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The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA;  
DONALD TRUMP, in his official capacity  
as President of the United States of America,  
et al.,

Defendants.

NO. 2:18-cv-00939-MJP

STATES' MOTION FOR EXPEDITED  
DISCOVERY AND REGULAR STATUS  
CONFERENCES

NOTING DATE: JULY 13, 2018

**ORAL ARGUMENT REQUESTED**

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Seventeen states and the District of Columbia<sup>1</sup> (collectively, the States) filed this lawsuit  
3 to protect themselves and their residents from the Trump Administration’s policy of forcibly  
4 separating families who enter the country along its Southwestern border and related illegal  
5 practices. Among other relief, the States seek an order that 1) enjoins the federal government  
6 from refusing to process asylum seekers who arrive at Southwestern border ports of entry;  
7 2) declares family separation for deterrence illegal; 3) requires prompt family reunification for  
8 those already separated; 4) prevents immigration officials from predicating familial reunification  
9 on the withdrawal of asylum claims, acquiescence to removal, payment of the costs of  
10 reunification, or other conditions unrelated to the safety of the child; and 5) confirms that the  
11 indefinite detention of families by the federal government is illegal.  
12

13  
14 Most Plaintiff States know that separated parents<sup>2</sup> or children<sup>3</sup> have been relocated within  
15 their borders—but several States have been unable to speak with them.<sup>4</sup> The States have  
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17 <sup>1</sup> Specifically, the States of Washington, California, Maryland, Oregon, New Mexico, New  
18 Jersey, New York, Iowa, Illinois, Minnesota, Rhode Island, Vermont, North Carolina, and Delaware; the  
19 Commonwealths of Massachusetts, Pennsylvania, and Virginia; and the District of Columbia.

20 <sup>2</sup>As of the date of this motion, the Department of Homeland Security (DHS) is detaining  
21 separated parents in Plaintiff States Washington, Oregon, California, New Jersey, Maryland, and New  
22 Mexico. Complaint ¶¶ 300-03, 307, 312-13, 319, 336, 315-16; Decls. of Blumenauer ¶ 6 (Ex. 25); Jayapal  
23 ¶¶ 8, 10 (Ex.26); Perhot ¶ 9 (Ex. 27); Ruppensberger ¶ 11 (Ex. 35). Other Plaintiff States have or anticipate  
24 receiving separated parents released from DHS facilities. *E.g.*, Decls. of W.R. ¶ 38 (Ex. 21); Roberts-  
25 Henry ¶ 11 (Ex. 24); Serrano ¶ 15 (Ex. 36).

26 <sup>3</sup> As of June 25, 2018, the Office of Refugee Resettlement (ORR) admits it has placed over 500  
separated children in at least nine Plaintiff States. *See* Clinton Ex. D. In addition to those states that  
Defendants acknowledge have received traumatized children, the Plaintiff States of Massachusetts,  
Minnesota, and the District of Columbia have confirmed that they, too, have received separated children.  
Compl. ¶¶ 306, 323-35, 341; Decl. of Perhot ¶¶ 10-11 (Ex. 27).

<sup>4</sup>The facilities in Oregon and California have not provided access to speak with individuals  
detained there. *See* Austria Decl. ¶¶ 3-10 (Ex. 37); Compl. ¶¶ 312; *cf.* Clinton Decl. Ex. E.

1 repeatedly demanded basic information about their well-being, but were answered with silence.  
2 Clinton Decl. Exs. A, B, C. These families are among the primary witnesses to the Defendants'  
3 misconduct. They also are largely at the Defendants' mercy, as they can move detainees without  
4 notice, a practice that the States have already encountered. Poletti Decl. ¶¶ 34-38 (Ex. 2).  
5

6 Hours after the States filed this lawsuit, the District Court for the Southern District of  
7 California issued a preliminary injunction on behalf of a national class of parents, ordering the  
8 federal government to promote family contact and setting deadlines for family reunification.  
9 *Ms. L v. U.S. Immigration & Customs Enf't*, No. 18CV0428 DMS (MDD), 2018 WL 3129486  
10 (S.D. Cal. June 26, 2018) (*Ms. L* Order). While the States agree that emergency relief for these  
11 families is necessary, the *Ms. L* Order further increases the risk that Defendants will move  
12 parents and children before their testimony can be taken. Moreover, the States have claims and  
13 interests that extend beyond the relief granted by the *Ms. L* Order.<sup>5</sup> It does not address  
14 Defendants' refusal to accept asylum seekers at Southwestern ports of entry, the conditions that  
15 they are attaching to reunification (e.g., withdrawal of asylum claims or payment of travel costs  
16 for ORR employees and separated children to be reunited with the parent), or their alternative  
17 proposals to indefinitely detain families at unlicensed locations or summarily deport them.  
18

19 Pursuant to Local Rules 7(d)(2), 16 and 26(d)(1), the States seek expedited discovery to  
20 obtain and preserve evidence concerning the government's family separation policy and its  
21 related practices.<sup>6</sup> See **Appendix A** (detailing specific topics for discovery). This relief is  
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24 <sup>5</sup> The broad and varied harms that the family separation policy inflicts on the States and their  
25 residents are documented through the exhibits to the Complaint, as well as the 99 declarations filed  
26 concurrently herewith. An index of those declarations is provided as **Appendix B** to this Motion.

<sup>6</sup> The States note this Motion as a Second Friday motion pursuant to LCR 7(d)(2)(A) because it  
requests relief from the standard case scheduling deadlines provided by FRCP 16(b)(2) and LCR 16.

1 necessary because Defendants exercise control over the primary witnesses to their misconduct,  
2 they constantly change position, and they have already caused deep and enduring harm. The  
3 States have attempted to confer with Defendants but have been unable to reach agreement.<sup>7</sup>

## 4 II. PERTINENT FACTS

5  
6 This spring, Defendants implemented a long-threatened policy of forcibly separating  
7 parents from their children when they enter our country through the Southwestern border, a  
8 policy expressly intended to terrify families and deter future immigrants from entering the United  
9 States. *See, e.g.*, Compl. ¶¶ 53, 55, 65, 67, 119. At the same time, Defendants have accelerated  
10 their practice of turning away asylum seekers, including families with small children, who  
11 present themselves at Southwestern ports of entry—a practice that encourages unlawful entry  
12 and thus artificially increases such violations. *Id.* ¶ 58; *see also* Decls. of Mensing ¶ 4(c)  
13 (Ex. 22); Levy ¶¶ 20-38, 43-45 (Ex. 1); Ramos ¶¶ 59-60 (Ex. 3). Recent reports confirm that  
14 Defendants are now using separated children to coerce parents to withdraw asylum claims or  
15 agree to deportation in order to expedite reunification. *Id.* ¶¶ 100-102 (Exs. 37-38); *see also*  
16 Decls. of Blumenauer ¶ 23 (Ex. 25); Griffith ¶ 12 (Ex. 29) (concern re long separation). Despite  
17 the *Ms. L* Order requiring them to reunify families, Defendants are conditioning reunification on  
18 onerous logistical and financial terms (such as the payment of travel costs for the child and  
19 government escorts) many parents cannot hope to satisfy. Decls. of Levy ¶¶ 46-51 (Ex. 1); Ramos  
20 ¶ 62 (Ex. 3); Greenberg (Ex. 43).<sup>8</sup>

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24 <sup>7</sup> *See* Certificate of Compliance (C. Melody), ¶¶ 1-3 & Ex. 1, filed herewith.

25 <sup>8</sup> *See also* Decls. of Mensing ¶ 7d (Ex. 22); Serrano ¶¶ 9-14 (Ex. 36); W.R. ¶¶ 41-51 (Ex. 21);  
26 Caceres ¶¶ 13-14, 17-18 (Ex. 4); Greenberg ¶ 13 (Ex. 43); Gonzalez-Garcia ¶¶ 25-30 (Ex. 6); Jose  
Francisco ¶ 7 (Ex. 39); Fanjoy (Ex. 40); Roberts Henry ¶ 10 (Ex. 24).

1 Unless required to protect a child’s safety, forced separation is known to cause immediate  
2 and extreme psychological harm to both children and their parents, and the resulting cognitive  
3 and emotional damage can be permanent. Compl. Exs. 43, 79-86.<sup>9</sup> The longer the separation  
4 lasts, the worse the damage will be. Brown Decl. ¶ 19 (Ex. 57). To date, Defendants admit that  
5 they have forcibly separated over 2,500 children from their parents, with over 2,000 still  
6 detained. *See* Compl. ¶¶ 70-71; Clinton Decl. Ex. F. Many professionals who have interviewed  
7 or worked with the separated parents and children in recent weeks have witnessed the impacts  
8 firsthand, and the States’ interviews of detainees in their jurisdictions confirm extensive harms,  
9 especially where parents and children have not been allowed to contact each other.<sup>10</sup> These  
10 interviews also reflect the deplorable conditions of detention, including “iceboxes;” cages; lack  
11 of food, clean water, and sanitation; deprivation of comfort for small children; and threats that  
12 children will be jailed or permanently kept from their families.<sup>11</sup> The dozens of personal  
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16 <sup>9</sup> Decls. of Brown ¶¶ 19-23, 28-32 (Ex. 57); Houshyar ¶¶ 4, 6-10, 13-15 (Ex. 51); Torlakson ¶ 14  
17 (Ex. 68); Escudero ¶ 8-10 (Ex. 60); Sheppard ¶¶ 7-8 (Ex. 52); Alvarez ¶¶ 3-11 (Ex. 53); Borque ¶ 7-9, 14  
18 (Ex. 73); Korte ¶ 8 (Ex. 75); Zucker ¶ 34-50 (Ex. 79); Bradbury ¶¶ 7-13 (Ex. 60); Aronson ¶¶ 5, 11 (Ex.  
19 41); Gallegos ¶¶ 5-7 (Ex. 54); Castillo ¶ 5-7 (Ex. 55); Martinez (Ex. 56).

20 <sup>10</sup> Decls. of Caceres (Ex. 4); Tapia (Ex. 5); Gonzalez-Garcia (Ex. 6); Oliva & Jimenez (Ex. 7);  
21 CCB (Ex. 8); G. Doe (Ex. 9); L. Doe (Ex. 10); Paz Rodriguez (Ex. 11); Arriaga-Pineda (Ex. 12); Garcia  
22 Castillo (Ex. 13); Aguirre Vega (Ex. 14); Monroy-Guerra de Tesucum (Ex. 15); Dubon Mejia (Ex. 16);  
23 Batres (Ex. 17); Sanchez Rodriguez (Ex. 18); Flores-Oliva (Ex. 19); Padilla-Orellana (Ex. 20); W.R. (Ex.  
24 21); *see also* Decls. of Poletti (Ex. 2); Mensing (Ex. 22); Langarica (Ex. 23); Roberts Henry (Ex. 24);  
25 Blumenauer (Ex. 25); Jayapal (Ex. 26); Perhot (Ex. 27); Griffith (Ex. 29); Mostofi (Ex. 30); Gilmore (Ex.  
26 31); D. Beyer (Ex. 32); Bellor (Ex. 33); Podkul (Ex. 34); Ruppertsberger (Ex. 35); *and* Decls. of Jose  
Francisco (Ex. 39); Fanjoy (Ex. 40); Serrano (Ex. 36).

<sup>11</sup> Decls. of Poletti (Ex. 2); Houshyar ¶¶ 5, 11-12 (Ex. 51); Roberts Henry Ex. 2 (Ex. 24); Aguirre  
23 Vega (Ex. 14); Paz Rodriguez (Ex. 11); Arriaga-Pineda ¶ 2 (Ex. 12); Dubon Mejia (Ex. 16); Batres ¶¶ 1,  
24 3, 6 (Ex. 17); Monroy-Guerra ¶¶ 5-7, 11 (Ex. 15); Sanchez Rodriguez ¶¶ 4, 9, 12 (Ex. 18); Flores-Oliva ¶  
25 2-4 (Ex. 19); Padilla-Orellana ¶¶ 4-5, 9-15 (Ex. 20); Gonzalez-Garcia ¶ 10 (Ex. 6); Oliva & Jimenez ¶¶  
26 7-11, 17-23 (Ex. 7); W. R. ¶¶ 19-22, 27, 29, 33 (Ex. 21); Ruppertsberger ¶ 7 (Ex. 35); L. Doe ¶ 8 (Ex. 10);  
G. Doe ¶ 9 (Ex. 9); Blumenauer ¶¶ 12, 18-19 (Ex. 25); Jayapal ¶¶ 17-19 (Ex. 26); CCB ¶ 2, 4-5 (Ex. 8);  
*see also* Leckman (Ex. 50).

1 accounts that the States have already obtained confirm the terror that this policy has inflicted on  
2 innocent children and their desperate parents. Defendants’ policies are causing fear and  
3 disruption in the States’ immigrant communities, both because they target Latino populations  
4 and because they harken back to some of the most destructive chapters in our history.<sup>12</sup> The  
5 ineffective policy has been condemned nearly universally. Compl. Exs. 77-87; Decl. of Wong  
6 (Ex. 42).  
7

8 On June 20, 2018, President Trump signed an Executive Order (EO) purporting to  
9 suspend family separation. Compl. Ex. 24. But the EO does not actually require an end to family  
10 separation, and in fact, it makes family unity contingent on the “availability of appropriations”  
11 and exemptions from the requirements of the “*Flores* Settlement,” a 1997 agreement that  
12 protects immigrant youth from indefinite detention. Compl. Ex. 30. Further, the EO appears  
13 limited to those families who do not seek to stay in the United States. The EO does not moot  
14 any of the States’ claims: there is no indication that funding will be appropriated, that  
15 appropriate federal facilities exist and are available, or that the creation of new family internment  
16 facilities is feasible or legal. Clinton Decl. Ex. G; Compl. Ex. 34.  
17

18 Indeed, Defendants admit that “it is not possible for the U.S. government to detain  
19 families together during the pendency of their immigration proceedings” without modifying the  
20 provisions in the *Flores* Settlement that require expeditious release of detained minors and use  
21 of non-secure facilities licensed by the state. Compl. Ex. 31 at 3. While Defendants seek to  
22 eliminate these protections for children and remove their facilities from outside scrutiny (*id.* at  
23  
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25 <sup>12</sup> Decls. of Roche (Ex. 58); Matos (Ex. 62); Torrijos (Ex. 63); Briggs (Ex. 48); Jones (Ex. 49)  
26 Kimoto (Ex. 45); Banko (Ex. 46); Margles (Ex. 47).

1 19), the *Flores* court has already rejected similar attempts.<sup>13</sup> Further, DHS has explained that  
2 reunification efforts are only for “adults who are subject to removal” to reunite families solely  
3 “for the purposes of removal,” i.e., not those seeking to remain in the country. Compl. 1. Ex. 35.  
4

5 Defendants acknowledge that they intend to switch to a policy of indefinite family  
6 detention or, alternatively, to resume family separations in the near future because of the  
7 constraints provided by *Flores* and limited federal resources. For example, CBP Commissioner  
8 Kevin McAleenan recently announced that he is unable to refer parents for prosecution without  
9 separating them from their children due to lack of resources, but that situation is reportedly  
10 temporary. Clinton Decl. Ex. H. White House Press Secretary Sarah Huckabee Sanders has  
11 emphasized that the EO purporting to halt family separations “is a temporary solution. This isn’t  
12 going to last . . . This will only last a short amount of time, because we’re going to run out of  
13 space, we’re going to run out of resources to keep people together.” Secretary Sanders reiterated:  
14 “We’re not changing the policy. We’re simply out of resources.” Clinton Decl. Ex. I.  
15

16 Meanwhile, President Trump recently proposed simply deporting immigrants without  
17 any legal process. Clinton Decl. Ex. J; Compl. Ex. 41. And Attorney General Sessions continues  
18 to publicly adhere to the “zero-tolerance” directive requiring criminal prosecution of all migrants  
19 who cross the Southwestern border outside a port of entry. Clinton Decl. Ex. H.  
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22 <sup>13</sup> The government’s argument that the *Flores* Settlement Agreement’s licensure requirement  
23 does not apply to ICE family residential facilities (*see* Compl. Ex. 31 at 4) is a direct attack on the States’  
24 sovereign interest in licensing, inspecting, and monitoring all out-of-home care providers (i.e., providers  
25 who care for children away from their parents), including federally funded ones. To ensure that all  
26 facilities where children are placed out of the care of their parents meet minimum safety standards, the  
States have comprehensive laws and regulations that require, *inter alia*, current licensing, periodic  
monitoring, meetings with staff and children, background checks, facility safety standards, and provision  
of necessary and appropriate care to the children. Decls. of Reeves (Ex. 66); Chen (Ex. 65); Culley  
(Ex. 61); Ford (Ex. 28); Guinn (Ex. 64); Velez (Ex. 38).

1 The federal government has ignored the States’ repeated requests for information about  
2 separated families. For example, on June 7, 2018 and again on June 18, 2018, Washington State  
3 Governor Jay Inslee and Attorney General Bob Ferguson requested information about separated  
4 children and parents; plans and timing for release or reunification; pending asylum claims; and  
5 their access to legal information and attorneys. *Id.* Exs. A & B. Similarly, on June 19, 2018,  
6 21 states and the District of Columbia sent a letter expressing concern about Defendants’ family  
7 separation policy. *Id.* Ex. C. Federal lawmakers have sent similar letters. *Id.* Exs. K, L, M;  
8 Compl. Exs. 7, 45. These requests were ignored.  
9

10 The States have also attempted to interview potential witnesses over whom Defendants  
11 have custody and control and the federal government has delayed or obstructed some of those  
12 efforts.<sup>14</sup> As a result, the States are forced to rely in part on media reports about the government’s  
13 shifting conduct, as well as vacillating public statements from the Administration.<sup>15</sup> Indeed, in  
14 granting preliminary relief, the *Ms. L.* Court expressed dismay that the government had not  
15 adequately tracked separated children and their parents, facilitated communication between  
16 them, or planned for reunification, noting that it accounted for *property* better than it accounted  
17 for the children it had taken from their parents. *Ms. L.*, 2018 WL 3129486 \*7.  
18

19 Meanwhile, the States and their residents continue to suffer harm from family separation  
20 and related practices—including the severe harms described above—even after the issuance of  
21 the preliminary injunction. For example, reports are emerging that some separated parents who  
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23 <sup>14</sup> Poletti Decl. ¶¶ 34-38 (Ex. 2); *see also* Austria Decl. ¶¶ 3-10 (Ex. 37); Compl. ¶ 312.  
24

25 <sup>15</sup> For example, the description of a father detained at the Sheridan Prison in Oregon who was  
26 separated from his 15-day-old child (Compl. ¶ 307) was taken from published news sources—not the  
Mexican Consulate. *See* <http://katu.com/news/local/vigil-scheduled-outside-sheridan-prison-for-123-undocumented-immigrants-detained-by-ice>. Plaintiffs are informed that the infant is with his mother.



1 hoped to be quickly reunited with their children are being told that they must first complete a  
2 host of burdensome paperwork never intended for this purpose,<sup>16</sup> or worse, voluntarily agree to  
3 deportation, effectively placing enormous pressure on parents to abandon asylum claims and  
4 withdraw their children’s claims in order to be reunited. Compl. Exs. 36-38. The Policy also  
5 continues to adversely affect the States’ sovereign, quasi-sovereign and proprietary interests.  
6 Through their application for relief from the protections of the *Flores* Settlement, Defendants  
7 seek to invade the States’ right to regulate the facilities where children are being housed,  
8 undermining the protections intended to ensure humane and safe treatment for children.<sup>17</sup>  
9 Defendants’ conduct forces the States to expend resources to remediate the harms inflicted by  
10 the Policy, many of which are likely to be permanent. State programs, including child welfare  
11 services, social and health services, courts, and public schools, are all experiencing fiscal impacts  
12 due to family separation that will only increase. *Id.* § K.<sup>18</sup>

### 15 III. AUTHORITY AND ARGUMENT

16 This Court has discretion under Rule 26(d) to allow the States to take the expedited  
17 discovery and to order the weekly status conferences they request. Courts typically require  
18 “good cause” to deviate from the standard pretrial schedule, a standard easily satisfied here.  
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20 <sup>16</sup> Greenberg Decl. (Ex. 43); Levy Decl. ¶¶ 46-51 (Ex.1).

21 <sup>17</sup> Decls. of Reeves (Ex. 66); Chen (Ex.65); Culley (Ex. 61); Ford (Ex. 28); Guinn (Ex. 64); Velez  
22 (Ex. 38).

23 <sup>18</sup> Decls. of Torlakson (Ex. 68); Cantwell (Ex. 69); Lee (Ex. 70); Ruiz (Ex. 71); Escudero (Ex.  
24 60); Manning (Ex.72); Bourque (Ex. 73); Tahiliani (Ex. 74); Perhot (Ex. 27); Korte (Ex. 75); Possin (Ex.  
25 76); Zimmerman (Ex. 77); Zucker (Ex. 79); Cechnicki (Ex. 80); Bradbury (Ex. 60); Katz (Ex. 81); Guinn  
26 (Ex. 64); Aronson (Ex. 41); Mostofi (Ex.30); Velez (Ex. 38); Gilmore (Ex. 31); Allen (Ex. 82); Nazarov  
(Ex. 83); Bates (Ex. 84); Gonzalez (Ex. 85); Lane (Ex. 86); Bouchey (Ex. 87); Schatz (Ex. 88); Schilling  
(Ex. 89); Allison (Ex. 90); Fourre (Ex. 91); Happold (Ex. 92); Meierbachtol (Ex. 93); Yanagida (Ex. 94);  
Curtatone & Skipper (Ex. 67); Weiss (Ex. 96); Lennox (Ex. 44); Perry-Manning (Ex. 97); C. Beyer (Ex.  
78); Sinski (Ex. 98); Aranowski (95); Peterson (Ex. 99).

1 *Music Grp. Macao Commercial Offshore Ltd. v. John Does I-IX*, 2014 WL 11010724, at \*1  
2 (W.D. Wash. 2014) (collecting cases). A request for expedited discovery is evaluated in light of  
3 “the reasonableness of the request in light of all the surrounding circumstances.” *Semitool, Inc.*  
4 *v. Tokyo Electron Am. Inc.*, 208 F.R.D. 273, 275 (N.D. Cal. 2002) (internal quotations and  
5 emphasis removed); *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2009).  
6

7 “ ‘Good cause may be found where the need for expedited discovery, in consideration of  
8 the administration of justice, outweighs the prejudice to the responding party.’ ” *In re*  
9 *Countrywide Fin. Corp. Derivative Litig.*, 542 F. Supp. 2d 1160, 1179 (C.D. Cal. 2008) (quoting  
10 *Semitool*, 208 F.R.D. at 276). Need outweighs potential prejudice in cases where physical  
11 evidence may be moved or difficult to track with the passage of time, thereby disadvantaging  
12 one or more parties to the litigation. *Cf. Pod-Ners, LLC v. N. Feed & Bean of Lucerne Liab.*  
13 *Co.*, 204 F.R.D. 675, 676 (D. Colo. 2002) (anticipated movement of field beans made ordinary  
14 discovery “unusually difficult or impossible.”). Indeed, if a party’s movement of beans is  
15 sufficient for expedited discovery, surely the movement of human beings must be. *Cf. id.* at 676.  
16

17 Here, numerous factors support the States’ request. Expedited discovery is needed to  
18 enable the States to obtain evidence and testimony from people over whom the Defendants have  
19 control, to determine the extent of the harm inflicted on State programs and residents, and to  
20 evaluate the need for interim emergency relief. The States also need to obtain discovery related  
21 to the claims they assert that are not addressed by the *Ms. L* Order: that detained parents and  
22 children are or have been subject to inhumane conditions of confinement; that Defendants are  
23 improperly refusing to accept applications for asylum at ports of entry; that Defendants are  
24 conditioning family reunification on an agreement to abandon an asylum claim or to waive other  
25  
26

1 relief available under the INA; and that Defendants are preparing to house children in unlicensed  
2 facilities to evade State standards. Compl. at 119-120.

3 As noted, Defendants have sole control over key witnesses and evidence, including the  
4 separated children and parents located in the Plaintiff States, but they cannot be relied upon to  
5 accurately track the location of either. *See Ms. L.* 2018 WL 3129486 \*7. Access to these  
6 potential witnesses and information about them is critical.<sup>19</sup> Moreover, many of the key  
7 witnesses will likely be moved in the coming days and weeks with no assurances as to their well-  
8 being or whereabouts, and continued chaos is inevitable. *Id.* at 9 (the government does not have  
9 “any affirmative reunification procedure for [separated] parents and children”).<sup>20</sup> Nor have the  
10 States delayed their requests: literally hundreds of government officials have previously  
11 requested similar information to no avail. Defendants have been on notice of these requests for  
12 weeks. Clinton Decl. Exs. A, B, C, K, L, M; Compl. Exs. 7, 45. While the States have tried to  
13 obtain evidence from these witnesses, they have been frustrated in these efforts. *See* Decl. of  
14 Poletti ¶¶ 34-38 (Ex. 2); Austria ¶¶ 3-10 (Ex. 37); Compl. ¶ 312; *cf.* Clinton Ex. E.

15 Moreover, the scope of the States’ requests is appropriate in relation to their purpose and  
16 the interests at stake. While the government publically asserts that it has rescinded, at least  
17 temporarily, its family separation policy, whether the rescission of an unconstitutional policy is  
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22 <sup>19</sup> Decls. of Paz Rodriguez (Ex. 11); Arriaga-Pineda (Ex. 12); Garcia Castillo (Ex. 13); Aguirre  
23 Vega (Ex. 14); Monroy-Guerra (Ex. 15); Dubon Mejia (Ex. 16); Batres (Ex. 17); Sanchez Rodriguez (Ex.  
24 18); Flores-Oliva (Ex.19); Roberts Henry, Ex. 2 (Ex. 24); Padilla-Orellana (Ex. 20); Caceras (Ex. 4);  
Gonzalez-Garcia (Ex. 6); Oliva and Jimenez (Ex. 7); W.R. (Ex. 21); L. Doe (Ex. 10); G. Doe (Ex. 9);  
CCB (Ex. 8).

25 <sup>20</sup> For example, the Texas Civil Rights Project claims that, for the more than 300 parents it  
26 represents, it has located only two children. Clinton Decl. Ex. N; *see also* Clinton Decl. Ex O (report of  
child walking away from ORR shelter).

1 really a sham has been the proper subject of expedited discovery in at least one case. *See Citizens*  
2 *for Quality Educ. San Diego v. San Diego Unified Sch. Dist.*, No. 17-CV-1054-BAS-JMA, 2018  
3 WL 1150836, at \*2-4 (S.D. Cal. Mar. 5, 2018). Likewise, discovery directed to the Defendants’  
4 recently announced strategies of indefinite family detention—or wholesale deportation without  
5 any legal process—are necessary to both support the States’ claims and to enable them to seek  
6 appropriate emergency relief if warranted. For example, on Friday, June 30, 2018, the  
7 government took the position before the *Flores* court that the *Ms. L* Order exempts them from  
8 legal restrictions on indefinite detention. *See Flores, et al. v. Sessions, et al.*, Case No.  
9 CV 85-4544-DMG (C.D. Cal.), Dkt. 447; Clinton Decl. Ex. P.  
10

11 Under the circumstances presented here, “the administration of justice[ ] outweighs the  
12 prejudice to the responding party.” *See In re Countrywide*, 542 F. Supp. 2d at 1179  
13 (quoting *Semitoil* 208 F.R.D. at 276). The expedited discovery requested is a limited subset of  
14 what the States would pursue in discovery regardless. The only burden is that Defendants must  
15 respond sooner, which is trivial compared to the immediate and real harms family separation and  
16 related policies are causing. Further, the Defendants have already been ordered by a federal  
17 court to reunify the separated children and parents. This will require the government to locate,  
18 identify, and maintain information about all of the separated children and parents; providing this  
19 information to the States adds very little additional burden.  
20  
21

22 Further, any burden to the Defendants also is mitigated by the request for regular  
23 conferences with the Court. Defendants can raise any unforeseen challenge that the requests  
24 pose during these status conferences—allowing Defendants to seek immediate relief if the  
25 parties are unable to resolve a dispute. Finally, any logistical difficulty is a “chaotic  
26

1 circumstance of the Government's own making." *See Ms. L.* 2018 WL 3129486 \*11. Whatever  
2 burden expedited discovery may pose pales in comparison to the States' needs and the  
3 administration of justice. All relevant factors weigh in favor of the States' requests.

4  
5 **IV. CONCLUSION**

6 The States respectfully request that the Court grant the relief requested.

7 DATED this 2nd day of July, 2018.

8  
9 **ROBERT W. FERGUSON**  
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10  
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