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20 UNITED STATES DISTRICT COURT

21 CENTRAL DISTRICT OF CALIFORNIA

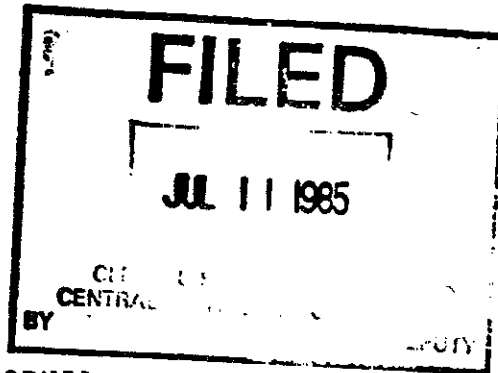
22 JENNY LISETTE FLORES, a minor, :
23 by next friend MARIO HUGO :
24 GALVEZ-MALDONADO; DOMINGA :
25 HERNANDEZ-HERNANDEZ, a minor, :
26 by next friend JOSE SAUL MIRA; :
27 ALMA YANIRA CRUZ, a minor, by :
28 next friend HERMAN PETROLILO :
TANCHEZ, ANA MARIA MARTINEZ- :
PORTILLO, a minor, by next :
friend, PATRICK HUGHES, :

Plaintiffs, :

-vs- :

EDWIN MEESE, Attorney General :
of the United States; IMMI- :
GRATION AND NATURALIZATION :
SERVICE, an agency of the :
United States, HAROLD W. :
EZELL, Western Regional Com- :
missioner, Immigration and :
Naturalization Service; :
BEHAVIORAL SYSTEMS SOUTHWEST; :
CORRECTIONS CORPORATIONS OF :
AMERICA, :

Defendants. :



Case No. 85 4544 *Type in* RJK (R)
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF, AND
RELIEF IN THE NATURE OF
MANDAMUS.

(class action)

1
2 Plaintiffs allege as follows:

3 I.

4 PRELIMINARY STATEMENT

5 1. This action presents a class-wide challenge to (a) the
6 Immigration and Naturalization Service's [hereafter "INS" or
7 "Immigration Service"] policy to condition juveniles' release on
8 bail on their parents' or legal guardians' surrendering to INS
9 agents for interrogation and deportation; (b) the procedures
10 employed by the INS in imposing a condition on juveniles' bail
11 that their parents' or legal guardians' surrender to INS agents
12 for interrogation and deportation; and (c) the conditions
13 maintained by the INS in facilities where juveniles are
14 incarcerated.

15 2. Pursuant to 8 U.S.C. section 1252, INS agents regularly
16 place persons under the age of eighteen (18) years under
17 administrative arrest. Unless admitted to bail or released on
18 their own recognizance, these minors are incarcerated until
19 administrative and judicial proceedings to determine their
20 deportability are completed, a process that can take several
21 years.

22 3. Like adults, juveniles arrested pursuant to 8 U.S.C.
23 1252 are entitled to release on bail while deportation
24 proceedings are conducted. Until recently, INS policy, custom,
25 and usage was to release arrested minors on bail to a parent or
26 other responsible adults who were neither a parent nor legal
27 guardian.
28

1 4. On or about September 6, 1984, defendants initiated a
2 policy to indefinitely jail juveniles, particularly those whose
3 parents INS agents suspect may be aliens unlawfully in the United
4 States, until and unless their parent or legal guardian
5 personally appears before an INS agent to undergo interrogation
6 and possible initiation of deportation proceedings. Said policy
7 was never published in the Federal Register in accordance with
8 the Administrative Procedure Act, 5 U.S.C. 552 et seq.

9 5. Defendants' policy has resulted in the indefinite
10 detention of juveniles who have never been accused or convicted
11 of having committed any crime. Rather, they are held solely for
12 the purpose of administrative proceedings to determine whether
13 they should be deported from the United States.

14 6. Defendants' ostensible purpose for requiring a parent's
15 or guardian's personal appearance is to ensure the welfare of
16 detained minors. Nonetheless, defendants make no effort to
17 assess the qualifications of other adult relatives or friends
18 regardless of how qualified and responsible such adults may be.
19 Instead, defendants incarcerate such minors in facilities where
20 there welfare is wholly neglected.

21 7. While in INS detention, plaintiffs and those similarly
22 situated are required to share sleeping quarters with unrelated
23 adults. Juveniles so detained are provided no educational
24 instruction, no educational or other reading materials, and no
25 supervised recreational activity. Plaintiffs and those similarly
26 situated are also denied reasonable visitation with family or
27 friends.

1 8. The conditions under which defendants jail juveniles,
2 coupled with their refusal to give due consideration to release
3 to other available, responsible adults, belies defendants'
4 professed concern with the welfare of these youngsters. Rather,
5 defendants' policy and practice are a thinly veiled device to
6 apprehend the parents of incarcerated juveniles and to punish
7 children for allegedly having entered the United States without
8 lawful authority.

9 II.

10 JURISDICTION AND VENUE

11 9. Jurisdiction is conferred on this Court by 28 U.S.C.
12 1331 [federal question jurisdiction]; 28 U.S.C. 1361
13 [jurisdiction to compel an officer of the United States to
14 perform a duty owed to plaintiffs]; 8 U.S.C. 1329 [jurisdiction
15 over all causes arising under Title II of the Immigration and
16 Nationality Act]; and 28 U.S.C. 2241 [habeas corpus jurisdiction
17 to remedy unlawful custody under the authority of the United
18 States].

19 10. Plaintiffs' action for declaratory relief is authorized
20 by 28 U.S.C. 2201 and 2202.

21 11. Venue is properly in this Court pursuant to 28 U.S.C.
22 1391(b) and (e)(1), (2), and (4) because acts complained of
23 herein occurred in this district, several of the plaintiffs,
24 numerous class members, and defendants reside in this district,
25 and no real property is involved in this action. Venue in this
26 Court is also proper pursuant to 8 U.S.C. 1329 because violations
27 such as those plaintiffs complain of occurred in this judicial
28 district.

1 III.

2 PARTIES

3 12. Plaintiff Jenny Lisette Flores is a 15-year-old native
4 and citizen of El Salvador. On or about May 16, 1985, she was
5 arrested by INS agents near San Ysidro, California. Thereafter,
6 defendants issued an Order to Show Cause and Warrant of Arrest
7 charging her with being deportable pursuant to 8 U.S.C.
8 1252(a)(2) because she allegedly entered the United States
9 without submitting to inspection by an INS officer. She was
10 subsequently incarcerated in Pasadena, California, where
11 defendants continue to detain her. She sues through her next
12 friend, Mario Hugo Galvez-Maldonado, an adult member of her
13 family who will undertake to advise her and protect her interests
14 during the course of the herein action.

15 13. Plaintiff Dominga Hernandez-Hernandez is 16 years of
16 age and a native and citizen of El Salvador. On or about May 4,
17 1985, she was arrested by INS agents near Calexico, California.
18 Thereafter, defendants issued an Order to Show Cause and Warrant
19 of Arrest charging her with being deportable pursuant to 8 U.S.C.
20 1252(a)(2) because she allegedly entered the United States
21 without submitting to inspection by an INS officer. She was
22 subsequently incarcerated in Pasadena, California, where
23 defendants continue to detain her. She sues through her next
24 friend, Jose Saul Mira, a responsible adult who will undertake to
25 advise her and protect her interests during the course of the
26 herein action.

27 14. Plaintiff Alma Yanira Cruz-Aldama is 13 years of age.
28 On or about June 7, 1985, she was arrested by INS agents near San

1 ysidro, California. Thereafter, defendants issued an Order to
2 Show Cause and Warrant of Arrest charging her with being
3 deportable pursuant to 8 U.S.C. 1252(a)(2) because she allegedly
4 entered the United States without submitting to inspection by an
5 INS officer. She was subsequently incarcerated in Pasadena,
6 California, where defendants continue to detain her. She sues
7 through her next friend, Herman Petrolilo Tanchez, a responsible
8 adult who will undertake to advise her and protect her interests
9 during the course of the herein action.

10 15. Plaintiff Ana Maria Martinez Portillo is sixteen years
11 of age and a native and citizen of El Salvador. On or about May
12 1, 1985, she was arrested by agents of the INS in Laredo, Texas.
13 Thereafter, defendants issued an Order to Show Cause and Warrant
14 of Arrest charging her with being deportable pursuant to 8 U.S.C.
15 Section 1252(a)(2) because she allegedly entered the United
16 States without submitting to inspection by an INS officer. She
17 was subsequently detained by INS in Laredo, Texas, where she was
18 subjected to unlawful strip and vaginal searches. The Laredo
19 facility in which plaintiff Portillo was subjected to the above-
20 alleged violations was operated by defendant Corrections
21 Corporation of America. She sues through her next friend,
22 Patrick Hughes, a responsible adult who will undertake to advise
23 her and protect her interests during the course of the herein
24 action.

25 16. Defendant Edwin Meese is the duly appointed Attorney
26 General of the United States. Pursuant to section 103(a) of the
27 Immigration and Nationality Act ["INA" or "Act"], 8 U.S.C.
28 1103(a), he is charged with the administration and enforcement of

1 all laws relating to the immigration, deportation and
2 naturalization of aliens, including terms and conditions for
3 release on bail pending deportation proceedings. All INS agents
4 and employees act pursuant to a series of delegations of
5 authority vested in the Attorney General by section 103(a) of the
6 Act. Defendant Meese is sued in his official capacity.

7 17. Defendant Immigration and Naturalization Service is a
8 federal agency within the United States Department of Justice and
9 is responsible for enforcing the INA and for developing
10 regulations and policies to implement the Act.

11 18. Defendant Harold W. Ezell is the Western Regional
12 Commissioner of the Immigration and Naturalization Service. As
13 such, defendant Ezell is responsible for the administration and
14 enforcement of the Immigration and Nationality Act, including the
15 conditions under which juveniles are confined or released on
16 bail, within the states of California, Hawaii, Nevada, and
17 Arizona.

18 19. Defendant Behavioral Systems Southwest, Inc.,
19 (hereafter "BSS") is private, for profit corporation that is
20 organized pursuant to the laws of and doing business within the
21 State of California. Plaintiffs are informed and believe, and on
22 such basis allege, that pursuant to a contract with the INS
23 defendant BSS operates a detention facility in Pasadena,
24 California, where juveniles and adults are incarcerated following
25 arrest for violation of administrative deportation laws and
26 pending proceedings to determine whether such persons will be
27 deported from the United States. Plaintiffs Flores, Hernandez,
28

1 and Cruz are currently incarcerated at the Pasadena facility
2 operated by defendant BSS.

3 20. Defendant Corrections Corporation of America ("CCA") is
4 a private contractor doing business in the State of Texas.
5 Plaintiffs are informed and believe, and on such basis allege,
6 that pursuant to a contract with the INS defendant CCS operates a
7 detention facility in Laredo, Texas, where juveniles are
8 incarcerated following arrest for violation of administrative
9 deportation laws and pending proceedings to determine whether
10 such persons will be deported from the United States. Plaintiffs
11 are presently ignorant as to the legal form in which defendant
12 CCA does business, and will amend this Complaint to state whether
13 said defendant is a corporation, partnership, or other entity.

14 21. Plaintiffs are informed and believe, and on such basis
15 allege, that defendants, their agents, and their employees
16 customarily and as a matter of practice or usage engage in the
17 acts here complained of. Plaintiffs are further informed and
18 believe, and on such basis allege, that defendants, and each of
19 them, are aware of and acquiesce in or encourage their agents and
20 employees in doing the acts here complained of.

21 IV.

22 CLASS ACTION ALLEGATIONS

23 22. Pursuant to Rules 23(a)(1)-(4) and (b)(2) of the
24 Federal Rules of Civil Procedure, plaintiffs bring this action as
25 a class action on behalf of all persons under the age of eighteen
26 (18) years who have been or will be arrested by the Immigration
27 and Naturalization Service and who have been or will be--
28

- 1 a. denied release from detention pending deportation
- 2 proceedings because of a condition placed on bail that their
- 3 parent or legal guardian personally appear for interrogation
- 4 at an INS office;
- 5 b. denied prompt written notice that their release from
- 6 detention pending deportation proceedings is contingent on
- 7 their parents' or legal guardians' personal appearance for
- 8 interrogation at an INS office;
- 9 c. denied prompt, mandatory, neutral and detached review
- 10 following arrest of the need to restrict release to a parent
- 11 or legal guardian to ensure the juvenile's presence at
- 12 future administrative proceedings;
- 13 d. denied prompt, mandatory, neutral and detached review
- 14 following arrest of the probable cause for arrest;
- 15 e. denied prompt, mandatory, neutral and detached review
- 16 following arrest of the suitability of an available adult to
- 17 ensure the juvenile's well-being and presence at future
- 18 deportation proceedings notwithstanding that such adult is
- 19 neither the juvenile's parent nor legal guardian;
- 20 f. denied adequate and appropriate recreation while
- 21 incarcerated by the INS;
- 22 g. denied adequate and appropriate reading materials and
- 23 education while incarcerated by the INS;
- 24 h. denied reasonable visitation while incarcerated by the
- 25 INS;
- 26 i. incarcerated with unrelated adults by the INS;
- 27 j. subjected to strip or body cavity searches while
- 28 incarcerated by the INS;

1 23. The proposed class-members will be identifiable from
2 defendants' records and number in the thousands. The size of the
3 class is so numerous that joinder of all members is
4 impracticable. The claims of plaintiffs and those of the
5 proposed class members raise common questions of law and fact
6 concerning the conditions under which the INS incarcerates
7 children and admits them to bail. These questions are common to
8 the named parties and to the members of the proposed class as
9 defendants have acted on grounds generally applicable to both the
10 named parties and proposed class members. Plaintiffs' claims are
11 typical of the class claims.

12 24. The prosecution of separate actions by individual
13 members of the class would create a risk of inconsistent or
14 varying adjudications establishing incompatible standards of
15 conduct for defendants with respect to the incarceration and
16 release of minors. Prosecution of separate actions would also
17 create the risk that individual class members will secure court
18 orders that would as a practical matter be dispositive of the
19 claims of other class members not named parties to this
20 litigation, thereby substantially impeding the ability of
21 unrepresented class-members to protect their interests.

22 25. Defendants, their agents, employees, and predecessors
23 and successors in office have acted or refused to act, and will
24 continue to act or refuse to act, on grounds generally applicable
25 to the class, thereby making appropriate injunctive relief or
26 corresponding declaratory relief with respect to the class as a
27 whole. Plaintiffs will vigorously represent the interests of
28 unnamed class-members. All members of the proposed class will

1 benefit by the action brought by plaintiffs. The interests of
2 the named plaintiffs and those of the proposed class members are
3 identical. Plaintiffs are represented by counsel associated with
4 non-profit public interest law firms and by counsel serving pro
5 bono publico. Counsel have other clients injured by defendants'
6 challenged practices and therefore have an independent interest
7 in ensuring the lawfulness of defendants' conduct. Plaintiffs'
8 counsel include attorneys experienced in federal class action
9 litigation involving the rights of youth, foreign nationals and
10 refugees within the United States.

11 V.

12 STATEMENT OF FACTS

13 26. Plaintiff Jenny Lisette Flores has been in INS
14 detention since her arrest on May 16, 1985. Shortly after her
15 arrest, defendants represented that she would be released from
16 custody pending deportation proceedings on bail in the amount of
17 \$2,000.00. Defendants thereafter initiated no review of the
18 terms and conditions under which plaintiff Flores is incarcerated
19 nor of the probable cause for her arrest.

20 27. On or about June 10, 1985, an immigration judge, at
21 plaintiff's request, reduced the amount of bond to \$1,500.00.
22 Defendants then announced an additional condition on her release:
23 that plaintiff Flores's parent or legal guardian personally
24 appear at an INS detention center for interrogation and take
25 physical custody of her. This was the first notice plaintiff had
26 ever received that such a condition was to be placed on her
27 freedom.

28

1 28. Plaintiff Flores' mother has refused, and will continue
2 to refuse, to personally appear before INS agents for
3 interrogation and to accept physical custody of plaintiff Flores
4 because she fears she will be taken into custody and deported to
5 El Salvador, where a civil war currently exists.

6 29. Counsel for plaintiff Flores therefore immediately
7 requested the immigration judge to remove said bond condition to
8 allow her release to Mr. and Mrs. Mario Hugo Galvez-Maldonado,
9 adult members of her family then ready, willing, and able to
10 ensure plaintiff's welfare and presence at future administrative
11 proceedings.

12 30. Mr. Galvez is a United States citizen and Mrs. Galvez
13 is a lawful permanent resident of the United States. Neither Mr.
14 nor Mrs. Galvez has ever been accused or convicted of any crime;
15 they have resided at the same Los Angeles address for over two
16 years. Mr. and Mrs. Galvez have been appointed by plaintiff's
17 natural mother as her mother's attorneys-in-fact with full
18 authority to ensure plaintiff Flores's well-being and presence at
19 future administrative proceedings.

20 31. Although the immigration judge did not question Mr. and
21 Mrs. Galvez's desire or ability to ensure plaintiff Flores's
22 well-being, she refused to remove the bond condition. On or
23 about June 26, 1985, pursuant to 8 C.F.R. section 242.2(b)
24 plaintiff Flores appealed said decision to the Board of
25 Immigration Appeals, which has refused to render a prompt
26 decision or to render any decision within any specific time.

27 32. Although plaintiff Flores is able to post the required
28 bail, defendants have refused, and will continue to refuse, to

1 release her unless and until a parent or legal guardian
2 personally appears before an INS agent for interrogation and to
3 accept physical custody of her. Plaintiff Flores has not been
4 accused or convicted of having committed any crime. The sole
5 reason for her continued incarceration is defendants' refusal to
6 release her to anyone other than her parent or legal guardian.

7 33. Plaintiff Dominga Hernandez-Hernandez has been
8 incarcerated by defendants since May 4, 1985. Shortly after
9 arrest, defendants represented that plaintiff Hernandez would be
10 released from custody pending deportation proceedings on bail in
11 the amount of \$500.00. Plaintiffs' release on bail, however, was
12 made conditional on her parent's or legal guardian's personally
13 appearing before an INS agent for interrogation and to accept
14 physical custody of her. Defendants thereafter initiated no
15 review of the terms and conditions under which plaintiff
16 Hernandez is incarcerated nor of the probable cause for her
17 arrest.

18 34. At the time of her arrest, plaintiff Hernandez was
19 accompanied by her adult brother, Deomedes Hernandez-Hernandez,
20 who had been entrusted by plaintiff Hernandez' parents with her
21 care and custody. Plaintiff Hernandez' parents have at all
22 relevant times remained in El Salvador. Defendants released
23 Deomedes Hernandez on bail shortly after arresting him.
24 Plaintiff Hernandez was not similarly released because of a
25 condition defendants placed on her bail that she be released only
26 if and when her parent or legal guardian personally appears
27 before an INS agent for interrogation and to accept physical
28 custody of her.

1 35. On or about May 17, 1985, plaintiff Hernandez requested
2 an immigration judge to remove said bond condition to allow her
3 release to Deomedes Hernandez, who was and is ready willing and
4 able to ensure plaintiff's welfare and presence at future
5 administrative proceedings.

6 36. On or about May 17, 1985, plaintiff Hernandez, through
7 counsel, requested an immigration judge to remove said condition
8 on her bail so as to allow her release to Deomedes. On or about
9 May 17, 1985, said request was denied. On or about May 21,
10 1985, pursuant to 8 C.F.R. section 242.2(b) plaintiff Hernandez
11 appealed the decision of the immigration judge to the Board of
12 Immigration Appeals. The Board of Immigration Appeals has since
13 refused to make a prompt decision on said appeal or to render a
14 decision within any reasonable time. Defendants continue to
15 refuse to release plaintiff Hernandez to her older brother,
16 Deomedes, or to any adult other than her natural parent or legal
17 guardian. The sole reason for plaintiff Hernandez' continued
18 incarceration is defendants' refusal to release her to anyone
19 other than her parent or legal guardian.

20 37. Although plaintiff Hernandez is able to post the
21 required bail, defendants have refused, and will continue to
22 refuse, to release her unless and until a parent or legal
23 guardian personally appears before an INS agent for interrogation
24 and to accept physical custody of her. Plaintiff Hernandez has
25 neither been accused nor convicted of having committed any crime.

26 38. Plaintiff Alma Yanira Cruz-Aldama has been in INS
27 detention since June 7, 1985, when she was arrested near San
28 Ysidro, California. Shortly after arresting her, defendants

1 issued an Order to Show Cause and Warrant of Arrest charging her
2 with having entered the United States without being inspected by
3 an INS agent. In connection with said Order to Show Cause,
4 defendants represented that they would release her on bail in the
5 amount of \$2,000.00. Plaintiff Cruz was given no notice that her
6 bail was contingent on her parent's or legal guardian's
7 personally appearing before an INS agent to accept physical
8 custody of her.

9 39. On or about July 11, 1985, plaintiff Cruz attempted to
10 post the aforementioned bail. At that time, INS agents refused
11 to release her, adding a condition that plaintiff Cruz' natural
12 parent or legal guardian personally appear before an INS agent
13 for interrogation and to accept physical custody of her.

14 40. Plaintiff Cruz' natural mother refuses to appear before
15 INS agents because she fears she will be arrested and deported to
16 El Salvador, where conditions of civil war currently exist.
17 Within the past three years, plaintiff's grandfather and uncle
18 were murdered in El Salvador, the victims of political violence.

19 41. Mr. Herman Petrolilo Sanchez, a lawful permanent
20 resident of the United States has requested defendants to release
21 plaintiff Cruz to his custody and care. Mr. Sanchez is a
22 respected member of the community, who has agreed to ensure
23 plaintiff Cruz' welfare and presence at future administrative
24 proceedings. Defendants have refused to release plaintiff Cruz
25 to Mr. Sanchez or to anyone other than her natural parent or
26 legal guardian. Plaintiff Cruz has never been accused nor
27 convicted of having committed any crime. She is ready, willing,
28

1 and able to post the required bail; the sole reason she has not
2 been released on bail is the afore-alleged condition on her bail.

3 42. Defendants are currently incarcerating plaintiffs
4 Flores, Hernandez, and Cruz at the BSS facility in Pasadena,
5 California. While there detained, plaintiffs, and each of them,
6 have been required to share sleeping quarters with unrelated
7 adults. Plaintiff Flores currently share sleeping quarters with
8 12 other unrelated women, five of whom are adults. Plaintiff
9 Cruz currently shares sleeping quarters with 7 other unrelated
10 women, 6 of whom are adults.

11 43. While confined in Pasadena plaintiffs Flores,
12 Hernandez, and Cruz, and each of them, have been provided--

- 13 a. no educational instruction;
14 b. no educational or other reading materials;
15 c. no adequate recreational activity; and
16 d. no medical examination.

17 44. Plaintiff Cruz attended school regularly before being
18 incarcerated by defendants.

19 45. While detained by the INS at the BSS Pasadena facility,
20 plaintiffs have been denied any visitation with family or
21 friends. On or about June 18 and June 25, 1985, Plaintiff
22 Flores' next friend, Mario Hugo Galvez-Maldonado, attempted to
23 visit plaintiff Flores in Pasadena, California. He was told that
24 visitation with family or friends was not permitted and that only
25 attorneys may visit persons incarcerated at the BSS Pasadena
26 facility.

27 46. Plaintiff Ana Maria Martinez Portillo was arrested by
28 INS agents on or about May 1, 1985. She was thereafter detained

1 at an INS facility in Laredo, Texas. On or about May 8, 1985,
2 after being interviewed by an attorney employed by the Refugee
3 Legal Services program in Laredo, Texas, she was forced to strip
4 and was subjected to a search of her vagina and rectum.

5 VI.

6 ALLEGATIONS RE FEDERAL DEFENDANTS'

7 CURRENT POLICY AND PRACTICE

8 47. Pursuant to 8 U.S.C. section 1252, INS agents regularly
9 place persons under the age of eighteen (18) years under
10 administrative arrest. A juvenile may be lawfully arrested
11 pursuant to section 1252 only if there is probable cause to
12 believe that he or she is (a) an alien and (b) unlawfully present
13 in the United States. Unless admitted to bail or released on
14 their own recognizance pursuant to 8 U.S.C. section 1252(a)(2),
15 these minors are incarcerated until administrative and judicial
16 proceedings to determine their deportability are completed, a
17 process that can take several years.

18 48. Defendants have discretion to release such persons
19 arrested for violation of administrative deportation laws "under
20 bond . . . containing such conditions as the Attorney General may
21 prescribe . . ." Ibid.; 8 C.F.R. 242.2. Defendants' discretion
22 to condition release on bail, however, is limited to ensuring an
23 individual's presence at future administrative proceedings and to
24 protecting national security.

25 49. Like adults, juveniles arrested pursuant to 8 U.S.C.
26 1252 are entitled to release on bail while deportation
27 proceedings are conducted. Until recently, INS policy, custom,
28

1 and usage was to release arrested minors on bail to responsible
2 adults who were neither their parents nor legal guardians.

3 50. On or about September 6, 1984, defendants initiated a
4 policy to indefinitely jail juveniles, particularly those whose
5 parents INS agents suspect may be aliens unlawfully in the United
6 States, unless and until their parent or legal guardian
7 personally appears before an INS agent for interrogation and to
8 accept physical custody of the minor. Said policy was
9 implemented to punish juveniles for having violated
10 administrative deportation laws and to facilitate the
11 apprehension of their parents whom INS agents suspect may be
12 deportable from the United States.

13 51. Defendants' policy to condition minors' release on bail
14 on their parents' or legal guardian's personal appearance for
15 interrogation and to accept physical custody was never published
16 in the Federal Register in accordance with the Administrative
17 Procedure Act, 5 U.S.C. 552 et seq.

18 52. No regulation published in the Code of Federal
19 Regulations supports defendants' restricting juveniles' release
20 on bond to the physical custody of parents and legal guardians.
21 Internal INS Operating Instructions specifically contemplate
22 release to persons other than parents or legal guardians,
23 providing in pertinent part,

24 Aliens who are defined as juveniles should only be placed in
25 a juvenile facility or with an appropriate responsible
26 agency or institution, recognized or licensed to accommodate
27 juveniles by the laws of that State. . . Children of tender
28 years who are too young to be placed in a juvenile facility

1 or youth hall should be placed with local youth/child
2 services, or with relatives or friends. In those extreme
3 cases where it is impossible to accommodate a child of
4 tender years accompanied by an adult, consideration should
5 be given to releasing [to] the accompanying adult [or] to a
6 responsible agency, relative, or friend. Extenuating
7 circumstances requiring a deviation from this policy must be
8 cleared through the appropriate Associate Regional
9 Commissioner for Enforcement.

10 O.I. 242.6(c) (2-12-81) (brackets added).

11 53. In contrast to defendants' treatment of plaintiffs and
12 other juveniles arrested pending deportation proceedings,
13 regulations governing release of minors pending exclusion
14 proceedings pursuant to 8 U.S.C. section 1226 specifically
15 authorize such release to adults who are neither their parents
16 nor legal guardians. In pertinent part these regulations provide
17 as follows:

18 (ii) . . . When it is determined that such juvenile should
19 be paroled from detention, the following guidelines should
20 be followed:

21 (A) Juveniles may be released to a relative (brother,
22 sister, aunt, uncle) not in Service detention who is willing
23 to sponsor a minor and the minor may be released to that
24 relative notwithstanding that he has a relative who is in
25 detention.

26 (B) If a relative who is not in detention cannot be located
27 to sponsor the minor, the minor may be released with an
28 accompanying relative who is in detention.

1 (C) If the Service cannot locate a relative in or out of
2 detention to sponsor the minor, but the minor has identified
3 a nonrelative in detention who accompanied him on arrival,
4 the question of releasing the minor and the accompanying
5 nonrelative adult shall be addressed on a case-by-case
6 basis.

7 8 C.F.R. 212.5(a)(2)(ii). Defendants have neither a rational
8 basis nor a substantial interest in discriminating between those
9 juveniles detained pending exclusion proceedings and those
10 detained pending deportation proceedings.

11 54. The condition that a parent or legal guardian
12 personally appear to accept physical custody of a juvenile
13 detained by the INS is imposed on the basis of two factual
14 determinations: first, that the individual should be placed
15 under administrative arrest, i.e., that there is probable cause
16 to believe the person is an alien deportable from the United
17 States; and second, that the arrestee is under the age of
18 eighteen years.

19 55. Defendants routinely and as a matter of custom and
20 usage initiate no effort to determine whether an available adult
21 other than a parent or legal guardian is qualified to accept
22 physical custody of a detained minor before conditioning bail on
23 a parent or legal guardian's personal appearance. Rather,
24 release on bail is automatically so conditioned regardless of the
25 availability of another responsible adult who is willing, able,
26 and qualified to ensure the juvenile's welfare and presence at
27 future administrative proceedings.

1 56. Under current procedure, a juvenile whose bail
2 defendants condition on a parent's or legal guardian's personal
3 appearance is given no notice of the condition until an attempt
4 is made to post bail or to have the amount of bail reduced.

5 57. A juvenile whose release on bail is made conditional
6 may request that an immigration judge "redetermine" the terms
7 under which he or she may be released. 8 C.F.R. 242.2(b).
8 However, such review is provided only if the detained juvenile
9 affirmatively requests it. There is no time limit within which
10 an immigration judge is required to act; review of bond
11 conditions by an immigration judge can take up to several weeks,
12 during which time the juvenile remains in detention.

13 58. As a matter of practice, custom, or usage, immigration
14 judges refuse to release detained juveniles to anyone other than
15 a parent or legal guardian regardless of the qualifications of
16 other available adults to ensure a detained minor's welfare and
17 presence at future administrative proceedings.

18 59. When an immigration judge refuses to remove a bond
19 condition, that decision may be appealed to the Board of
20 Immigration Appeals (hereafter "Board"). 8 C.F.R. sections
21 242.2(b) and 3.1(b)(7). The Board will review an adverse
22 decision of an immigration judge only if affirmatively appealed
23 by the aggrieved juvenile. There is no time limit within which
24 the Board must act, and juveniles must typically wait several
25 weeks before receiving a decision affirming or overruling an
26 immigration judge's refusal to remove a bond condition.
27 Meanwhile, the juvenile remains incarcerated under the conditions
28 challenged herein.

1 60. The scope of administrative review by an immigration
2 judge and the Board is limited. Whether a given bond condition
3 is necessary to ensure an individual's presence at future
4 administrative proceedings may be reviewed; however, neither an
5 immigration judge, the Board, nor any other neutral and detached
6 authority will review the probable cause supporting the INS's
7 threshold decision to place a juvenile under arrest.

8 61. When a detained juvenile's parent or legal guardian
9 personally appears to accept physical custody, defendants' policy
10 and practice is to interrogate the parent or legal guardian
11 regarding his or her citizenship and immigration status. Parents
12 and guardians whom INS agents thereby develop cause to believe
13 are unlawfully in the United States are typically taken into
14 custody.

15 62. The parents of many juveniles in INS custody, such as
16 the mother of plaintiffs Flores, Cruz, and Hernandez, have come
17 to the United States seeking refuge from civil war and political
18 persecution. In 1980 alone, 12,000 persons were killed in El
19 Salvador, a country about the size of Massachusetts with a
20 population of approximately 4.8 million. 1981 Amnesty
21 International Report at 145-46. The United Nations and the
22 Organization of American States continue to issue reports
23 regarding the Guatemalan government's consistent violation of
24 human rights.

25 63. Notwithstanding continuing levels of extreme violence,
26 the United States continues to expel hundreds of refugees per
27 month to Central American countries such as El Salvador and
28 Guatemala. Because refugees from Central American countries are

1 routinely denied asylum in the United States, surrender to the
2 Immigration Service for them means virtually certain deportation
3 to civil war. For these and other reasons, the parents and
4 guardians of detained minors frequently refuse to cooperate in
5 securing their children's release.

6 64. Defendants' policy and practice to indefinitely
7 incarcerate juveniles by conditioning bail on a parent or legal
8 guardian's personal appearance severely penalizes persons
9 suspected of having violated administrative immigration laws.
10 Said policy and practice constitutes retribution for suspected
11 violations of administrative immigration laws and is intended to
12 deter future violations. Said policy and practice is excessive
13 in relation to the purpose defendants assign to it.

14 65. While in INS contract detention facilities, such as
15 those operated by defendants BSS, juveniles, as a matter of
16 custom, practice, or usage, are provided (a) no educational
17 instruction, (b) no access to educational or other written
18 materials, (c) no adequate and appropriate recreation, and (d) no
19 reasonable visitation with family and friends. Juveniles at the
20 INS contract facility operated by defendant CCA are also
21 subjected to strip or body cavity searches after visiting with
22 their attorneys or appearing before administrative and judicial
23 tribunals.

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1 VII.

2 FIRST CAUSE OF ACTION

3 [Unlawfully conditioning bail on parent or legal
4 guardian's personal appearance.]

5 66. Plaintiffs reallege and incorporate by reference the
6 allegations set out in paragraphs 1 through 65, inclusive, of
7 this Complaint as though fully set forth here.

8 67. Defendants' policy, practice, custom or usage to
9 condition bail for a juvenile taken into custody pursuant to 8
10 U.S.C. 1252 on his or her parent's or legal guardian's personal
11 appearance before an INS agent violates (a) the Immigration and
12 Nationality Act, 8 U.S.C. sections 1101 et seq., including 8
13 U.S.C. section 1252(a)(2) and implementing regulations and
14 Operating Instructions; (b) the Administrative Procedure Act, 5
15 U.S.C. sections 552 et seq., including 5 U.S.C. section 553(b)-
16 (c); (c) the Due Process Clause of the Fifth Amendment to the
17 United States Constitution; (d) the Equal Protection Guarantee of
18 the Fifth Amendment to the United States Constitution; and (e)
19 the 1967 Protocol Relating to the Status of Refugees, TIAS 6577,
20 19 U.S. 6223 [hereafter "United Nations Protocol"], and customary
21 international law.

22 VIII.

23 SECOND CAUSE OF ACTION

24 [Imposition of bond condition without due process of law]

25 68. Plaintiffs reallege and incorporate by reference the
26 allegations set out in paragraphs 1 through 65 inclusive of this
27 Complaint as though here fully set out here.

1 71. It is defendants' policy and practice to deny persons
2 under the age of eighteen (18) years appropriate reading
3 materials and educational services while incarcerating them
4 pending conclusion of deportation proceedings. Said policy and
5 practice violates the First Amendment to the United States
6 Constitution, the Due Process Clause of the Fifth Amendment to
7 the United States Constitution, the Equal Protection Guarantee of
8 the Fifth Amendment to the United States Constitution, 8 U.S.C.
9 section 1252(a) & (c), INS Operations Instruction section
10 242.6(c), and the INS Operational Manual on Service Processing
11 Centers (January 1, 1983).

12 IX.

13 FOURTH CAUSE OF ACTION

14 [Unlawful conditions of detention: Denial of Recreation]

15 72. Plaintiffs reallege and incorporate by reference the
16 allegations set out in paragraphs 1 through 65 inclusive of this
17 Complaint as though here fully set out here.

18 73. It is defendants' policy and practice to deny persons
19 under the age of eighteen (18) years reasonable access to outdoor
20 activities and to facilities for physical exercise, thus
21 depriving them of adequate and appropriate recreation while
22 incarcerating them pending conclusion of deportation proceedings.
23 Said policy and practice violates the Due Process Clause of the
24 Fifth Amendment to the United States Constitution, the Equal
25 Protection Guarantee of the Fifth Amendment to the United States
26 Constitution, 8 U.S.C. section 1252(a) & (c), INS Operations
27 Instruction section 242.6(c), and the INS Operational Manual on
28 Service Processing Centers (January 1, 1983).

1 X.

2 FIFTH CAUSE OF ACTION

3 [Unlawful conditions of detention:
4 Denial of Reasonable Visitation]

5 74. Plaintiffs reallege and incorporate by reference the
6 allegations set out in paragraphs 1 through 65 inclusive of this
7 Complaint as though here fully set out here.

8 75. It is defendants' policy and practice to deny persons
9 under the age of eighteen (18) years reasonable visitation with
10 family members and friends while incarcerating them pending
11 conclusion of deportation proceedings. Said policy and practice
12 violates the First Amendment to the United States Constitution,
13 the Due Process Clause of the Fifth Amendment to the United
14 States Constitution, the Equal Protection Guarantee of the Fifth
15 Amendment to the United States Constitution, 8 U.S.C. section
16 1252(a) & (c), INS Operations Instruction section 242.6(c), and
17 the INS Operational Manual on Service Processing Centers (January
18 1, 1983).

19 XI.

20 SIXTH CAUSE OF ACTION

21 [Unlawful conditions of detention:
22 Incarceration with Unrelated Adults]

23 76. Plaintiffs reallege and incorporate by reference the
24 allegations set out in paragraphs 1 through 65 inclusive of this
25 Complaint as though here fully set out here.

26 77. It is defendants' policy and practice to incarcerate
27 persons under the age of eighteen (18) years with unrelated
28 adults pending conclusion of deportation proceedings. Said

1 policy and practice violates the Due Process Clause of the Fifth
2 Amendment to the United States Constitution, the right to privacy
3 guaranteed by the First, Fourth, Fifth, and Ninth Amendments to
4 the United States Constitution, the Equal Protection Guarantee of
5 the Fifth Amendment to the United States Constitution, 8 U.S.C.
6 section 1252(a) & (c), INS Operations Instruction section
7 242.6(c), and the INS Operational Manual on Service Processing
8 Centers (January 1, 1983).

9 XII.

10 SIXTH CAUSE OF ACTION

11 [Unlawful conditions of detention:
12 Strip and Body Cavity Searches]

13 78. Plaintiffs reallege and incorporate by reference the
14 allegations set out in paragraphs 1 through 65 inclusive of this
15 Complaint as though here fully set out here.

16 79. It is defendant's policy and practice to conduct strip
17 and body cavity searches of juveniles in its custody following the
18 youth have visited with their attorneys or appeared in
19 administrative or judicial proceedings. Said policy and
20 practice violates the Due Process Clause of the Fifth Amendment
21 to the United States Constitution, the right to privacy
22 guaranteed by the First, Fourth, Fifth, and Ninth Amendments to
23 the United States Constitution, the Equal Protection Guarantee of
24 the Fifth Amendment to the United States Constitution, 8 U.S.C.
25 section 1252(a) & (c), INS Operations Instruction section
26 242.6(c), and the INS Operational Manual on Service Processing
27 Centers (January 1, 1983).

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1 XIII.

2 IRREPARABLE INJURY

3 80. Defendants are engaged in a continuing pattern of
4 illegal and discriminatory conduct in incarcerating persons under
5 the age of eighteen (18) years. As a result, plaintiffs and the
6 class they seek to represent have suffered and will continue to
7 suffer irreparable injury for which they have no adequate remedy
8 at law. If the relief prayed for is not granted, plaintiffs and
9 the class they seek to represent will suffer, among other things,
10 absolute deprivation of education and release on bail pending
11 conclusion of deportation proceedings. Defendants will continue
12 their challenged practices unless and until this Court enjoins
13 them from doing so.

14 XIV.

15 PRAYER FOR RELIEF

16 WHEREFORE, plaintiffs pray this Court:

- 17 1. Assume jurisdiction over this action;
- 18 2. Order that plaintiffs may maintain this action as a
19 class-action pursuant to Rule 23, Federal Rules of Civil
20 Procedure;
- 21 3. Declare that the herein challenged practices are
22 unlawful and unconstitutional as applied to both the named
23 plaintiffs and unnamed class-members;
- 24 4. Issue an order in the nature of mandamus or preliminary
25 and permanent injunctons requiring defendants to admit persons
26 under the age of eighteen (18) years to bail without first
27 requiring their parents or legal guardians to personally appear
28 before INS agents.

1 5. Issue preliminary and permanent injunctions restraining
2 defendants, their agents, employees, and successors in office
3 from:

4 (a) Incarcerating persons under the age of eighteen (18)
5 years while denying adequate and appropriate reading
6 material and education;

7 (b) Incarcerating persons under the age of eighteen (18)
8 years while denying them adequate and appropriate
9 recreation;

10 (c) Incarcerating persons under the age of eighteen (18)
11 years while denying them reasonable visitation with family and
12 friends;

13 (d) Subjecting detained juveniles to strip or body cavity
14 searches after they have visited with attorneys or appeared
15 before administrative or judicial tribunals.

16 6. Issue a writ of habeas corpus releasing plaintiffs
17 Flores, Hernandez, and Cruz and other incarcerated plaintiff
18 class members on bail without the condition that their parents or
19 legal guardinas appear before INS agents for interrogation
20 concerning thier immigration status in the United States.

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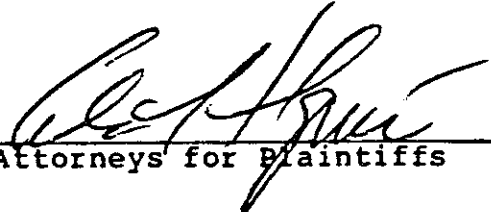
- 7. Award plaintiffs' attorneys all costs and attorneys' fees incurred as a result of this lawsuit;
- 8. Grant such further relief as the Court deems just.

Dated: July 11, 1985.

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
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NATIONAL CENTER FOR YOUTH LAW
James Morales
Alice Bussiere
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ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Paul Hoffman

By: 
Attorneys for Plaintiffs

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