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17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19
20 MS. L, et al.,

Case No. 18-cv-428 DMS MDD

21 Petitioners-Plaintiffs,

Declaration of Robert Guardian

22 vs.

23 U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, et al.,

24 Respondents-Defendants.
25

26
27 **DECLARATION OF ROBERT GUARDIAN**
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1
2 I, Robert Guadian, hereby make the following declaration with respect to the above-
3 captioned matter:

4 1. I am currently serving as the Acting Deputy Assistant Director (DAD),
5 Domestic Operations Division, Western Operations, Enforcement and
6 Removal Operations (ERO), U.S. Immigration and Customs Enforcement
7 (ICE), Department of Homeland Security (DHS), a position I have held since
8 April 2018. In this capacity, I oversee, direct, and coordinate the ERO field
9 operations in 12 of the 24 ERO field offices.

10 2. I have been employed by ICE, and the former Immigration and
11 Naturalization Service before it, since 1997. I was promoted to the position
12 of Supervisory Detention and Deportation Officer in the San Antonio Field
13 Office in 2005 and Assistant Field Office Director in 2009. In January of
14 2014, I was named Chief of Staff for the San Antonio Field Office Director.
15 I have been the Deputy Field Office Director for the Dallas Field Office since
16 March 2016.

17 3. In my current role as Acting DAD, I am aware of the preliminary injunction
18 issued by this Court on June 26, 2018, *Ms. L v. I.C.E.*, ---F. Supp. 3d---, 2018
19 WL 3129486 (S.D. Cal. June 26, 2018), and I have been personally involved
20 in the management of implementing this Court's order.

21 4. In order to effectuate the reunification of class members and their minor
22 children, pursuant to the requirements of the preliminary injunction, ICE is
23 working closely with U.S. Customs and Border Protection (CBP) and the
24 U.S. Department of Health and Human Services (HHS), Office of Refugee
25 Resettlement (ORR).

26 5. Immediately after the order was issued, ICE's senior leadership met
27 internally and with leadership from across the federal government to
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1 determine the various ways in which implementation could be achieved. For
2 ICE, implementation requires several labor intensive steps, such as, but not
3 limited to providing guidance to ERO's field offices, gathering data from
4 other agencies within and outside DHS, conducting case-by-case reviews of
5 all potential class members, transferring class members of children four years
6 of age and younger to detention facilities near their children, developing a
7 reunification plan for class members with children five years of age and over,
8 facilitating access of HHS employees to detention facilities to conduct DNA
9 testing, facilitating communication between class members and their
10 children, communicating with HHS about each case, and providing details
11 about criminal history and location of detention or location of class members
12 who had been released from ICE custody.

13 6. The first step toward reunifying separated families was the difficult and time-
14 consuming task of identifying potential class members. The data necessary to
15 determine class membership is not maintained as part of ICE's regular
16 business process. Rather, ICE had to create a new dataset using information
17 collected from CBP and HHS. To create an initial dataset for consideration,
18 ICE had to reconcile CBP data against HHS data manually and new
19 methodologies were developed by ICE to identify separated parents. This
20 data was then sent to the relevant ERO field offices so immigration officers
21 could review available information for each case in order to determine
22 whether the particular alien qualifies as a class member.

23 7. 19 of ERO's 26 field offices have been affected by this order. Field Office
24 Directors (FODs) around the country have reassigned officers from other
25 duties, such as fugitive operations and case management, to review cases of
26 each potential class member, which includes reviewing available DHS
27 databases, the alien file, and the National Crime Information Center database.

1 As class members are identified, FODs have also had to reassign officers to
2 track these cases, arrange transfers from detention facilities across the United
3 States, share information with HHS, and facilitate communication between
4 separated alien parents and their children.

5 8. Employees within ERO's Custody Management Division have also
6 committed significant resources to ensuring compliance with the order. They
7 have deployed two deportation officers and six other ERO staff to three
8 detention facilities in which a significant percentage of separated parents are
9 detained to provide surge support related to identification of family units,
10 identification of the location of separated parents and their respective
11 children, responding to detainee inquiries, and facilitating telephone calls
12 between parents and their children. ERO also deployed three dedicated
13 policy/data analysts to HHS's Special Operations Center, which was
14 established to address the operational challenges of coordinating family
15 reunification across different departments.

16 9. As of today, our information indicates that potential class members with
17 children under five years of age are detained in 23 facilities across 13 states.

18 10. As of July 5, 2018, ICE has confirmed that all individuals detained in DHS
19 custody and known by ICE to be parents separated from a minor child age
20 four and under who is detained in ORR custody, ORR foster care, or DHS
21 custody, have had telephonic contact with their children. ICE continues to
22 work to ensure that all remaining class members have had such contact.

23 11. For those individuals detained in ICE custody for whom it is determined that
24 a minor child has been separated and is in HHS custody, ICE has directed its
25 field offices to review and prepare summaries of the adult alien's criminal
26 and immigration histories, as well as indicators of gang membership. These
27 summaries are sent to HHS. To date, ICE has completed approximately 300

1 such summaries. Based upon currently available information, ICE has
2 approximately 1400 more summaries to complete for potential class
3 members.

4 12. ICE will need to complete the same criminal and immigration history reviews
5 for the remaining individuals. ICE and HHS will also need to facilitate
6 reunification for the class members.

7 13. Based upon this information, ICE and/or HHS, depending upon the
8 circumstances, will determine whether the separated alien parent is excluded
9 from the class due to criminal history. Based upon available information ICE
10 has determined that some alien parents of children age four and under have
11 convictions that would exclude them from the class. These convictions
12 include drug offenses, aggravated assault, rape, robbery, kidnapping, and
13 domestic violence.

14 14. In order to facilitate the reunification process, ICE has taken steps to move
15 the detained parents of children four years of age or under to a detention
16 facility in the area of responsibility (AOR) close to the location of the minor
17 child in HHS custody. To date, ICE has moved 23 such individuals from
18 across the country on commercial airlines, which requires officer escorts.
19 Some class members who were recently identified have not been transferred
20 at the request of HHS, so that HHS can more efficiently take DNA samples
21 of the parents.

22 15. ICE must carry out a similar process to reunify detained parents of children
23 five years of age or over. For these class members, ICE is considering using
24 a few dedicated staging facilities for reunification purposes.

25 16. Upon HHS's completion of vetting and a determination of suitability for
26 reunification in accordance with law and the injunction, in many cases, ICE
27 will release the parent on Alternatives to Detention (ATD) to enable
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reunification to be completed. Because ICE does not have authority to transport the parent once released from its custody, reunification will generally occur at the detention facility concurrent with the parent's release.

17. In accordance with longstanding practices for alien parents, ICE has removed class members who have administratively final orders of removal. This is done after the class member has had an opportunity to request relief. He or she may request to be reunited with his or her minor child prior to removal or he or she can request to be removed without his or her minor child who will then remain in the United States to pursue available relief.

18. Class members who are still pursuing claims for relief or protection and, therefore, do not have administratively final orders of removal, will be reunited with their children, where appropriate, pursuant to the process described above in this declaration.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of July 2018, in Washington, D.C.

Robert-Guadian

Acting Deputy Assistant Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement