

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE DANA M. SABRAW, JUDGE PRESIDING

MS. L. AND MS. C.,

PETITIONERS-PLAINTIFFS,

VS.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT ("ICE"); U.S. DEPARTMENT
OF HOMELAND SECURITY ("DHS"); U.S.
CUSTOMS AND BORDER PROTECTION ("CBP");
U.S. CITIZENSHIP AND IMMIGRATION
SERVICES ("USCIS"); U.S. DEPARTMENT
OF HEALTH AND HUMAN SERVICES ("HHS");
OFFICE OF REFUGEE RESETTLEMENT ("ORR");
THOMAS HOMAN, ACTING DIRECTOR OF ICE;
GREG ARCHAMBEAULT, SAN DIEGO FIELD
OFFICE DIRECTOR, ICE; ADRIAN P. MACIAS,
EL PASO FIELD DIRECTOR, ICE; FRANCES M.
JACKSON, EL PASO ASSISTANT FIELD
OFFICE DIRECTOR, ICE; KIRSTJEN NIELSEN,
SECRETARY OF DHS; JEFFERSON BEAUREGARD
SESSIONS III, ATTORNEY GENERAL OF THE
UNITED STATES; L. FRANCIS CISSNA,
DIRECTOR OF USCIS; KEVIN K.
MCALEENAN, ACTING COMMISSIONER OF
CBP; PETE FLORES, SAN DIEGO FIELD
DIRECTOR, CBP; HECTOR A. MANCHA JR.,
EL PASO FIELD DIRECTOR, CBP;
ALEX AZAR, SECRETARY OF THE
DEPARTMENT OF HEALTH AND HUMAN
SERVICES; SCOTT LLOYD, DIRECTOR
OF THE OFFICE OF REFUGEE RESETTLEMENT,

RESPONDENTS-DEFENDANTS.

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)
) CASE NO. 18CV0428-DMS
)
)
)
) SAN DIEGO, CALIFORNIA
) FRIDAY JUNE 22, 2018
) 12:00 P.M. CALENDAR

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TELEPHONIC STATUS CONFERENCE

COUNSEL APPEARING TELEPHONICALLY:

FOR PLAINTIFF:

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ACLU IMMIGRANT RIGHTS PROJECT
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FOR DEFENDANT:

SARAH B. FABIAN, ESQ.
U.S. DEPARTMENT OF JUSTICE
OFFICE OF IMMIGRATION LITIGATION
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WASHINGTON, DC 20044

ADAM L. BRAVERMAN
INTERIM UNITED STATES ATTORNEY
BY: SAM BETTWY
ASSISTANT U.S. ATTORNEY
880 FRONT STREET
SAN DIEGO, CALIFORNIA 92101

REPORTED BY:

LEE ANN PENCE,
OFFICIAL COURT REPORTER
UNITED STATES COURTHOUSE
333 WEST BROADWAY, ROOM 1393
SAN DIEGO, CALIFORNIA 92101

1 SAN DIEGO, CALIFORNIA - FRIDAY, JUNE 22, 2018 - 12:10 P.M.

2 * * *

3 **THE CLERK:** NO. 12 ON CALENDAR, CASE NO. 18CV0428,
4 MS. L. VERSUS U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; ON FOR
5 A STATUS CONFERENCE.

6 **THE COURT:** GOOD AFTERNOON. THIS IS JUDGE SABRAW.
7 IF COUNSEL CAN HEAR ME, CAN YOU ENTER YOUR
8 APPEARANCES, PLEASE.

9 **MR. GELERNT:** YES, YOUR HONOR. THIS IS LEE GELERNT
10 FROM THE ACLU FOR PLAINTIFFS.

11 **MR. VAKILI:** GOOD AFTERNOON, YOUR HONOR. THIS IS
12 BARDIS VAKILI FROM THE ACLU SAN DIEGO FOR PLAINTIFFS.

13 **MS. FABIAN:** GOOD AFTERNOON, YOUR HONOR. SARAH
14 FABIAN WITH THE DEPARTMENT OF JUSTICE FOR DEFENDANTS.

15 **MR. BETTWY:** GOOD AFTERNOON, YOUR HONOR. SAM BETTWY
16 WITH THE U.S. ATTORNEY'S OFFICE FOR DEFENDANTS.

17 **THE COURT:** OKAY. IS THAT ALL COUNSEL?

18 **MR. GELERNT:** YOUR HONOR, WE HAVE SOME COUNSEL HERE
19 BUT THEY ARE NOT GOING TO BE SPEAKING. I DON'T KNOW WHETHER
20 YOU WOULD LIKE US TO ANNOUNCE ALL OF THEM.

21 **THE COURT:** NO, THAT'S OKAY.

22 **MR. GELERNT:** OKAY.

23 **THE COURT:** I JUST WANTED A RECORD FOR TODAY'S
24 APPEARANCES.

25 AND I KNOW WE HAVE A NUMBER OF MEDIA ONLINE, AND I

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1 THINK WE HAVE AT LEAST ONE MEDIA PERSON PRESENT IN THE
2 COURTROOM.

3 I AM CONDUCTING THIS TELEPHONIC HEARING ON THE
4 RECORD, IN THE COURTROOM. AND I DO APPRECIATE EVERYONE'S
5 COOPERATION MEETING TELEPHONICALLY. I WANTED TO GET COUNSELS'
6 INSIGHTS AS QUICKLY AS WAS REASONABLY PRACTICAL, AND SO I
7 THINK THIS PROVIDES THE BEST OPTION FOR ALL OF US.

8 IN LIGHT OF A NUMBER OF EVENTS THAT HAVE TAKEN PLACE
9 OVER THE LAST COUPLE OF WEEKS, AND IN PARTICULAR ON JUNE 20,
10 2018, TWO DAYS AGO WHEN THE PRESIDENT ISSUED THE EXECUTIVE
11 ORDER, I HAD SOME QUESTIONS AND WANTED TO GIVE COUNSEL AN
12 OPPORTUNITY TO PROVIDE INSIGHT AS TO HOW WE PROCEED.

13 PERHAPS I CAN START FIRST WITH MR. GELERNT.

14 HOW DOES THE EXECUTIVE ORDER AFFECT THIS CASE?

15 **MR. GELERNT:** YOUR HONOR, WE DO NOT BELIEVE IT IN
16 ANY WAY ELIMINATES THE URGENT NEED FOR A PRELIMINARY
17 INJUNCTION, AND THAT IS FOR TWO REASONS.

18 ONE IS WE DO NOT BELIEVE THE EXECUTIVE ORDER
19 ELIMINATES THE NEED FOR AN --

20 **(PHONE INTERFERENCE)**

21 -- WHEN SEPARATIONS OCCUR BECAUSE THE EXECUTIVE
22 ORDER HAS TOO MANY EXPLICIT EXCEPTIONS THAT WOULD STILL ALLOW
23 SEPARATIONS TO GO FORWARD UNDER WHAT WE BELIEVE IS NOT A
24 CONSTITUTIONAL STANDARD AND THE CONSTITUTIONAL STANDARD YOUR
25 HONOR SET FORTH IN HIS INITIAL OPINION.

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1 THE SECOND REASON THE EXECUTIVE ORDER DOESN'T
2 ELIMINATE THE NEED FOR AN IMMEDIATE INJUNCTION IS MAYBE MORE
3 ACUTE, IS THAT THE EXECUTIVE ORDER SIMPLY DOES NOT SPEAK AT
4 ALL TO THE REUNIFICATION OF PARENTS AND CHILDREN, THOSE WHO
5 HAVE ALREADY BEEN SEPARATED. DOESN'T SAY ONE WORD ABOUT IT.
6 AND IN STATEMENTS THAT POSTDATE THE EXECUTIVE ORDER THE
7 ADMINISTRATION HAS MADE CLEAR THAT THOSE CASES WILL JUST GO ON
8 AS USUAL.

9 AND I CANNOT EXPRESS ENOUGH HOW BAD THE SITUATION
10 HAS BECOME SINCE WE HAVE BEEN IN YOUR COURT IN THE BEGINNING
11 OF MAY.

12 AS YOUR HONOR HAS PROBABLY BEEN FOLLOWING IN THE
13 MEDIA, THERE ARE ABOUT 2,000 KIDS NOW WHO HAVE BEEN SEPARATED.
14 THEY ARE -- RANGE FROM LITTLE BABIES LESS THAN A YEAR OLD, TO
15 TODDLERS, TO YOUNG CHILDREN. AND THEY ARE SUFFERING
16 IMMEASURABLY.

17 EVERY NIGHT WE ARE HEARING STORIES ABOUT CHILDREN
18 GOING TO SLEEP, ASKING WHETHER THEY ARE EVER GOING TO SEE
19 THEIR PARENTS AGAIN, CLUTCHING PICTURES OF THEIR PARENTS. I
20 JUST MET WITH A FAMILY, THE FOUR AND TEN-YEAR-OLD BOY HAD BEEN
21 SEPARATED FOR MONTHS. AND THE CHILD NOW IS BACK WITH HIS
22 MOTHER, FINALLY, AND EVERY NIGHT HE ASKS HIS MOTHER, ARE THEY
23 GOING TO COME AND TAKE ME AWAY?

24 AND I THINK IT IS JUST CONSISTENT WITH THE MEDICAL
25 TESTIMONY WE PROVIDED YOU AND WHAT THE MEDICAL COMMUNITY HAS

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1 PREDICTED WOULD HAPPEN, THAT DEEP, DEEP TRAUMA WOULD SET IN.
2 AND IT HAS JUST BECOME A COMPLETE MESS WITH 1,000 PEOPLE OVER
3 -- YOU KNOW, 2,000 PEOPLE SEPARATED THAT THEY DON'T -- THE
4 PARENTS CAN'T FIND THE CHILDREN, THEY ARE NOT EVEN SPEAKING TO
5 THE CHILDREN. I THINK IT IS A, YOU KNOW, A HUMANITARIAN
6 CRISIS OF THE UTMOST PROPORTIONS.

7 AND I REALIZE THAT, YOU KNOW, I AM SORT OF ALMOST
8 PLEADING, BUT AT THIS POINT, YOUR HONOR, WE BELIEVE THAT IT IS
9 NECESSARY FOR YOU TO ISSUE AN INJUNCTION AS EARLY AS TONIGHT
10 OR THIS WEEKEND.

11 AND WHAT I WANT TO PROPOSE TO YOU, YOUR HONOR, IS
12 THAT IT BE IN STAGES. AND THAT THE INJUNCTION WOULD SAY THAT
13 ALL KIDS NEED TO BE REUNITED WITHIN A MONTH, BUT THE KIDS
14 UNDER THE AGE OF FIVE, WE THINK, NEED TO BE REUNITED WITHIN
15 TEN DAYS. I MEAN, THERE ARE JUST LITTLE BABIES SITTING THERE
16 ALL BY THEMSELVES.

17 THE OTHER THING THAT WE URGENTLY WOULD REQUEST IS
18 THAT THE GOVERNMENT PROVIDE A LIST OF ALL OF THE PARENTS AND
19 CHILDREN SO THAT THEY CAN SHOW THEY HAVEN'T LOST TRACK OF
20 THESE PARENTS AND CHILDREN, AND TO TELL THE PARENTS HOW THEY
21 CAN EVEN REACH THEIR KIDS.

22 WE HAVE PARENTS SITTING IN DETENTION CENTERS WHO
23 HAVE NO IDEA WHERE THEIR CHILDREN ARE, NO IDEA HOW TO REACH
24 THEM. AND THEY CAN'T SLEEP, THEY CAN'T EAT. THEY ARE JUST
25 WORRIED ABOUT THEIR CHILDREN EVERY SECOND, UNDERSTANDABLY. IT

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1 IS CAUSING DEEP, DEEP DEPRESSION. AND ON THE CHILD'S SIDE, I
2 THINK THE CHILDREN ARE JUST BEING PERMANENTLY DAMAGED NOW, AS
3 THE MEDICAL COMMUNITY SAID WOULD HAPPEN.

4 SO, YOU KNOW, WE UNDERSTAND THAT WHEN WE WERE THERE
5 BEFORE YOU IN EARLY MAY WE ASKED FOR PROMPT REUNIFICATION. WE
6 THINK, GIVEN THAT THE GOVERNMENT HAS NOW DOUBLED DOWN, TRIPLED
7 DOWN ON THIS PRACTICE, YOU KNOW, AND WHAT NOW IS CLEAR AS A
8 POLICY, THAT THERE IS REALLY AN URGENT NEED TO SET A
9 TIMETABLE.

10 AND I SUSPECT THE GOVERNMENT IS GOING TO GET ON THE
11 PHONE WITH YOU AND SAY, WELL, WE HAVE A PROCESS, WE WOULD LIKE
12 TO REUNITE.

13 BUT ALL WE HAVE HEARD IS THAT THEY ARE GOING TO USE
14 THE PAST PROCESS. AND THAT, AS YOU KNOW, YOUR HONOR, CAN TAKE
15 MONTHS AND MONTHS AND MONTHS.

16 MS. C., ONE OF THE NAMED PLAINTIFFS, WASN'T REUNITED
17 WITH HER CHILD FOR EIGHT MONTHS. AND I THINK THE TIME TO SORT
18 OF LEAVE THE GOVERNMENT TO ITS OWN DEVICES HAS LONG PASSED.
19 AND WE DON'T CARE HOW THEY GO ABOUT DOING IT, BUT WE DO THINK
20 THAT 30 DAYS IS REASONABLE.

21 AND I SUSPECT WHAT THE GOVERNMENT IS GOING TO TELL
22 YOU IS, WELL, THAT, LOOK, THERE IS A LOT OF LOGISTICS INVOLVED
23 AND THERE IS A LOT OF KIDS.

24 BUT WHAT I GUESS I WOULD SAY IS IT IS A CRISIS OF
25 THEIR OWN MAKING. AND THE UNITED STATES GOVERNMENT HAS

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1 ENORMOUS RESOURCES WHEN THEY WANT TO PRIORITIZE SOMETHING.
2 AND IT JUST SEEMS TO US AT THIS POINT THEY NEED TO PRIORITIZE
3 IT, AND 30 DAYS IS NOT UNREASONABLE FOR THEM TO GET THIS DONE
4 IF THEY ARE GOING TO PRIORITIZE IT. AND THEY HAVE DONE THIS
5 DAMAGE TO THE CHILDREN. AND AT THIS POINT WE THINK THAT THEY
6 JUST NEED TO DO IT.

7 AND IF THEY WANT TO TAKE YOUR ORDER UP, YOU KNOW,
8 TONIGHT, TOMORROW TO THE NINTH CIRCUIT, SO BE IT. BUT, AT
9 THIS POINT, WE RESPECTFULLY WOULD URGE YOU TO ISSUE AN
10 INJUNCTION, EVEN IF IT HAS TO BE FOLLOWED BY AN OPINION AT
11 SOME LATER POINT. TO GET AN ORDER OUT THAT THE GOVERNMENT
12 NEEDS HERE, BECAUSE EVERY STATEMENT WE HAVE SEEN SINCE THE
13 EXECUTIVE ORDER HAS SAID, WELL, WE ARE THINKING ABOUT HOW TO
14 DO IT OR SOME KIND OF PROCESS, OR WE ARE GOING TO USE THE OLD
15 PROCESS.

16 AT THIS POINT, YOU KNOW, IT IS JUST NOT GOOD ENOUGH.
17 ALMOST EVERY CORNER OF SOCIETY NOW IS BEGGING FOR THESE KIDS
18 TO BE BACK. AND I THINK, AT THE END OF THE DAY, YOUR HONOR,
19 YOU HAVE GIVEN THE GOVERNMENT PLENTY OF TIME SINCE YOUR MOTION
20 TO DISMISS TO TRY AND FIX THINGS. THEY HAVEN'T. AND I DON'T
21 THINK IT IS UNREASONABLE AT THIS POINT FOR YOUR HONOR, WHO IS
22 REALLY THE ONLY PERSON LEFT WHO CAN HELP THESE LITTLE
23 CHILDREN, TO SAY TO THE GOVERNMENT, YOU KNOW, 30 DAYS IS
24 REASONABLE. AND IF YOU WANT TO APPEAL IT TO THE NINTH CIRCUIT
25 ON AN EMERGENCY BASIS, SO BE IT.

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1 BUT THE LAST THING I WOULD SAY, YOUR HONOR, IS WE
2 STILL BELIEVE WE NEED AN INJUNCTION GOING -- TO STOP
3 SEPARATIONS GOING FORWARD.

4 THE EXECUTIVE ORDER HAS A NUMBER OF EXCEPTIONS
5 HAVING TO DO WITH APPROPRIATIONS AND VARIOUS OTHER THINGS, AND
6 THERE WAS A STATEMENT BY C.B.P. SUGGESTING THAT SEPARATIONS
7 COULD STILL OCCUR WHERE THERE IS PROSECUTIONS. BUT PUTTING
8 ALL OF THAT CONFUSION ASIDE, I THINK ONE THING YOUR HONOR WILL
9 RECOGNIZE IN THE EXECUTIVE ORDER IS THAT THE EXECUTIVE ORDER
10 HAS AN EXCEPTION WHERE -- FOR THE BEST INTEREST OF THE CHILD.
11 THE EXECUTIVE ORDER -- WE CAN EXPLICITLY SEPARATE WHERE WE
12 BELIEVE IT IS IN THE BEST INTEREST OF THE CHILD.

13 AND AS YOUR HONOR KNOWS WE, THE PLAINTIFFS, HAVE
14 SAID THAT IS A FINE STANDARD, THAT IS THE STANDARD USED BY THE
15 STATE AND FEDERAL GOVERNMENT AND CHILD ADVOCACY GROUPS; BUT
16 THE REAL PROBLEM IS IN HOW THIS ADMINISTRATION, IN THIS
17 CONTEXT, HAS INTERPRETED BEST INTEREST OF THE CHILD. BECAUSE,
18 AS YOUR HONOR KNOWS, WITH THE CONGOLESE MOM, MS. L., THEY
19 SEPARATED THE CHILD AND THEY SAID IT WAS IN THE BEST INTEREST
20 OF THE CHILD BECAUSE THEY WEREN'T SURE THE ADULT WAS REALLY
21 THE MOTHER.

22 AND WHAT YOUR HONOR WROTE IN HIS OPINION IS
23 ABSOLUTELY RIGHT AND IS CONSISTENT WITH THE EVIDENCE YOU HAVE
24 BEFORE YOU FROM CHILD EXPERTS THAT YOU WOULD NEVER SEPARATE A
25 CHILD IN THAT SITUATION. IT IS NOT IN THE BEST INTEREST OF

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1 THE CHILD. IT IS ONLY IN THE BEST INTEREST OF THE CHILD TO DO
2 THE VERIFICATION WHICH, YOU KNOW, AT A MINIMUM MEANS A DNA
3 TEST, IT IS SO SIMPLE. BUT WHAT WE ARE CONCERNED ABOUT IS
4 THAT WE WILL CONTINUE TO SEE SEPARATIONS LIKE THE MS. L.
5 SEPARATION UNDER THAT EXCEPTION, THAT LOOPHOLE FOR BEST
6 INTEREST.

7 AND, YOU KNOW, I DON'T THINK THE GOVERNMENT -- THE
8 GOVERNMENT THROUGHOUT THIS LITIGATION HAS SAID THE MS. L.
9 SEPARATION WAS LEGAL, SO THAT WOULD SUGGEST THAT UNDER THE
10 EXECUTIVE ORDER'S EXCEPTION FOR BEST INTEREST OF THE CHILD
11 THEY COULD STILL SEPARATE MS. L.

12 AND UNLESS THE GOVERNMENT IS PREPARED TO GET ON THE
13 PHONE RIGHT NOW AND SAY ALL OF THE PRIOR SEPARATIONS WERE
14 ILLEGAL, I THINK WE DO NEED THAT INJUNCTION GOING FORWARD THAT
15 STOPS -- YOU KNOW, SO THAT -- BECAUSE THE SEPARATIONS ARE JUST
16 SO HARMFUL WHEN THESE LITTLE CHILDREN ARE RIPPED AWAY.

17 AND I'M SURE YOUR HONOR HAS READ IN THE MEDIA THAT
18 NOW THEY TELL THE PARENTS, WE ARE JUST TAKING YOUR CHILD FOR A
19 BATH, THEN THE PARENT NEVER SEES THE CHILD AGAIN. IT IS
20 BECOMING UNBEARABLE. AND EVERY DAY ON THE GROUND WE ARE
21 HEARING FROM DOCTORS AND ADVOCATES AND PARENTS THAT THE
22 SITUATION IS SIMPLY INTOLERABLE AT THIS POINT. SO I KNOW THAT
23 I AM REALLY PUSHING HARD HERE, BUT I THINK THE SITUATION
24 WARRANTS IT.

25 SO THAT IS WHERE WE ARE. WE WOULD URGE THE COURT TO

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1 GET SOMETHING OUT TONIGHT OR OVER THE WEEKEND, AT LEAST AS TO
2 THE REUNIFICATION PART.

3 **THE COURT:** WHAT ABOUT THE RECORD BEFORE THE COURT.
4 THE COURT, OBVIOUSLY, IS A COURT BASED ON THE RECORD. WHAT
5 HAS HAPPENED IN THIS CASE IS UNUSUAL IN THAT THE CASE HAS
6 DEVELOPED IN THE MEDIA, BUT THE RECENT EVENTS ARE NOT IN THE
7 RECORD BEFORE THE COURT. AND SO IF THE RELIEF REQUESTED WERE
8 PROVIDED BY THE COURT THERE HAS TO BE SOME EVIDENTIARY BASIS
9 FOR IT, OTHER THAN NEWSPAPER AND TELEVISION AND RADIO
10 ACCOUNTS.

11 HOW WOULD YOU RESPOND TO THAT?

12 **MR. GELERT:** YES, YOUR HONOR. I THINK THAT IS A
13 FAIR QUESTION.

14 AND HERE IS WHAT I WOULD SAY, IS THAT WHAT -- WE
15 DON'T NEED YOU TO MAKE FACTUAL FINDINGS ABOUT WHAT HAS
16 HAPPENED SINCE WE WERE THERE BEFORE YOU. I THINK -- YOU KNOW,
17 I THINK EVERYONE KNOWS WHAT'S HAPPENING. I THINK THERE IS A
18 LOT OF THINGS YOU CAN TAKE JUDICIAL NOTICE OF BECAUSE THERE IS
19 THINGS THE GOVERNMENT HAS SAID ON THE RECORD, AND THOSE THINGS
20 ARE FINE TO TAKE JUDICIAL NOTICE OF.

21 AND, YOU KNOW, I THINK THE MEDIA, TO THE EXTENT IT
22 SEEMS LIKE THERE IS CONSENSUS YOU CAN TAKE -- YOU CAN
23 ACKNOWLEDGE THAT. BUT WE ARE NOT ASKING YOU TO MAKE FACTUAL
24 FINDINGS. WE DO NOT BELIEVE THAT THE INJUNCTION HINGES ON
25 ANYTHING THAT HAS HAPPENED AFTER THE HEARING.

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1 WHAT I THINK HAS HAPPENED AFTER THE HEARING IS THE
2 NUMBERS ARE INCREASED AND THE SUFFERING IS INCREASED, BUT I
3 DON'T THINK THAT CHANGES THE LEGAL LANDSCAPE. THERE WERE
4 ALREADY 700 PEOPLE BEFORE YOU AT THE TIME WE HAD THE HEARING
5 AND THE GOVERNMENT, YOU KNOW, THE GOVERNMENT ADMITTED THAT
6 THAT WAS A NUMBER THAT WAS ACCURATE. AND SO THAT IS PLENTY
7 FOR CLASS CERTIFICATION. THAT IS PLENTY OF SUFFERING,
8 UNFORTUNATELY. THE SCENARIOS THAT WERE ALREADY OCCURRING
9 BEFORE THE ZERO POLICY ANNOUNCEMENT.

10 SO I DON'T THINK ANYTHING HAS REALLY CHANGED FROM A
11 LEGAL STANDPOINT. BUT YOUR ANALYSIS IS STILL SPOT-ON THAT
12 UNDER SUBSTANTIVE DUE PROCESS YOU DON'T SEPARATE A CHILD
13 ABSENT A FINDING THAT THE PARENT IS UNFIT, OR NOT IN THE BEST
14 INTEREST OF THE CHILD. SO THAT IS ALL WE ARE ASKING YOU TO
15 DO.

16 AND WE HAVE ALWAYS BEEN ASKING YOU TO REUNIFY THE
17 CHILDREN. I JUST THINK THAT WHAT HAS HAPPENED SINCE SHOWS THE
18 NEED FOR YOUR HONOR TO ACT URGENTLY, BECAUSE AT THIS POINT YOU
19 ARE THE ONLY ONE WHO CAN REALLY STOP THE SUFFERING OF THESE
20 LITTLE CHILDREN. BUT WE CERTAINLY -- WE UNDERSTAND THAT YOU
21 WOULD NOT WANT TO MAKE FACTUAL FINDINGS BASED ON MEDIA
22 ACCOUNTS, WITH ALL DUE RESPECT TO THE MEDIA THAT ARE ON THE
23 LINE.

24 BUT WE THINK THERE IS PLENTY OF FACTUAL --
25 ESPECIALLY THE DOCTORS' AFFIDAVITS THAT WERE BEFORE YOU FROM

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1 THE BEGINNING, THE TEN DOCTORS' AFFIDAVITS. THEY SHOW THE
2 HARM ACUTELY AND THEY PREDICTED WHAT WAS GOING TO HAPPEN, AND
3 SO WHAT HAS HAPPENED AFTER IS JUST CONSISTENT WITH WHAT THEY
4 TOLD YOU.

5 **THE COURT:** WITH REGARD TO ONE OF THE FORMS OF
6 RELIEF YOU ARE REQUESTING, AND THAT IS INJUNCTIVE RELIEF TO
7 REUNIFY THE CHILDREN WHO HAVE ALREADY BEEN SEPARATED SO THAT
8 THE FAMILIES CAN BE DETAINED TOGETHER; IF THAT RELIEF WERE
9 GRANTED, WOULDN'T THAT BE GOOD FOR ONLY A 20-DAY PERIOD IN
10 LIGHT OF THE FLORES SETTLEMENT, ABSENT JUDGE GEE MODIFYING.

11 **MR. GELERT:** RIGHT. YOUR HONOR, I AM GLAD YOU
12 ASKED ABOUT THAT, BECAUSE I DO THINK THE GOVERNMENT HAS BEEN
13 PUSHING THAT NARRATIVE AND I THINK THERE IS SOME CONFUSION IN
14 THE MEDIA. SO I WANT TO BE AS ABSOLUTELY CLEAR AS POSSIBLE
15 ABOUT THE FLORES SETTLEMENT.

16 AND I THINK, YOU KNOW, AS A LEGAL MATTER I AM NOT
17 SURE THAT THE GOVERNMENT FULLY BELIEVES IT, AND I THINK THAT
18 IS WHY THEY RELEGATED THE FLORES DISCUSSION IN THEIR PAPERS
19 BEFORE YOU TO ONE SENTENCE IN A FOOTNOTE.

20 BUT HERE IS, I THINK, THE SITUATION WITH FLORES.

21 FIRST OF ALL, AT A MINIMUM THEY SHOULD BE DETAINING
22 THE CHILDREN FOR THE 20 DAYS. SO EVEN UNDER THE GOVERNMENT'S
23 UNDERSTANDING OF FLORES THE FAMILIES NEED TO BE REUNITED, AND
24 THEN PEOPLE CAN SEE WHAT HAPPENS AT 20 DAYS. BUT I DON'T EVEN
25 THINK THE 20 DAYS WILL ULTIMATELY BE RELEVANT FOR THE

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1 FOLLOWING REASONS.

2 MOST FAMILIES ARE RELEASED BEFORE 20 DAYS BECAUSE
3 THEY ARE NOT A FLIGHT RISK OR A DANGER. AS YOUR HONOR
4 PROPERLY NOTED IN HIS OPINION, THESE ARE ASYLUM SEEKERS, THEY
5 ARE CREDIBLE FEAR, SO MOST ARE GOING TO BE RELEASED.

6 THE OTHER CRITICAL POINT THAT I THINK HAS GOTTEN
7 LOST IN THE MEDIA ACCOUNTS AND GOVERNMENT'S NARRATIVE IS
8 FLORES IS ULTIMATELY, AT THE END OF THE DAY, A SETTLEMENT FOR
9 THE BEST INTEREST OF THE CHILD. IF A MOTHER IS GOING TO HAVE
10 HER BOND HEARING AT THE 34TH DAY SHE CAN SAY, I DON'T WANT MY
11 TWO-YEAR-OLD CHILD SENT TO SOME FACILITY IN CHICAGO, I WOULD
12 RATHER HAVE MY CHILD STAY WITH ME IN THIS FACILITY.

13 THE FACT THAT THE FACILITY IN CHICAGO MAY HAVE
14 BETTER CRAYONS AND TOYS DOES NOT MEAN SHE HAS TO ALLOW HER
15 CHILD, UNDER FLORES, TO BE FORCED -- TO BE SENT TO CHICAGO,
16 SHE CAN KEEP HER CHILD WITH HER. I THINK THAT IS SORT OF
17 BASIC SETTLEMENT LAW. AND THAT THE PARENT CAN ALWAYS SAY,
18 LOOK, THE BEST INTEREST OF MY CHILD IS TO REMAIN WITH ME.

19 FLORES WAS SET UP FOR SITUATIONS WHERE KIDS ARE
20 UNACCOMPANIED OR THE PARENT SAYS, LOOK, THE CHILD IS 15 YEARS
21 OLD AND HE KNOWS HIS UNCLE VERY WELL IN ST. LOUIS, I AM FINE
22 WITH HIM GOING IN 19 DAYS.

23 BUT NOTHING ABOUT FLORES REQUIRED THE RELEASE OF A
24 CHILD AT 19 DAYS OVER A PARENT'S OBJECTION, SO THAT AGAIN
25 BABIES WILL BE RIPPED OUT OF THEIR PARENT'S ARMS AT THE 19TH

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1 DAY IN THE DETENTION CENTER.

2 **THE COURT:** BUT HOW DOES FLORES PROVIDE PARENTS WITH
3 ANY RIGHTS. AS I UNDERSTAND IT, IT IS A DOCUMENT CREATED FOR
4 THE MINOR ONLY.

5 **MR. GELERT:** YOUR HONOR, I THINK THAT IS A GOOD
6 QUESTION. WHAT I UNDERSTAND FLORES TO DO, I MEAN WHAT, YOU
7 KNOW -- AND THE NINTH CIRCUIT HAS SAID THIS, HAS SAID IT
8 DOESN'T PROVIDE THE PARENT WITH ANY RELEASE RIGHTS. BUT IT
9 CERTAINLY DOESN'T TAKE AWAY THE PARENT'S RIGHT TO MAKE
10 DECISIONS FOR THE CHILD, YOU KNOW, ESPECIALLY FOR YOUNG
11 CHILDREN.

12 SO THERE IS NO QUESTION THE PARENT CAN SAY, YEAH,
13 MAYBE I CAN'T CITE FLORES TO GET OUT MYSELF, BUT I CERTAINLY
14 CAN SAY, I HAVE -- I MAKE THE DECISIONS FOR MY CHILD AND KNOW
15 WHAT IS IN THE BEST INTEREST OF MY CHILD, AND CAN WAIVE THE
16 FLORES RIGHT TO RELEASE AT THE 19TH DAY.

17 SO YOUR HONOR IS ABSOLUTELY RIGHT, IT DOESN'T
18 PROVIDE RELEASE FOR THE PARENTS, BUT IT DOESN'T REMOTELY
19 SUGGEST A PARENT IS STILL NOT MAKING DECISIONS FOR THE CHILD'S
20 BEST INTEREST SO THAT THE CHILD DOESN'T HAVE TO BE TORN AWAY.

21 AND AGAIN I WOULD CIRCLE BACK, YOUR HONOR, TO WHAT I
22 SAID IN THE BEGINNING, IS THAT WE ARE NOT EVEN AT THAT
23 SITUATION. I MEAN, THE GOVERNMENT IS NOT SAYING, WE ARE
24 SENDING KIDS TO BE REUNITED FOR 19 DAYS AND THEN THERE IS THE
25 PROBLEM.

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1 I THINK THIS WHOLE -- THIS WHOLE IDEA OF FLORES IS
2 REALLY TO GET RID OF FLORES' OTHER PROTECTIONS FOR KIDS, THAT
3 FACILITIES HAVE TO BE LICENSED AND ALL OF THAT, AND THEY ARE
4 USING THE 19-DAY THING AS SORT OF A TRANSPARENT LOOPHOLE.

5 SO AGAIN, BECAUSE THE PARENT CAN WAIVE THE 19-DAY
6 RELEASE, ESPECIALLY WHEN IT IS A YOUNG CHILD, BECAUSE THE
7 GOVERNMENT DOES AND CAN RELEASE PARENTS WHO ARE NOT A FLIGHT
8 RISK OR A DANGER, ESPECIALLY THE PARENTS WHO HAVE PASSED THE
9 INITIAL ASYLUM SCREENING, I DON'T THINK FLORES IS AN
10 IMPEDIMENT.

11 **THE COURT:** WITH REGARD TO THE RELIEF THAT YOU ARE
12 REQUESTING AND THE CLASS CERTIFICATION, IF WE CAN MOVE TO THAT
13 FOR A MOMENT.

14 DO YOU CONCEDE THAT THE GOVERNMENT CAN PROPERLY
15 SEPARATE A PARENT FROM A CHILD IF THERE ARE OTHER LEGITIMATE
16 CONSIDERATIONS BEYOND DANGER TO THE CHILD. THOSE COULD
17 INCLUDE, FOR EXAMPLE, CRIMINAL HISTORY, CONTAGIOUS OR
18 COMMUNICABLE DISEASES, THINGS LIKE THAT. DO YOU CONCEDE THAT?

19 **MR. GELERT:** WELL, YOUR HONOR, I THINK WHAT THAT
20 WOULD DO IS -- I THINK THOSE THINGS, YOU WOULD PUT THEM UNDER
21 THE BEST INTEREST OF THE CHILD OR IF THERE IS A DANGER TO THE
22 CHILD. SO IF THE PARENT, YOU KNOW, IN THE RARE CASE, HAD A
23 CONTAGIOUS DISEASE THAT WAS GOING TO BE HARMFUL TO THE CHILD
24 AND THERE WAS, YOU KNOW, CLEAR EVIDENCE OF THAT, THEN I THINK
25 OF COURSE, YOUR HONOR.

1 I THINK WHAT THE COURT ULTIMATELY DOESN'T HAVE TO DO
2 IS MAKE UP ITS OWN SORT OF STANDARD, THAT THERE ARE THE STATE
3 LAW PRACTICES OUT THERE. AND I THINK THAT IF THE PARENT
4 REALLY WAS A HEALTH DANGER TO THE CHILD THEN YOU MIGHT HAVE
5 SEPARATION.

6 THE ONE THING I WOULD SAY ABOUT CRIMINAL HISTORY IS
7 IF THE PARENT IS A DANGER, BECAUSE OF THEIR CRIMINAL HISTORY,
8 TO THEIR CHILD, THEN THERE CERTAINLY CAN BE A SEPARATION.
9 THAT IS CLEAR UNDER STATE LAW.

10 WHAT I DON'T THINK CAN HAPPEN IS THE GOVERNMENT CAN
11 SIMPLY SAY, WELL, THIS PARENT HAD A DUI OR, YOU KNOW, SOME
12 TRESPASSING CRIMINAL CONVICTION 19 YEARS AGO, AND THEN WE
13 DECIDE IT IS GOING TO BE A DANGER TO THE CHILD. I MEAN, STATE
14 LAW HAS BEEN DEALING WITH THIS FOR DECADES AND DECADES. AND
15 IT HAS TO BE A CRIME THAT WOULD SUGGEST THE PARENT IS STILL A
16 DANGER.

17 SO I DON'T THINK THE COURT NEEDS TO CREATE NEW
18 STANDARDS, IT JUST NEEDS TO MAKE CLEAR IN ITS OPINION THAT
19 BEST INTEREST OF THE CHILD IS WHEN THE PARENT IS NEGLECTFUL,
20 UNFIT, OR A DANGER.

21 AND IF THERE IS A RARE CASE WHERE THE GOVERNMENT
22 SAYS, WELL, WE THINK THIS PARENT JUST ENGAGED IN ARMED ROBBERY
23 AND IS REALLY A DANGER TO THE CHILD, I MEAN, THOSE CAN BE
24 WORKED OUT. AND THERE IS GUIDELINES FOR THAT IN THE AMIKI
25 GUIDELINES.

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1 BUT I THINK WHAT IS HAPPENING NOW, YOUR HONOR -- AND
2 I KNOW YOUR HONOR WANTS TO BE CAREFUL ABOUT HOW TO CRAFT THE
3 INJUNCTION, AND WE CERTAINLY DON'T WANT YOU TO HAVE TO WRITE
4 AN INJUNCTION THAT WOULD PROHIBIT THE GOVERNMENT FROM
5 SEPARATING IN THOSE LEGITIMATE CASES. BUT I THINK NOW WE ARE
6 TALKING ABOUT LITERALLY 2,000 KIDS AND -- OVER 2,000 KIDS, AND
7 THERE ARE NOT THOSE TYPES OF JUSTIFICATIONS. THEY HAVE JUST
8 BEEN TAKEN AWAY.

9 IF THERE IS A RARE CASE OF A CONTAGIOUS DISEASE, YOU
10 KNOW, WE CAN WORK WITH THE GOVERNMENT, THE GOVERNMENT CAN COME
11 BACK TO YOU. AND CERTAINLY I DON'T THINK YOU ARE GOING TO
12 CRAFT AN INJUNCTION THAT WOULD PROHIBIT THAT SEPARATION. BUT
13 RIGHT NOW WE DON'T THINK THAT IS WHAT IS GOING ON.

14 I MEAN, THE OVERWHELMING MAJORITY OF KIDS HAVE JUST
15 BEEN TAKEN AWAY AND ARE SITTING THERE LITERALLY BEGGING TO SEE
16 THEIR PARENTS, AND TO THE EXTENT THEY ARE NOT PRE-VERBAL AND
17 THEY ARE JUST SITTING IN SOME FACILITY CRYING EVERY NIGHT.

18 **THE COURT:** WHAT ABOUT CRIMINAL HISTORY, EVEN MINOR
19 CRIMINAL HISTORY, AS IT MIGHT AFFECT THE GOVERNMENT'S DECISION
20 WHETHER OR NOT TO RELEASE, PAROLE, OR BOND OUT IN SOME FASHION
21 A PARENT. SO SEPARATE AND APART FROM CHILD ENDANGERMENT
22 ISSUES WOULD BE JUST BOND OR PAROLE RELATED ISSUES AND WHETHER
23 A PARENT OUGHT TO BE DETAINED FOR CRIMINAL HISTORY REASONS.

24 **MR. GELERT:** RIGHT, YOUR HONOR. SO I THINK THAT IS
25 ANOTHER IMPORTANT QUESTION.

1 WHAT WE WOULD SAY IS, THE PARENT AND CHILD HAVE TO
2 BE REUNITED, AND THEN ULTIMATELY THE PARENT WILL HAVE TO PASS
3 THEIR PAROLE OR BOND HEARING. AND CRIMINAL CONVICTIONS ARE
4 TAKEN INTO ACCOUNT, AND OTHER INDICIA OF FLIGHT RISK ARE TAKEN
5 INTO ACCOUNT, AND THOSE WILL BE INDIVIDUALIZED. WE ARE SIMPLY
6 SAYING THAT MOST PARENTS WILL GET OUT.

7 BUT I DON'T THINK YOUR INJUNCTION HAS TO GO ANYWHERE
8 NEAR DECIDING WHETHER THE GOVERNMENT HAS TO RELEASE A
9 PARTICULAR PARENT. I THINK THERE ARE GUIDELINES IN PLACE, AND
10 THOSE GUIDELINES WILL GOVERN WHETHER ANY PARTICULAR PARENT
11 GETS OUT. WE ARE SIMPLY SAYING THAT MOST PARENTS, ESPECIALLY
12 ASYLUM SEEKERS, WILL GET OUT BECAUSE THEY ARE AT LEAST SHOWN
13 NOT TO BE A FLIGHT RISK OR A DANGER. BUT I DON'T THINK YOU
14 NEED TO GO SAY ANYTHING ONE WAY OR THE OTHER ABOUT EXACTLY
15 WHAT TYPE OF CRIMINAL CONVICTION MAY LEAD THE GOVERNMENT TO
16 DENY PAROLE OR NOT.

17 **THE COURT:** WHAT ABOUT CLASS DEFINITION PURPOSES.
18 DO YOU ARGUE THAT IT SHOULD REMAIN AS DEFINED WHICH COULD
19 INCLUDE PARENTS WITH SOME CRIMINAL HISTORY OR COMMUNICABLE
20 DISEASES. IT COULD INCLUDE NON ASYLUM SEEKERS WITHIN THE
21 INTERIOR OF THE COUNTRY. DO YOU STAND ON THE PRESENT
22 DEFINITION?

23 **MR. GELERT:** YOUR HONOR, IF I COULD TAKE THOSE ONE
24 AT A TIME. I THINK I AM JUST STARTING FROM THE LAST ONE,
25 ABOUT ASYLUM SEEKERS.

1 YOU ARE RIGHT, WE DID NOT DEFINE THE CLASS AS ONLY
2 ASYLUM SEEKERS. WE THINK THAT MOST OF THESE INDIVIDUALS ARE
3 ASYLUM SEEKERS. WE WOULD ASK YOUR HONOR NOT TO LIMIT IT TO
4 ASYLUM SEEKERS ONLY.

5 WE UNDERSTAND THAT YOU FEEL THAT THE ASYLUM SEEKERS
6 ARE A PARTICULARLY POWERFUL CASE. WE DO THINK, HOWEVER, THERE
7 MAY BE PARENTS WITH OTHER TYPES OF CLAIMS. AND, YOU KNOW,
8 MAYBE THEY ARE GOING TO LOSE, MAYBE THEY ARE GOING TO WIN, BUT
9 ULTIMATELY TAKING A CHILD AWAY IS ITS OWN DISTINCT HARM.

10 IN TERMS OF THE INJUNCTION NOT ALLOWING YOU -- NOT
11 ALLOWING THE GOVERNMENT TO SEPARATE WHERE THERE IS A DANGER TO
12 THE CHILD, I THINK THAT THAT IS SOMETHING, YOU ARE RIGHT,
13 YOUR HONOR, MAYBE WE DIDN'T DO AS CAREFUL ENOUGH JOB IN
14 SETTING FORTH THE CLASS DEFINITION. BUT I THINK IF YOUR HONOR
15 WANTS TO MAKE CLEAR THAT THE PARENT IS A DANGER TO THE CHILD
16 WHERE THEY MAY BE ABUSIVE OR NEGLECTFUL OR HAVE A CONTAGIOUS
17 DISEASE OR SOMETHING ALONG THOSE LINES THAT WOULD CONSTITUTE A
18 PERMISSIBLE BASIS FOR SEPARATION UNDER STANDARD CHILD
19 PRACTICES EXERCISED BY THE STATES OR THE FEDERAL GOVERNMENT IN
20 OTHER CONTEXTS, I THINK THAT WOULD BE ABSOLUTELY FINE, YOUR
21 HONOR.

22 **THE COURT:** ALL RIGHT. AND THEN ON THE CLASS
23 DEFINITION WITH RESPECT TO CRIMINAL HISTORY, I UNDERSTAND YOU
24 TO BE ARGUING THAT TO THE EXTENT ANY CLASS DEFINITION INCLUDES
25 PARENTS WHO HAVE SOME CRIMINAL HISTORY, HOWEVER MINOR, THEY

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1 WOULD NEVERTHELESS STILL BE INCLUDED WITHIN THE CLASS.

2 **MR. GELERT:** YES, YOUR HONOR. AND I APOLOGIZE.
3 YOU HAD ASKED ME THAT, AND I DID NOT ADDRESS THAT.

4 I THINK WHAT WE WOULD SAY IS THAT ANY SORT OF
5 CATEGORICAL EXCEPTION FOR A PARENT WITH A CRIMINAL HISTORY
6 WOULD NOT BE PROPER UNDER STATE PRACTICES OR FEDERAL PRACTICES
7 FOR SEPARATING CHILDREN FROM THEIR PARENTS. WHAT WE WOULD SAY
8 IS WHERE THE CRIMINAL CONVICTION ACTUALLY IS INDICATIVE THAT
9 THE PARENT IS A DANGER TO THE CHILD, THEN THAT WOULD OBVIOUSLY
10 BE A BASIS FOR SEPARATION WHERE THE GOVERNMENT COULD SHOW IF
11 THIS PARENT HAS COMMITTED A CRIME AND THAT CRIME IS INDICATIVE
12 OF DANGER. BUT WE CERTAINLY WOULDN'T WANT THE GOVERNMENT TO
13 SAY, LOOK, TEN YEARS AGO IN EL SALVADOR THIS PARENT HAD A
14 BURGLARY CONVICTION. THAT WOULD NOT SUGGEST THAT THEY ARE A
15 DANGER TO THEIR OWN CHILD.

16 WE WOULD ASK YOU THAT YOU NOT PUT IN AN EXCEPTION
17 FOR CRIMINAL CONVICTIONS, BUT JUST MAKE CLEAR THAT IF THE
18 PARENT'S CRIMINAL CONVICTION ACTUALLY DID SUGGEST THAT THE
19 PARENT WAS A DANGER TO THEIR OWN CHILD, THEN THAT WOULD, OF
20 COURSE, BE A PERMISSIBLE BASIS FOR SEPARATION IF THE
21 GOVERNMENT ACTUALLY HAD EVIDENCE OF THAT.

22 **THE COURT:** ON THE PRESENT CASE IT APPEARS THE FOCUS
23 IS, BY AND LARGE, ON THOSE WHO ARE APPREHENDED AT THE BORDER,
24 EITHER AT THE PORT OF ENTRY OR BETWEEN PORTS OF ENTRY.

25 DO YOU HAVE ANY IDEA HOW MANY POTENTIAL CLASS

1 MEMBERS COULD BE IN THE INTERIOR OF THE COUNTRY WHO MIGHT BE
2 ASYLUM OR NON ASYLUM SEEKERS?

3 **MR. GELERT:** RIGHT. YOUR HONOR, I APOLOGIZE. I
4 KNOW YOU ASKED ME THAT BEFORE AND I DID NOT ADDRESS THAT.

5 WE DO NOT KNOW. AND IF YOUR HONOR FELT THAT THERE
6 WASN'T A SUFFICIENT RECORD BEFORE HIM TO DEAL WITH THE
7 INTERIOR NOW, THAT WOULD BE UNDERSTANDABLE. WE WOULD TRY TO
8 FIGURE THAT OUT. I MEAN, THE GOVERNMENT REALLY IS THE ONE WHO
9 HAS THAT INFORMATION. WE WOULD TRY AND WORK WITH THE
10 GOVERNMENT TO GET THAT INFORMATION AND SUBMIT IT TO YOU. AND
11 MAYBE WE WOULD HAVE TO FOLLOW UP, SEEK AN INJUNCTION IF IT
12 TURNS OUT THERE IS MANY, MANY SEPARATIONS IN THE INTERIOR.

13 I THINK FOR PRESENT PURPOSES IF YOU WANTED TO LIMIT
14 IT TO THE BORDER AND WHAT IS GOING ON AT THE BORDER, THAT
15 WOULD BE SATISFACTORY TO US, GIVEN THAT WE RECOGNIZE WE ARE
16 ASKING YOU TO RULE URGENTLY. AND WE CERTAINLY DON'T WANT YOU
17 TO GET OUT AHEAD OF THE RECORD.

18 **THE COURT:** ALL RIGHT.

19 LET ME TURN, IF I MIGHT, TO GOVERNMENT COUNSEL. I
20 ASSUME THAT WILL BE MS. FABIAN.

21 WHAT IS YOUR POSITION WITH RESPECT TO THE EXECUTIVE
22 ORDERS. ARE THERE ANY ISSUES ALIVE AND WELL? DO YOU CONCEDE
23 THAT THE ISSUES PRESENTED IN THIS LAWSUIT, WITH MS. L. AND THE
24 INITIAL SEPARATION AND MS. C., THE REUNIFICATION ISSUE, ARE
25 ALIVE AND WELL? WHAT IS THE GOVERNMENT'S POSITION?

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1 **MS. FABIAN:** YOUR HONOR, THE GOVERNMENT DOESN'T HAVE
2 A POSITION NECESSARILY TO SAY THAT THOSE ISSUES AREN'T ALIVE
3 AND WELL. WHAT I THINK THE CONVERSATION WE ARE HAVING TODAY
4 MAKES CLEAR IS THAT PLAINTIFFS ARE PERHAPS ROUNDABOUT BUT
5 ASKING THIS COURT TO CONSIDER A LOT OF DEVELOPMENTS THAT HAVE
6 OCCURRED SINCE WE SPOKE ON MAY 4TH. TO THE EXTENT THAT IT HAS
7 BECOME NOT POSSIBLE FOR THE COURT TO PROCEED ON THOSE ISSUES
8 WITHOUT CONSIDERING RECENT DEVELOPMENTS, I WOULD AGREE WITH
9 THE COURT'S EARLIER SUGGESTION THAT IT WOULD BE NECESSARY FOR
10 PLAINTIFFS TO PUT THOSE DEVELOPMENTS THAT THEY WANT TO HAVE
11 THE COURT CONSIDER ON TO THE RECORD AND GIVE THE GOVERNMENT
12 THE OPPORTUNITY TO RESPOND.

13 I THINK IT IS IMPORTANT TO REMEMBER, ALSO, WE HAVE
14 EVEN FROM THE BEGINNING -- AND THIS GOES TO ALSO THE CLASS
15 CERTIFICATION ISSUE -- YOU HAVE TWO VERY DIFFERENT NAMED
16 PLAINTIFFS, YOU HAD TWO DIFFERENT EXPERIENCES BASED ON
17 SEPARATION. I THINK WE BRIEFED THAT QUITE A BIT BUT PERHAPS
18 RECENT EVENTS DO HIGHLIGHT THE DIFFERENT ISSUES RELATING TO
19 SEPARATION IN DIFFERENT CIRCUMSTANCES AND HOW PLAINTIFFS'
20 BROAD REQUEST FOR A SINGULAR SOLUTION AND A SINGULAR
21 INJUNCTION FROM THE COURT COULD BE PROBLEMATIC AND COULD BE
22 DIFFICULT TO CRAFT.

23 SO I THINK, YOU KNOW, AS I UNDERSTAND IT, THE
24 PLAINTIFFS DO INTEND TO AMEND THEIR COMPLAINT, AS OFFERED BY
25 THE COURT, ON JULY 3RD. AND I DON'T KNOW IF THEY INTEND TO

1 RAISE NEW ISSUES OR IF THEY ARE SIMPLY GOING TO BE ADDRESSING
2 THE ISSUES THAT WERE -- THAT WERE FOUND DEFICIENT BY THE COURT
3 IN THE ORDER.

4 BUT IT SEEMS TO ME THAT IF WE ARE -- IF THE COURT IS
5 LOOKING AT AN INJUNCTION THAT CONSIDERS ANYTHING THAT HAS
6 OCCURRED SINCE MAY 4TH THEN IT IS IMPORTANT TO ALLOW THE
7 PARTIES TO PUT THAT IN THE RECORD, TO ASK PLAINTIFFS TO TELL
8 THE COURT WHAT THEY WANT THE COURT TO CONSIDER AND GIVE THE
9 GOVERNMENT THE OPPORTUNITY TO RESPOND.

10 AND I THINK THE EXECUTIVE ORDER FALLS WITHIN THAT
11 PURVIEW. IT IS HARD TO SAY ITS EFFECTS ON THE EXISTING CASE
12 WITHOUT TALKING ABOUT THE EVENTS THAT LED TO THAT ORDER.

13 **THE COURT:** DO YOU CONCEDE THAT THE EXECUTIVE ORDER,
14 BECAUSE IT IS A DIRECTIVE TO STOP FAMILY SEPARATION, IS AN
15 ADMISSION ON THE PART OF THE GOVERNMENT THAT THE PRACTICE AS
16 ALLEGED BY THE PLAINTIFFS IN FACT EXISTED?

17 **MS. FABIAN:** I DON'T THINK I COULD SAY THAT
18 SPECIFICALLY, YOUR HONOR. I THINK THE EXECUTIVE ORDER
19 ADDRESSED A POLICY THAT WAS ANNOUNCED AFTER THIS CASE BEGAN.

20 WE HAVE ACKNOWLEDGED AND WE HAVE DISCUSSED WITH YOUR
21 HONOR THE SEPARATIONS THAT OCCURRED FOR THE TWO NAMED
22 PLAINTIFFS AND THE CIRCUMSTANCES IN WHICH THOSE SITUATIONS
23 OCCUR. I DON'T THINK THERE IS ANY QUESTION THAT IN THE CASE
24 OF BOTH NAMED PLAINTIFFS THERE WAS A SEPARATION BETWEEN THE
25 PARENT AND THE CHILD. AND, AS WE ARGUED, BOTH OF THOSE

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1 SEPARATIONS OCCURRED --

2 (PHONE INTERFERENCE)

3 SORRY. BOTH OF THOSE SEPARATIONS --

4 I AM GOING TO PAUSE FOR A SECOND.

5 YOUR HONOR, DO I STILL HAVE YOU?

6 **THE COURT:** YES, I AM STILL HERE.

7 I AM ASSUMING MR. GELERNT IS STILL ON THE LINE.

8 **MR. GELERNT:** YES.

9 **MS. FABIAN:** AM I THE ONLY ONE -- I AM HEARING
10 RINGING.

11 **THE COURT:** YES. WE WILL SEE IF WE CAN FIX THAT,
12 BUT GO AHEAD WITH YOUR ARGUMENT.

13 **MS. FABIAN:** SORRY, I HAVE LOST MY PLACE A BIT.

14 YOU KNOW, AS WE TALKED ABOUT WITH THE TWO NAMED
15 PLAINTIFFS EACH -- SEPARATION DID OCCUR IN EACH --

16 (PHONE INTERFERENCE)

17 THE SEPARATION WAS INCIDENT TO OTHER IMMIGRATION
18 ACTIONS. THAT CONTINUES TO BE THE CASE, AND IT MAY BE A PART
19 OF EVENTS THAT HAVE OCCURRED SINCE THEN. BUT --

20 (PHONE INTERFERENCE)

21 AS LONG AS THOSE EVENTS -- TO THE EXTENT THEY HAVE
22 AFFECTED THE WAY THE COURT MAY LOOK AT THOSE -- AT THOSE
23 IMMIGRATION ACTIONS, I THINK IT IS IMPORTANT THAT FURTHER
24 BRIEFING BE CONDUCTED BEFORE THE COURT TAKES ANY ACTION.

25 **THE COURT:** ALL RIGHT. LET'S PAUSE FOR JUST A

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1 MOMENT. MAYBE WE CAN --

2 **MR. GELERNT:** DO YOU WANT US TO DIAL BACK IN, YOUR
3 HONOR?

4 **THE COURT:** I AM NOT SURE WHAT HAS HAPPENED. NO ONE
5 IS CALLING IN, FROM THE RECORD WE HAVE, SO I AM NOT SURE WHAT
6 IS CAUSING THAT DIAL TONE.

7 I AM A LITTLE RELUCTANT TO START THE CONFERENCE CALL
8 AGAIN, GIVEN THE NUMBER OF PARTICIPANTS WE HAVE ONLINE, BUT I
9 AM NOT SURE THIS IS GETTING ANY BETTER. SO I THINK MR.
10 GELERNT HAS A GOOD SUGGESTION. WHY DON'T WE ALLOW EVERYONE AN
11 OPPORTUNITY TO DIAL BACK IN, AND SEE IF WE CAN GET A CLEAR
12 LINE.

13 **MR. GELERNT:** OKAY. THANK YOU.

14 **THE COURT:** YOU ARE WELCOME. I WILL REMAIN ON THE
15 BENCH PENDING THE CALLS IN.

16 **(PAUSE IN PROCEEDINGS)**

17 **THE CLERK:** RE-CALLING NO. 12 ON CALENDAR, CASE NO.
18 18CV0428, MS. L. VERSUS U.S. IMMIGRATION AND CUSTOMS
19 ENFORCEMENT; ON FOR STATUS CONFERENCE.

20 **THE COURT:** OKAY. GOOD AFTERNOON AGAIN. I WANT TO
21 MAKE SURE THAT I HAVE THE ATTORNEYS ON THE LINE.

22 DO I HAVE MS. FABIAN AND MR. BETTWY, AS WELL AS MR.
23 GELERNT AND MR. VAKILI?

24 **MR. GELERNT:** YES, YOUR HONOR. MR. GELERNT IS ON.
25 THANK YOU.

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1 **THE COURT:** ALL RIGHT.

2 **MR. VAKILI:** MR. VAKILI IS ON, YOUR HONOR. THANK
3 YOU.

4 **MS. FABIAN:** THIS IS SARAH FABIAN, I AM ON.

5 **THE COURT:** ALL RIGHT. IS MR. BETTWY WITH US?

6 OKAY. THEN WE WILL PROCEED WITH JUST MS. FABIAN.

7 I BELIEVE WE HAVE MOST, IF NOT ALL, OF THE MEDIA

8 BACK ON, SO I AM GRATEFUL THAT WE WERE ABLE TO GET THE

9 CONFERENCE CALL BACK IN ORDER.

10 WHERE WE LEFT OFF, MS. FABIAN WAS ADDRESSING SOME
11 ISSUES. NOW, BEFORE I ASK THE NEXT QUESTION, MS. FABIAN, DID
12 YOU WANT TO COMPLETE ANYTHING YOU WERE SAYING BEFORE WE WERE
13 INTERRUPTED?

14 **MS. FABIAN:** NOT THAT I RECALL, YOUR HONOR. I
15 APOLOGIZE.

16 **THE COURT:** ALL RIGHT.

17 WITH RESPECT TO THE EXECUTIVE ORDER, IT PUTS AN END
18 TO FAMILY SEPARATION. IT ALSO CONTEMPLATES THAT CRIMINAL
19 PROSECUTION WILL CONTINUE. AND THAT IF FAMILIES ARE
20 APPREHENDED AT THE BORDER THAT I AM ASSUMING THE GOVERNMENT IS
21 SUGGESTING, THROUGH THE EXECUTIVE ORDER, THAT THE FAMILIES
22 WILL BE DETAINED TOGETHER IN SOME FASHION. IF SO, HOW IS THAT
23 GOING TO WORK, BECAUSE ONE OF THE CENTRAL ISSUES IN THIS CASE
24 AND ONE OF THE CENTRAL CONCESSIONS IN THIS CASE AS TO
25 PLAINTIFF MS. C. WAS THAT SHE WAS NOT CONTESTING HER INITIAL

1 SEPARATION, CONCEDED THAT UNDER EXISTING LAW IF THE
2 GOVERNMENT ELECTED TO PROSECUTE FOR CRIMINAL ILLEGAL ENTRY IT
3 WOULD NECESSARILY EFFECTUATE A SEPARATION BETWEEN PARENT AND
4 CHILD FOR THE PERIOD OF TIME THAT MS. C. WAS IN CRIMINAL
5 CUSTODY. AND THEN, OF COURSE, THE ARGUMENT WAS ONCE SHE
6 COMPLETED HER CRIMINAL SENTENCE AND WAS RETURNED TO
7 IMMIGRATION DETENTION SHE WAS ENTITLED TO REUNIFICATION.

8 SO I GUESS THE INITIAL QUESTION IS, IS THIS ZERO
9 TOLERANCE POLICY CONTINUING; AND, IF SO, HOW DOES THE
10 GOVERNMENT NOT SEPARATE PARENT AND CHILD UNDER THE CURRENT
11 STATUTORY MECHANISM WHICH PROVIDES, OF COURSE, THAT CHILDREN
12 CANNOT BE DETAINED IN CUSTODY WITH THEIR PARENTS WHILE THEY
13 ARE UNDERGOING CRIMINAL PROCEEDINGS.

14 **MS. FABIAN:** I AM NOT SURE I CAN ANSWER ALL OF THOSE
15 QUESTIONS TODAY, YOUR HONOR. I THINK THAT IS -- SOME OF THE
16 IMPLEMENTATION QUESTIONS ARE STILL UNDERWAY. AND THAT I JUST
17 DON'T HAVE THE INFORMATION TO ANSWER ALL OF THOSE QUESTIONS
18 TODAY.

19 WHAT I WOULD SAY IS THAT TO THE EXTENT THE POLICY
20 THAT WE ARE TALKING ABOUT WAS IMPLEMENTED SINCE THIS CASE WAS
21 BRIEFED AND ARGUED THAT THAT IS -- IF THAT IS SOMETHING THAT
22 THE COURT WANTS PUT BEFORE THE COURT FOR CONSIDERATION, I
23 THINK THAT THAT NEEDS TO BE BROUGHT INTO THE CASE THROUGH
24 BRIEFING BY THE PLAINTIFFS AND RESPONSIVE BRIEFING BY THE
25 DEFENDANT.

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1 BUT I TAKE THE COURT'S POINT THAT AT THE TIME WHEN
2 WE WERE TALKING ABOUT MS. C.'S CASE, MS. C. WAS SEPARATED DUE
3 TO A PROSECUTION. MY RECOLLECTION IS THAT SHE WAS SENTENCED
4 TO A PERIOD OF THREE DAYS, AND THAT AT THAT TIME IT WAS
5 NECESSARY TO EFFECTUATE A SEPARATION.

6 I JUST CAN'T SPEAK TO THE CHANGES WITH THE NEW
7 POLICY AND TO THE EXTENT THAT THAT CREATED ADDITIONAL
8 PROSECUTIONS, AND THEN THE FURTHER EFFECT OF THE EXECUTIVE
9 ORDER ON THAT DETENTION. I CAN'T SPEAK TO THAT TODAY.

10 **THE COURT:** ALL RIGHT.

11 WITH RESPECT TO THE REUNIFICATION ISSUE, I INQUIRED
12 LAST TIME WHETHER THERE WAS ANY MECHANISM THAT THE GOVERNMENT
13 HAS BETWEEN AND AMONG ITS AGENCIES TO AFFIRMATIVELY REUNIFY;
14 THAT IS H.H.S. AND O.R.R. COMMUNICATING IN SOME INTELLIGENT
15 MANNER WITH OTHER GOVERNMENT AGENCIES UNDER THE UMBRELLA OF
16 D.H.S., LIKE ICE OR B.O.P., SUCH THAT THE PARENT IS AWARE
17 WHERE HIS OR HER CHILD IS. AND THAT THERE IS A MECHANISM UPON
18 COMPLETION OF HIS OR HER CRIMINAL SENTENCE THAT THE GOVERNMENT
19 CAN BEGIN A REUNIFICATION PROCESS.

20 SO THERE ARE TWO QUESTIONS HERE. ONE, IS THERE
21 CURRENTLY ANY COMMUNICATION BETWEEN H.H.S. AND, FOR EXAMPLE,
22 D.H.S. OR B.O.P.; AND, NUMBER TWO, IS THERE ANY AFFIRMATIVE
23 REUNIFICATION PROCESS THAT THE GOVERNMENT HAS IN PLACE ONCE
24 PARENT AND CHILD ARE SEPARATED.

25 **MS. FABIAN:** I WOULD SAY, YOUR HONOR, WHEN WE SPOKE

1 ABOUT THAT INITIALLY, I THINK MY ANSWER -- I RECALL THAT IT
2 WAS A MORE NARROW QUESTION; AND THAT WAS, WHEN A PARENT IS
3 RELEASED FROM CRIMINAL CUSTODY AND TAKEN INTO ICE CUSTODY IS
4 THE PRACTICE TO REUNITE THEM IN FAMILY DETENTION. AND AT THAT
5 TIME I SAID NO, THAT THAT WAS NOT THE PRACTICE.

6 I THINK MY ANSWER ON THAT NARROW QUESTION WOULD BE
7 THE SAME. I THINK WHAT YOU ARE ASKING NOW IS A BROADER
8 QUESTION. AND ONE THING THAT HAS TO BE CONSIDERED WITH THAT
9 QUESTION IS THE NUMBER OF DIFFERENT WAYS, AGAIN, THAT A
10 SEPARATION COULD BE EFFECTED, AND THAT IS A SEPARATION DUE TO
11 A DETERMINATION OF DANGER AS OPPOSED TO A SEPARATION THAT MAY
12 RESULT FROM PROSECUTION.

13 ALL OF WHICH GOES TO SAY I STILL THINK ON A BROAD --
14 AS A BROAD MATTER THERE IS NOT A SINGULAR ACTION OF SEPARATION
15 THAT -- IN WHICH, THEN, THE RESPONSE FOR PROCEDURALLY WOULD
16 BE -- WOULD BE THE SAME FOR ALL CASES. SO THAT IS SORT OF THE
17 PRECURSOR TO MY ANSWER.

18 THERE ARE PROCEDURES BY WHICH O.R.R. THEN RELEASES
19 MINORS TO THE CUSTODY OF A PARENT WHO HAS BEEN RELEASED FROM
20 CUSTODY, AND THOSE ARE THE PROCEDURES UNDER THE T.V.P.R.A. FOR
21 REUNIFICATION. WHETHER THERE IS -- IN LIGHT OF ADDITIONAL
22 SEPARATIONS WHETHER THERE ARE ADDITIONAL PROCEDURES THAT CAN
23 BE PUT IN PLACE TO IMPROVE THOSE PROCEDURES OR EXPEDITE THOSE
24 PROCEDURES, I THINK THAT IS SOMETHING THAT IS THE SUBJECT OF
25 ONGOING DISCUSSION. BUT AT THE MOMENT THE PROCESS IS THE

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1 SAME, AND IT IS THE RELEASE PROCESS UNDER THE T.V.P.R.A.

2 AS FAR AS COMMUNICATIONS BETWEEN O.R.R. AND D.H.S.,
3 I THINK -- I KNOW THAT THERE ARE COMMUNICATIONS. I THINK TO
4 THE EXTENT THAT THAT IS SOMETHING THE COURT WANTS TO CONSIDER,
5 I THINK -- AS WITH MUCH OF THIS, I THINK THAT THIS IS
6 SOMETHING THAT THE COURT WOULD -- WHAT THE GOVERNMENT WOULD
7 SUGGEST IS THAT THE COURT SHOULD TAKE -- GIVE THE OPPORTUNITY
8 FOR BRIEFING AND PERHAPS THE SUBMISSION OF EVIDENCE OR A
9 HEARING OR SOMETHING TO THAT EXTENT. BECAUSE I DON'T THINK
10 THAT I CAN MAKE ANY REPRESENTATIONS TODAY THAT WOULD BE
11 SUFFICIENT FOR THE COURT TO BE ABLE TO RELY ON.

12 **THE COURT:** YOU MENTIONED THAT THERE IS SOME
13 COMMUNICATION BETWEEN O.R.R. AND D.H.S. AGENCIES. WHAT ARE
14 THOSE?

15 **MS. FABIAN:** WHEN A CHILD IS SEPARATED OR IS --
16 REGARDLESS, WHEN D.H.S. IS GOING TO TRANSFER A CHILD TO THE
17 CUSTODY OF O.R.R. THERE IS A PORTAL THAT IS USED TO
18 ESSENTIALLY MAKE THAT REQUEST FOR A SPACE TO BE PROVIDED BY
19 O.R.R.

20 SO IN THAT D.H.S. WILL PUT THE INFORMATION REGARDING
21 THE CHILD, REGARDING -- GENERALLY THAT WILL NOTATE THAT. IF
22 IT HAS BEEN A SEPARATION THE SAME PORTAL WOULD ALSO BE USED
23 FOR A U.A.C., BUT GENERALLY IN THAT THERE WOULD BE PROVIDED
24 INFORMATION OF A SEPARATION. SO THAT INFORMATION, THEN, IS
25 ABLE TO BE SHARED WITH O.R.R. AND O.R.R. IS ABLE TO BE AWARE

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1 OF THAT.

2 I DO KNOW THAT O.R.R. WILL THEN, WHEN THEY TAKE
3 CUSTODY OF THE CHILD, WHEN THEY ARE AWARE THAT THE CHILD WAS
4 SEPARATED FROM THE PARENT, FOLLOW UP AND MAKE EFFORTS TO ALLOW
5 THE CHILD TO COMMUNICATE BACK WITH THEIR PARENT THROUGH D.H.S.

6 **THE COURT:** DO YOU KNOW WHETHER THAT IS OCCURRING?
7 WHAT YOU HAVE OUTLINED IS A MECHANISM BY WHICH D.H.S.
8 COMMUNICATES WITH O.R.R., BUT IS THERE COMMUNICATION FROM
9 O.R.R. TO D.H.S. WHICH WOULD HELP ASSIST REUNIFICATION? DO
10 YOU KNOW THAT TO BE A FACT?

11 **MS. FABIAN:** THERE IS A RECENT MEMORANDUM OF
12 UNDERSTANDING BETWEEN O.R.R. AND D.H.S. IN WHICH D.H.S. DOES
13 ASSIST O.R.R. IN OBTAINING INFORMATION FOR THE SUITABILITY
14 ANALYSIS WHEN O.R.R. IS RELEASING A MINOR. SO TO SOME EXTENT
15 THAT DOES PROVIDE SOME AVENUE FOR COMMUNICATION.

16 I DON'T -- TODAY I DON'T WANT TO MISREPRESENT
17 EXACTLY WHETHER THERE IS A FORMAL POLICY. I BELIEVE THERE IS
18 COMMUNICATION, BUT WHETHER THERE IS SORT OF A FORMAL AVENUE OF
19 COMMUNICATION, I CAN'T SPEAK TO THAT TODAY.

20 AGAIN, I WOULD SAY -- ASK FOR THE OPPORTUNITY TO
21 SUBMIT TO THE COURT SOMETHING IN THE FORM OF BRIEFING OR
22 ANOTHER EVIDENTIARY SUBMISSION ON THAT.

23 **THE COURT:** BUT WHEN THE O.R.R. CONSIDERS RELEASE TO
24 THE PARENT OR AN APPROPRIATE GUARDIAN UNDER THE T.V.P.R.A.,
25 THAT OFTEN OCCURS. AND WITH RESPECT TO RELEASE TO A PARENT IT

1 ONLY OCCURS, FROM MY UNDERSTANDING, WHEN THE PARENT INITIATES
2 THE EFFORT TO REUNIFY. IS THAT CORRECT?

3 **MS. FABIAN:** I BELIEVE THAT IS THE TRADITIONAL WAY,
4 AND IT IS FREQUENTLY THE WAY THAT THAT IS INITIATED.

5 I UNDERSTAND THAT O.R.R. WILL ALSO, IF THEY ARE
6 AWARE THAT THE CHILD HAS A PARENT, THEY WILL MAKE EFFORTS TO
7 REACH OUT TO THE PARENTS.

8 NOW, WHETHER O.R.R. HAS THE MECHANISM TO DISCOVER
9 WHEN THE PARENT IS RELEASED FROM CUSTODY, I DON'T BELIEVE THEY
10 DO. BUT O.R.R. WILL MAKE EFFORT IF THE CASE WORKER AT O.R.R.
11 IS AWARE THAT THE CHILD HAS BEEN SEPARATED FROM A PARENT. OR
12 EVEN THAT, FOR EXAMPLE, IF THE CHILD COMES INTO THE COUNTRY
13 WITH THE PHONE NUMBER OF A RELATIVE, O.R.R. WILL MAKE EFFORTS
14 TO REACH OUT TO THAT RELATIVE AND FACILITATE THE
15 REUNIFICATION.

16 SO I THINK THE SAME PROCESS WOULD BE USED IF O.R.R.
17 IS AWARE THAT THE CHILD WAS SEPARATED FROM A PARENT, O.R.R.
18 WILL MAKE SIMILAR EFFORTS TO LOCATE THE PARENTS AND TO
19 FACILITATE REUNIFICATION THAT WAY.

20 **THE COURT:** O.R.R. IS NOT NOTIFIED BY D.H.S. OR
21 B.O.P. WHEN A PARENT IS RELEASED FROM CRIMINAL CUSTODY, IS IT?

22 **MS. FABIAN:** NOT TO MY KNOWLEDGE.

23 **THE COURT:** THE REUNIFICATION PROCESS, THEN, OCCURS,
24 IF AT ALL, BASED ON THE PARENT'S EFFORT TO LOCATE AND TRACK
25 DOWN THEIR CHILD. AM I CORRECT?

1 **MS. FABIAN:** WELL, AS I SAID, I BELIEVE O.R.R. -- IF
2 O.R.R. IS AWARE OF A PARENT THEY WILL TAKE STEPS TO LOCATE
3 THEM, AND ALSO WORK WITH THE PARENT TO BEGIN THAT
4 REUNIFICATION PROCESS.

5 SO I WOULDN'T SAY IT IS ONLY IF THE PARENT INITIATES
6 ACTION, I WOULD SAY THAT O.R.R. WILL TAKE STEPS. BUT I
7 ACKNOWLEDGE THAT THERE MAY BE TIMES, AS YOU SUGGEST, THAT
8 O.R.R. WOULD NOT BE AWARE THAT THE PARENT WAS -- HAD BEEN
9 RELEASED OR OTHERWISE WOULD NOT BE AWARE OF THE NEED TO
10 COMMUNICATE TO THE PARENT.

11 **THE COURT:** I ASK BECAUSE THERE IS A DISTRICT COURT
12 CASE IN THE WESTERN DISTRICT OF TEXAS WHICH SETS OUT THE
13 PROBLEM GIVEN THE FAILURE OF COMMUNICATION WITH CRIMINAL
14 DETAINEES. THEY ARE APPEARING IN COURT ON MISDEMEANOR CHARGES
15 AND THEY DON'T KNOW WHERE THEIR CHILD IS, NOR DOES THE
16 ATTORNEY, NOR DOES ANYONE IN THE COURTHOUSE.

17 AND THE OPINION BY THE MAGISTRATE JUDGE IN THAT CASE
18 SETS OUT A HISTORY OF JUST A LACK OF COMMUNICATION BETWEEN
19 O.R.R. AND THE PROSECUTORIAL ARM OF THE FEDERAL GOVERNMENT,
20 WHETHER IT IS B.O.P. OR OTHER D.H.S. ACTORS. THAT IS
21 CONSISTENT WITH A LACK OF COMMUNICATION BETWEEN THE AGENCIES.

22 DO YOU HAVE ANY INFORMATION TO THE CONTRARY; IN
23 OTHER WORDS, THAT THERE IS OPEN COMMUNICATION OR ANY
24 COMMUNICATION AT ALL BETWEEN, FOR EXAMPLE, O.R.R. AND B.O.P.
25 SUCH THAT PEOPLE WHO ARE CONTINUING TO BE CHARGED AND APPEAR

1 IN COURT CAN FIND OUT OR HAVE ACCESS TO INFORMATION THAT WOULD
2 REVEAL WHERE THEIR CHILD IS?

3 **MS. FABIAN:** I CAN'T SAY TODAY THAT THERE IS A
4 FORMALIZED PROCESS FOR THAT. I CAN SAY THAT I BELIEVE EFFORTS
5 ARE BEING MADE IN THAT DIRECTION, BUT I WOULDN'T SUBMIT TODAY
6 THAT THERE IS A FORMALIZED PROCESS FOR THAT COMMUNICATION.

7 **THE COURT:** ALL RIGHT.

8 MR. GELERT, IN THIS CASE, MS. C. HAS CONCEDED THAT
9 THE INITIAL SEPARATION IS LAWFUL UNDER THE CURRENT STATE OF
10 LAW BECAUSE THE CRIMINAL PROSECUTION NECESSARILY SEPARATES THE
11 PARENT FROM THE CHILD. THAT IS STILL THE STATE OF LAW, UNLESS
12 THE FLORES DECISION IS SOMEHOW MODIFIED. DO YOU AGREE?

13 **MR. GELERT:** YES, YOUR HONOR. WE DON'T TAKE BACK
14 THAT CONCESSION. THE ONLY THING I WANTED TO DO IS CLARIFY ONE
15 THING THAT MAY BE GOING ON WITH THIS E.O. AND NEW PRACTICE,
16 BUT I DON'T THINK IT REMOTELY CHANGES YOUR ANALYSIS IN THE
17 FIRST OPINION, WHICH IS RECOGNIZING THAT WE CONCEDED THAT THE
18 CHILD CANNOT GO INTO A CRIMINAL JAIL. BUT ONCE THEY GET OUT,
19 THE PARENT SHOULD -- ONCE THE PARENT GETS OUT THEY SHOULD BE
20 REUNITED WITH THE CHILD. AND AT THAT POINT, FOR PURPOSES OF
21 OUR DUE PROCESS CLAIM, MS. L. AND MS. C. ARE SIMILARLY
22 SITUATED.

23 THE ONLY THING THAT I THINK CAN HAPPEN IS THAT EVEN
24 THOUGH THE PARENT IS BEING PROSECUTED AND THEREFORE
25 TECHNICALLY UNDER CRIMINAL CUSTODY, IT IS MY UNDERSTANDING

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1 THAT BECAUSE THESE ARE BASICALLY TIME-SERVED, THE PARENT IS
2 HELD THE NIGHT BEFORE THE HEARING AND THEN GOES THROUGH A SORT
3 OF STREAMLINED HEARING AND PLEADS GUILTY. THAT THE PARENT CAN
4 BE HELD IN ACTUALLY A D.H.S. FACILITY WHERE KIDS ARE ALLOWED,
5 EVEN THOUGH THE PARENT IS BEING PROSECUTED. AND SO IF THAT
6 HAPPENS, OBVIOUSLY THERE IS NO NEED FOR THAT INITIAL
7 SEPARATION.

8 BUT YOUR OVERALL POINT IS EXACTLY RIGHT. WE DO NOT
9 TAKE BACK THAT CONCESSION. IF THE PARENT IS PROSECUTED AND
10 PUT IN A JAIL, YOU KNOW, A CRIMINAL FACILITY, THAT SEPARATION
11 IS NOT SOMETHING WE ARE CHALLENGING IN THIS CASE. WE SIMPLY
12 WANT THE CHILD BACK. THE PARENT HAS TO BE REUNITED AFTER THEY
13 STEP OUT.

14 AND JUST GOING TO YOUR QUESTIONS ABOUT THE O.R.R.
15 PROCESS. I MEAN, I THINK YOU HEAR FROM THE GOVERNMENT THAT
16 THEY HAVEN'T PUT INTO PLACE AN EXPEDITED MECHANISM FOR
17 REUNITING THESE CHILDREN. AND THESE ARE VERY DIFFERENT
18 CHILDREN THAN WHAT O.R.R. IS USED TO SEEING, AN OLDER TEENAGER
19 COMING AS AN UNACCOMPANIED CHILD AND THEY ACTUALLY HAVE TO
20 FIND A LEGITIMATE SPONSOR. THESE ARE LITTLE CHILDREN WHO HAVE
21 BEEN TORN FROM THEIR PARENTS, ARE TRAUMATIZED, ESSENTIALLY
22 TERRORIZED. AND THAT PROCESS NEEDS TO BE MUCH QUICKER, AND
23 O.R.R. SHOULD NOT BE HAVING TO DO THIS MAJOR INVESTIGATION
24 JUST TO RETURN THEM TO THE PARENT, ASSUMING THEY EVEN KNOW
25 WHERE THE PARENT IS.

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1 SO WE ARE NOT ASKING, OBVIOUSLY, TO MICROMANAGE THE
2 PROCESS, ONLY THAT YOUR HONOR ORDER THAT IT BE HAPPENING
3 EXPEDITED AND WITHIN 30 DAYS; WHICH I THINK SHOULD BE
4 PERFECTLY REASONABLE IF THE GOVERNMENT HAS DONE WHAT THEY ARE
5 SUPPOSED TO DO AND AT LEAST TRACK, IN SOME MINIMAL WAY, WHERE
6 THE PARENTS AND KIDS ARE.

7 **THE COURT:** THAT KIND OF OVERARCHING INJUNCTIVE
8 RELIEF THAT YOU REQUEST WOULD THEN, FROM YOUR STANDPOINT,
9 REQUIRE THE GOVERNMENT TO COME UP WITH A PLAN BY WHICH ITS
10 VARIOUS AGENCIES, H.H.S. AND D.H.S., FOR EXAMPLE, COMMUNICATE,
11 KEEP TRACK OF CHILDREN, AND ESTABLISH A PROTOCOL OR A
12 PROCEDURE BY WHICH TO REUNIFY UPON THE PARENT BEING RETURNED
13 TO IMMIGRATION DETENTION. IS THAT CORRECT?

14 **MR. GELERT:** WELL, I THINK IT WOULD, YOUR HONOR. I
15 THINK AT A MINIMUM ANY GOVERNMENT DEALING WITH LITTLE
16 CHILDREN, TAKING LITTLE CHILDREN AWAY, SHOULD HAVE SOME BASIC
17 PROCESS. AND IT SHOULDN'T BE ON THE PARENT TO TRY AND TRACK
18 DOWN WHERE THE CHILD IS. I MEAN, WE ARE HEARING THAT WEEKS
19 AND MONTHS GO BY BEFORE A PARENT LOCATES THEIR CHILD.

20 BUT RIGHT NOW, YOU KNOW, WHATEVER PROCESS THE
21 GOVERNMENT ULTIMATELY WANTS TO PUT IN, I THINK IF THEY SIMPLY
22 PRIORITIZE THIS THEY CERTAINLY -- THE UNITED STATES GOVERNMENT
23 CERTAINLY HAS ENOUGH RESOURCES NOW TO GET THE AGENCIES
24 TOGETHER AND GET THESE CHILDREN BACK TOGETHER.

25 WHATEVER PROCESS THEY WANT TO PUT INTO PLACE IN THE

1 FUTURE, WHATEVER MECHANISMS THEY WANT FOR ENSURING
2 REUNIFICATION, YOU KNOW, GREAT. WE WANT THAT TO BE FLORES.
3 BUT RIGHT NOW I THINK THEY JUST -- THEY NEED TO MOVE, IN OUR
4 VIEW, BECAUSE THESE KIDS ARE LITERALLY SUFFERING EVERY DAY,
5 AND EVERY DAY GOES BY, THEY ARE IRREPARABLY HARMED. AND IT IS
6 JUST -- IT IS TOO MUCH NOW FOR THE GOVERNMENT TO SIMPLY SAY,
7 LET'S HAVE ADDITIONAL BRIEFING, LET'S STRING THIS OUT AGAIN,
8 WE WILL LOOK INTO THINGS.

9 AT THIS POINT I THINK THE GOVERNMENT HAS HAD PLENTY
10 OF TIME TO REALIZE THAT THEY ARE LITERALLY TERRORIZING THESE
11 LITTLE CHILDREN AND CREATING IRREPARABLE HARM TO THEM.

12 **THE COURT:** THE FLORES DECISION, AS I UNDERSTAND
13 IT -- AND THIS IS A QUESTION FOR MR. GELERNT -- WAS
14 ESTABLISHED IN THE LATE '90'S. AND AT THAT POINT IT WAS
15 FOCUSING ON OLDER CHILDREN WHO WERE CROSSING THE BORDER
16 ILLEGALLY BY THEMSELVES. IS THAT --

17 **MR. GELERNT:** ABSOLUTELY, YOUR HONOR.

18 **THE COURT:** IN THAT SENSE THEY WERE UNACCOMPANIED,
19 AND THE FEDERAL GOVERNMENT NEEDED TO PROVIDE SOME REASONABLE
20 SAFETY AND SHELTER FOR THESE CHILDREN PENDING THEIR EITHER
21 CRIMINAL PROSECUTION, JUVENILE PROSECUTION, OR REMOVAL.

22 **MR. GELERNT:** THAT'S ABSOLUTELY RIGHT. YOUR HONOR,
23 YOU ARE ABSOLUTELY RIGHT. AND THAT IS PROBABLY A POINT THAT I
24 SHOULD HAVE MADE. I MEAN, THAT IS THE OVERARCHING PURPOSE OF
25 FLORES AND THAT WAS THE ORIGINS OF FLORES. IT WAS OLDER KIDS

1 WHO WERE ACTUALLY UNACCOMPANIED, AS OPPOSED TO THESE KIDS THAT
2 ARE BEING RENDERED UNACCOMPANIED. AND IT WAS AN ATTEMPT TO
3 ENSURE THAT THESE KIDS DIDN'T LANGUISH IN SUB-PAR FACILITIES
4 FOREVER.

5 IT REALLY -- NOW IT TECHNICALLY APPLIES TO
6 ACCOMPANIED CHILDREN BUT THE THRUST OF IT WAS ALWAYS FOR THESE
7 UNACCOMPANIED CHILDREN. IT WASN'T SUPPOSED TO BE A RIGID
8 REQUIREMENT THAT IF YOU ARE ACTUALLY WITH YOUR PARENT YOU ARE
9 SHIPPED OFF AT THE 19TH DAY, EVEN IF YOU ARE TWO YEARS OLD,
10 OVER THE PARENT'S OBJECTION. YOU ARE ABSOLUTELY RIGHT ABOUT
11 THE THRUST AND THE HISTORICAL ORIGINS OF FLORES.

12 **THE COURT:** THE PLAINTIFFS ARE ALSO REQUESTING
13 INJUNCTIVE RELIEF BECAUSE THERE ARE DOCUMENTED INCIDENTS OF
14 PARENTS BEING SEPARATELY DEPORTED OR REMOVED FROM THEIR CHILD,
15 CORRECT?

16 SO, FOR EXAMPLE, WE COULD USE HYPOTHETICALLY SOMEONE
17 SIMILARLY SITUATED TO MS. L. OR MS. C. THEIR ASYLUM CLAIM
18 FAILS, THEY ARE REMOVED TO THEIR HOME COUNTRY. THE CHILD IS
19 IN A SEPARATE GOVERNMENT AGENCY THAT APPARENTLY IS NOT
20 COMMUNICATING WITH OTHER GOVERNMENT AGENCIES, AND THE CHILD
21 THEN IS SEPARATELY DEPORTED TO THE HOMELAND AT A DIFFERENT
22 TIME. IS THAT CORRECT?

23 **MR. GELERT:** ABSOLUTELY, YOUR HONOR. AND I THINK
24 WHAT IS HAPPENING IS THAT THE CHILD IS JUST LANGUISHING IN THE
25 UNITED STATES, NOT DEPORTED, AND IS IN DANGER OF BEING GIVEN

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1 TO A FAMILY PERMANENTLY, AND THE PARENT WHO HAS BEEN DEPORTED
2 LOSES CUSTODY. THE PARENTS HAVE NO WAY TO TRACK THE CHILD.

3 SO WE WOULD ASK THAT AS PART OF THE TRACKING SYSTEM
4 WE KNOW ABOUT PARENTS -- THE GOVERNMENT SHOULD KNOW ABOUT
5 PARENTS WHO WERE WITH A CHILD, THE GOVERNMENT TOOK THE CHILD
6 AWAY AND THEN DEPORTED THE PARENT, BECAUSE I THINK THAT IS
7 PART OF THIS WHOLE THING. IT IS IN SOME WAY THE MOST EXTREME
8 SITUATION BUT IT IS HAPPENING.

9 SO WE CERTAINLY WOULD WANT SOME WAY FOR THE PARENT
10 AND THE CHILD TO SPEAK TO EACH OTHER AND THERE BE AN
11 ARRANGEMENT SO THAT THE PARENT KNOWS WHERE THE CHILD IS AND
12 CAN MAKE ARRANGEMENTS TO HAVE THE CHILD REMOVED BACK TO THEIR
13 OWN COUNTRY, OTHERWISE THE CHILD IS JUST LEFT HERE IN THE
14 UNITED STATES ALL BY HIM OR HERSELF.

15 **THE COURT:** DOES THE GOVERNMENT PRESENTLY HAVE A
16 PLAN FOR DETAINING PARENTS TOGETHER WITH THE CHILD UNDER THE
17 EXECUTIVE ORDER OR RELEASING PARENTS, OR IS THIS ALL IN THE
18 STATE OF FLUX?

19 **MS. FABIAN:** YOUR HONOR, I DON'T HAVE ANYTHING TO
20 SUBMIT ON THAT TODAY. AGAIN, I THINK THERE IS A CURRENT
21 EXISTING PRACTICE OF FAMILY DETENTION. AND THERE HAS BEEN A
22 FILING MADE IN THE FLORES CASE TO PERHAPS AMEND THE FLORES
23 AGREEMENT THAT MIGHT LEAD TO CHANGES IN THAT PRACTICE.
24 HOWEVER, THAT OBVIOUSLY REMAINS IN FLUX UNTIL THAT CAN BE
25 HEARD BY THE FLORES COURT.

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1 I WANT TO ADD THAT SOME OF THE ISSUES THAT THE COURT
2 HAS BEEN ASKING ABOUT, THIS ABILITY TO LOCATE, AND I THINK
3 YOUR HONOR ASKED ABOUT THE QUESTION OF PARENTS BEING REMOVED
4 WITHOUT THEIR CHILD. WELL, I AGREE THAT THOSE ARE DIFFICULT
5 ISSUES AND IMPORTANT ISSUES TO TALK ABOUT. I AM NOT SURE THAT
6 THEY ARE A PART OF THIS CASE IN TERMS OF THEY WERE NOT PLED IN
7 THE ORIGINAL COMPLAINTS AND THEY ARE NOT SITUATIONS THAT ARE
8 ENCOMPASSED BY THE NAMED PLAINTIFFS.

9 SO I THINK I WOULD REITERATE MY CONCERNS WITH
10 ENCOMPASSING TOO MUCH -- WITH BRINGING THESE ISSUES INTO THE
11 CASE AT THIS TIME AND WITHOUT THE OPPORTUNITY FOR PUTTING IN
12 SOME EVIDENCE OF THAT TO SORT OF REACH DECISIONS IN THIS CASE
13 BASED ON NEWS REPORTS. WHILE I UNDERSTAND THAT THE COURT IS
14 CONCERNED WITH THOSE AND MAY BE INTERESTED IN THOSE, I THINK
15 WE NEED TO CONSIDER WHAT HAS BEEN BRIEFED IN THIS CASE.

16 **THE COURT:** THAT WAS ONE OF THE CLAIMS FOR RELIEF,
17 THOUGH, SET OUT EITHER IN THE AMENDED COMPLAINT OR IN THE
18 MOTION FOR PRELIMINARY INJUNCTION WAS FOR REQUESTING THE COURT
19 TO ORDER AN INJUNCTION TO PROHIBIT THE REMOVAL OF PARENT AND
20 CHILD AT SEPARATE TIMES. SO IT SEEMED TO ME THAT IT WAS PART
21 AND PARCEL OF THIS REUNIFICATION ISSUE AS IT RELATES TO, FOR
22 EXAMPLE, MS. C.'S CASE. DO YOU DISAGREE?

23 **MS. FABIAN:** NO. I AGREE. AND AS YOUR HONOR SAYS,
24 I DO RECALL THAT THAT IS -- PART OF THE CHALLENGE HERE IS THAT
25 THERE WAS NOT -- WITHOUT A PROPOSED ORDER I THINK THERE WAS

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1 SOME VERY BROAD REQUESTS BEING MADE AND I THINK THAT THEY --
2 WHAT PLAINTIFFS HAVE BEEN REQUESTING HAS CHANGED A LITTLE BIT
3 OVER TIME. BUT I DO RECALL, AS YOUR HONOR SAYS THAT, THAT
4 THAT WAS ONE OF THE REQUESTS THAT WAS BEING MADE.

5 BUT I DON'T THINK THAT WE HAVE THE NAMED PLAINTIFFS
6 AND REALLY THE CLAIMS IN THIS CASE THAT AT THE TIME THAT THIS
7 CASE WAS ARGUED THAT THIS ABILITY TO LOCATE AND BE -- WE DON'T
8 HAVE A NAMED PLAINTIFF WHO WAS REMOVED WITHOUT THE CHILD BEING
9 RETURNED, AND THAT THE ABILITY-TO-LOCATE ISSUES HAD NOT
10 BEEN -- HAD NOT BEEN RAISED BY THE NAMED PLAINTIFFS IN THE
11 CASE.

12 **THE COURT:** ALL RIGHT.

13 MR. GELERNT, DO THE PLAINTIFFS INTEND OR ANTICIPATE
14 ON AMENDING THE COMPLAINT?

15 **MR. GELERNT:** YES, YOUR HONOR, WE DO. BUT WE DO
16 NOT, AT THIS TIME, HAVE ANY PLAN TO SEEK PRELIMINARY RELIEF ON
17 THOSE CLAIMS. WE WOULD ASK THE COURT TO ISSUE THE INJUNCTION
18 JUST BASED ON DUE PROCESS, BUT WE WILL AMEND IT BEFORE
19 JULY 3RD. SO FOR THE CASE GOING FORWARD THOSE CLAIMS WILL BE
20 THERE, AND OBVIOUSLY THE COURT WILL DECIDE WHETHER OUR
21 AMENDMENTS ARE SUFFICIENT. BUT WE WOULD NOT BE SEEKING
22 PRELIMINARY RELIEF ON THOSE, WE HAVE NO PLAN TO DO THAT. AND
23 WE WOULD JUST ASK THE COURT TO RULE ON THE P.I. BASED ON DUE
24 PROCESS.

25 **THE COURT:** I THINK THAT MR. GELERNT'S OBSERVATION

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1 THAT THE RECORD BEFORE THE COURT CONTAINS A LOT OF INFORMATION
2 THAT MAY BE SUFFICIENT TO PROCEED, BASED ON THE PRESENT
3 RECORD, BUT OBVIOUSLY A LOT HAS OCCURRED IN THE LAST SEVERAL
4 WEEKS, AND PARTICULARLY THIS WEEK, THAT MAY BE RELEVANT. I
5 WOULD LIKE TO GIVE COUNSEL THE OPPORTUNITY TO SUPPLEMENT THE
6 RECORD.

7 I DO APPRECIATE THAT COUNSEL NEED NOT HAVE TO COME
8 IN WITH A LARGE FILING WITH LOTS OF DECLARATIONS AND THINGS TO
9 VERIFY WHAT HAS PLAYED OUT IN THE MEDIA. I THINK THE ISSUES
10 ARE NOT REALLY DISPUTED, AND THEY ARE WELL-KNOWN TO EVERYONE
11 WHO HAS BEEN READING, WATCHING, OR LISTENING. BUT THIS IS A
12 COURT OF PUBLIC RECORD AND THERE DOES NEED TO BE SOME
13 SUPPLEMENTATION.

14 SO WHAT I WOULD REQUEST -- AND I WILL INVITE
15 COUNSELS' COMMENT -- IS AN OPPORTUNITY, FOR EXAMPLE, FOR
16 PLAINTIFFS TO SUBMIT. IT CAN BE A VERY BRIEF FILING, SIMPLY
17 GIVING AN UPDATE OF WHAT HAS OCCURRED BETWEEN THE COURT'S
18 12(B) ORDER AND THE PRESENT TIME.

19 I WILL LEAVE IT TO YOU WHETHER YOU WANT TO
20 SUPPLEMENT WITH ANY DECLARATIONS OR OTHER EVIDENCE, OR SIMPLY
21 MAKE A FILING THAT CAPTURES THE CURRENT STATE.

22 AND MOST SPECIFICALLY, I WOULD ASK THAT YOU SET OUT
23 WHAT IT IS, SPECIFICALLY, YOU ARE ASKING THE COURT TO DO.
24 WHAT IS THE INJUNCTIVE RELIEF WITH RESPECT TO INDIVIDUALS LIKE
25 MS. C. WHO ARE INITIALLY SEPARATED, IN PLAINTIFFS' VIEW

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1 IMPROPERLY. AND THEN WHAT IS THE RELIEF THAT IS REQUESTED
2 SPECIFICALLY WITH RESPECT TO INDIVIDUALS LIKE MS. C., AND IT
3 COULD BE MS. L. AS WELL, WHERE THERE IS A REQUEST TO REUNIFY
4 AND NOT TO SEPARATELY REMOVE. SO THAT WOULD BE HELPFUL, TO
5 SET OUT IN DETAIL WHAT TYPE OF INJUNCTIVE RELIEF YOU ARE
6 REQUESTING WITH SPECIFICITY.

7 AND TO THE EXTENT THAT YOU BELIEVE THE COURT CAN
8 ISSUE MORE BROAD INJUNCTIVE RELIEF, AND NOT GET INTO THE
9 WEEDS, AND ASSUMING INJUNCTIVE RELIEF IS PROVIDED THAT ISSUES
10 WITH RESPECT TO HOW VARIOUS GOVERNMENTAL AGENCIES COMMUNICATE,
11 HOW REUNIFICATION OCCURS, WHAT THE PROTOCOL IS, WHETHER THERE
12 IS A PROCEDURE OR A CHECKLIST THAT IS MADE, FOR EXAMPLE. IF
13 IT IS THE PLAINTIFFS' POSITION THAT THE COURT NEED NOT GET
14 INTO THE DETAILS BUT SIMPLY MAKE OVERARCHING DECLARATIONS AND
15 INJUNCTIONS, A BRIEF DISCUSSION IN THAT REGARD WOULD BE
16 HELPFUL.

17 I WOULD PROPOSE THAT PLAINTIFFS MAKE THAT FILING BY
18 MONDAY. IS THAT -- THAT MEANS WORKING THE WEEKEND OR --

19 **MR. GELERT:** YOUR HONOR, THAT'S ABSOLUTELY FINE.
20 WE WILL HAVE THAT TO YOU AT 9:00 A.M.

21 I ALSO WANT TO SAY, AT THE RISK OF ANNOYING YOU,
22 THAT WE WILL SUBMIT WHAT WE THINK IS PROPER INJUNCTIVE RELIEF
23 TONIGHT, A PROPOSED ORDER AT A GENERAL -- AND YOU CAN
24 OBVIOUSLY EVALUATE WHETHER YOU THINK THAT INJUNCTION COULD BE
25 ISSUED BASED ON THE RECORD THAT WAS BEFORE YOU AT THE TIME.

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1 BUT WE WILL CERTAINLY, BECAUSE WE UNDERSTAND YOU WANT A
2 SUPPLEMENT BY 9:00 A.M. YOUR TIME ON MONDAY MORNING.

3 **THE COURT:** ALL RIGHT. AND I WOULD SUGGEST THAT THE
4 GOVERNMENT RESPOND BY NO LATER THAN CLOSE OF BUSINESS ON
5 WEDNESDAY.

6 ANY OBJECTION?

7 **MS. FABIAN:** THAT'S FINE, YOUR HONOR.

8 **THE COURT:** AND I WILL CONTINUE TO TAKE THESE
9 MATTERS UNDER SUBMISSION. AND I WILL ENDEAVOR TO ISSUE A
10 RULING SHORTLY AFTER RECEIVING THE BRIEFING BY COUNSEL.

11 ARE THERE ANY ADDITIONAL COMMENTS FOR THE RECORD?

12 **MR. GELERNT:** YOUR HONOR, THIS IS MR. GELERNT AGAIN.

13 WE ARE -- I JUST WANT TO SAY FOR THE RECORD THAT WE
14 ARE HAPPY TO EXPEDITE THE BRIEFING SCHEDULE EVEN FURTHER IF
15 THE GOVERNMENT IS PREPARED, GIVEN THAT EVERY DAY THESE LITTLE
16 CHILDREN ARE BY THEMSELVES. WE ARE GETTING CALLS FROM DOCTORS
17 SAYING THAT REAL DAMAGE IS BEING DONE.

18 SO IF THE GOVERNMENT, YOU KNOW, UNDER -- WHAT THE
19 GOVERNMENT PRESUMABLY UNDERSTANDS THE URGENCY AND HOW MUCH
20 DAMAGE IS BEING DONE TO THESE LITTLE CHILDREN WE WOULD GET
21 SOMETHING TO YOU BY MIDNIGHT TOMORROW NIGHT IF THE GOVERNMENT
22 CAN RESPOND BY 9:00 A.M. MONDAY TO ALLOW YOU TO ISSUE
23 SOMETHING, YOU KNOW, BY TUESDAY, IF THE GOVERNMENT IS WILLING
24 TO DO THAT.

25 **THE COURT:** MS. FABIAN?

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1 **MS. FABIAN:** I CAN'T SAY RIGHT NOW THAT I WOULD BE
2 ABLE TO HAVE THE FOLKS I WOULD NEED TO PROVIDE THE EVIDENTIARY
3 RESPONSES WITHOUT HAVING AT LEAST SOME TIME THAT COVERED
4 WORKING HOURS DURING THE WEEK.

5 SO IT IS HARD TO SAY WITHOUT KNOWING EXACTLY WHAT
6 EVIDENTIARY ISSUES I WILL NEED TO RESPOND TO. BUT MY ONE
7 CONCERN IS THAT I CAN'T, AT THIS HOUR ON A FRIDAY, ENSURE THAT
8 I WILL BE ABLE TO BE IN TOUCH WITH THE FOLKS I WOULD NEED TO
9 GET THE EVIDENCE IN RESPONSE WITHOUT HAVING SOME PERIOD OF
10 TIME OVER WORKING HOURS.

11 **THE COURT:** ALL RIGHT. I DO APPRECIATE THE REQUEST
12 FOR EXPEDITED DECISION MAKING, BUT IT IS ALSO IMPORTANT TO
13 HAVE AN OPPORTUNITY FOR EVERYONE TO BE HEARD AND TO MAKE THEIR
14 RECORD, AND FOR THE COURT TO MAKE A DETERMINATION BASED ON A
15 COMPLETE RECORD, AS IS REASONABLY POSSIBLE, GIVEN THE CURRENT
16 DEVELOPMENTS THAT ARE UNFOLDING.

17 SO I WILL STAND ON THE PROPOSAL. I THINK THAT IS
18 REASONABLE UNDER THE CIRCUMSTANCES. IT IS STILL VERY
19 EXPEDITED, AND IT ALLOWS DECISION-MAKING IN A RELATIVELY
20 ORDERED FASHION. SO TO BE --

21 **MR. GELERT:** YOUR HONOR, IF I COULD JUST SAY ONE
22 OTHER THING. I UNDERSTAND, AND SO WE WILL SUBMIT BY 9:00 A.M.
23 PACIFIC TIME MONDAY.

24 AND I THINK GIVEN THAT YOU ARE GOING TO GO FORWARD
25 WITH GETTING BRIEFING WE WILL JUST SUBMIT OUR PROPOSED

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1 INJUNCTIVE LANGUAGE WITH OUR 9:00 A.M. SUBMISSION RATHER THAN
2 TONIGHT IF YOU ARE NOT GOING TO RULE UNTIL YOU SEE THE FUTURE
3 SUBMISSIONS. I THINK IT JUST MAKES SENSE FOR US TO JUST
4 SUBMIT IT ALL AT ONCE ON MONDAY.

5 **THE COURT:** YES, THAT WOULD BE FINE.

6 AND THE GOVERNMENT WOULD HAVE ITS SUPPLEMENTAL
7 BRIEFING BY WEDNESDAY, 4:30 P.M. PACIFIC TIME.

8 OKAY. I APPRECIATE VERY MUCH THE DISCUSSION, IT WAS
9 VERY, VERY HELPFUL, AND I THANK COUNSEL FOR THE OPPORTUNITY
10 AND THE INSIGHT THAT YOU PROVIDED.

11 I WILL AWAIT THE BRIEFING. AND AGAIN I WILL
12 ENDEAVOR TO ISSUE AN ORDER AS QUICKLY AND AS REASONABLY AS I
13 CAN.

14 **MS. FABIAN:** ONE THING, YOUR HONOR, I JUST WANTED TO
15 CLARIFY.

16 WE HAVE NOT ANSWERED THE REMAINING CLAIM IN THE
17 COMPLAINT THAT WAS NOT DISMISSED. WE HAD SPOKEN, AND I WAS
18 GOING TO SUBMIT SOMETHING BUT THEN YOU SET THIS CALL, SO I
19 FIGURED I WOULD JUST SAY IT ON THE RECORD.

20 BECAUSE PLAINTIFFS ARE GOING TO BE AMENDING THEIR
21 COMPLAINT ON THE 3RD WE PLAN TO RESPOND TO THAT WITHIN TWO
22 WEEKS, AS REQUIRED UNDER THE RULES, AND TO PROCEED WITH
23 ANSWERING IN DUE COURSE ON THAT TIMELINE, UNLESS THE COURT
24 WANTS A DIFFERENT TIMELINE FOR THAT.

25 **THE COURT:** NO, I THINK THAT IS A GOOD SUGGESTION.

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1 SO TWO WEEKS FROM THE FILING OF ANY SECOND AMENDED COMPLAINT
2 WOULD BE FINE.

3 **MS. FABIAN:** OKAY. THANK YOU, YOUR HONOR.

4 **THE COURT:** ALL RIGHT. THANK YOU VERY MUCH.

5 **MR. GELERT:** THANK YOU, YOUR HONOR.

6 **THE COURT:** YOU ARE WELCOME.

7
8 * * *

9 I CERTIFY THAT THE FOREGOING IS A CORRECT
10 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS
11 IN THE ABOVE-ENTITLED MATTER.

12 S/LEEANN PENCE 6/23/2018
13 LEEANN PENCE, OFFICIAL COURT REPORTER DATE
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