

1 Lee Gelernt\*  
 2 Judy Rabinovitz\*  
 3 Anand Balakrishnan\*  
 4 AMERICAN CIVIL LIBERTIES  
 5 UNION FOUNDATION  
 6 IMMIGRANTS' RIGHTS PROJECT  
 7 125 Broad St., 18th Floor  
 New York, NY 10004  
 T: (212) 549-2660  
 F: (212) 549-2654  
 lgelernt@aclu.org  
 jrabinovitz@aclu.org  
 abalakrishnan@aclu.org

Bardis Vakili (SBN 247783)  
 ACLU FOUNDATION OF SAN  
 DIEGO &  
 IMPERIAL COUNTIES  
 P.O. Box 87131  
 San Diego, CA 92138-7131  
 T: (619) 398-4485  
 F: (619) 232-0036  
 bvakili@aclusandiego.org

8 *Attorneys for Petitioner-Plaintiff*  
 9 *Additional counsel on next page*

*\*Application for admission pro hac  
 vice forthcoming*

10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 Ms. L.,

Case No. '18CV0428 DMS MDD

13 *Petitioner-Plaintiff,*

14 v.

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

25  
 26 *Respondents-Defendants.*

27 **PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR**  
 28 **DECLARATORY AND INJUNCTIVE RELIEF**

1 Spencer E. Amdur (SBN 320069)  
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
3 IMMIGRANTS' RIGHTS PROJECT  
4 39 Drumm Street  
5 San Francisco, CA 94111  
6 T: (415) 343-1198  
7 F: (415) 395-0950  
8 *samdur@aclu.org*  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**INTRODUCTION**

1  
2           1.       This is an immigration case involving the United States government’s  
3 forcible separation of plaintiff from her seven (7) year-old-daughter, S.S.

4           2.       Plaintiff, Ms. L., is S.S.’s mother and a native of the Democratic  
5 Republic of Congo. Fearing near certain death in the Congo, Ms. L. escaped with  
6 S.S.

7           3.       Upon arriving at a United States Port of Entry near San Diego on  
8 November 1, 2017, they presented themselves to border agents. Although their  
9 native language is Lingala, they were able to explain to the border guards, in the  
10 little bit of Spanish they knew, that they sought asylum.

11           4.       Based on her expression of a fear of returning to Congo, Ms. L. was  
12 given an initial screening interview before an asylum officer. The initial interview  
13 requires the asylum officer to determine whether the applicant has a significant  
14 possibility of ultimately receiving asylum. The officer determined that Ms. L. did  
15 have a significant possibility of ultimately receiving asylum and therefore allowed  
16 her to move on to the next stage of the long asylum process.

17           5.       Since their arrival on November 1, Ms. L. and S.S. have been detained.

18           6.       For the first 4 days upon arriving, Ms. L. and S.S. were detained  
19 together, in what Ms. L. understood to be some sort of motel.

20           7.       Ms. L. was then sent to the Otay Mesa Detention Center in the San  
21 Diego area, where she remains today, nearly four months later. But her daughter  
22 S.S. was taken from her.

23           8.       Although S.S. is only 7 years old, she was sent half way across the  
24 country to a facility in Chicago without her mother, or anyone else she knows.

25           9.       When the officers separated them, Ms. L. could hear her daughter in  
26 the next room frantically screaming that she wanted to remain with her mother.

27  
28

1           10. No one explained to Ms. L. why they were taking her daughter away  
2 from her or where her daughter was going or even when she would next see her  
3 daughter.

4           11. Ms. L. did not get to speak to her daughter until approximately four  
5 days later, and then only on the phone. In the nearly four months they have been  
6 separated, Ms. L. has only spoken to her daughter approximately 6 times, and then  
7 only by phone, and never by video hookup where they can see each other.

8           12. On the phone, S.S. cries and is fearful of what will happen to her and  
9 her mother. She also worries constantly about how her mother is doing in “prison”  
10 and whether she is eating and sleeping properly.

11           13. Ms. L. tries to remain positive during these calls and comfort her  
12 daughter, but feels hopeless under the circumstances, and does not herself fully  
13 understand much of what is happening. It was only after Ms. L. was detained more  
14 than 3 months that she finally obtained legal counsel in her immigration  
15 proceeding.

16           14. The reason why Ms. L. and S.S. were separated was not a finding (or  
17 even any accusation) that Ms. L. was abusing or neglecting S.S., or that she is an  
18 unfit parent.

19           15. Ms. L. and her daughter have been separated now for nearly 4 months.  
20 Seven-year-old S.S. sits all alone in a Chicago facility, frightened and traumatized,  
21 crying for her mother and not knowing when she will see her again.

22           16. Ms. L. brings this action to reunite with her daughter. There are  
23 shelters that house African asylum-seekers and their children while they await the  
24 final adjudication of their asylum cases. If, however, the government feels  
25 compelled to continue detaining Ms. L. and S.S., it must at a minimum detain  
26 them together in one of its immigration family detention centers.

27  
28



1 certain individuals apprehended at the border to determine whether they have a  
2 credible fear of persecution and should be permitted to apply for asylum.

3 25. Respondent U.S. Department of Health and Human Services (HHS) is  
4 a department of the executive branch of the U.S. government.

5 26. Respondent Office of Refugee Resettlement (“ORR”) is a component  
6 of HHS which provides care of and placement for unaccompanied noncitizen  
7 children.

8 27. Respondent Thomas Homan is sued in his official capacity as the  
9 Director of ICE, and is a legal custodian of Petitioner.

10 28. Respondent Greg Archambeault is sued in his official capacity as the  
11 ICE San Diego Field Office Director, and is a legal custodian of Petitioner.

12 29. Respondent Joseph Greene is sued in his official capacity as the ICE  
13 San Diego Assistant Field Office Director for the Otay Mesa Detention Center, and  
14 is a legal custodian of Petitioner.

15 30. Respondent Kirstjen Nielsen, is sued in her official capacity as the  
16 Secretary of the Department of Homeland Security. In this capacity, she directs  
17 each of the component agencies within DHS: ICE, USCIS, and CBP. As a result,  
18 Respondent Nielsen has responsibility for the administration of the immigration  
19 laws pursuant to 8 U.S.C. § 1103, is empowered to grant asylum or other relief, and  
20 is a legal custodian of the Petitioner.

21 31. Respondent Jefferson Beauregard Sessions III is sued in his official  
22 capacity as the Attorney General of the United States. In this capacity, he has  
23 responsibility for the administration of the immigration laws pursuant to 8 U.S.C. §  
24 1103, oversees the Executive Office of Immigration Review, is empowered to grant  
25 asylum or other relief, and is a legal custodian of the Petitioner.

26 32. Respondent L. Francis Cissna is sued in his official capacity as the  
27 Director of USCIS.

28



1           44. Ms. L. and her daughter have been separated now for nearly four  
2 months. Seven-year-old S.S. is alone in a facility in Chicago.

3           45. Ms. L. has spoken to her daughter approximately 6 times by phone and  
4 is terrified she will never see her daughter again.

5           46. S.S. is scared and misses her mother, and wants to be reunited with her  
6 as soon as possible. Each time S.S. is able to speak with her mother on the phone,  
7 she is crying. In December, S.S. turned 7 and spent her birthday without her  
8 mother.

9           47. There is overwhelming medical evidence that the separation of a  
10 young child from her parent will have a devastating negative impact on the child's  
11 well-being, especially where there are other traumatic factors at work, and that this  
12 damage can be permanent.

13           48. The American Association of Pediatrics has recently denounced the  
14 Administration's practice of separating immigrant children from their parents,  
15 noting that: "The psychological distress, anxiety, and depression associated with  
16 separation from a parent would follow the children well after the immediate period  
17 of separation—even after the eventual reunification with a parent or other family."

18           49. Every day that S.S. is separated from her mother causes her greater  
19 emotional and psychological harm and could potentially lead to permanent  
20 emotional trauma.

21           50. Ms. L. is distraught and depressed because of the separation from her  
22 daughter. She is not eating, has lost weight, is not sleeping due to worry and  
23 nightmares.

24           51. The government has no legitimate interest in separating Ms. L. and her  
25 child.

26           52. There has been no evidence, or even accusation, that S.S. was abused  
27 or neglected by Ms. L.

28







1 Dated: February 26, 2018

Respectfully Submitted,

2 Lee Gelernt\*  
3 Judy Rabinovitz\*  
4 Anand Balakrishnan\*  
5 AMERICAN CIVIL LIBERTIES  
6 UNION FOUNDATION  
7 IMMIGRANTS' RIGHTS PROJECT  
8 125 Broad St., 18th Floor  
9 New York, NY 10004  
10 T: (212) 549-2660  
11 F: (212) 549-2654  
12 *lgelernt@aclu.org*  
13 *jrabinovitz@aclu.org*  
14 *abalakrishnan@aclu.org*

*/s/Bardis Vakili*  
Bardis Vakili (SBN 247783)  
ACLU FOUNDATION OF SAN  
DIEGO & IMPERIAL COUNTIES  
P.O. Box 87131  
San Diego, CA 92138-7131  
T: (619) 398-4485  
F: (619) 232-0036  
*bvakili@aclusandiego.org*

9 Spencer E. Amdur (SBN 320069)  
10 AMERICAN CIVIL LIBERTIES  
11 UNION FOUNDATION  
12 IMMIGRANTS' RIGHTS PROJECT  
13 39 Drumm Street  
14 San Francisco, CA 94111  
15 T: (415) 343-1198  
16 F: (415) 395-0950  
17 *samdur@aclu.org*