



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

Meeting Date: July 24, 2018

Item Number: 57

Item Description: Resolution Supporting SB 54, AB 103, and AB 450 and Opposing US vs. California, the Lawsuit against those Laws by Attorney General Jeff Sessions

Submitted by: Councilmember Harrison

Combines Item 57 with an item that had been submitted by Councilmember Davila at the Agenda Committee, per the request of the Agenda Committee, and consistent with language requested by the City Manager and City Attorney.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
July 24, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmembers [Harrison](#), [Davila](#), [Hahn](#), and [Mayor Arreguin](#)

Subject: Resolution Supporting [SB 54](#), [AB 103](#), and [AB 450](#) and [California's Sanctuary Immigration Policies and Opposing US vs. California, the Lawsuit against those Laws by Attorney General Jeff Sessions](#) [Lawsuits Against the Trump Administration's Abusive Immigration Policies, and Opposing a Lawsuit by the Trump Administration against the State of California](#)

RECOMMENDATION

That the Council adopt a resolution:

- [Reiterating its support of SB 54 \(Sanctuary State\), and supporting AB 103 \(Detention Facility Review\), and AB 450 \(Anti Workplace Immigration Raids\), the three laws that make up California's Sanctuary Policy.](#)
- [Opposing the United States vs. California, the lawsuit against those laws by Attorney General Jeff Sessions.](#)
- [Supporting Flores v. Sessions, Washington, et al., v. United States, and Ms. L, et al., v. ICE, et al., all lawsuits against the Trump Administration's family separation policy.](#)
- [Supporting California v. Ross and New York, et al., v. US Department of Commerce, lawsuits against the inclusion of a citizenship question on the 2020 census, and](#)
- [requesting that the City Attorney to join the amicus briefs in favor or opposed to these the lawsuits as specified and to join them as parties where feasible.](#)

BACKGROUND

Berkeley prides itself on being the first city in the United States to become a "Sanctuary City" through a 1971 resolution that protected sailors resisting the Vietnam War. The initiative forbade city employees from assisting in federal law enforcement. In 2017, due to the election of Donald Trump and his rhetoric of "cracking down" on immigration, Berkeley has re-affirmed its status of being a sanctuary city. The City has committed not to respond to requests by Immigration and Customs Enforcement concerning local residents unless agents have a judicial warrant. Berkeley has continuously committed to protecting its community and ensuring all of its residents feel safe.

~~Senate Bill~~ 54, introduced by then Senate President Pro Tem Kevin De Leon on December 5, 2016, and signed by Governor Jerry Brown on October 5, 2017, has made the entirety of California a “sanctuary state” by standardizing protocol on non-cooperation policies between law enforcement agencies and federal immigration authorities. The bill makes it illegal for county or municipal police officers to ask about an arrestee’s immigration status, notify federal authorities about the pending release of a jailed undocumented immigrant, participate in task forces that target undocumented immigrant offenders, or utilize immigration officers as interpreters during local interactions with suspects. The law preserves trust between local government and immigrant communities that may fear deportation.

~~Assembly Bill~~ 103, an omnibus public safety law signed by Governor Jerry Brown on June 27, 2017, mandates that the California Attorney General be given access to any detention facility holding immigrants awaiting a hearing on their immigration status.

~~Assembly Bill~~ 450, signed by Governor Jerry Brown on October 5, 2017, bans employers from giving access to private areas of their workplace or confidential documents without giving their employees notice and receiving a judicial warrant from ICE.

On March 5, 2018, Attorney General Jeff Sessions sued the state of California over SB 54, AB 103, and AB 450, alleging that these laws “have the purpose and effect of interfering with the enforcement of the [federal] prohibition on working without authorization.”

However, Supreme Court precedent affirms that the federal government cannot “commandeer” state governments. Senate Bill 54 does not prevent or prohibit Immigrations and Customs Enforcement or the Department of Homeland Security from doing their work in any way. When local communities view police as immigration officers in a different uniform, fewer crimes get reported and fewer witnesses come forward, which undermines the criminal justice system and community safety.

It is incumbent upon all public safety departments to make a commitment to equal enforcement of the law and service to the public, regardless of immigration status. Berkeley has set the precedent for sanctuary status in the country and should remain a cornerstone in immigrant protection policy.

[Furthermore, the Trump Administration has begun in recent months to separate immigrant families at the border, including those seeking asylum. This is part of an escalation of the on-going separation of families through deportation as “punishment” for attempting immigration. Several states and cities have taken legal action against this cruel and inhumane policy which violates international human rights laws and basic human dignity.](#)

Flores v. Sessions is a lawsuit filed by the City of Los Angeles City Attorney against the separation of the Flores family to challenge the separation of families and expedite reunification. The Cities of Chicago and New York and City and County of San Francisco have also signed on to the case. Berkeley can be added to the next round of amicus briefs and/or file separately in support of the suit.

The State of Washington initiated a lawsuit that has been joined by dozens of States and other municipalities challenging the constitutionality of the family separation policy and President Donald Trump's new executive order meant to replace it. In light of the urgency of the separation and lack of speedy reunification, they secured an order for the federal government to provide details about and access to victims of the Trump Administration's family separation policy on an expedited schedule. The coalition is inviting the City of Berkeley to work with the California Department of Justice on filing an amicus in support of summary judgment as the next step in the lawsuit.

Ms. L, et al., v. ICE, et al. is a class action lawsuit initiated by the ACLU and supported by municipalities across the United States. The lawsuit challenges the Trump Administration's practice of separating parents and children absent any showing that the parent presents a danger to the child.

Finally, the Department of Commerce has begun an effort to include a question on immigration status in the 2020 Census. The question's inclusion is likely to make many immigrants — both those with and without documentation — afraid of participating in the census. This is likely to reduce California's representation in Congress and the Electoral College, as well as impacting the City's ability to assess who lives in our community and properly distribute resources and meet the needs of our full and diverse population.

California Attorney General Xavier Becerra filed a lawsuit in March 2018 to challenge the proposed addition of an immigration status question. The California Department of Justice would welcome the opportunity to work with the Berkeley City Attorney on filing a complaint to be added to the lawsuit ~~or filing a separate legal challenge~~. The cities of Fremont, Stockton, Los Angeles and Long Beach have also joined the lawsuit, while San Francisco and San Jose are part of a separate legal challenge to the census change.

FINANCIAL IMPLICATIONS

No additional cost to the city Staff time to support/oppose the listed suits.

ENVIRONMENTAL SUSTAINABILITY

No ecological impact.

CONTACT PERSON

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Vice Mayor and Councilmember Cheryl Davila, (510) 981-7120

Attachments:

1: Resolution

2: [Flores vs. Sessions](#)

RESOLUTION NO. ##,###-N.S.

Resolution Supporting [SB 54, AB 103, and AB 450](#) [California's Sanctuary Immigration Policies and Lawsuits Against the Trump Administration's Abusive Immigration Policies](#), and Opposing ~~the a~~ [Lawsuit by the Trump Administration against these Laws by Attorney General Jeff Sessions](#) [the State of California](#)

WHEREAS, in 1971, the City of Berkeley became the first "Sanctuary City" in the United States through a resolution that protected sailors resisting the Vietnam War; and,

WHEREAS, in 2017 the City of Berkeley re-affirmed its Sanctuary City status; and,

WHEREAS, in 2017, Governor Brown signed in to law three acts, SB 54, AB 103, and AB 450, in order to make California a Sanctuary State; and,

WHEREAS, these laws serve to make all Californians, immigrants, citizens, and the undocumented alike feel secure and protected in speaking with and seeking aid from California law enforcement; and,

WHEREAS, these laws protect Californians from unannounced workplace immigration raids and work to ensure that those being detained on the grounds of their citizenship are treated fairly and not being held under poor conditions; and,

WHEREAS, on March 5, 2018, Attorney General Jeff Sessions sued the state of California over SB 54, AB 103, and AB 450, alleging that these laws "have the purpose and effect of interfering with the enforcement of the [federal] prohibition on working without authorization."; and,

WHEREAS, the City of Berkeley believes that the federal administrations attack on California's immigrant population is unjust, unacceptable, and an expression of deeply held nativist views; and,

WHEREAS, the City of Berkeley must work to protect its immigrant community from all such attacks; [and](#),

[WHEREAS, the Trump Administration has engaged in the brutal, unjust, and illegal policy of separating families at the US border, including those seeking asylum from violence and persecution; and,](#)

[WHEREAS, despite reportedly ending this policy, the vast majority of families broken apart by the Administration have yet to be reunited, in violation of a court order; and,](#)

[WHEREAS, cities and states throughout the country, as well as the ACLU, have sued the Trump Administration over this unconscionable practice; and,](#)

WHEREAS, the Department of Commerce intends to include a question on immigration status in the 2020 Census, which is likely to cause immigrants to avoid the Census out of justifiable fear; and

WHEREAS, this is a nakedly partisan attempt to reduce the political representation of immigrants to the electoral benefit of this President and those who enable him and his nativist agenda; and

WHEREAS, the States of California and New York have each filed a lawsuit against this ploy.-

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley reiterates its supports for SB 54, in light on the attack by the federal government against the law; and.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley supports AB 103, AB 450, California's status as a Sanctuary State, and any effort in the state of California to protect our immigrant community from unjust persecution; and,

BE IT FURTHER RESOLVED that the Council of the City of Berkeley opposes Attorney General Session's attempt through US vs. California to undermine California's protection of its immigrant community; and,

BE IT FURTHER RESOLVED that the Council of the City of Berkeley supports the effort to combat the Trump Administration's attack on immigrant's rights and representation through Flores v. Sessions, Washington, et al., v. United States, Ms. L, et al., v. ICE, et al., California v. Ross, and New York, et al., v. US Department of Commerce; and,

BE IT FURTHER RESOLVED that the Council of the City of Berkeley ~~requests-directs~~ that the City Attorney to join the amicus briefs in the US vs. Californiaaforementioned lawsuits supporting California's-Berkeley's stated position to the fullest extent possible, and to participate as a party to the extent feasible given the resources availablestatus as a Sanctuary State.

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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 Case No. 2:85-cv-4544-DMG

15 JENNY LISETTE FLORES, *et*
16 *al.*,

17 Plaintiffs,

18 v.

19 JEFFERSON B. SESSIONS III,
20 Attorney General of the
21 United States, *et al.*,

22 Defendants.
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**ADMINISTRATIVE MOTION
FOR LEAVE TO FILE BRIEF
OF CITY OF LOS ANGELES,
CITY OF CHICAGO, CITY OF
NEW YORK, CITY AND
COUNTY OF SAN FRANCISCO
AS AMICI CURIAE IN
OPPOSITION TO
DEFENDANTS' *EX PARTE*
APPLICATION FOR RELIEF
FROM THE FLORES
SETTLEMENT**

1 *Amici Curiae*, the City of Los Angeles, City of Chicago, City of New
2 York, and City and County of San Francisco, hereby request leave to file
3 the attached Proposed Brief of *Amici Curiae* in Opposition of
4 Defendants’ *Ex Parte* Application for Relief from the Flores Settlement.
5 A copy of the proposed brief is attached to this motion as Attachment 1.
6 Plaintiffs and Defendants both consent to *amici’s* filing of this brief.

7 On June 26, 2018, Judge Dana M. Sabraw, in the District Court for
8 the Southern District of California issued an order requiring the federal
9 government to reunite many Plaintiffs in this instant case – those who
10 have been cruelly and unnecessarily separated from their families by
11 Defendants – with their parents.¹ Because many, if not most, of
12 Plaintiffs’ parents remain in Defendants’ custody, Defendants are
13 asking this court for relief from critical child welfare protections set
14 forth in the longstanding *Flores* Settlement Agreement.

15 The precipitating crisis, i.e. forced family separation, was a
16 creation of Defendants’ own doing, and *amici* assert that Defendants’ *Ex*
17 *Parte* Application for Relief from the Flores Settlement threatens the
18 well-being of not just Plaintiffs and their families, but also *amici’s* police
19 power interests in seeing the state licensing requirements be properly
20 applied and enforced within our respective jurisdictions.

21 Specifically, *amici*, by and through either our respective police
22 departments or our prosecutors, enforce and prosecute violations of
23 respective state child welfare laws. *Amici* have a strong interest,
24 therefore, in the continued licensed regulation of Defendants’ child
25 welfare programs, especially considering that thousands of
26 unaccompanied minors have been placed with sponsors in our respective

27 _____
28 ¹ *Ms. L. v. U.S. Immigration & Customs Enf’t*, No. 18-cv-0428 (DMS)
(MDD), 2018 U.S. Dist. LEXIS 107365 (S.D. Cal. June 26, 2018).

1 jurisdictions in recent years and, separately, hundreds of children taken
2 from their families by Defendants in recent weeks are currently being
3 held in facilities located in our jurisdictions.

4 For the foregoing reasons, *amici* respectfully request the court's
5 permission to file the attached brief.

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Dated: June 29, 2018

Respectfully submitted,
By: /s/ Michael Dundas

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2018, a copy of the foregoing Administrative Motion for Leave to File Brief of City of Los Angeles, City of Chicago, City of New York and City and County of San Francisco as Amici Curiae in Opposition to Defendants’ *Ex Parte* Application for Relief from the *Flores* Settlement; and attached Proposed Brief were filed and served pursuant to the Court’s electronic filing procedures using CM/ECF.

/s/ Michael Dundas
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ATTACHMENT 1

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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 JENNY LISETTE FLORES,
15 *et al.*,

16 Plaintiffs,

17
18 v.

19 JEFFERSON B. SESSIONS III,
20 Attorney General of the
21 United States, *et al.*,

22 Defendants.
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Case No. 2:85-cv-4544-DMG

**[PROPOSED] BRIEF OF CITY
OF LOS ANGELES, CITY OF
CHICAGO, CITY OF NEW
YORK, AND CITY AND
COUNTY OF SAN FRANCISCO
AS AMICI CURIAE IN
OPPOSITION TO
DEFENDANTS' EX PARTE
APPLICATION FOR RELIEF
FROM THE FLORES
SETTLEMENT**

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27
28

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF INTEREST..... 1

ARGUMENT..... 5

I. DEFENDANTS ARE UNABLE TO MEET THE BURDEN OF SHOWING THERE HAS BEEN A SIGNIFICANT CHANGE IN CIRCUMSTANCES AT THE SOUTHWEST BORDER TO WARRANT REVISION OF THE SETTLEMENT..... 5

II. THE STATE LICENSING REQUIREMENT IN THE EXISTING SETTLEMENT IS CRITICAL TO ENSURING THE HEALTH AND SAFETY OF THE PLAINTIFF CHILDREN. 7

CONCLUSION..... 10

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

CASES

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 Released to Sponsors by County FY16 2, 4

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1 **STATEMENT OF INTEREST**

2 The City of Los Angeles, City of Chicago, City of New York and
3 City and County of San Francisco respectfully submit this proposed
4 brief, as *amici curiae*, in opposition to Defendants’ *ex parte* application
5 for relief from the *Flores* settlement agreement.

6 This litigation is of utmost importance to *amici*. At least 1.5
7 million Los Angeles residents are themselves immigrants.¹ Nearly
8 900,000 of those, 22% of the city’s entire population, were born either in
9 Mexico or Central America.² The City of Los Angeles is home to
10 residents from more than 135 foreign countries, and 185 languages are
11 spoken here.³ Some 40.2% of business owners in Los Angeles are
12 immigrants.⁴ And the City, itself, employs approximately 10,000
13 foreign-born workers in its various offices and departments.⁵

14 The city’s economic and cultural success derives directly from its
15 openness to welcoming diversity. In 2016, approximately 2,322 refugees
16 were resettled in the Los Angeles area,⁶ and 3517 unaccompanied
17 minors being held by the U.S. Department of Health & Human Services
18 Office of Refugee Resettlement (ORR) were released to sponsors in and
19

20 ¹ U.S. Census Bureau, 2012-2016 American Community Survey 5-Year
21 Estimates (2012-2016 ACS Data).

22 ² *Id.*

23 ³ *Id.*; U.S. Census Bureau, Detailed Languages Spoken at Home and
24 Ability to Speak English for the Population 5 Years and Older: 2009-
25 2013.

26 ⁴ Analysis of data from the 2016 Current Population Survey by the
27 American Immigration Council, using IPUMS-CPS. Sarah Flood, King,
28 Miriam, Ruggles, Steven, and Warren, J. Robert, *Integrated Public Use
Microdata Series, Current Population Survey: Version 5.0* [dataset]
(Minneapolis, MN: University of Minnesota, 2017).

⁵ City of Los Angeles analysis of personnel data.

⁶ U.S. Department of State, Bureau of Population, Refugees and
Migration, Office of Admissions – Refugee Processing Center (State
Department Refugee Data), *available at* ireports.wrapsnet.org.

1 around Los Angeles.⁷

2 Chicago is likewise heavily dependent on the contributions of
3 individuals from countries most affected by the *Flores* settlement
4 agreement. Some 560,000 of Chicago's approximately 2.7 million
5 residents are immigrants. More than one half of those immigrants
6 (291,487, or approximately 11% of Chicago's population) were born in
7 Central America, Mexico, or South America.⁸ Approximately 1.32
8 million people are employed in Chicago. Of those, 185,836, or
9 approximately 14% of Chicago's workforce, were born in Central
10 America, Mexico, or South America.⁹

11 In addition, like Los Angeles, Chicago welcomes and resettles a
12 large number of refugees: in 2016, approximately 2,091 refugees
13 resettled in the Chicago area,¹⁰ and in 2016, 256 unaccompanied minors
14 were placed by ORR in and around Chicago.¹¹ This includes refugees
15 directly impacted by the federal government's policy of separating
16 immigrant parents and children at the southwest border. Just
17 yesterday, a federal district court judge in Chicago entered a
18 preliminary injunction directing government officials to immediately
19 release a nine-year-old boy who had been placed with a social services
20 agency in Chicago to his mother, who had not seen him since they were
21 separated at the border in late May. The court held that their continued
22 separation likely violated their due process rights and subjected them to

23 ⁷ U.S Department of Health and Human Services, Office of Refugee
24 Resettlement - Unaccompanied Children Released to Sponsors by
25 County FY16, Updated: January 26, 2017. (FY16 ORR Report).
Retrieved from: [https://www.acf.hhs.gov/orr/resource/unaccompanied-
children-released-to-sponsors-by-county-fy16](https://www.acf.hhs.gov/orr/resource/unaccompanied-children-released-to-sponsors-by-county-fy16)

26 ⁸ 2012-2016 ACS Data, *supra*, fn. 1.

27 ⁹ *Id.*

28 ¹⁰ State Department Refugee Data, *supra*, fn. 6.

¹¹ FY16 ORR Report, *supra*, fn. 7.

1 irreparable harm.¹²

2 The population of New York City is 8.4 million people as of 2016.¹³
3 New York City is home to over 3.1 million foreign-born New Yorkers,
4 about 37% of the City's population.¹⁴ Of those immigrants, over 300,000
5 people, or about 4% of the city's total population, were born either in
6 Mexico or Central America.¹⁵ New York City has residents from more
7 than 150 foreign countries.¹⁶ Over 150 languages are spoken in New
8 York City¹⁷ and approximately 49% of New Yorkers speak a language
9 other than English at home.¹⁸

10 Approximately 4.3 million people are in the labor force in New
11 York City; of those, 46% are foreign-born immigrants.¹⁹ New York City
12 itself employs 287,000 people,²⁰ 33% of them foreign-born.²¹ And 52% of
13 New York City's business owners are immigrants.²²

14 More than 2,000 refugees have been resettled in New York City
15 since 2010.²³ However, since President Trump entered office, on
16 average, New York City has received about half the number of refugees

17 ¹² Souza v. Sessions, No. 1:18-cv-04412 (MSS) ECF Dkt. # 23 (N.D. Ill.
18 June 28, 2018).

19 ¹³ 2012-2016 ACS Data, *supra*, fn. 1.

20 ¹⁴ *Id.*

21 ¹⁵ *Id.*

22 ¹⁶ *Id.*

23 ¹⁷ NEW YORK CITY MAYOR'S OFFICE OF IMMIGRANT AFFAIRS, STATE OF OUR
24 IMMIGRANT CITY: ANNUAL REPORT MARCH 2018, at *13. Retrieved from:
25 [https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_re](https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report_2018_final.pdf)
26 [port_2018_final.pdf](https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report_2018_final.pdf)

27 ¹⁸ 2012-2016 ACS Data, *supra*, fn. 1.

28 ¹⁹ *Id.*

²⁰ Goodman, David J., *Now Hiring: Under De Blasio, New York's*
Government Grows to Record Level, N.Y. Times (Oct. 11, 2016),
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²¹ 2012-2016 ACS Data, *supra*, fn. 1.

²² *Id.*

²³ State Department Refugee Data, *supra*, fn. 6.

1 per month compared to the last year of the Obama administration, from
2 about 29 refugees placed in New York City per month in 2016 to about
3 15 per month during Trump's administration, for a total of 241 refugees
4 placed in New York City from January 2017 to June 26, 2018.²⁴ In
5 federal fiscal year 2017, 1,400 unaccompanied minors being held by
6 ORR were released to sponsors in New York City.²⁵

7 The City and County of San Francisco, with a total population of
8 850,282, has some 296,849 immigrant residents. Of those, 46,220 (more
9 than 5% of the entire population) were born in either Mexico or Central
10 America. In addition, San Francisco has 10,600 Hispanic/Latino owned
11 business. Those businesses generated \$1,583,562,000 in sales, receipts,
12 or value of shipments and they employed 8,748 people. Specifically
13 addressing the need for ongoing support of Plaintiffs, San Francisco
14 welcomed 253 unaccompanied minors placed with sponsors by ORR in
15 2016 and another 230 unaccompanied minors in 2017.²⁶

16 Of course, *amici* simply echo our nation's centuries-old practice of
17 welcoming migrant children. Since its inception, the United States has
18 served as an adopted home for generations of migrant children.
19 Welcoming and protecting young immigrants is part and parcel of our
20 DNA. For example, more than one million children passed through Ellis
21 Island in its 62 years as an immigration station.²⁷ However immigrants
22 came to our country, those who arrived here as children have certainly
23 helped to build the foundation of our economic prosperity, military

24 ²⁴ *Id.*

25 ²⁵ U.S Department of Health and Human Services, Office of Refugee
26 Resettlement - Unaccompanied Children Released to Sponsors by
27 County FY17, Updated: May 25, 2018 (FY17 ORR Report). Retrieved
28 from: <https://www.acf.hhs.gov/orr/resource/unaccompanied-children-released-to-sponsors-by-county-fy17>

²⁶ FY16 ORR Report, *supra*, fn. 7; FY17 ORR Report, *supra*, fn. 25.

²⁷ Moreno, Barry, *Children of Ellis Island*, Arcadia Publishing (2005).

1 security, cultural artistry, and civic society. *Amici* therefore look to a
2 new generation of child migrants, especially those traveling here to
3 escape harm and persecution, to help lead our financial and cultural
4 success into the future. For the following reasons, *amici* assert that
5 Defendants’ *ex parte* application should be denied.

6 **ARGUMENT**

7 I. DEFENDANTS ARE UNABLE TO MEET THE BURDEN OF
8 SHOWING THERE HAS BEEN A SIGNIFICANT CHANGE IN
9 CIRCUMSTANCES AT THE SOUTHWEST BORDER TO
10 WARRANT REVISION OF THE SETTLEMENT.

11 As Defendants note in their application, a court may only relieve a
12 party from “a final judgment, order, or proceeding” if that party
13 established that “a significant change in circumstances warrants
14 revision of the decree.” Fed. R. Civ. Proc. 60(b)(5); *Rufo v. Inmates of the*
15 *Suffolk County Jail*, 502 U.S. 367, 383 (1992); see also *Horne v. Flores*,
16 557 U.S. 433, 447 (2009). As set forth by the United States Supreme
17 Court, this test is met where there are “changes in circumstances that
18 were beyond the defendants’ control and were not contemplated by the
19 court or the parties when the decree was entered.” *Rufo*, at 380-81.

20 Defendants have not met that burden. This Court’s action in
21 response to Defendants’ 2015 motion to modify the *Flores* agreement
22 provides guidance here. At that time, Defendants argued that a
23 modification to the agreement was required since the United States was
24 experiencing a “surge” in unauthorized family units entering the United
25 States in 2014. Defendants argued that this increase in the
26 apprehension of family units, as distinguished from apprehensions of
27 unaccompanied minors, was not anticipated when the parties entered
28

1 into the *Flores* agreement.²⁸

2 Statistics show that in 2012 and 2013, the two years prior to the
3 “surge” that was the impetus for Defendants’ 2015 motion, United
4 States Border Patrol apprehended a yearly average of 12,986 people
5 arriving in family units.²⁹ In 2014, however, Border Patrol apprehended
6 68,445 family unit members, a 427% increase in family unit
7 apprehensions over the preceding year-over-year average. *Id.* After
8 considering the impact of the “surge,” this Court denied Defendants’
9 motion, and the Ninth Circuit affirmed, holding that the *Flores*
10 agreement “expressly anticipated an influx” could occur. *Flores v.*
11 *Lynch*, 828 F.3d 898, 910 (9th Cir. 2016).

12 With the present *ex parte* application, Defendants are once again
13 trying to claim that a “surge” in family units crossing the southwest
14 border has created a change sufficient to meet the standard set forth in
15 *Rufo*. But, even taking Defendants’ own qualified interpretation³⁰ of
16 recent family unit apprehension statistics, one can see that there has
17 been no “significant change in circumstances.” Defendants are

18
19 ²⁸ See Defendants’ Motion to Modify Settlement Agreement, ECF Dkt. #
120 (Feb. 27, 2015).

20 ²⁹ U.S. Customs and Border Protection (CBP) statistical report titled:
21 *United States Border Patrol Southwest Family Unit Subject and*
22 *Unaccompanied Alien Children Apprehensions Fiscal Year 2016*.
Retrieved from: [https://www.cbp.gov/newsroom/stats/southwest-border-](https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016)
[unaccompanied-children/fy-2016](https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016)

23 ³⁰ *Amici* use the word “qualified” because Defendants’ motion states they
24 are estimating 88,670 apprehensions of family unit members in 2018, a
25 number “projected” off the monthly average of family unit apprehensions
26 to date in 2018 and “based on the assumption that illegal crossers for
27 the remaining four months will arrive at the same rate as in the prior
28 eight months, a projection that does not account for seasonal variations.”
Defendants’ *Ex Parte* Application to Modify Settlement Agreement
(Application), ECF Dkt. # 435-1 at *8 (June 21, 2018). The “projected”
number should not be considered reliable because it fails to reflect the
seasonal fluctuations in migration patterns (*i.e.* the 2018 CBP statistical
year ends on September 30, 2018 and crossings historically drop in the
coming summer months when temperatures spike at the southwest
border.).

1 estimating there will be 88,670 apprehensions of family unit members in
2 2018. Taking this one year of data alone, Defendants’ assert “a 30%
3 increase” in family entries over the 2014 apprehensions. But this
4 increase is significantly smaller than the 427% “surge” relied upon in
5 Defendants’ 2015 motion, which this Court found unconvincing. And, if
6 one averages out the four years of reported family apprehensions since
7 that prior ruling – including Defendants’ qualified 2018 count – one
8 would find a yearly average of 70,451 apprehensions from 2015 through
9 and including 2018, which is a de minimis increase over the 68,445
10 apprehensions in 2014 that this Court found to be insufficient under the
11 *Rufo* test.

12 II. THE STATE LICENSING REQUIREMENT IN THE EXISTING
13 SETTLEMENT IS CRITICAL TO ENSURING THE HEALTH
14 AND SAFETY OF THE PLAINTIFF CHILDREN.

15 *Amici* are acutely focused on Defendants’ attempt to modify the
16 settlement to eliminate the state licensing requirement. Notably,
17 paragraph 6 of the *Flores* settlement defines “licensed program” as “any
18 program, agency or organization that is licensed by an appropriate state
19 agency,” and Exhibit 1 of the settlement requires that licensed programs
20 “comply with all applicable state child welfare laws and regulations and
21 all state and local building, fire, health and safety codes.”

22 The City of Los Angeles, through the Los Angeles City Attorney’s
23 Office, prosecutes violations of child welfare laws and health and safety
24 codes in the State of California. So does the City and County of San
25 Francisco and the City of New York. Cases are referred to these offices
26 for prosecution by the State of California’s and New York’s licensing
27 agencies. *Amici* have a strong interest, therefore, in the continued
28 licensed regulation of Defendants’ child welfare programs, especially

1 considering that media reports estimate that hundreds of children
2 recently separated from their families by Defendants' are being held in
3 and around *amici's* jurisdictions.³¹

4 Defendants assert in their application to the Court that they will
5 continue to comply with the requirements set forth in Exhibit 1 of the
6 settlement. *See* Application at *18 (stating "the Government does not
7 now object to the requirement that [Immigration and Customs
8 Enforcement (ICE)] family residential facilities would continue to meet
9 the standards laid out in Exhibit 1 to the Agreement"). Defendants are,
10 therefore, conceding they will continue to comply with state law, as
11 Exhibit 1 requires, but they want to be relieved of any oversight
12 provided by the state licensure.

13 Licensing is a critical check on the adequacy and competence of the
14 organizations running the facilities holding these migrant children. The
15 very purpose of state licensing is to ensure a minimum standard of
16 quality in a service field that is incredibly complex with the potential to
17 inflict extreme harm upon an already vulnerable youth population. The
18 only discernible purpose of the government's requested change is to
19 evade the crucial layer of oversight and accountability provided by the
20 settlement agreement's state licensure requirement.

21 But Defendants present no evidence that state licensing is
22 unavailable or even impracticable, nor do they propose any alternative
23 to state licensure that would help ensure accountability of the agencies
24

25 ³¹ *See* Robbins, Liz, *Hundreds of separated children have quietly been*
26 *sent to New York*, N.Y. Times (June 20, 2018). Retrieved from:
27 [https://www.nytimes.com/2018/06/20/nyregion/children-separated-](https://www.nytimes.com/2018/06/20/nyregion/children-separated-border-new-york.html)
28 [border-new-york.html](https://www.nytimes.com/2018/06/20/nyregion/children-separated-border-new-york.html); Bermudez, Esmeralda, *Children separated from*
parents arrive in L.A., but frustrated community gets few answers, L.A.
Times (June 21, 2018). Retrieved from:
[http://www.latimes.com/local/california/la-me-ln-separated-kids-la-](http://www.latimes.com/local/california/la-me-ln-separated-kids-la-20180620-story.html)
[20180620-story.html](http://www.latimes.com/local/california/la-me-ln-separated-kids-la-20180620-story.html)

1 running the facilities. To the contrary, a report released just this week
2 by the Office of the Inspector General (OIG) at the Department of
3 Homeland Security shows that ICE, for example, should not be self-
4 monitoring. Specifically, the OIG determined that ICE's privately-
5 contracted inspection firms and its own self-monitoring via ICE's Office
6 of Detention Oversight do not result in sustained compliance with
7 detention standards and practices, nor do they promote systemic
8 improvements or comprehensive corrections of deficiencies.³²

9 The state licensing requirement is all the more critical now that
10 Judge Dana M. Sabraw has issued an order requiring the federal
11 government to reunite the separated children with their parents, many
12 of whom are in Defendants' custody.³³ Removing the licensing
13 requirement at this critical moment of reunification could create serious
14 consequences for the health and wellbeing of the children. In his ruling,
15 Judge Sabraw recognized the "constitutional liberty interest 'of parents
16 in the care, custody, and control of their children[,]'" which 'is perhaps
17 the oldest of the fundamental liberty interests recognized by' the
18 Supreme Court." *Id.* at *35 (quoting *Troxel v. Granville*, 530 U.S. 57, 65
19 (2000)).

20 *Amici's* interest in seeing the state licensing requirements be
21 properly applied and enforced within our respective jurisdictions has its
22 foundation in that same fundamental liberty interest in protecting the
23 care and custody of all children.

24
25 ³² U.S. Department of Homeland Security OIG Report (OIG-18-67),
26 *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to*
27 *Sustained Compliance or Systemic Improvements* (June 26, 2018).
Retrieved from: <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

28 ³³*Ms. L. v. U.S. Immigration & Customs Enft.*, No. 18-cv-0428 (DMS) (MDD), 2018 U.S. Dist. LEXIS 107365 (S.D. Cal. June 26, 2018).

CONCLUSION

1
2 For these reasons, *amici* respectfully request this Court to deny
3 Defendants' *ex parte* application for relief from the *Flores* settlement
4 agreement.

5 As Physicians for Human Rights stated last week, "without state
6 licensure, there would be no guarantee of adherence to existing
7 minimum standards, which are designed to protect children and
8 families. In practice, such a modification would legalize ad hoc detention
9 sites, including tent cities on military bases. Families should be placed
10 in community-based settings while their proceedings are pending, and
11 no detention facility should ever be exempt from state licensing
12 requirements."³⁴

13 Ironically, just yesterday, the United States Department of State
14 echoed the statement by Physicians for Human Rights in the
15 department's 2018 Trafficking in Persons Report.³⁵ The report, which
16 was officially released on June 28, 2018, states in the context of
17 criticizing foreign government practices of child institutionalization
18 that, "[r]emoval of a child from the family should only be considered as a
19 temporary, last resort. Studies have found that both private and
20 government-run residential institutions for children, or places such as
21 orphanages and psychiatric wards that do not offer a family-based
22 setting, cannot replicate the emotional companionship and attention
23 found in family environments that are prerequisites to healthy cognitive

24
25 ³⁴ Statement by Homer Venters, MD, Physicians for Human Rights
26 Director of Programs, on June 21, 2018. Retrieved from:
[http://physiciansforhumanrights.org/press/press-releases/legal-
protections-for-immigrant-children.html](http://physiciansforhumanrights.org/press/press-releases/legal-protections-for-immigrant-children.html)

27 ³⁵ U.S. Department of State, *2018 Trafficking in Persons Report* (June
28 28, 2018). Retrieved from:
<https://www.state.gov/documents/organization/282798.pdf>

1 development.”³⁶

2 Dated: June 29, 2018

Respectfully submitted,

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³⁶ *Id.*