures"). For similar reasons, a child faces insurmountable difficulties availing herself of the right to cross-examine adverse witnesses, which is another component of the fair hearing right. *See Cinapian v. Holder*, 567 F.3d 1067, 1075-77 (9th Cir. 2009). And a child, who cannot make the same kinds of informed judgments as can adults, cannot reasonably be expected to make the strategic decisions necessary to know how best to compile and present testimony on her own behalf. *See Zolotukhin v. Gonzales*, 417 F.3d 1073, 1076 (9th Cir. 2005).

The intricacy of the immigration system further demands a mastery of sophisticated legal knowledge and skills that children cannot hope to attain. The federal courts have repeatedly stated that "the immigration laws have been termed second only to the Internal Revenue Code in

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complexity." *Baltazar-Alcanzar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004) (internal quotation marks and citation omitted); *accord Higgs v. Att'y Gen.*, 655 F.3d 333, 340 (3d Cir. 2011) ("[Immigration] law itself is complicated and difficult to navigate."). In short, requiring children without legal representation to engage in the myriad functions of self-representation cannot yield proceedings that are fundamentally fair.

The Ninth Circuit strongly suggested that children cannot obtain fair removal hearings without legal representation in *Jie Lin*, 377 F.3d 1014. There, the court reversed the removal order of a 14-year-old boy whose case had been severely prejudiced by the failures of his retained counsel. The court appreciated that while all individuals in immigration proceedings have a "right to a full and fair presentation of [their] claim[s]," the "proper implementation [of this principle] is intensified when the petitioner is a minor." *Id.* at 1025.

Although *Jie Lin* did not hold that representation was required in all cases involving children, it repeatedly suggested as much, including by citation to Ninth Circuit law establishing that children in federal court cannot proceed without counsel. *See, e.g.*, *id*. at 1033 ("Given that minors are 'entitled to trained legal assistance so their rights may be fully protected,' *Johns [v. County of San Diego*, 114 F.3d at 877], upon recognizing that New York counsel was in no position to provide effective assistance, as he must have, the IJ had the obligation to suspend the hearing and give Lin a new opportunity to retain competent counsel or *sua sponte* take steps to procure competent counsel to represent Lin."); *id*. ("Given the near-certain prospect that Lin would be unable to present his case fully and fairly if unrepresented, the IJ could not let Lin's hearing proceed without counsel."); *id.* at 1034 ("The due process right to effective assistance of retained counsel in the full and fair presentation of an asylum claim must not be vitiated. This is *especially* so when the applicant is a minor."). The Ninth Circuit concluded that, given the petitioner's status as a child "who did not speak English and did not understand the process unfolding around him," fundamental fairness may require that the Immigration Judge "take an affirmative role in securing representation by competent

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counsel." *Id.* at 1033-34. Thus, *Jie Lin* strongly supports Plaintiffs' claim that children must have legal representation in order to have the full and fair hearing that the immigration statutes require.[9]

B. Plaintiffs Will Suffer Irreparable Harm Absent the Appointment of Legal Representation.

Plaintiffs have brought this motion *now* because they face imminent irreparable harm if required to represent themselves in immigration court, as they may be required to do in just a few weeks. If Plaintiffs are correct that they have a constitutional right to legal representation, their appearance without counsel will constitute irreparable harm. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)); *see also* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

The harm Plaintiffs face is both real and immediate. Defendants have explicitly refused to assure these children that their cases will be continued to allow them to find attorneys. *See* Kang Decl., Exh. F (email dated July 29, 2014, from Colin Kisor to Ahilan Arulanantham). Even if they

[9] Although *Jie Lin* suggested, in 2004, that 8 U.S.C. § 1229a(b)(4)(A) does not require the Government to pay for counsel *any* noncitizens in immigration proceedings as that section specifically provides for counsel only "at no expense to the Government," 377 F.3d at 1027, the Government has subsequently acknowledged that this does not preclude it from providing counsel. *See Franco-Gonzalez v. Holder*, No. CV 10–02211 DMG (DTBx), 2013 WL 3674492, *6 (C.D. Cal. Apr. 23, 2013) (noting that then-DHS General Counsel David P. Martin had explicitly disavowed the position). Since then, the government has begun paying for legal representation both for people with serious mental disorders in removal proceedings and for children in removal proceedings. *See* Kang Decl., Exhs. N-O (announcing and explaining Government-funded program for providing legal representation to limited number of unaccompanied children); *id.* Exh. P (Government announcement of program to provide legal representation for un for unrepresented immigration detainees with serious mental disorders). To be clear, Plaintiffs do not argue that § 1229a(b)(4)(A) must be read to require legal representation for *all people* facing removal proceedings. Rather, they contend only that *children* must receive legal representation so that they can exercise the *other rights* guaranteed by § 1229a(b), and thereby receive the full and fair hearing required by the statute.

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are not summarily deported, failure to properly defend themselves even in these initial proceedings could lead to critical errors that lead to the deportation of each child.

At the outset, the child Plaintiffs will face a number of complex procedural hurdles in their immigration cases. Several of them could shortly be required to plead to the charges filed against them – to admit or deny the government's allegations of alienage and removability. Without knowing that they may deny or contest the government's charges, Plaintiffs may waive crucial defenses to removal. This could result in the IJ issuing a removal order against them based on their statements alone. *See* Immigration Court Practice Manual, §4.15(i)(i); *see also Perez-Mejia v. Holder*, 663 F.3d 403, 414 (9th Cir. 2011) (stating that "if at the §1240.10(c) pleading stage an alien, individually or through counsel, makes admissions of fact or concedes removability, and the IJ accepts them, no further evidence concerning the issues of fact admitted or law conceded is necessary"); *Matter of Amaya*, 21 I. & N. Dec. 583, 586-87 (BIA 1996) (holding that even children under 14 can be found deportable based on their uncounseled statements in immigration court, and that children accompanied by non-lawyer friends or relatives may explicitly concede removability). Accordingly, each child risks making a concession that could severely prejudice their immigration cases. *See* Declaration of Eve Stotland ("Stotland Decl."), ¶¶6-9; Declaration of Simon Sandoval-Moshenberg ("Sandoval-Moshenberg Decl."), ¶¶4-6.

The Immigration Judge could also ask each child to state their position on what forms of relief they are seeking. Plaintiffs may waive their opportunity to apply for any form of relief they fail to mention. *See Khan v. Ashcroft*, 374 F.3d 825, 829 (9th Cir. 2004) (stating that at a master calendar hearing, respondent must "be prepared to respond to the allegations contained in the charging document, to present all applications for relief from removal, and to indicate how much time will be needed for trial"); *see also* Immigration Court Practice Manual, §3.1(d)(ii) (stating that though the Immigration Judge retains authority to determine how to treat an untimely filing, the alien's interest in that relief may be deemed waived or abandoned); *In re Villarreal-Zuniga*, 2006 WL 575269, **5 (BIA 2006) (finding that the immigration judge did not abuse his discretion when he found that an application that was not timely filed was deemed to be waived). This could result in the child's

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deportation despite her having a valid defense. *See* Stotland Decl., ¶¶10-11; Sandoval-Moshenberg Decl., ¶¶4-6.

During these initial stages, the IJ could also ask each child to consider voluntary departure. *See* 8 C.F.R. § 1240.26(b)(1)(i); 8 U.S.C. § 1229c(a); *see also Matter of Arguelles-Campos*, 1999 WL 360383, **1 (BIA 1999) (stating that "under section 240B(a) of the Act, an alien may apply for voluntary departure either in lieu of being subject to proceedings . . . or before the conclusion of the removal proceedings, or voluntary departure may be requested at the conclusion of the removal proceedings under section 240B(b) of the Act [8 U.S.C. § 1229c(b)]"). A child may well accept such an offer simply for fear that she cannot fight her case without legal representation, or in order to accede to the perceived wishes of the adults running the hearing. *See* Stotland Decl., ¶12.

All of this of course assumes that Plaintiffs are able to appear at their court hearings in the first place. Failure to appear may result in entry of an *in absentia* removal order against them. 8 U.S.C. § 1229a(b)(5)(A). For Plaintiff G.M.G.C., as for so many other children, that risk is real. Although she lives in Los Angeles, California, G.M.G.C. is scheduled to appear in court in Harlingen, Texas. Aldana Madrid Decl., Exh. D. If a child like G.M.G.C. does not know how to seek (or is unable to obtain) a change of venue to a court in their current place of residence, she risks removal simply for failing to show up.

Unsurprisingly, these children express profound fear of what might happen at their upcoming hearings (to the extent they even understand what may happen to them). *See* D.G.F.M. Decl., ¶¶5-7; F.L.B. Decl., ¶¶5-8; Guerrero Diaz Decl., ¶¶7-8; S.R.I.C. Decl., ¶¶5-7. Sadly, that fear is well-justified, as each child could be forced to make decisions without counsel that may have dire consequences, including their swift expulsion from the United States, and (in some cases) separation from the parents with whom they have been reunited. Plaintiffs have established the irreparable harm required for entry of injunctive relief.

C. The Balance of Hardships Weighs Heavily in Plaintiffs' Favor.

The foregoing explanation also demonstrates why the balance of hardships strongly favors the issuance of Plaintiffs' requested relief. The injuries that the children will likely suffer absent this

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Court's intervention are profound and life-altering. The harm that Defendants will suffer if preliminary relief is granted pales in comparison – they will have to either give Plaintiffs more time to find attorneys or otherwise ensure that Plaintiffs receive legal representation in their proceedings. While cost does factor into this analysis, the price of legal representation for these six children is surely outweighed by the potentially life-altering harm they could suffer if forced to endure their proceedings without counsel. *Cf. Golden Gate Rest. Ass'n v. City and County of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) ("Faced with . . . a conflict between financial concerns and preventable human suffering, we have little difficulty concluding that the balance of hardships tips decidedly in favor of the latter.") (internal quotation marks omitted); *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

D. An Injunction is Unquestionably in the Public Interest.

Finally, an injunction here is clearly in the public interest. The public has an interest in the welfare of these children, the integrity of their families, the accurate resolution of their asylum and other applications for relief, and respect for their statutory and constitutional rights. *Lassiter*, 452 U.S. 18, 27-28 (stating that "[s]ince the state has an urgent interest in the welfare of the child, it shares the parent's interest in an accurate and just decision [regarding termination of parent rights]"); *see also Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013) ("[T]he public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions."); *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011) ("[T]he public interest favors applying federal law correctly."); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); c*f. Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) ("The Ninth Circuit has held that 'separation from family members, medical needs, and potential economic hardship' are important irreparable harm factors").

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Moreover, as other courts have previously found in immigration cases, "[t]he government's arguments regarding the resources required to implement the injunction are [] not compelling." *Rodriguez*, 715 F.3d at 1146. The public interest overwhelmingly favors ensuring that the immigration system guarantees fair treatment for children, a group that both society and the law recognize deserve our solicitude and protection.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court order Defendants to refrain from denying continuances to Plaintiffs J.E.F.M., J.F.M., D.G.F.M., F.L.B., S.R.I.C., and G.M.G.C. until such time as they are provided with or otherwise obtain legal representation.

Dated this 31st day of July, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2014, I electronically filed the foregoing, along with the supporting declarations and exhibits, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record, and I electronically filed Exhibits A-F of Glenda M. Aldana Madrid's Declaration as a sealed document with the Clerk of the Court using the CM/ECF system, and served all parties of record by email:

.

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