

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

J.S.R., by and through his next friend, Joshua Perry,

Plaintiff-Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General of the United States; DEPARTMENT OF
HOMELAND SECURITY (“DHS”); KIRSTJEN
NIELSEN, Secretary of DHS; U.S. CUSTOMS
AND BORDER PROTECTION (“CBP”); KEVIN
K. MCALEENAN, Commissioner of CBP; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT (“ICE”); RONALD D.
VITIELLO, Acting Director of ICE; U.S.
CITIZENSHIP AND IMMIGRATION SERVICES
(“USCIS”); L. FRANCIS CISSNA, Director of
USCIS; U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES (“HHS”); ALEX AZAR,
Secretary of the Department of Health and Human
Services; OFFICE OF REFUGEE
RESETTLEMENT (“ORR”); and SCOTT LLOYD,
Director of ORR,

Defendants-Respondents.

Civil Action No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF &
PETITION FOR WRIT OF
HABEAS CORPUS

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Counsel for Plaintiff-Petitioner

INTRODUCTION

1. J.S.R. is a nine-year-old boy who fled with his father from Honduras after J.S.R.'s grandparents were murdered and a body was left in the family's backyard. Fearing for their lives, J.S.R. and his father sought refuge in this country. Defendants-Respondents ("Defendants") detained J.S.R and his father near the southern border of the United States in June 2018. The federal government's response to the plight of J.S.R. and his father was to hold them in freezing conditions near the border, separate the young child from his father while the child was sleeping, and refuse to provide J.S.R. accurate information about his father. The federal government has put two thousand miles between a frightened nine-year-old boy and the most important person in his life, causing J.S.R acute psychological harm and exposing him to the significant risk of long-term mental, emotional, and physical damage as a result of his trauma.

2. J.S.R. and his father, J.S.G., arrived in the United States soon after Defendants announced implementation of their "zero tolerance policy," which subjects asylum seekers to prosecution for unlawful entry and forcibly separates parents from children, for the express purpose of deterring asylum seekers from coming to the United States. J.S.G. is a caring and dedicated father: J.S.R. sees him as his hero and protector against the dangers that drove him from the country of his birth. There is no basis to believe that J.S.R. has ever been subject to abuse and neglect by his father, J.S.G.

3. Upon information and belief, the government has taken no steps to reunite J.S.R. and his father. As a result, the initial trauma of government agents wresting a frightened nine-year-old child from his father has been compounded by their indefinite separation and prolonged detention. This has unnecessarily inflicted additional emotional harm on J.S.R. while frustrating

his ability to pursue his legal claims, including asylum and the present action, without the opportunity for meaningful communication with his father.

4. The government's continued detention of J.S.R., and its continued, forcible separation of J.S.R. from his father is unlawful, and it subjects J.S.R. to ongoing harm that cannot be remediated without releasing him from detention and reuniting him with his father.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, 2201-2202, 2241, and Article I, clause 9 § 2 and Article III of the U.S. Constitution.

6. Venue is proper under 28 U.S.C § 1391 because Plaintiff J.S.R. is currently in custody of Defendants in Mystic, Connecticut and a substantial part of the events or omissions giving rise to the claims made herein occurred or are occurring in Connecticut.

PARTIES

7. Plaintiff J.S.R. is a nine-year old national of Honduras. He has been in the custody of the federal government for at least three weeks. J.S.R. brings this lawsuit through a next friend as a result of his incapacity due to his minor status, his trauma-related disability, his limited access to the courts while detained, his unfamiliarity with U.S. law, and his inability to seek advice and counsel from the most important person in his life – his father, J.S.R. – as a result of the government's actions.

8. Joshua Perry is Deputy Director of Connecticut Legal Services (CLS), a non-profit law firm that is dedicated to improving the lives of low-income people, including children and immigrants, by providing access to justice. CLS has established an attorney-client relationship with J.S.R. to assist him in obtaining relief from removal from the United States. Mr.

Perry brings this suit as next friend and on behalf of J.S.R. in order to protect J.S.R.'s rights and out of dedication to J.S.R.'s expressed interest in reuniting with his father.

9. Defendant Jefferson B. Sessions III is the Attorney General of the United States and is sued in his official capacity. He has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, oversees the Executive Office of Immigration Review, and is empowered to grant relief from removal.

10. Defendant U.S. Department of Homeland Security ("DHS") has responsibility for enforcing the immigration laws of the United States.

11. Defendant Kirstjen Nielsen is the Secretary of DHS and is sued in her official capacity. She directs each of the component agencies within DHS, including ICE. Defendant Nielsen is responsible for implementing U.S. immigration laws and policies, including policies related to family separation and family detention at the U.S. southern border.

12. Defendant U.S. Customs and Border Protection ("CBP") is the sub-agency of DHS that is responsible for enforcement operations along the borders of the United States, including the southern border.

13. Defendant Kevin K. McAleenan is the Commissioner of CBP and is sued in his official capacity. He oversees the apprehension and detention of individuals, including asylum seekers, who enter the United States at or near the U.S. border.

14. Defendant U.S. Immigration and Customs Enforcement ("ICE") is the sub-agency of DHS that is responsible for the detention and removal operations of DHS.

15. Defendant Ronald D. Vitiello is the Acting Director of ICE and is sued in his official capacity. He directs the nation's immigration detention system and oversees the removal of families ordered deported at ICE detention facilities. Defendant Vitiello plays a critical role in

setting detention policies that affect asylum seekers who are held in detention while they await the first steps of the asylum process.

16. Defendant U.S. Citizenship and Immigration Services (“USCIS”) is the sub-agency of DHS that, through its asylum officers, conducts interviews of certain individuals apprehended at or near the border to determine whether they have a credible fear of persecution and must be permitted to apply for asylum.

17. Defendant L. Francis Cissna is the Director of USCIS and is sued in his official capacity.

18. Defendant U.S. Department of Health and Human Services (“HHS”) is a department of the executive branch that is responsible for “unaccompanied” non-citizen minor children.

19. Alex Azar is the Secretary of HHS and is sued in his official capacity.

20. Defendant Office of Refugee Resettlement (“ORR”) is the component of HHS which provides placement and care for “unaccompanied” non-citizen minor children and holds legal custody of J.S.R.

21. Scott Lloyd is the director of ORR and is sued in his official capacity.

LEGAL AND FACTUAL FRAMEWORK OF FAMILY SEPARATION

Arriving Families’ Right to Seek Asylum

22. United States law entitles non-citizens on American soil to seek asylum, without regard to how they arrive. 8 U.S.C. § 1158(a)(1). Since 1996, immigration law has also provided authority for “expedited removal,” or the removal of certain individuals from the United States without a removal hearing. *Id.* § 1225(b)(1)(A)(i).

23. Even an individual subject to expedited removal, however, must receive a removal hearing if the person “indicates either an intention to apply for asylum . . . or a fear of persecution.” *Id.* Under such circumstances, an asylum officer evaluates whether the individual has a “credible fear” of persecution in their home country. *Id.* U.S.C. § 1225(b)(1)(A)(ii). If an asylum officer determines that there is a “significant possibility” that such an individual could prove eligibility for fear-based relief, *id.* § 1225(b)(1)(B)(v), then the asylum seeker is placed into regular removal proceedings. *Id.* § 1225(b)(1)(B)(ii).

The Government’s Policies Before “Zero Tolerance”

24. Prior to implementing a systematic policy of family separation in 2018, the government did not detain some families apprehended at the border at all, instead placing them in regular removal proceedings. For others, the government followed expedited removal procedures, and detained members of these families together. If Defendants found these family members to have a credible fear of persecution, they would release the family from detention.

25. When the government decides to detain children, it is subject to the *Flores* Settlement, which implements a “general policy favoring release” of minors. *See* Settlement Agreement, *Flores v. Reno*, No. CV-85-4544-RJK (C.D. Cal. Jan. 17, 1997), *available at* <https://tinyurl.com/y9fxrbps> (hereinafter “*Flores* Settlement”). The *Flores* Settlement “unambiguously applies both to accompanied and unaccompanied minors” in DHS custody. *Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016), and requires the government to “place each detained minor in the least restrictive setting appropriate to the minor’s age and special needs . . .” *Flores* Settlement ¶ 11.

26. Under the settlement, children must be released from detention within five days, or within twenty days in certain emergency circumstances, to a parent, legal guardian, adult

relative, adult designated by a legal guardian, or (if none of these individuals are available) a licensed program willing to accept legal custody. *Id.* ¶¶ 12, 14.

27. Starting in January 2016, the government piloted the Family Case Management Program (“FCMP”) as an “alternative to detention . . . initiative that use[d] qualified case managers to promote participant compliance with their immigration obligations” through a wrap-around service model. The ICE Office of Inspector General determined that the FCMP was 99 percent effective at ensuring participant attendance for ICE check-ins and appointments, and 100 percent effective at ensuring attendance for court hearings. *U.S. Immigration and Customs Enforcement’s Award of the Family Case Management Program Contract (Redacted)*, DHS Office of Inspector General, at 5 (OIG-18-22) (Nov. 30, 2017), *available at* <https://tinyurl.com/y96l9t8y>. Nevertheless, the government closed the program in June 2017.

The Government’s “Zero Tolerance” Family Separation Policy

28. In early 2017, DHS contemplated changing its policy on asylum-seeking families by implementing family separation to deter migration from Central America into the United States. In March 2017, then-DHS Secretary John Kelly stated that he was considering separating arriving children from their parents “in order to deter more movement” into the United States.

29. On May 7, 2018, Defendant Sessions announced a “zero tolerance policy” of coercive family separation in order to deter asylum seekers and other migrants from crossing into the United States. Defendant Sessions explained, “If you cross this border unlawfully, then we will prosecute you. It’s that simple. . . . If you are smuggling a child, then we will prosecute you and that child will be separated from you” *Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018)*, *available at* <https://tinyurl.com/ybqbfubb>.

30. The government applied its “zero-tolerance policy” against parents who crossed the border with their own children seeking asylum, including J.S.R. Defendants have forcibly separated over 2,300 children from their parents while crossing the border, some only months old.

31. Children forcibly separated from their parents were transferred to the custody of the Office of Refugee Resettlement (“ORR”), a component of HHS, and sent to shelters and temporary housing. ORR deems these children as “unaccompanied minors.”

32. Under ORR policies, a child will be released from ORR custody only after ORR undertakes an onerous and lengthy procedure to determine that a potential custodian, or “sponsor,” is suitable for providing for the child’s physical and mental well-being.

33. In the face of widespread public condemnation of coerced family separation as a grave violation of American values, President Trump purportedly retracted the policy on June 20, 2018. Exec. Order, *Affording Congress an Opportunity to Address Family Separation*, 2018 WL 3046068 (June 20, 2018) (hereinafter “EO”). The EO continued the policy of initiating criminal proceedings for all individuals who crossed the border without authorization; however, in place of systematic separation of families, the EO called for indefinite detention of families in camps and makeshift facilities. *Id.*

The Government’s Ongoing Failure to Reunify Families

34. The EO did not include any provisions to reunite families that had been separated at the border, nor did it purport to remediate the trauma or other harms caused by family separation.

35. DHS has not disclosed any process for reunification of families prior to removal, including during the pendency of asylum claims, which may last for months. In litigation in the

U.S. District Court for the Southern District of California, Defendants did not dispute that they had “no plans or procedures to reunify the parent with the child other than arranging for them to be deported together after the parent’s immigration case is concluded.” *Ms. L. v. ICE*, ___ F. Supp. 3d ___, 2018 WL 3129486, at *5 (S.D. Cal. June 26, 2018) (internal quotations omitted). The court found that “under the present system migrant children are not accounted for with the same efficiency and accuracy as *property*.” *Id.* at *7 (emphasis in original).

The Racial Animus Underlying Coerced Family Separation

36. The Trump Administration adopted its policy of coerced family separation as a central part of an anti-immigrant agenda, motivated primarily by racial animus against individuals of Hispanic origin and individuals from Central America.

37. On the first day of his presidential campaign, Candidate Trump stated: “When Mexico sends its people, they’re not sending their best. . . . They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.” *Donald Trump Announces a Presidential Bid*, WASH. POST (June 16, 2015), available at <https://tinyurl.com/gl6ofm5>.

38. Since taking office, President Trump has consistently pursued immigration policies motivated by racial animus against non-European immigrants. In summer 2017, he stated that the 15,000 Haitians admitted to the United States “all have AIDS,” and expressed concern that Nigerian nationals in the United States would never “go back to their huts” in Africa. Aaron Blake, *Trump’s ‘shithole’ comment about Haiti lends credence to report he said Haitians ‘all have AIDS’*, WASH. POST (Jan. 11, 2018), available at <https://tinyurl.com/ybspu5qa>.

39. In January 2018, President Trump complained about protections for individuals from specific Central American and African countries, asking why the United States was admitting “all these people from shithole countries,” as opposed to countries like Norway. *Id.* In May 2018, President Trump characterized certain unauthorized migrants as “animals.” Jamelle Bouie, *The “Animal” Debate is Over*, SLATE, June 19, 2018, <https://tinyurl.com/yckbshah>. The next month, defending his coerced family separation policy, the President alleged that families crossing the border with their children “could be murderers and thieves and so much else,” and warned that “[t]he United States will not be a migrant camp. . . .” *Id.*

40. The Administration’s shifting race-neutral explanations for coerced family separation are pretextual. President Trump falsely asserted that family separation was required under an unnamed law, but he unilaterally ended the policy through an executive order two days later. DHS Secretary Nielsen claimed that the policy was necessary due to arriving adults and children fraudulently claiming to be family units, but less than one percent of families apprehended at the border made such fraudulent claims. Linda Qiu, *Fact-Checking the Trump Administration’s Case for Child Separation at the Border*, N.Y. TIMES (June 19, 2018), available at <https://tinyurl.com/yddv5oef>. And although President Trump falsely asserted that 80 percent of individuals who were released pending immigration hearings failed to appear, most such individuals do in fact appear for their immigration hearings. Noah Bierman, Sarah D. Wire, & Eli Stokols, *Trump Orders End to His Family Separation Policy at the Border, but Relief Could Be Temporary*, L.A. TIMES (June 20, 2018), available at <https://tinyurl.com/yaq2a2hg>.

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FACTUAL ALLEGATIONS

41. J.S.R. and his father, J.S.G. came to the United States in or around June 2018, fearing for their lives if they stayed in Honduras. They traveled for approximately two months, often by foot, in order to seek asylum in the United States.

42. Shortly after J.S.R. and J.S.G. entered the U.S., federal immigration officials apprehended them near the southern border and detained them. They have both been detained by the federal government since then.

43. Upon information and belief, J.S.G. expressed a fear to return to Honduras to a federal immigration official.

44. Defendants initially detained J.S.G. and J.S.R. together, first at a detention facility that J.S.R. knows as the “hielera,” or “freezer” in Spanish. During this time, J.S.R. saw his father crying and shaking. The freezing temperatures and his father’s emotional state caused J.S.R. significant distress.

45. After holding them at the “hielera,” Defendants transferred J.S.G. and J.S.R. to an immigration detention center in Texas.

46. One day in early-to-mid June, while J.S.R. was sleeping, federal agents took his father away from him. Defendants brought J.S.R. into an area with other parents and children, where he thought he would be reunited with his father. He observed other children being reunited, but his father was not there. Since J.S.R. awoke that day, J.S.R. has not seen his father.

47. Defendants are currently detaining J.S.G. over 2,000 miles from J.S.R., at the Port Isabel Service Detention Center in Los Fresnos, Texas.

48. Left alone, J.S.R. asked over and over about his father. In response, federal agents have variously refused to disclose information about his father, told him inaccurately that his

father was just doing paperwork and would return soon, and claimed that they did not know why he was not with his father.

49. After Defendants took J.S.R. away from his father, they kept J.S.R. in cages with other young children for approximately four days. The location in which J.S.R. was detained had no windows. During this time, J.S.R. suffered significant harm, constantly crying for his father, witnessing other young children cry, and experiencing enormous confusion over his father's absence and his own detention. J.S.R. did not understand why he was separated from his father, when he would see him again, or whether he was at risk of being returned to Honduras, which he associates with the risk of violence and death.

50. Defendants eventually transferred J.S.R. from ICE custody to the custody of the ORR in mid-June 2018. When J.S.R. was informed he would be transferred, federal officials provided him conflicting information. One immigration official stated that he was going far away from his father and would not be able to see his father, while another stated that he would soon be close to his father and be able to see him often.

51. On or around June 16, 2018, ORR placed J.S.R. with Noank Community Support Services, Inc., a non-profit agency based in Groton, Connecticut that contracts to house children in custody of the federal government. Noank Community Support Services receives federal funding as a result of its contract with ORR, but does not offer legal representation. J.S.R. has been held in ORR custody at Noank Community Support Services since on or around June 16.

52. Defendants' actions in separating J.S.R. from his father, together with Defendants' other actions and failures to act, have caused significant and immediate mental and emotional harm to J.S.R., and threaten even greater long-term harm.

53. On information and belief, J.S.R. has been exposed to multiple significant traumatic events throughout his young life – from grinding poverty to destruction of his home in a hurricane to seeing the executed bodies of his grandparents. In the face of this trauma, his father has been his primary caregiver and source of protection and strength. To an even greater extent than other children his age, J.S.R. relies on the love and support of his father to help him survive a terrifying world.

54. J.S.R. is suffering deeply as a result of result of Defendants' actions. Since Defendants separated him from his father, J.S.R. has begun exhibiting severe and debilitating symptoms of acute trauma. He manifests numerous symptoms of Post-Traumatic Stress Disorder (PTSD), and on information and belief, suffers from PTSD. He cries often, and worries constantly about his father. He does not sleep at night. He is deeply depressed. He has trouble concentrating or communicating, and cannot bring himself to trust others.

55. Defendants' actions are not only causing short-term trauma but also threaten significant long-term damage to J.S.R. Childhood trauma and enforced separation from loved ones carries a dramatically increased risk of long-term psychiatric illness, including major depressive disorder, and anxiety disorders. Children who have suffered from trauma are also at significantly increased risk of physical illness.

56. J.S.R. has expressed to CLS his desire to be reunited with his father and his fear if returned to Honduras.

57. On information and belief, J.S.R. has no relatives in Connecticut and, since his detention at Noank Community Support Services, he has been able to speak with his father only once. J.S.R. does not know whether Defendants will reunite him with his father or when he can

see his father next. During the one phone call he has been permitted with his father, J.S.R. was unable to discuss with him his legal rights, including the issues presented in the present action.

58. The government does not have any legitimate interest in separating J.S.R. from his father. There is no allegation that J.S.G. is an unfit parent to J.S.R.

59. J.S.R. requests an order that Defendants immediately release him into the custody of his father, or to such other suitable adult as J.S.G. may direct.

CAUSES OF ACTION

COUNT I (Violation of Substantive Due Process)

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

61. The Due Process Clause of the Fifth Amendment applies to all “persons” on United States soil and thus applies to J.S.R.

62. J.S.R. has a liberty interest under the Due Process Clause in remaining together with his father, J.S.G., as a family.

63. The separation of J.S.R. from his father violates substantive due process because it furthers no legitimate purpose, much less a compelling governmental interest.

COUNT II (Violation of Procedural Due Process)

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

65. The Due Process Clause of the Fifth Amendment applies to all “persons” on United States soil and thus applies to J.S.R.

66. J.S.R. has a liberty interest under the Due Process Clause in remaining together with his father, J.S.G., as a family.

67. The separation of J.S.R. from his father violates procedural due process because it deprived J.S.R. of his protected liberty interest without notice or any opportunity to be heard.

COUNT III
(Violation of Section 504 of the Rehabilitation Act)

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

69. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) provides that “no otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 29 U.S.C. § 794(a).

70. Disability is defined to include “(A) a physical or mental impairment that substantially limits one or more major life activities . . .” 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102.

71. J.S.R. suffers from the effects of chronic trauma and acute PTSD. The effects of chronic trauma cause an impairment that limits J.S.R.’s ability to concentrate, think, and communicate. J.S.R. thus has a physical or mental impairment that substantially limits one or more major life activities.

72. Defendants’ separation of J.S.R. from his father and decision to detain J.S.R. thousands of miles away exacerbate J.S.R.’s existing limitations in communication, including when relating his past trauma. As a result, J.S.R. faces barriers in presenting his claims and is being denied equal and equally effective access to the asylum process on the basis of disability.

73. J.S.R. is “otherwise qualified” to participate in any removal proceedings currently pending against him and in affirmative asylum proceedings, as well as in the programs and activities of his temporary placement by ORR in a children’s shelter.

74. The children’s shelter at which J.S.R. is currently detained by ORR has received substantial federal financial assistance. Immigration proceedings, including asylum adjudications before USCIS and removal proceedings prosecuted by ICE before an Immigration Judge, are federal programs.

75. The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing “criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient’s program or activity with respect to handicapped persons.” 34 C.F.R. § 104.4(b)(4).

76. In separating J.S.R. from his father and detaining son and parent thousands of miles apart, the Defendants have exacerbated J.S.R.’s disabilities, interfered with his ability to meaningfully participate in immigration proceedings, excluded him from the protections afforded by the asylum statutes, and discriminated against J.S.R. on the basis of his disability.

77. Defendants have a legal duty to provide reasonable accommodations to J.S.R. to ensure his meaningful access to the federal program of asylum and removal proceedings.

78. J.S.R. has provided Defendants with notice of his disabilities and requested reasonable accommodations no later than service of this pleading. Defendants have not granted these requests.

79. There are effective reasonable accommodations that Defendants could implement. In particular, Defendants could immediately cease the forced separation of J.S.R. from his father. Defendants have failed to implement any reasonable accommodations.

80. The reasonable accommodation requested by J.S.R. would not be unduly burdensome nor would it require a fundamental alteration in the program. The burden of showing that any such relief or accommodation would require a fundamental alteration or pose an undue burden rests with Defendants. 6 C.F.R. § 15.50(a)(2).

81. By forcibly separating J.S.R. from his father, Defendants have denied J.S.R. equal and effective access to a federal program.

82. As a result of this discrimination and failure to reasonably accommodate J.S.R.'s disabilities, and solely based on his disability, J.S.R. cannot receive the benefits of the asylum process or the placement by Defendants in a children's shelter in Connecticut.

COUNT IV
(Violation of Administrative Procedure Act)

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

84. The Administrative Procedure Act ("APA") prohibits agency action that is arbitrary and capricious.

85. The forcible separation of J.S.R. from his father and the decision to detain them thousands of miles from one another constitutes final agency action under the APA.

86. Defendants' separation of J.S.R. from his father without a legitimate justification is arbitrary and capricious and accordingly violates the APA. 5 U.S.C. § 706.

87. ORR's decision to apply its policies and procedures for "sponsoring" an "unaccompanied alien child" to the parents who were forcibly separated from their children by the U.S. government is also a final agency action for purposes of the APA.

88. In light of ORR's mission to "promptly place" minors into "the least restrictive setting that is in the best interest of the child," ORR's insistence that J.S.R. remain detained and separated from his father is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

COUNT V
(Violation of Equal Protection Guarantee)

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

90. The Fifth Amendment contains an implicit guarantee of equal protection that invalidates any official action that in part reflects a racially discriminatory intent or purpose. Classifications based on race or national origin receive exacting scrutiny, and even facially neutral policies and practices will be held unconstitutional when they reflect a pattern unexplainable on grounds other than race or national origin.

91. Defendants' decisions to separate families from Central and South America arriving at the southern border seeking asylum, and to isolate children in detention facilities separate from their parents, are unconstitutional because they were motivated, at least in part, by intentional discrimination based on race, ethnicity, and/or national origin. This intentional discrimination includes bias against immigrants perceived to come from Central or South American countries.

92. As a result of these decisions, including the decisions that have caused the separation of J.S.R. from his father, J.S.R. has been and is being denied equal protection.

COUNT VI
(Declaratory Judgment Act)

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

94. The Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, provides that “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

95. There is an actual controversy between the parties because Defendants have refused to immediately release J.S.R. The Court should exercise its authority under the Declaratory Judgment Act to declare that Defendants have no basis to refuse to release J.S.R. and to order Defendants to immediately release J.S.R., into the custody of his father or another suitable relative as directed by J.S.G.

PRAYER FOR RELIEF

WHEEFORE, Plaintiff respectfully requests that the Court enter a judgment against Defendants and award the following relief:

- A. Declare that Defendants have no basis to hold or maintain custody over J.S.R.;
- B. Declare that Defendants’ failure to reasonably accommodate J.S.R.’s disabilities, or their failure to provide J.S.R. equal and effective access to a federal program, violates Section 504 of the Rehabilitation Act of 1973;
- C. Declare that Defendants must immediately release J.S.R. into the custody of his father, or to such other suitable adult as J.S.G. may direct;
- D. Order Defendants to produce J.S.G. in the District of Connecticut, on a writ of habeas corpus *ad testificandum* or otherwise, so that he may visit in person with his son J.S.R so

as to advise this Court whether J.S.G. requests his son's immediate release to another suitable relative or continued detention, together with J.S.G., for as long as Defendants detain them both;

E. Preliminarily and permanently enjoin Defendants from continuing to separate J.S.R. from his father, J.S.G. and from refusing to release J.S.R. into the custody of his father, or to such other suitable adult as J.S.G. may direct;

F. Grant a writ of Habeas Corpus requiring Defendants to release J.S.R. immediately to the custody of his father or such other suitable relative as J.S.G. may direct, or issue an order directing the Defendants to show cause within three days why the writ should not be granted, pursuant to 28 U.S.C. § 2243;

G. Require Defendants to pay Plaintiff's reasonable attorneys' fees and costs; and

H. Grant all other relief that is just and proper.

Dated: July 2, 2018
New Haven, Connecticut

Respectfully submitted,

/s/ Michael Wishnie

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* Motion for law student appearance forthcoming.

† Application for admission forthcoming.

** This complaint and petition has been prepared by a program affiliated with Yale Law School, but does not purport to present the school's institutional views, if any.