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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

M.M.M., on behalf of his minor child,  
J.M.A., et al.

Plaintiffs,

v.

Jefferson Beauregard Sessions, III,  
Attorney General of the United States,  
et al.,

Defendants.

Ms. L, et al.,

Plaintiffs,

v.

U.S. Immigration and Customs  
Enforcement, et al.,

Defendants.

**FILED**  
  
OCT 23 2018  
  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *VJC* DEPUTY

Case No. 3:18-cv-1832-DMS

Case No. 18-cv-00428-DMS-MDD

CLASS ACTION

**OBJECTION OF MS. EGLA ARELY  
VELASQUEZ MOLINA TO THE  
OCTOBER 5, 2018 SETTLEMENT  
AGREEMENT**

FILED

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1 Pursuant to the Court's October 5, 2018 Order preliminarily approving the  
2 class settlement in this action (the "Settlement"), Ms. Egla Arely Velasquez  
3 Molina ("Ms. Velasquez Molina"), a citizen of Honduras seeking asylum in the  
4 United States and presently detained at the Port Isabel Detention Center ("PIDC"),  
5 files this objection seeking clarification that she is included within the definition of  
6 the plaintiff class in the Settlement. The grounds for this objection are set forth  
7 below.

8 **I. INTRODUCTION**

9 Ms. Velasquez Molina, a thirty year old citizen of Honduras, is the sole  
10 primary caregiver, legal guardian, and biological aunt of E.C., a ten-year old girl  
11 who has lived with Ms. Velasquez Molina since the murder of E.C.'s biological  
12 father, Ms. Velasquez Molina's biological nephew, and has been in the sole care of  
13 Ms. Velasquez Molina since the death of E.C.'s biological father in 2017. Copies  
14 of official documents from the Honduran government appointing Ms. Velasquez  
15 Molina legal guardian for E.C., together with certified translations, are collectively  
16 attached to this Objection as Exhibit A.

17 Ms. Velasquez Molina and E.C. fled Honduras to escape threats of physical  
18 violence and death and crossed the U.S. border in June 2018. Pursuant to the  
19 Government's "zero tolerance" policy, Ms. Velasquez Molina and E.C. were  
20 separated from one another shortly after they crossed the U.S. border. Ms.  
21 Velasquez Molina is detained at the Port Isabel Detention Center in Texas, while  
22 her *de facto* daughter, E.C., is currently housed at a foster-care facility in San  
23 Antonio, Texas.

24 The separation from her daughter caused extreme emotional trauma for Ms.  
25 Velasquez Molina, as would be the case with any parent. Ms. Velasquez Molina  
26 was in this traumatized state when she was given her credible fear interview as part  
27 of the asylum process, which resulted in a negative finding by the Asylum Officer.

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1 On October 17, 2018, Ms. Velasquez Molina filed a lawsuit in the United  
2 States District Court for the District of Columbia seeking, among other things, a *de*  
3 *novi* credible fear interview conducted in good faith, which is one element of the  
4 relief granted to similarly situated detained immigrants in the Settlement. A copy  
5 of Ms. Velasquez Molina's complaint in her District of Columbia action is attached  
6 as Exhibit B to this Objection. In her complaint, Ms. Velasquez Molina alleges  
7 that because she was emotionally traumatized by the Government's forced family  
8 separation policy at the time her initial credible fear interview was conducted, she  
9 was denied her due process rights guaranteed by the Fifth and Fourteenth  
10 Amendments to the U.S. Constitution.

11 There are numerous scholarly articles that describe the devastating  
12 emotional harm caused by family separations. *See, e.g.*, Gaiane Nazarian,  
13 "Separation Due to Deportation: Psychological, Emotional, and Economic Affect  
14 on Children of Deported Parents," *Cal. State San Bernardino* (2014). The  
15 Settlement in this action is a tacit acknowledgement by Defendants that family  
16 separations cause significant emotional damage to all concerned. The *de novo*  
17 credible fear interview provided for in the Settlement is obviously based on the  
18 understanding that a credible fear interview administered while the detainee was  
19 emotionally traumatized from being separated from her child is inherently unfair  
20 and a denial of due process.

21 The Settlement calls for a *de novo* credible fear interview for certain  
22 immigrant "parents," a term that is not defined in the Settlement or in the original  
23 class certification order from this Court. *See* Tentative Settlement Agreement,  
24 Doc. 247 at 32. The class certification order and the Settlement expressly exclude  
25 certain parents from the class, such as those with criminal histories or with  
26 communicable diseases, but do not exclude legal guardians or any other type of  
27 parent. As shown below, Ms. Velasquez Molina is properly included within the  
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1 plaintiff class and should be afforded the relief provided in the Settlement.

2 **II. MS. VELASQUEZ MOLINA SHOULD BE IN THE SETTLEMENT**  
3 **CLASS**

4 **A. Legal Guardians Should Be Treated The Same As Biological**  
5 **Parents Under The Settlement**

6 As shown in the documents attached to this Objection as Exhibit A, Ms.  
7 Velasquez Molina is the official legal guardian of her young niece, E.C., and has  
8 been her guardian since gang members murdered her father in 2017. Counsel for  
9 Ms. Velasquez Molina have engaged with counsel for the Defendants in Ms.  
10 Velasquez Molina’s District of Columbia action seeking their agreement that  
11 official legal guardians such as Ms. Velasquez Molina should be within the scope  
12 of the Settlement and, therefore, entitled to a *de novo* credible fear interview. To  
13 date, Defendants have not agreed that Ms. Velasquez Molina is within the  
14 definition of “parent” in the Settlement, and, in a related case with the same  
15 Defendants, *Lesbi Nohemi Martinez Martinez v. ICE, et al.*, Case No. 18-02231-  
16 PLF (D.D.C.),<sup>1</sup> have stated their position that the term “parent” does not refer to  
17 legal guardians such as Ms. Velasquez Molina. However, Defendants’ position is  
18 not only inconsistent with the meaning and spirit of this Court’s class certification  
19 order, the Settlement Agreement and Defendants’ arguments before this Court, it is  
20 also inconsistent with federal law and Defendants’ own immigration policy.

21 As an initial matter, this Court’s June 26, 2018 order certified the following  
22 class pursuant to Federal Rule of Civil Procedure 23(b)(2) for purposes of  
23 Plaintiffs’ substantive due process claim:

24 *All adult parents* who enter the United States at or  
25 between designated ports of entry who (1) have been, are,

26 \_\_\_\_\_  
27 <sup>1</sup> Ms. Martinez has filed an objection to the proposed settlement on the same grounds as expressed herein. See Doc.  
28 282 (October 15, 2018).

1 or will be detained in immigration custody by the DHS,  
2 and (2) have a minor child who is or will be separated  
3 from them by DHS and detained in ORR custody, ORR  
4 foster care, or DHS custody, absent a determination that  
5 the parent is unfit or presents a danger to the child.”

6 Doc. 82 at 17 (emphasis added).

7 This Court provided only one modification to the definition of parent, for  
8 purposes of determining class members. Specifically, the Court held that the class  
9 “does not include migrant parents with criminal history or communicable disease,  
10 or those who are in the interior of the United States or subject to the [President’s  
11 June 20, 2018 Executive Order which reversed the administrations family  
12 separation policy].” Pursuant to this Executive Order, the Secretary of Homeland  
13 Security is prohibited from “detain[ing] an alien family together when there is a  
14 concern that detention of an alien child with the child’s alien parent would pose a  
15 risk to the child’s welfare.” Ms. Velasquez Molina’s and her daughter’s forced  
16 separation fell within the class definition. As of the date of the Court’s June 26  
17 class certification order, Ms. Velasquez Molina “ha[d] been...detained in  
18 immigration custody by the DHS, . . . [she had] a minor child who . . . [wa]s  
19 separated from [her] by DHS and [had been] detained in ORR custody, absent a  
20 determination that [she was] . . . unfit or present[ed] a danger to [her] child.” See  
21 Order Granting In Part Plaintiffs’ Motion for Class Certification (Doc. 82) at 17.  
22 The proposed Settlement Agreement largely tracks the certified class definition,  
23 referencing “all adult alien parents who entered the United States at . . . designated  
24 ports of entry with their child(ren), and . . . before the effective date of the  
25 [settlement] agreement . . . were detained in immigration custody by DHS” and  
26 “ha[d] a child who was or is separated from them by DHS and, . . . was housed in  
27 ORR custody. . . , absent a determination that the parent is unfit or presents a  
28 danger to the child.” As with the certified class definition, the Settlement  
Agreement expressly excludes from the class alien parents with criminal histories

1 or a communicable disease. *See* Doc. 247 at 32. Nothing in the terms of the  
2 original class definition or in the proposed agreement excludes legal guardians.

3 In an earlier status conference in this case, the Government suggested that  
4 non-biological parents could properly be considered to be within the class  
5 definition. During the July 6th status conference, in discussing the difficulties that  
6 the Government would face in establishing “parentage,” and requesting “some  
7 relief to allow for that process” given “the inherent delays” in establishing such  
8 parentage, the Government said “[t]here are situations, for example in a  
9 nonbiological parent situation, where the -- where there may need to be additional  
10 review of paperwork, perhaps communications with the consulates.” Doc. 93 at 12.  
11 The Court noted that “the class is defined to include parents . . . arguably that could  
12 mean adoptive parents, nonbiological.” *Id.*

13 Further, federal law has defined legal guardianships as “a judicially-created  
14 relationship between child and caretaker which is intended to be permanent and  
15 self-sustaining as evidenced by the transfer to the caretaker of the following  
16 parental rights with respect to the child: protection, education, care and control of  
17 the person, custody of the person, and decision-making.” 45 C.F.R.  
18 § 1355.20(a)(2). The law recognizes that the strong emotional and legal bonds  
19 between legal guardians and their minor charges are the same as those between  
20 parents and their biological children, thereby granting legal guardians equal or  
21 substantially similar rights. For example, when consent is required for treatment of  
22 substance abuse by a minor, consent by either a parent or guardian is acceptable  
23 under federally funded programs. 42 C.F.R § 2.14(b). Similarly, under the  
24 regulations implementing the Health Insurance Portability and Accountability Act,  
25 parents and guardians are granted equal authority to make decisions relating to the  
26 access to, and release of, protected health information of unemancipated minors.  
27 45 C.F.R. § 164.502(g)(3).

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1 Immigration statutes and policy guidance also treat parents and legal  
2 guardians interchangeably, while distinguishing them from individuals with a more  
3 distant connection to the minor child. For example, guidance issued by U.S.  
4 Immigration and Customs Enforcement on the “Detention and Removal of Alien  
5 Parents or Legal Guardians” makes no differentiation between the two (Exhibit C  
6 hereto). Similarly, the Office of Refugee Resettlement (“ORR”), in its guidance  
7 concerning unaccompanied minors, treats parents and legal guardians as similarly  
8 situated and distinguishable from other parties (Exhibit C hereto). Not only does  
9 ORR group parents and legal guardians into “Category 1” for purposes of release  
10 and the type of background check required, but it also “gives preference to a parent  
11 or legal guardian when determining release plans.” See U.S. Dep’t of Health &  
12 Human Services, Office of Refugee Resettlement, Children Entering the United  
13 States Unaccompanied, at §§ 2.2.1, 2.5.1 (Jan. 30, 2015) (Exhibit C hereto).

14 Moreover, federal law defines “unaccompanied alien child” to be a minor  
15 child without lawful immigration status in the United States who has “no parent or  
16 legal guardian . . . available to provide care and physical custody.” 6 U.S.C. §  
17 279(g)(2). Defendants forcibly separated Ms. Velasquez Molina’s minor child  
18 from her, in the same manner in which they separated minor children from their  
19 parents in this case, and then deemed Ms. Velasquez Molina’s child to be an  
20 unaccompanied minor because her legal guardian was no longer available to  
21 provide care and physical custody.

22 Defendants’ position with respect to the treatment of legal guardians is  
23 inconsistent with the underlying zero tolerance policy which resulted in these  
24 forced separations. On June 15, 2018, as the extent of the administration’s family  
25 separation policy became evident and the national outrage grew, the Department of  
26 Homeland Security issued responses to frequently asked questions regarding the  
27 administration’s zero tolerance policy. In that document, DHS considers legal  
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1 guardians “parents” for purposes of the zero tolerance policy. In response to the  
2 question “Why are Parents Being Separated from Their Children?” HHS responded  
3 that DHS “may separate a parent *or legal guardian* from his or her child for several  
4 reasons . . . [including] if a parent *or legal guardian* is referred for criminal  
5 prosecution.” Similarly in response to the question “How can I communicate with  
6 my child?” HHS responded “for parents *or legal guardians* detained in ICE  
7 custody, ICE and HHS will work to schedule regular communication with their  
8 children in HHS custody . . .” (*See Exhibit D hereto*) (emphasis added).

9       The similar treatment of parents and legal guardians is not limited to federal  
10 law or policy, but is evident under state law as well. For example, attached as  
11 Exhibit E to this Memorandum is a summary of the rights and obligations of legal  
12 guardians published by the Judicial Branch of the California State Government. In  
13 that summary, the California Judicial Branch states that legal guardians “have the  
14 same legal responsibilities as a parent” in that legal guardians must provide the  
15 child with basic needs such as housing, food, and medical care, and also decide  
16 where the child lives and attends school. Legal guardians are also responsible for  
17 losses or damages caused by their children for whom they are guardians. These  
18 responsibilities forge bonds between legal guardians and their *de facto* children  
19 that are just as strong as those between biological parents and children. The  
20 California Judicial Branch succinctly advises potential legal guardians that “[y]ou  
21 will be like the child’s parent.” (Ex. E, at p. 1).

22       In sum, a fair reading of this Court’s narrowly defined class would include  
23 Ms. Velasquez Molina and her daughter who were forcibly separated by the  
24 Government and detained in separate facilities, causing severe emotional trauma to  
25 both parent and child. Such a reading is consistent with how legal guardians have  
26 been viewed under federal law and consistent with Defendants’ own immigration  
27 policies.

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**B. None of the Other Criteria In Settlement Class Membership  
Should Keep Ms. Velasquez Molina Out Of The Settlement Class**

Although the parties’ proposed Settlement largely tracks this Court’s June 26, 2018 class definition, it departs from that definition in two key respects. First, the Settlement includes a requirement that the minor child who was separated from his/her adult parent be housed in ORR custody, ORR foster care, or DHS custody “on or after June 26, 2018,” the date of this Court’s class certification order. Second, the proposed Settlement requires that the child and his or her parent “have been continuously present within the United States since June 26, 2018[.]” Doc. 247 at 32. E.C. is currently housed at an ORR custody in San Antonio, Texas. Moreover, Ms. Velasquez Molina and E.C. have been continuously in the United States since they were apprehended at the border in early June. Thus, Ms. Velasquez Molina and her daughter fall squarely within the parameters of the class.

**III. CONCLUSION**

WHEREFORE, Ms. Velasquez Molina respectfully requests that this Court confirm that she is within the plaintiff class for purposes of the Settlement.

Respectfully submitted,  
/s/ Julia Romano  
JULIA ROMANO

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing on all counsel of record by first-class mail.

/s/ Julia Romano

Julia Romano

Dated: October 22, 2018