

1 SUMMER J. WYNN (240005)(swynn@cooley.com)  
MARY KATHRYN KELLEY (170259) (mkkelley@cooley.com)  
2 MEGAN L. DONOHUE (266147) (mdonohue@cooley.com)  
LINH K. NGUYEN (305737) (lknghuyen@cooley.com)  
3 COOLEY LLP  
4401 Eastgate Mall  
4 San Diego, CA 92121  
Telephone: (858) 550-6000  
5 Facsimile: (858) 550-6420

6 Attorneys for *Amici Curiae*

7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 Ms. L.,

12 *Petitioner-Plaintiff,*

13 v.

14 U.S. Immigration and Customs  
Enforcement (“ICE”); U.S. Department of  
15 Homeland Security (“DHS”); U.S.  
Customs and Border Protection (“CBP”);  
16 U.S. Citizenship and Immigration Services  
(“USCIS”); U.S. Department of Health and  
17 Human Services (“HHS”); Office of  
Refugee Resettlement (“ORR”); Thomas  
18 Homan, Acting Director of ICE; Greg  
Archambeault, San Diego Field Office  
19 Director, ICE; Joseph Greene, San Diego  
Assistant Field Office Director, ICE, Otay  
20 Detention Facility; Kirstjen Nielsen,  
Secretary of DHS; Jefferson Beauregard  
21 Sessions III, Attorney General of the  
United States; Kevin K. McAleenan,  
22 Acting Commissioner of CBP; L. Francis  
Cissna, Director of USCIS; Pete Flores,  
23 San Diego Field Director, CBP; Fred  
Figueroa, Warden, Otay Mesa Detention  
24 Center; Alex Azar, Secretary of the  
Department of Health and Human Services;  
25 Scott Lloyd, Director of the Office of  
Refugee Resettlement,

26 *Respondents-Defendants.*  
27  
28

Case No. 3:18-cv-00428-DMS-  
MDD

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR LEAVE TO FILE BRIEF  
BY AMICI CURIAE IN SUPPORT OF  
PLAINTIFF’S HABEAS CORPUS  
PETITION AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Date: May 4, 2018  
Time: 1:30 p.m.  
Dept. 13A  
Judge: Hon. Dana M. Sabraw

**MEMORANDUM OF POINTS AND AUTHORITIES**

1  
2 The legal service organizations and child welfare professionals described below  
3 (collectively “*amici*”) seek leave to file a brief detailing the harms suffered by children  
4 and families when they are unnecessarily and forcibly separated by the government,  
5 and the circumstances under which such separation is permitted under U.S. and  
6 international law. Understanding these important issues will assist the Court in  
7 addressing Plaintiff’s request for declaratory and injunctive relief.

**I. LEGAL STANDARD**

8  
9 A “district court “has broad discretion to appoint amici curiae.” *Hoptowit v.*  
10 *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v.*  
11 *Conner*, 515 U.S. 472 (1995). Such discretion is generally exercised liberally, as  
12 “[t]here are no strict prerequisites that must be established prior to qualifying for  
13 amicus status.” *Duronslet v. Cty. of Los Angeles*, 2017 WL 5643144, at \*1 (C.D. Cal.  
14 Jan. 23, 2017) (quoting *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal.  
15 1991)). A third party must merely “make a showing that [its] participation is useful  
16 or otherwise desirable to the court.” *Roxford Foods*, 790 F. Supp. at 997. “The  
17 touchstone is whether the amicus is ‘helpful,’ and there is no requirement ‘that amici  
18 must be totally disinterested.’” *California v. U.S. Dept. of Labor*, 2014 WL 12691095  
19 at \*1 (E.D. Cal. Jan. 14, 2014) (citing *Hoptowit*, 682 F.2d at 1260).

20 The individuals and legal services organizations filing this motion offer a unique  
21 and important perspective on the child welfare issues before the Court, and for the  
22 reasons stated below, request leave to file a brief as *amici curiae*. See *Missouri v.*  
23 *Harris*, 2014 WL 2987284, at \*2 (E.D. Cal. Jul. 1, 2014) (“An amicus brief should  
24 normally be allowed when... the amicus has unique information or perspective that  
25 can help the court beyond the help that the lawyers for the parties are able to provide.”)  
26 (internal quotations omitted).

1 **II. ARGUMENT**

2 **A. Identity of Proposed *Amici Curiae* and Statement of Interest.**

3 Proposed *amici* are a group of nonprofit legal aid organizations and child  
4 welfare professionals dedicated to protecting the legal rights of children by providing  
5 a range of legal services, education, and advocacy for their communities, in child  
6 welfare and other areas (such as immigration and juvenile justice). Each has extensive  
7 legal and practical experience in issues regarding child welfare.

8 Proposed *amici* have a substantial interest in the Court's resolution of this case  
9 because the issues this Court will decide have a direct impact on their work and their  
10 clients. Many of proposed *amici*'s clients are vulnerable children and families,  
11 including non-citizens, who are involved in complex child protection and juvenile  
12 justice matters. Proposed *amici* provide family and legal counseling to these  
13 vulnerable individuals, and help guide them through the intricacies of the state and  
14 federal child welfare and juvenile justice systems.

15 As a result of their regular interaction with children, proposed *amici* are well-  
16 positioned to articulate the nature of the irreparable harms at issue in this case. These  
17 legal service organizations and child welfare professionals understand the devastating  
18 harm that can be inflicted on vulnerable parents and children by the forcible separation  
19 of families. *See Miller-Wohl Co., Inc. v. Commissioner of Labor and Industry*, 694  
20 F.2d 203, 204 (9th Cir. 1982) (“[T]he classic role of *amicus curiae* [is] assisting in a  
21 case of general public interest, supplementing the efforts of counsel, and drawing the  
22 court's attention to law that escaped consideration.”).

23 Proposed *amici* include the following legal services organizations and child  
24 welfare professionals:

25 **Children's Rights** is a national advocacy non-profit organization dedicated to  
26 improving the lives of vulnerable children in government systems. Children's Rights  
27 has a 20-year track record of using civil rights litigation, policy expertise, and public  
28 education to create positive systems change. Children's Rights has successfully  
challenged unnecessary and harmful practices in the over-institutionalization of  
children in state custody, especially children who already have been traumatized as a

1 result of separation from their homes and families. Children’s Rights also directly  
 2 represents immigrant youth petitioning for the legal right to remain and work in the  
 United States indefinitely (“Special Immigrant Juvenile Status”).

3 **Children’s Defense Fund** (“CDF”) Leave No Child Behind® mission is to ensure  
 4 every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in  
 5 life and successful passage to adulthood with the help of caring families and  
 6 communities. CDF is a 501(c)(3) child advocacy organization that has advocated and  
 7 worked relentlessly for more than 40 years on behalf of children to ensure children are  
 always a priority, and to ensure a level playing field for all children. A major goal of  
 8 CDF’s work is to keep children safely with their parents because children grow best  
 in families and a healthy parent-child relationship is key to children’s healthy  
 development and safety. Forced separation puts children at increased risk of harm and  
 has long-term consequences for physical and mental health.

9 **Children’s Law Center of Minnesota** (“CLC”) is a 501c(3) organization whose  
 10 mission is to promote the rights and interests of Minnesota’s children, especially  
 11 children of color and children with disabilities, in the judicial, child welfare, health  
 care, and education systems. CLC carries out its mission in three ways: (1) by  
 12 providing direct legal representation for children in child protection (dependency)  
 matters in Minnesota juvenile courts; (2) by advocating and participating in state-wide  
 efforts to improve and reform the child protection and juvenile justice systems; and (3)  
 by training volunteer lawyers and other child advocates to represent children.

13 **Dr. Luis H. Zayas** is Dean of the Steve Hicks School of Social Work at the University  
 14 of Texas at Austin (“UT Austin”), holds the Robert Lee Sutherland Chair in Mental  
 Health and Social Policy and is Professor of Psychiatry at the Dell Medical School of  
 15 UT Austin. He is a licensed clinical social worker and psychologist. His primary areas  
 of research and clinical practice are on (1) the mental health effects of detention on  
 16 refugee families fleeing violence and (2) U.S. citizen-children’s development and  
 psychosocial functioning when their undocumented parents have been deported. His  
 17 opinions and findings are his own and do not reflect the opinion of UT Austin.

18 **First Star** has worked extensively with foster youth across the nation for 19 years by  
 19 partnering with child welfare agencies, universities, and school districts to ensure  
 foster youth have the academic, life skills, and adult supports needed to successfully  
 20 transition to higher education and adulthood. First Star knows first-hand the effects  
 of trauma on a young person.

21 **Foster Children’s Project of the Legal Aid Society of Palm Beach County** (the  
 “Project”) was created 16 years ago for the express purpose of providing counsel to  
 22 children in the dependency system. The Project was created with the simple premise  
 that children, being young human beings, have certain rights under the Constitution,  
 23 including the liberty interest in preserving familial relationships and being free of state  
 custody.

24 **Juvenile Law Center** (“JLC”) advocates for rights, dignity, equity and opportunity  
 for youth in the child welfare and justice systems through litigation, appellate  
 25 advocacy, amicus briefs, policy reform, public education, training, and consulting.  
 Founded in 1975, JLC is the first non-profit, public interest law firm for children in  
 26 the country. JLC strives to ensure that laws, policies, and practices affecting youth  
 advance racial and economic equity and are rooted in research, consistent with  
 27 children’s unique developmental characteristics, and reflective of international human  
 rights values.  
 28

1 **Lawyers For Children** (“LFC”) is a non-profit legal corporation dedicated to  
2 protecting the rights of New York City foster care children, and compelling system-  
3 wide child welfare reform. Since 1984, LFC has served as court-appointed attorneys  
4 for children in more than 30,000 court proceedings involving foster care, abuse,  
5 neglect, termination of parental rights, adoption, guardianship, custody and visitation.  
6 LFC has an Immigration Rights Project and provides advocacy for undocumented  
7 immigrant clients, including children in removal proceedings who are eligible for  
8 Special Immigrant Juvenile Status (“SIJS”).

9 **Legal Counsel for Youth and Children** (“LCYC”) protects children’s unique legal  
10 rights and interests through holistic, multidisciplinary, legal advocacy. We focus on  
11 children involved in child welfare, juvenile offense, and homelessness systems. In  
12 collaboration with the Northwest Immigrant Rights Project and Kids In Need of  
13 Defense, LCYC also provides direct legal assistance to immigrant children, preventing  
14 deportation and expanding opportunities.

15 **Prof. Michael J. Dale** is a faculty member at Nova Southeastern University College  
16 of Law in Fort Lauderdale, Florida, where he teaches courses in family law, juvenile  
17 law, and the family and juvenile clinic. He was the Executive Director of the San  
18 Francisco Youth Law Center after serving as Attorney-in-Charge of the Special  
19 Litigation Unit in the Juvenile Rights Division of the NYC Legal Aid Society. For 40  
20 years he specialized in civil rights litigation, focusing on issues related to children and  
21 their families.

22 **Pegasus Legal Service for Children** (“Pegasus”) is a New Mexico nonprofit  
23 corporation established in 2002 to promote and defend the rights of children and youth  
24 to safe and stable homes, quality education and healthcare, and a voice in decisions  
25 that impact their lives. Pegasus provides free legal services to hundreds of children  
26 living apart from their parents, often as wards of the State. Pegasus attorneys witness  
27 first-hand the adverse effects both on the physical and mental health and on the long-  
28 term well-being and future prospects of children who have been removed from their  
family. Pegasus joins this brief as an advocate for ensuring that children are not  
separated from their families.

1 **The American Academy of Social Work and Social Welfare** (“AASWSW”) is an  
2 honorific society established in 2009 to achieve excellence in the field of social work  
3 and social welfare through high-impact work that advances social good. AASWSW  
4 informs social policy by serving as a frontline source of information regarding social  
5 work and social welfare to government and non-government entities charged with  
6 advancing the public good. AASWSW believes that the family unit forms the  
7 backbone of our country and is deeply concerned about the treatment and well-being  
8 of detained immigrants and refugee families. Our 130 Academy Fellows proudly  
9 endorse this amicus brief.

10 **The Center for Children & Youth Justice** (“CCYJ”) is a 501(c)(3) organization that  
11 seeks to improve – through systems reform – the outcomes of children and youth in  
12 the juvenile justice, child welfare, and related systems. CCYJ ensures that such  
13 systems are integrated, unbiased, fueled with innovative ideas, and backed by rules  
14 and programs to achieve the best outcomes. As a non-profit organization advocating  
15 for the rights and interests of children, CCYJ protects the right of children to be free  
16 from unnecessary or punitive interference with the family unit.

17 **The Children’s Advocacy Institute** (“CAI”) is an academic center founded in 1989,  
18 based at the University Of San Diego School Of Law, and with offices in Sacramento  
19 and Washington DC. It supervises clinics representing children in court, provides the

1 text Child Rights and Remedies, and teaches courses serving a “Child Rights”  
2 concentration at the university. CAI advocates for children before legislatures,  
agencies and courts.

3 **Women’s Refugee Commission** advocates for policies and programs that drive  
4 lasting change on the ground for women, children and youth displaced by war,  
persecution and natural disaster.

5 **B. *Amici’s* Brief Is Desirable and Relevant to the Disposition of the**  
6 **Issues Before the Court.**

7 Proposed *amici’s* brief will assist the Court by providing important information  
8 about the harmful impact of unnecessary and forcible family separation on proposed  
9 *amici’s* clients and the public interest. *See Safari Club Intern. v. Harris*, 2015 WL  
10 1255491 at \*1 (E.D. Cal. Jan. 14, 2015) (“District courts frequently welcome amicus  
11 briefs from nonparties concerning legal issues that have potential ramifications beyond  
12 the parties directly involved or if the amicus has ‘unique information or perspective  
13 that can help the court’”).

14 Proposed *amici* have specialized knowledge of and experience with  
15 international, federal, state and professional child welfare laws and the constitutional  
16 issues that arise in the context of family separation. *See California v. U.S. Dept. of*  
17 *Labor*, 2014 WL 12691095 at \*1 (leave to file amicus brief granted where case  
18 implicated constitutional issues and therefore had “potential ramifications beyond the  
19 parties directly involved”). They are familiar with the child welfare system—a system  
20 that universally provides that children should not be separated from their families  
21 except in cases where they are at risk of suffering from abuse or neglect. Needlessly  
22 separating children from their parents has devastating psychological and emotional  
23 consequences in children that can affect their development into adulthood. Thus the  
24 unnecessary separation of families in asylum proceedings impacts the public interest.

25 Proposed *amici*, legal service organizations and child welfare professionals who  
26 counsel, advocate, and have regular contact with vulnerable children, are well-  
27 positioned to provide a unique perspective on the pervasive nature of these harms and  
28 inform the court of relevant child welfare laws and practices.

