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20 IN THE UNITED STATES DISTRICT COURT
21 FOR THE EASTERN DISTRICT OF WASHINGTON

22 MARCOS GONZALEZ MACHADO, by
23 and through DAVID GROESBECK, the
24 Proposed Guardian ad Litem, and all others
25 similarly situated,

26 Plaintiffs,

27 vs.

28 JOHN ASHCROFT, Attorney General;
ROBERT COLEMAN, District Director,
Seattle INS District Office; and
IMMIGRATION AND
NATURALIZATION SERVICE,

Defendants.

CS-02-0066-FVS
No.

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

CLASS ACTION

COMPLAINT- 1 of 9

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I. PRELIMINARY STATEMENT

1. This is a class action seeking declaratory and injunctive relief against the Immigration and Naturalization Service ("INS") for failing to provide Plaintiff, and all other similarly situated minors, with legal counsel at government expense during immigration removal/deportation proceedings.

2. Plaintiff, Marcos Gonzalez Machado, is a fifteen year old minor being detained by the INS at a secure detention facility located near Spokane, Washington. The sole reason he is in custody is to await removal proceedings to determine whether he will be deported from the United States. Marcos is indigent and does not have legal representation to assist him with his immigration proceedings. Marcos seeks an injunction on behalf of himself, and others similarly situated, requiring the INS to provide indigent minors who are detained in secure and shelter care facilities, and awaiting removal proceedings with legal representation at government expense.

3. Plaintiff further asks this Court for a Declaratory Judgment declaring that the INS violates the due process rights of minors who are in INS custody in secure and shelter care facilities by failing to provide them with legal representation during removal proceedings.

II. JURISDICTION AND VENUE

4. Jurisdiction of the Court is predicated upon 28 U.S.C. §§ 1331 and 1346(a)(2) in that the matter arises under the Constitution and the laws of the United States and the United States is a Defendant.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (e)(1), (2), and (4) because the events and omissions giving rise to the claim occurred in Spokane County.

6. Declaratory Judgment is sought pursuant to 28 U.S.C. §§ 2201-02.

III. PARTIES

7. Plaintiff Marcos ("Marcos") Gonzalez Machado is a real party in interest in this case. He is currently in INS custody.

8. David Groesbeck is Marcos' proposed guardian ad litem. Pursuant to LR 17.1(a), he is an attorney in good standing and is licensed to practice in the United States District Court for the Eastern District of Washington.

9. Defendant John Ashcroft is the Attorney General of the United States and, as such, is charged with the constitutional and lawful implementation of the Immigration and Naturalization Act ("INA"). He is sued in his official capacity.

10. Defendant Robert Coleman is the District Director of the INS in Seattle, Washington and, as such, is charged with the constitutional and lawful implementation of the INA. He is the INS officer currently responsible for Marcos'

1 custody, care, well-being and processing under the INA. He is sued in his official
2 capacity.
3

4 11. Defendant Immigration and Naturalization Service ("INS") is an agency
5 of the United States Department of Justice and is responsible for the administration of
6 the INA and regulations and policies issued thereunder.
7

8 IV. STATEMENT OF THE FACTS

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10 12. Marcos was born on May 8, 1984. His father died when he was young
11 and his mother abandoned him shortly thereafter. He was raised by his grandfather.
12

13 13. Prior to his detention, Marcos was residing in Seattle, Washington with
14 his aunt and uncle.

15 14. In February 2002, Marcos was kidnapped at gunpoint. He went to a
16 police station in Seattle to report that he had been the victim of a crime. He informed
17 the police that he would be able to identify the perpetrators of the crime.
18

19 15. The police department notified the INS and Marcos was placed in INS
20 custody in Seattle, Washington. Shortly thereafter, he was transferred to Martin Hall
21 in Eastern Washington. He is being held in custody there awaiting immigration
22 removal proceedings.
23

24 16. Martin Hall is a secure juvenile detention facility located in Medical
25 Lake, Washington. It is a lockdown facility used by several Washington counties to
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1 incarcerate juvenile offenders. The INS also contracts with Martin Hall to detain
2 juveniles being held on immigration matters.
3

4 17. At Martin Hall, Marcos and other INS detainees are treated as prisoners,
5 even though they have not been charged with any criminal offense. Marcos and the
6 other INS detainees are in daily contact with juveniles who have committed violent
7 offenses.
8

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10 18. Marcos is not at liberty to leave Martin Hall except for appearances
11 before the Immigration Court. When transporting Marcos to and from appearances
12 before the Immigration Court, INS uses physical restraints, such as handcuffs and
13 shackles.
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15 19. Marcos does not speak English. Martin Hall has a limited number of
16 staff members who speak Spanish, his native language. As a result, Marcos is unable
17 to adequately communicate with either staff members or other detainees.
18

19
20 20. Marcos is currently in removal proceedings before the Immigration
21 Court. The INS is seeking to deport Marcos to Mexico.
22

23 21. Marcos has not been able to secure an attorney to represent him in his
24 immigration matters.
25

26 22. If the INS prevails in Marcos' removal proceedings, they will physically
27 transport him against his will to Mexico. Marcos could also be permanently barred
28 from returning to the United States. Marcos would thus be separated from his aunt

1 and uncle, with whom he was living in Seattle. Marcos' aunt and uncle are United
2 States citizens. If Marcos were removed from the United States to Mexico, his aunt
3 and uncle would not be able to petition for his return to the United States.
4

5 23. Removal proceedings are governed by the INA, an extremely complex
6 statutory scheme. Marcos is unfamiliar with the provisions of the INA and with the
7 legal system of the United States. Due to his youth, immaturity, inability to speak or
8 understand English, and lack of familiarity with the legal proceedings and applicable
9 law, Marcos will have extreme difficulty understanding the nature of the legal
10 proceedings. Without legal assistance, it will be nearly to impossible for him to
11 meaningfully participate in his removal proceedings.
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15 24. Without the assistance of counsel, Marcos will not even be aware of
16 available remedies he has under the law that could enable him to avoid
17 removal/deportation from the United States. For example, Marcos could ask for
18 immigration relief pursuant to INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U)
19 (application for victims of violent crimes), and INA § 101(a)(27)(J), 8 U.S.C. §
20 1101(a)(27)(J) (special immigrant juvenile status) which would permit him to avoid
21 removal/deportation. Without the assistance of counsel, Marcos will be unable to
22 present his claims for relief to the Immigration Court. In the absence of the assistance
23 of counsel, it is probable that Marcos will be erroneously deported. Appointing
24 counsel to represent Marcos will substantially decrease the likelihood that he will be
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1 erroneously removed from the United States and permanently separated from his
2 home and family here.

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4 25. INS District Counsel appoints an Assistant Attorney to represent the INS
5 at all removal proceedings. Marcos, on the other hand, must defend himself against
6 counsel appointed to represent the opposing side.
7

8 V. CLASS ALLEGATIONS

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10 26. Marcos brings this action on behalf of himself, and all others who are
11 similarly situated, pursuant to FED. R. CIV. P. 23(a) and 23(b)(2). Plaintiff
12 provisionally proposes the following class definition:
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14 All current and future unaccompanied, indigent minors who are in
15 INS custody in a secure detention or shelter care facility and for
16 whom the INS has not appointed a legal representative at government
17 expense to represent them during removal proceedings.

18 27. This is an appropriate class action because the class is so numerous that
19 joinder of all of the members is impracticable. Members of the proposed class
20 number in the thousands.
21

22 28. There are questions of law and fact common to the class, including
23 whether the current INS policy of failing to appoint legal counsel to represent
24 unaccompanied, detained minors is lawful.
25

26 29. The claims of the named Plaintiff are typical to the claims of the class.
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1 30. The named Plaintiff will fairly and adequately protect the interests of the
2 class because he has been subjected to the conditions challenged by the class as a
3 whole.
4

5 31. The named Plaintiff has available competent counsel with experience in
6 civil rights, prisoner's rights and immigration law who are willing and able to protect
7 the interests of the class.
8

9 32. The Defendants have acted or refused to act on grounds generally
10 applicable to the class, thereby making appropriate final declaratory and injunctive
11 relief with respect to the class as a whole.
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14 **VI. IRREPARABLE INJURY**

15 33. Plaintiff, and others similarly situated, are threatened with immediate,
16 irreparable harm by the unlawful failure of the INS to appoint counsel to represent
17 them in their removal proceedings. Such injury includes deprivation of due process
18 through removal from the United States and denial of rights under the INA in general.
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21 **VII. CAUSES OF ACTION**

22 34. Defendants' failure to appoint counsel to represent Plaintiffs in their
23 removal hearings denies them their due process rights in violation of the Fifth
24 Amendment of the United States Constitution.
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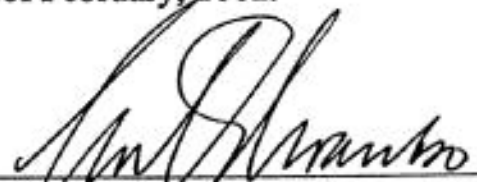
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VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

1. Certify this action as a class action pursuant to FED. R. CIV. P. 23(b)(2);
2. Issue a Declaratory Judgment declaring that Defendants have violated Plaintiff's due process rights and declaring that the Plaintiff's due process rights entitle him, and all others similarly situated, to have counsel appointed to represent them in removal proceedings at government expense;
3. Issue an injunction appointing counsel to represent members of the class in removal/deportation proceedings;
4. Award Plaintiffs' costs of this suit and attorney's fees reasonably incurred as a result of this lawsuit pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) or any other applicable law; and
5. Grant Plaintiffs other such relief as the Court deems appropriate and just.

Respectfully submitted this 19th day of February, 2002.



ATIENO ODHIAMBO, WSBA #30280
Attorney for Plaintiffs