Ms. T

address

City, ST ZIP Code

Phone | Fax

Email

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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| Plaintiff's name,  Plaintiff,  vs.  Xavier Becerra,  health and human services of the united states | Case No.: (leave blank until filed with district court clerk)  PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF WITH CLASS ACTION ALLEGATIONS |

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| Ms. T Pro Se Dated this 11th of January, 2022 |

1. This case challenges the United States government’s forcible separation of parents from their young children for no legitimate reason and notwithstanding the threat of irreparable psychological damage that separation has been universally recognized to cause young children.
2. Ms. T and members of this class bring this action to have the government reunite them with their young children, from whom they have been separated now for more months and years.
3. They also bring this action on behalf of the hundreds if not thousands of parents whom the government has forcibly separated from their children and continues to separate. Without finding of parental unfitness, and with no hearings of any kind, the government is seizing young children, leaving them with strangers alone and frightened, often to other counties and states miles away from their parents.
4. Forced separation from parents causes severe trauma to young children. The resulting cognitive and emotional damage can be permanent.
5. Defendants have ample ways to keep Plaintiffs together with their children, they give shelters to house immigrant families (including criminal illegal immigrants) while they await the jurisdictional preceding until final adjudication in juvenile dependency cases. If the government feels compelled to continue separation of these parents and children, it must minimally offer to detain them together as they do for foreigners in family detention centers.
6. The Due Process Clause of the Fifth Amendment does not permit the government to forcibly take young children from their parents, without exigency or even a hearing. Separation also violates the Administrative Procedure Act (APA), which prohibits arbitrary government action.

JURISDICTION

1. This case arises under the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act. The court has jurisdiction under 28 u. S. C. 1331 (federal question jurisdiction) 28 U.S.C. 2241 (habeas jurisdiction) and Art.1., section 9 clause 2 of the United States Constitution (suspension clause).

CLASS ALLEGATIONS

1. Plaintiffs bring this action under Federal Rule of Civil Procedure 23(b)(2) on behalf of themselves and a nationwide class of all other persons similarly situated.
2. Plaintiffs seek to represent the following nationwide class: pro se ‘ adult parents nationwide who (have been or are being) forcibly separated from their minor children by the Department of Health and Human Services, absent a demonstration in a hearing the parent is unfit or is extremely dangerous to their child.
3. Ms. T and Ms. P. are adequate representations to their proposed class.
4. There are hundreds of parents that fit within the class and many more that will become separated from their young children.
5. The class meets the commonality requirements of Federal Rule of Civil Procedure 23(a)(2). The members of the class are subject to a common practice: forcibly separating parents from their minor children. By definition, all class members have experienced that practice, and none has been given an adequate hearing regarding the separation. The lawsuit raises numerous questions of law common to members of the proposed class, including: whether Defendants’ family separation practice violates class members’ substantive due process right to family integrity; whether the practice violates class members; procedural due process rights; whether the practice violates the federal statutes; and whether these separations are arbitrary and capricious under the APA.
6. The proposed class meets the typicality requirements of Federal Rule of Civil Procedure 23(a)(3),because the claims of the representative Plaintiffs are typical of the claims of the class Ms. T, Ms. P., and the proposed class members are all individuals who have had or will have their children forcibly taken away from them despite there being no proven allegations of abuse, neglect, or any other danger or unfitness prior to this action. Plaintiffs and the proposed class also share the same legal claims, which assert the same substantive and procedural rights under the Due Process Clause, and the APA.
7. The proposed class meets the adequacy requirements of Federal Rule of Civil Procedure 23(a)(4). The representative Plaintiffs seek the same relief as the other members of the class—namely, an order that they be reunified with their children, whether through release or in family detention facilities. In defending their own rights, Ms. T. and Ms. P. will defend the rights of all proposed class members fairly and adequately.
8. The members of the class are readily ascertainable through Defendants’ records.
9. The proposed class also satisfies Federal Rule of Civil Procedure 23(b)(2). Defendants have acted on grounds generally applicable to the class by unlawfully separating parents from their young children. Injunctive and declaratory relief is thus appropriate with respect to the class as a whole.

CAUSES OF ACTION

COUNT 1

(VIOLATION OF DUE PROCESS)

1. All the forgoing allegations are repeated and realleged as though fully set forth herein.
2. The Due Process clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Ms.  T.
3. Ms. T has a Liberty interest under the Due Process Clause in remaining together as a family.
4. The separation of Ms. T and her son violates Substantive Due Process Clause because it furthers no legitimate purpose not to mention a compelling government interest.
5. The separation of Ms. T from her son also violates the Procedural Due Process Clause because it was undertaken without a hearing.

COUNT II

(ADMINISTRATIVE PROCEDURE ACT ARBITRARY AND CAPRICIOUS PRACTICE)

1. All the forgoing allegations are repeated and realleged as though fully set forth herein.
2. The APA prohibits agency action that is arbitrary and capricious. rary and capricious.
3. Defendants’ separation of Ms. T from her son without a  legitimate justification is arbitrary and capricious and accordingly violates the APA. 5 U.S.C. § 706