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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

INITIAL JOINT STATUS REPORT

INTRODUCTION

Counsel for the State of Washington (on behalf of all Plaintiff States) and Counsel for Defendants conferred telephonically and via email on **July 23, 2018, July 25, 2018, and July 26, 2018** pursuant to the Court’s Order on Plaintiffs’ Motion for Expedited Discovery and Regular Status Conferences (Dkt. 32) (“Order”), and now together submit this Initial Joint Status Report and their respective positions on the issues the Court asked the parties to address concerning “the posture of the case as it currently stands,” “a prioritized list of discovery topics with a proposed timetable for completion,” and “an agenda of items for discussion at the initial conference.” Order at 10.

1 **1. Statement regarding the posture of the case as it currently stands.**

2 **Status of case:** The Plaintiff States filed this matter on June 26, 2018. They moved
3 for expedited discovery and regular status conferences on July 2, 2018, which motion the
4 Court granted in part on July 19, 2018. Defendants filed a motion to dismiss, transfer, or stay
5 on July 11, 2018, which remains pending.

6 The States believe that this case is complex, but that the issues are primarily legal and
7 that they can be presented for the Court’s decision before the end of this year, after a brief
8 period of expedited discovery. The States propose a period for expedited discovery ending in
9 late September, followed by dispositive motions on a fall 2018 briefing schedule to be
10 proposed by the parties for the Court’s consideration.

11 The States note that the parties conferred by phone on Monday July 23, 2018, at
12 which time the States requested information about the content of the *Ms. L* discovery and
13 whether it would address their requests, as well as information about the *Ms. L* protective
14 order. The States provided Defendants with a draft Joint Status Report with their position on
15 the issues addressed below and their proposed set of discovery the next day. The parties
16 again conferred on by phone on Wednesday, July 25, 2018, and the States provided
17 Defendants with a revised Joint Status Report, including the specific information submitted
18 by the States below regarding their discovery priorities and the narrowing efforts they
19 undertook. The States note that Defendants did not provide them with any of the specific
20 information included in their position statement in Section 2 (“prioritized list of discovery
21 topics with a proposed timetable for completion”) until shortly before 9:00 am on Thursday,
22 July 26, 2018. At that time, the Defendants provided a draft of their position statement for
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1 Section 2, without any of Defendants' cited materials in that section, including declarations
2 and the Ms. L protective order. As a result, the States have been unable to evaluate the
3 factual claims made by Defendants in Section 2. As of this filing, Defendants have not
4 provided the requested information about the content of the Ms. L discovery or submitted a
5 draft protective order for the States' review.

6 Defendants believe that there are dispositive issues involved in this case that are
7 primarily legal but not particularly complex factually. Defendants intend to file a dispositive
8 Rule 12 motion very soon. Regardless, Defendants believe this matter largely overlaps with
9 *Ms. L. v. ICE*, No. 18-cv-428 (S.D. Cal.) and that the discovery the Plaintiffs envision will
10 substantially detract from the federal government's compliance efforts in that case.
11 Defendants consequently sought Plaintiffs' agreement to stay this litigation for the next two
12 weeks to allow the Government to prioritize reunification efforts, but that Plaintiffs oppose
13 that request.

14 Defendants also note that they did not receive any of Plaintiffs documents until 11:42
15 PM Eastern time on Tuesday, July 24, and thus have had very little time to confer with the
16 relevant agency personnel—who are expending their resources complying with deadlines in
17 the *Ms. L* litigation—including conferring on the proposed scope and burden of Plaintiffs
18 requests for immediate discovery. The parties in fact conferred concerning when the
19 Government would be able to provide Plaintiffs with their portions of this pleading, and
20 Defendants have provided Plaintiffs with as much information as they could promptly,
21 including laying out their position by phone on the proper scope of discovery and the burdens
22 the relevant agencies were enduring during compliance with *Ms. L.*'s injunction that further
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1 discovery here would impact. Defendants proposed jointly asking the Court for a few more
2 hours to file this document so that Plaintiffs could have more time to review the factual
3 representation of Defendants but they declined to join such a motion. Defendants certainly
4 would not oppose a delay in proceedings to provide Plaintiffs with any time they believe they
5 need to review Defendants positions further.

6 **2. Prioritized list of discovery topics with a proposed timetable for completion:**

7 **Plaintiffs’ Position**

8 Plaintiffs propose the following expedited discovery plan:

- 9 **A.** The parties telephonically conferred on July 23, 2018 regarding the Court’s
10 order allowing expedited discovery, and again on July 25 and July 26, 2018.
- 11 **B.** The States request leave to serve Defendants with immediate written discovery
12 regarding 1) persons subjected to family separation and the progress of
13 reunification efforts; 2) the justification for the family separation policy and
14 directives regarding it to those Defendant employees charged with
15 implementation, oversight and/or tracking the individuals affected by it; 3) the
16 justification for a family detention policy and the implementation of same; and
17 4) directives to Defendant employees at Southwestern border ports of entry to
18 turn away or “meter” asylum applicants, and documents reflecting Defendants’
19 knowledge of this practice. The Plaintiff States’ proposed First Set of Requests
20 for Expedited Discovery, which was provided to Defendants’ counsel on July
21 24, 2018, is attached as **Exhibit A**.

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By its Order on Motion for Expedited Discovery and Regular Status Conferences, Dkt. No. 32 at 9-10, the Court directed the States to prioritize the discovery topics listed in Appendix A of the States’ Motion. Accordingly, as reflected in their First Set of Requests for Expedited Discovery, the States have prioritized and limited their discovery requests by:

- Limiting discovery requests to twelve Requests for Production under Federal Rule of Civil Procedure 34, and deferring the issuance of Interrogatories, Requests for Admission, and notices or subpoenas for deposition under Federal Rules of Civil Procedure 30, 33, 36 and 45.
- Prioritizing documents containing up-to-date information about separated parents and children, including their locations, well-being, and Defendants’ efforts to reunite them. (Exhibit A, RFP Nos. 1-3, 7).
- Seeking to minimize the burden to Defendants by allowing them to respond to seven out of the twelve proposed Requests for Production by producing the same materials already produced in *Ms. L*, provided that those materials provide the information sought by the States, including information about the separated children whose rights are not represented directly in *Ms. L*. (Exhibit A, RFP Nos. 1-7). (At the time of the parties’ conference on June 23, 2018, counsel for Defendants did not yet have information about the content of documents already provided to the *Ms. L* plaintiffs.)

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- Prioritizing discovery on the States’ claims that are not being litigated in the *Ms. L* action. (Appendix A, RFP Nos. 8-12).
- Limiting the Requests for Production to documents concerning official justifications and implementation directives for the family separation and family detention policies, or components thereof, and deferring any broader “all documents” requests or requests for information specific to the history or development of those policies. (Exhibit A, RFP Nos. 4, 5, 9, 11).

C. The States propose that the responses to their First Set of Requests for Expedited Discovery be due on August 3, 2018. Assuming that Defendants are able to produce complete responsive materials at that time, the States will confer with Defendants and determine what, if any, additional written discovery is necessary and confer regarding a schedule for all other discovery, if necessary.

D. The States recognize Defendants’ desire to reduce the burdens of discovery and, consistent with the Court’s Order on Motion for Expedited Discovery and Regular Status Conferences, have proposed the following additional measures to ameliorate those burdens:

- Production to the States of the materials that have been/will be produced in the matter of *Ms. L., et al. v. ICE, et al.*, Case No. 18cv-0428 DMS (MDD) (S.D. Cal.). The States understand that this material will

1 address, at least in part, their requests for information regarding
2 separated family members and the reunification process;

- 3 • The States requested on July 23, 2018 a form of stipulated protective
4 order from Defendants to address any privacy concerns related to
5 production of the *Ms. L* material;
- 6 • The States intend to offer Defendants stipulations that would obviate the
7 need for discovery into discrete topics, for example, a stipulation that
8 parents separated from their children after entering along the
9 Southwestern border were not provided a hearing on parental
10 fitness/best interests of the child prior to separation;
- 11 • The States propose reducing the number of depositions in this case to 5
12 per side, absent agreement of the parties or further order of the Court.

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14 **Defendants’ Position**

15 Defendants reiterate their position that any discovery in this case is inappropriate while
16 their motion to transfer or dismiss based on comity considerations, Dkt. 22, remains pending.
17 That motion raises threshold justiciability issues, as well as principles of comity that this Court
18 should resolve prior to the commencement of any discovery. Furthermore, Defendants have
19 asked Plaintiffs for a stay of this litigation for two weeks while reunification efforts are still
20 ongoing in *Ms. L* and Defendants’ intent to file a formal Rule 12 Motion to Dismiss Plaintiffs’
21 claims in the near future. This should provide even more reason to refrain from discovery,
22 expedited or otherwise, in whole or in part until the motions are resolved.
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1 As an initial matter, a crucial threshold determination that must be determined is the
2 States' standing in this case. Case law is clear that States have no legally protected interest in
3 avoiding the incidental effects of the federal government's actions affecting individuals
4 subjected to federal regulation who may eventually arrive in that State or who are in federal
5 custody within the State's boundaries. *See, e.g., Massachusetts v. Mellon*, 262 U.S. 447, 485–
6 86 (1923) (“[I]t is no part of [a State’s] duty or power to enforce [its citizens’] rights in respect
7 of their relations with the federal government. In that field it is the United States, and not the
8 state, which represents them as *parens patriae*.”). Nor can the States rely on the legal rights or
9 interests of third parties they allege are impacted by Defendants’ enforcement actions, none of
10 whom the States have alleged a close relationship with to support third-party standing. *See,*
11 *e.g., Voigt v. Savell*, 70 F.3d 1552, 1565 (9th Cir. 1995). The mere fact that an individual *might*
12 be housed within a State’s territory does not somehow create a close relationship where those
13 individuals are subject to *federal* custody and control. *See* 6 U.S.C. §§ 279, 1232(d)(5).
14 Nonetheless, even if the States had standing based on their asserted interests in licensing out-
15 of-home facilities or policies on family unity, which they do not, they have no basis to assert
16 any due process rights of individuals, and they have no cause of action under the APA or INA
17 to challenge the specific policies and practices at issue here. *Sure-Tan, Inc. v. NLRB*, 467 U.S.
18 883, 897 (1984) (third parties have “no judicially cognizable interest in procuring enforcement
19 of the immigration laws” affecting someone else); *Ctr. for Law & Educ. v. Dep’t of Educ.*, 396
20 F.3d 1152, 1157 (D.C. Cir. 2005) (APA zone of interests test requires plaintiff to show that
21 “the [actions] in question are *designed* to protect [or regulate] some . . . concrete interest of *his*
22 that is the ultimate basis of his standing”). The law is clear that detention and removal of aliens
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1 taken into federal custody is exclusively a federal function. *See Arizona v. United States*, 132
2 S. Ct. 2492, 2498 (2012); *cf. In re Tarble*, 80 U.S. 397, 407-08 (1871).

3 Although Plaintiffs have represented that the basis for their expedited discovery is the
4 need to “obtain and preserve evidence,” Dkt 15-1, as to their claims because of the risk that
5 such evidence may no longer be present if they must wait until normal discovery processes
6 begin, they now seek discovery far broader in scope than anything that can be justified on the
7 basis of an emergent need to obtain and preserve evidence. Defendants dispute that Plaintiffs
8 have met their high burden of demonstrating any “legitimate[] fear[] that information” concerning
9 any of the challenged practices in this case or the location of relevant individuals “faces imminent
10 destruction.” *Music Grp. Macao Commercial Offshore Ltd. v. John Does I-IX*, No. 14-CV-621
11 RSM, 2014 WL 11010724, at *2 (W.D. Wash. July 18, 2014). The United States is fully
12 complying with its preservation obligations in connection with this and other related
13 litigations, and whatever concerns Plaintiffs may have about spoliation is purely speculative,
14 and is generally of minimal relevance in litigation involving governmental entities. But even
15 assuming they had, the Plaintiffs’ envisioned expedited discovery is even more inappropriate
16 given their failure to “prioritize[]” any of their topics, Order at 9, or “narrowly tailor[]” them to
17 the circumstances this Court found to justify expedited discovery. *Music Grp.*, 2014 WL
18 11010724 at *2. As explained below, such broad discovery, unmoored from the professed
19 exigency, fails that standard, and more importantly “prejudice[s] the responding party”
20 significantly by interposing Plaintiffs in this case between the parties in *Ms. L.*, who are
21 actively engaged in compliance with a court order designed to reunite the parents and children
22 the Plaintiffs in this case profess to likewise seek to reunite. *Id.*

1 In addition, as this Court has noted, the topics for which Plaintiffs seek expedited
2 discovery “do not appear to have equal weight when it comes to the necessity for a swift
3 response in the discovery process.” Dkt 27 at 9. Although the Court ordered Plaintiffs to
4 prioritize those topics, *see id.*, they still have not shared with Defendants their proposed
5 prioritization of expedited-discovery topics. Instead, they have sent Defendants twelve
6 proposed Requests for Production, with multiple subparts to several requests, many of which
7 are new and broader than what they proposed in Appendix A, which they indicate are *all* a
8 priority, and with an identical proposed deadline of just one week. And while their proposed
9 requests appear to mostly mirror Appendix A, some are new and Plaintiffs have failed to
10 provide any discernible indication of priority within these requests. Without any of the
11 prioritization of discovery categories that this Court ordered, Defendants instead offer their
12 views on the appropriate prioritization:

13 A. Plaintiffs’ requests encompass several categories of information. The first is for
14 documents that have been provided to class counsel in the *Ms. L.* matter. If any expedited
15 discovery is to be granted, it should be limited to this information, although there is no
16 suggestion these documents are in any risk of being destroyed or moved and Defendants are
17 undertaking preservation efforts. In any event, the Plaintiffs should first be obligated to request
18 this information from the *Ms. L.* class counsel. Since *Ms. L.* class counsel is certified to
19 represent the class on a nationwide basis, and the information being provided to them is highly
20 sensitive personal identifying information about their class members and their children,
21 consent from the *Ms. L.* class counsel should be obtained by Plaintiffs here before that
22 information is provided to them. The Plaintiffs seemingly do not care about this concern.
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1 The Plaintiffs allege that they are acting in the interest of the individuals represented by
2 the *Ms. L.* class counsel and that plaintiff class’s their children. But it is not clear how they can
3 properly claim to represent those interests when class counsel has been appointed, on a
4 nationwide basis, by another court. The duties of class counsel include both “loyalty and
5 confidentiality” to all class members, *Andrews Farms v. Calcot, LTD.*, No. 07-cv-0464, 2010
6 WL 3341963, at *8 (E.D. Cal. Aug. 23, 2010), and “fiduciary duties,” *Gilmore v. California*,
7 No. 66-cv-45878, 2007 WL 2127843, at *1 (N.D. Cal. July 25, 2007), among others. These are
8 duties that the Plaintiffs’ counsel here categorically lack with respect to the *Ms. L.* parents and
9 children whose interests they ostensibly seek to represent. And there are sure to be a number of
10 conflicts presented by the Plaintiffs purporting to act on behalf of the certified class—for
11 example, the Plaintiff States have an obligation and duty to enforce their own state (or District)
12 laws, and enforcement of those laws may present conflicts between the Plaintiffs and their
13 purported actions on behalf of the class. Providing personal *Ms. L.* class-member information
14 to the Plaintiffs here runs headlong into those conflicts. Indeed, to take but one example, the
15 lead Plaintiffs’ Attorney General’s responsibility is to enforce the laws of Washington State,
16 not to represent individuals. The Washington Attorney General is thus not well-suited, nor
17 even authorized by statute to represent the interests of parents and children and to track down
18 parents and children for reunification. In fact, his office explicitly disclaims any authority to
19 represent the interests of “private citizens on personal legal matters,” *see What the Attorney*
20 *General’s Office DOES NOT do*, <https://www.atg.wa.gov/roles-office>, which reunification
21 with one’s child undoubtedly is, and would be unable as an ethical or legal matter to serve as
22 class counsel on behalf of the parents and children in *Ms. L.*, for whom that case’s class
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1 counsel has been working diligently to reunify in line with Judge Sabraw’s order. Defendants
2 believe similar limitations and conflicts would also be presented by the other State Plaintiffs.

3 The sensitive personal information concerning class members is protected by statute or
4 regulation. *See, e.g.*, 8 C.F.R. §§ 208.6(a), 1208.6(a) (prohibiting the federal government, in
5 multiple contexts, from disclosing records pertaining to aliens’ asylum applications, credible-
6 fear determinations, or reasonable-fear determinations); *see also Owino v. Holder*, 771 F.3d
7 527, 535–36, 539 (9th Cir. 2014) (per curiam) (noting how the federal government should not
8 breach an alien’s personal “right to confidentiality”). For example, the sensitive information at
9 issue here could tend to reveal whether individuals have claimed a credible fear of persecution
10 or applied for asylum—but this information is protected from disclosure by federal regulations.
11 *See id.*

12 In somewhat similar circumstances, immigration advocates and the federal government
13 strongly resisted a sanctions order that would have required the federal government provide a
14 “list [of Deferred Action for Childhood Arrival recipients that] ... should include all personal
15 identifiers and locators including names, addresses, “A” file numbers and all available contact
16 information.” *See Texas v. United States*, 2016 WL 3211803, at *12 (S.D. Tex. May 19,
17 2016). That information would have been held under seal, but be made available to “Plaintiff
18 State[s] [upon] a showing of good cause.” *Id.* The federal government then sought
19 mandamus relief from that order, explaining how “the production of sensitive personally
20 identifying information for approximately 50,000 individuals for the purpose of potential
21 further transmission to plaintiffs [States] would ... undermine the confidence of individuals in
22 the preservation of confidential information submitted to [the federal government] for specified
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1 purposes, and, if dissemination is permitted, expose these individuals to an irremediable
2 invasion of their privacy.” See *In re United States*, No. 16-40795, United States’ Petition for a
3 Writ of Mandamus, (5th Cir. June 3, 2016) Fifth Circuit Mandamus Petition, at 30,
4 [https://www.nilc.org/wp-content/uploads/2016/06/TX-v-US-Govt-Mandamus-Petition-2016-](https://www.nilc.org/wp-content/uploads/2016/06/TX-v-US-Govt-Mandamus-Petition-2016-06.pdf)
5 [06.pdf](https://www.nilc.org/wp-content/uploads/2016/06/TX-v-US-Govt-Mandamus-Petition-2016-06.pdf). As a result, the district court stayed, and then withdrew, its previous order requiring
6 that personally identifying information in DHS files be provided to the plaintiff States. See
7 *Texas v. United States*, No. 14-cv-254, Order, Dkt. 434 (S.D. Tex. Jan. 19, 2017) (concluding
8 that there was “no current need for the [federal government] to file with the Court the
9 personnel identifiers”).

10 It is also protected by a protective order entered into in *Ms. L*. The protective order in
11 that case, attached hereto as Exhibit B, specifies who may be provided with confidential,
12 protected material. Notably, the *Ms. L*. class counsel and the federal government agreed that
13 individuals and organizations who were designated for the purpose of facilitating reunification
14 may have access to the protected material. The Plaintiffs here have not been so designated, and
15 their efforts before this Court—including this expansive expedited discovery request in the
16 midst of the reunification efforts—appear to be aimed at complicating and slowing down that
17 process, rather than serving the people on whose behalf they purport to be acting.

18 Moreover, the information shared with class counsel in *Ms. L*. was created for the
19 *purpose* of complying with the preliminary injunction in that case—a function that is being
20 ably administered by Judge Sabraw. It is unclear what the Plaintiffs would be doing with the
21 information in this litigation—they have not sought to participate in the reunification efforts in
22 the Southern District of California. Indeed, if the Plaintiffs’ claims were valid, they would be
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1 subject to mandatory joinder in *Ms. L.* because the States “claim[] an interest relating to the
2 subject of the action and ... disposing of the action in the person's absence may ... as a practical
3 matter impair or impede the person’s ability to protect the interest” and would certainly “leave
4 an existing party”—the United States as well as the *Ms. L.* plaintiffs—“subject to a substantial
5 risk of incurring double, multiple, or otherwise inconsistent obligations because of the
6 interest.” Fed. R. Civ. P. 19(b)(1). Indeed, if they were truly interested in pursuing these claims
7 on the merits, it is unusual that they would pick a forum new to the issues, rather than a forum
8 (located in one of the Plaintiff States, no less) that has already carefully considered the issues
9 for a period of months, addressed the legal claims in denying in part a motion to dismiss,
10 certified a class of the people the Plaintiffs purport to represent, held that they are likely to
11 succeed on the merits of some of their claims, and is busy administering a comprehensive
12 remedy that the Plaintiffs claim to be seeking in this Court.

13 What is most outrageous about Plaintiffs’ expedited discovery requests is its timing—in
14 the midst of Judge Sabraw’s rapid management of the reunification process. If Plaintiffs were
15 truly interested in the reunification of families, they would let Judge Sabraw finish the job.
16 Instead, they propose that Defendants respond to their proposed discovery requests within *one*
17 *week*—a week in which some of the most important reunification work in *Ms. L.* will be taking
18 place. Information exchanges between the federal government and the *Ms. L.* class counsel
19 during that period will be critical to the determination of class membership, the reunification of
20 class members who were removed, and the handling class members recently reunified and in
21 detention with final orders of removal. Declaration of David W. Jennings at ¶¶ 7, 9–11.
22 Expedited discovery in this case on that time frame—conducted outside of the able supervision
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1 of Judge Sabraw—would work to detract from the virtually night and day work that the
2 agencies are doing, under the supervision of Judge Sabraw, to reunify families. The Plaintiffs
3 completely disregard this effort in seeking expansive discovery in the midst of this multi-
4 agency effort to implement Judge Sabraw’s order that provides relief to the group the States
5 purport to represent.

6 2. Under no circumstances should expedited discovery be granted that goes
7 beyond the information being provided in the *Ms. L.* class action.

8 Although Plaintiffs represent that they have attempted to narrow their requests by
9 asking for the information provided in *Ms. L.*, it is clear that they intend their responses to be
10 read to encompass far more information than what has been provided in *Ms. L.* Indeed, in
11 several instances their requests read “to the extent such documents are not already identified
12 and produced” where the first of their twelve requests seeks all the information provided in *Ms.*
13 *L.* Everything else is in addition to that. And contrary to the claim they need this real-time,
14 current information to avoid spoliation, Plaintiffs request information dating back to the
15 beginning of the year, in formats that the federal government does not maintain when
16 implementing Judge Sabraw’s orders in *Ms. L.* or administering the Unaccompanied Alien
17 Children program in the ordinary course. *See* Declaration of Jonathan White at ¶¶ 5–6.
18 *Moreover, Plaintiffs seek such information for parents and children who have already been*
19 *reunified.* Plaintiffs cannot possibly vindicate the interests of parents and children who have
20 already received the relief the parents sought in court—and if the parents were to seek
21 additional relief, it should come that request should come from the certified class, not Plaintiff
22 States. Requiring Defendants to provide customized reporting on parents, children, and
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1 reunifications to the Plaintiffs—especially for parents and children who have already been
2 reunified, let alone by month, facility, and state going back to January 1, 2018—would be
3 unduly burdensome to all agencies involved, is not needed on an expedited basis, and would
4 seriously impede the agencies’ ability to complete the remaining reunifications quickly. *See id.*
5 at ¶¶ 29–30; Jennings Declaration, at ¶ 23.

6 Given the time constraints implicit in any expedited discovery situation, and
7 particularly the instant situation where the important work of reunification is ongoing,
8 Defendants submit that the information already provided to class counsel in *Ms. L.* would be
9 the least burdensome information to produce to Plaintiffs. And, of course, any production
10 should be conditioned upon the entry of an appropriate protective order, but Defendants are
11 confident that one can be negotiated and entered into expeditiously. Indeed, it is the only
12 practical solution in the time frame Plaintiffs have proposed for expedited discovery. Most
13 importantly, the production of the information from *Ms. L.*, along with the production of the
14 blank forms presently used by the agencies for reunification, is the only expedited discovery
15 that can be produced without an adverse impact on the ongoing *Ms. L.* reunification and
16 compliance. And production should only happen with the consent and approval of *Ms. L.* class
17 counsel. Thus, Defendants request that the Court limit the entry of expedited discovery to this
18 material, upon consent of the *Ms. L.* class counsel.¹

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20 B. A second category of information the Plaintiffs seek includes both aggregated
21 and individualized information spanning each and every separated child and parent, including

22 ¹ Indeed, with respect to two related cases, including another class action, involving the children whose interests
23 the States purport to represent, *N.T.C. v. ICE*, No. 18-cv-6428, 2018 WL 3472544 (S.D.N.Y. July 19, 2018),
24 *E.S.R.B. v. Sessions*, No. 18-cv-6654, slip op. (S.D.N.Y. July 24, 2018), both judges, with the parties’ consent
consulted with Judge Sabraw in order to ensure coordination in light of these issues. *See* Dkt. 35 at 2-3.

1 the total number, location, conditions of release, DHS' reunification plan, and the current
2 location of every separated parent and child, dating back to the beginning of the year. Again,
3 there no suggestion, and no showing has been made, that such information is at any risk of
4 being destroyed or moved, and that is especially so here where litigation holds have been
5 issued to relevant agencies concerning those very documents. Moreover, much of that
6 information duplicates the information provided in *Ms. L.*, and requiring a separate production
7 of these categories of material would require extensive work by the same information experts
8 and personnel who are critical to the *Ms. L.* reporting and reunification efforts.

9 Such discovery presents an overwhelming burden because, to the extent it goes beyond
10 the information being produced in *Ms. L.*, it can only be done with a manual search of records.
11 HHS has estimated that it would take more than 2,000 hours to generate the kind of
12 information sought by Plaintiffs. *See* White Declaration, at ¶ 16. The necessity of manual
13 searches requiring many thousands of man hours to respond to the proposed discovery is a
14 reality for each of the agencies at issue. For example, ICE cannot run a search for “conditions
15 of release” for a category of individuals. Therefore, to provide such information would require
16 a painstaking, individual, case by case review. *See* Jennings Declaration, at ¶¶ 11, 15.
17 Furthermore, because the information is not kept in the kind of format sought by Plaintiffs, it
18 would require the agencies to create a spreadsheet or database to produce this information for
19 hundreds of children and families, adding to the burdensome nature of the request. *See id.* at ¶¶
20 12–13.

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22 In addition, some of the information sought is simply not available to the agencies. For
23 example, ICE may not know the current location of aliens who have been released. *See id.* at
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1 ¶ 15. To the extent ICE has any information, it may simply be the last known address, and
2 would again involve manual records review of individual files to produce this information. *Id.*
3 And all of HHS’s resources, including their “surge” capacity, have been deployed to devote to
4 ensuring compliance in the *Ms. L.* case. Simply put “HHS does not have additional ‘surge’
5 resources or personnel available to deploy in order to fulfill expedited discovery requests,” to
6 the extent it is not what has already been generated by *Ms. L.* See White Declaration at ¶ 13.
7 Thus, to require HHS and ORR to provide information pursuant to such request would be
8 extremely burdensome and counterproductive to the reunification of children and parents as is
9 mandated by *Ms. L.* See *id.*; see also *Ms. L.*, Transcript of Proceedings, at 35 (S.D. Cal. July
10 24, 2018) (noting how HHS’s efforts to accomplish reunification with their “surge” personnel
11 thus far have been a “remarkable achievement”).

12 The third category of information pertains to documents, directives, and forms.
13 Specifically, Plaintiffs request directives regarding the “treatment” of separated children,
14 documents regarding the “justification” for vetting sponsors, prerequisites to reunification, the
15 rollout of family separation, the justification for the use of a certain form, hearings on parental
16 fitness, the alleged refusal to permit asylum seekers to present themselves at ports of entry,
17 family detention, and the DHS “Northern Border Strategy.” There is no need for expedited
18 discovery on these matters. This information presents no risk that “the evidence sought may be
19 moved or become difficult to track as time goes on.” Order, Dkt. 27 at 5. Policies, directives,
20 forms, and other documents, even if they may change, are not at risk of being destroyed or
21 moved, and that is especially so here where the agencies are undertaking efforts to preserve
22 those very documents. Importantly, to divert agency resources towards burdensome discovery
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1 of non-exigent matters at this time would seriously impair the critical work being done at
2 multiple agencies to accomplish the relief that Plaintiffs allegedly seek—to reunify families.
3 As we have explained, it makes no sense that if the goal of this suit is the reunification of
4 families, that Plaintiffs reject pursuing their claims and seeking discovery before the *Ms. L.*
5 court, which could efficiently manage both the claims in this lawsuit as well as ensure these
6 claims and discovery requests would not impair the relief being granted and implemented to
7 the certified class in *Ms. L.*

8
9 **C. Proposed Agenda for Initial Status Conference:**

10 **Plaintiffs' Position**

11 A. The Plaintiff States propose that the initial status conference address the
12 States' proposed expedited discovery and the timing for responses to same, the
13 States' request for the additional orders noted below, and the schedule for status
14 conferences going forward.

15 B. The States seek an order permitting them to serve their initial discovery
16 on July 27, 2018, following the status conference and in compliance with any
17 orders issued by the Court during the conference.

18 C. The States further request that the Court enter an order allowing for
19 telephonic hearing attendance by Plaintiff States other than Washington; provided
20 that the State of Washington will attend all hearings in person and is authorized to
21 act on behalf of the Plaintiff States at such hearings.
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Defendants’ Position

1
2 Defendants propose addressing the following items at the July 27, 2018 status
3 conference:

- 4 • Developments in *Ms. L.* concerning compliance with that court’s injunction, ongoing
5 efforts to reunify children with parents, and overlap between that case and this one.
- 6 • The potential impact of parallel proceedings and discovery in this case on ongoing
7 efforts to reunify families in *Ms. L.*
- 8 • The impact on *Ms. L.* and this case of the recent decisions by two district courts in
9 New York to transfer a putative class action and a related case concerning children
10 seeking reunification with their parents to the Southern District of California. *See*
11 *N.T.C. v. ICE*, No. 18-cv-6428, 2018 WL 3472544 (S.D.N.Y. July 19, 2018) (Dkt.
12 33-1) and *E.S.R.B. v. Sessions*, No. 18-cv-6654, slip op. (S.D.N.Y. July 24, 2018).
- 13 • An expedited briefing schedule for the Defendants’ impending Rule 12 motion to
14 dismiss.
- 15 • The Defendants’ pending transfer motion.
- 16 • The Defendants’ request to stay this litigation to allow for *Ms. L.* compliance efforts
17 to be prioritized.
- 18 • Scheduling of subsequent status conferences in this case.
- 19 • Coordination between this Court and Judge Sabraw in the Southern District of
20 California in the event parallel discovery proceeds. As Judges Furman and Rakoff did
21 with the parties consent in *N.T.C.* and *E.S.R.B.*, Defendants believe it may be
22 worthwhile for this Court to confer with Judge Sabraw concerning any overlap with
23

1 the *Ms. L.* litigation and ongoing compliance with the injunction in that case and
2 would not object to that occurring. Defendants have conferred with Plaintiffs'
3 counsel, who indicate they "have no objection to the Court managing its caseload and
4 docket as it deems appropriate" in this case.

5 DATED this 26th day of July, 2018.

6
7 /s/ Laura K. Clinton
8 LAURA K. CLINTON, WSBA #29846
9 Assistant Attorney General
10 NOAH G. PURCELL, WSBA #43492
11 Solicitor General
12 COLLEEN M. MELODY, WSBA #42275
13 Civil Rights Division Chief
14 REBECCA GLASGOW, WSBA #32886
15 Deputy Solicitor General
16 MEGAN D. LIN, WSBA #53716
17 Assistant Attorney General
18 Attorneys for Plaintiff State of Washington

19 /s/ Joshua Press
20 CHAD READLER
21 Acting Assistant Attorney General
22 AUGUST E. FLENTJE
23 Special Counsel to the Assistant Attorney
24 General
WILLIAM C. PEACHEY
Director
EREZ REUVENI
Assistant Director
JOSHUA S. PRESS
NICOLE MURLEY
Trial Attorneys
Attorneys for Defendants

Exhibit A

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

PLAINTIFF STATES' FIRST SET OF
DISCOVERY REQUESTS FOR
EXPEDITED DISCOVERY

TO: THE UNITED STATES OF AMERICA; DONALD TRUMP, in his official capacity as President of the United States of America; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. CUSTOMS AND BORDER PROTECTION; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; OFFICE OF REFUGEE RESETTLEMENT; KIRSTJEN NIELSEN, in her official capacity as Secretary of the U.S. Department of Homeland Security; THOMAS HOMAN, in his

1 official capacity as Acting Director of U.S. Immigration and Customs
2 Enforcement; KEVIN K. MCALEENAN, in his official capacity as
3 Commissioner of U.S. Customs and Border Protection; ALEX AZAR, in his
4 official capacity as Secretary of U.S. Department of Health and Human Services;
5 SCOTT LLOYD, in his official capacity as Director of Office of Refugee
6 Resettlement; and JEFFERSON BEAUREGARD SESSIONS III, in his official
7 capacity as the Attorney General of the United States, Defendants;

8 AND TO: JOSHUA S. PRESS, Attorney for Defendants.

9 **I. INSTRUCTIONS**

10 Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs hereby request that
11 Defendants produce the following documents and electronically stored information for
12 inspection and copying within the time ordered by the Court to the office of Laura K. Clinton,
13 Assistant Attorney General, Office of the Attorney General, 800 Fifth Avenue, Suite 2000,
14 Seattle, Washington 98104-3811, or at such other place as the parties shall mutually agree.
15 Electronic documents may be produced in PDF format or as a printed record.

16 For each document that you assert is privileged or otherwise excludable from discovery,
17 please provide the following information: the author(s), the recipient(s), all copy recipients, the
18 date, the type of document (memorandum, e-mail, letter, chart, photograph, etc.), a description
19 of the document, the privilege being claimed, and the grounds for the privilege claim.

20 If any request for production seeks information in any document formerly in your
21 possession, custody, or control that has been discarded, misplaced, lost, destroyed, or otherwise
22 placed outside your custody or control, identify the document and describe its contents in detail
23 and state when the document was discarded, misplaced, lost, destroyed, or otherwise placed
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1 outside your custody or control. If the document was destroyed, identify each person with
2 knowledge of its destruction, the person requesting or performing the destruction, the reasons
3 for its destruction, and each document that refers or relates to either the existence or destruction
4 of the document. For each document that was discarded, misplaced, lost, or otherwise placed
5 outside your custody or control, explain all circumstances in relation to the loss of the document
6 and identify each person with knowledge regarding those circumstances.

7 If you object to producing documents in response to any request for production, state
8 your objection and all factual and legal bases for the objection.

9 These discovery requests are continuing in nature. If you discover additional or different
10 information that is responsive to these discovery requests, you are required to provide
11 supplemental responses in accordance with Federal Rules of Civil Procedure 26(e). If you do not
12 provide the required supplemental information, the Plaintiffs may move at the time of trial to
13 exclude from evidence any requested information and documents that were not timely furnished.

14 The singular shall include the plural and vice versa, and the conjunctive shall include the
15 disjunctive and vice versa. Wherever used, references to the masculine, feminine, or neuter
16 gender shall include the neuter, feminine, and masculine genders, as the context demands.

17 **II. DEFINITIONS**

18 The following definitions apply to following discovery requests:

19 The term “document” encompasses the broadest possible definition permitted under the
20 Rules and specifically includes all written or recorded material of any kind or character in your
21 possession, custody, or control or within your knowledge, including without limitation
22 statements, letters, correspondence, telegrams, memoranda, notes, records, reports, studies,
23 interoffice communications, calendar and diary entries, microfilm, bulletins, circulars,
24

1 pamphlets, messages, invoices, maps, charts, tabulations, summaries or abstracts, video or audio
2 recordings, work sheets, surveys, graphs, statistics, tables, photographs, rules, regulations,
3 opinions, orders, interpretations, guidelines, electronic mail, any data or information stored or
4 saved on any computer hard disk, floppy disk, tape, or other medium, any computer print-outs,
5 computer software or code, whether in machine or human readable form on any medium, and all
6 other documentary material, including non-identical copies (whether different from the original
7 because of any alterations, notes, comments, or other material contained thereon or attached
8 thereto or otherwise and whether a draft or final version).

9 The term “communication” means any transmission, disclosure or exchange of
10 information or opinion, however made.

11 The term “concerning or relating to” to means referring to, evidencing, containing,
12 discussing, mentioning, describing, reflecting, summarizing, constituting, identifying,
13 memorializing, referring or pertaining to, studying, commenting or reporting on, or analyzing,
14 in whole or in part

15 A “person” means any individual, corporation, partnership, association, or any other
16 entity of any kind.

17 “You” and “your” mean any Defendants and any person acting or purporting to act on
18 behalf of any of them, including without limitation all present and former employees, agents,
19 representatives, personnel, attorneys, accountants, consultants, experts, investigators, or other
20 persons.

21 “Separated Child” or “Separated Children” mean any child under the age of 18 who
22 entered the United States along the U.S.-Mexico border at or between designated ports of entry
23 with a parent or guardian, and who was separated from that parent or adult guardian by the
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1 Department of Homeland Security (DHS) or any other Defendant without a determination that
2 the parent or adult guardian is unfit or presents a danger to the child.

3 “Separated Parent” means any parent or guardian who entered the United States along
4 the U.S.-Mexico border at or between designated ports of entry with a child under the age of 18,
5 and who was separated from that child by DHS or any other Defendants without a determination
6 that the parent or adult guardian is unfit or presents a danger to the child.

7 The “*Ms. L Case*” refers the matter *Ms. L., et al. v. U.S. Immigration and Customs*
8 *Enforcement, et al.*, Case No. 18-cv-0428 DMS (MDD) (S.D. Cal.).

9 III. REQUESTS FOR PRODUCTION

10 **REQUEST FOR PRODUCTION NO. 1:** All documents provided to Plaintiffs’ counsel
11 or the court in the *Ms. L Case* concerning the separation of families and Defendants’ attempts to
12 reunite them. For future productions of materials in the *Ms. L Case*, please produce such materials
13 concurrently with, or within two business days after, production in *Ms. L*.

14
15 **REQUEST FOR PRODUCTION NO. 2:** To the extent such documents are not already
16 included and produced in response to Request for Production No. 1, documents sufficient to
17 identify:

- 18
- 19 a) The number and location of Separated Children placed by the Office of Refugee
20 Resettlement (ORR) - or any other Defendant - in each Plaintiff State from
January 1, 2018 to the present.
 - 21 b) The number and location of Separated Parents who are or were detained in each
22 Plaintiff State from January 1, 2018 to the present, by month and facility.
 - 23 c) The number and location of Separated Parents in each Plaintiff State released
24 from DHS custody from January 1, 2018 to the present, including the facility
from which they were released, the conditions of release, and current location.

- 1 d) As to every Separated Parent who is present in any Plaintiff State (or who was
2 present in a Plaintiff State on the day this lawsuit was filed) the location of that
3 Parent’s children and DHS’ plan to reunify the Separated Parent with the child.
4 e) As to every Separated Child who is present in any Plaintiff State (or who was
5 present in a Plaintiff State on the day this lawsuit was filed), the current placement
6 and location of every such child (e.g., living with a sponsor in Seattle,
7 Washington), the location of that Separated Child’s Separated Parent(s), and
8 DHS’ plan to reunify the Separated Child with the Separated Parent(s).

9 **REQUEST FOR PRODUCTION NO. 3:** To the extent such documents are not already
10 included and produced in response to RFP No. 1, documents regarding Defendants’ efforts to
11 reunify families separated at the Southwestern border, including

- 12 a) Directives regarding the treatment of Separated Children as Unaccompanied Minors
13 as a matter of policy, and application of ORR’s Unaccompanied Minor reunification
14 policies to separated families;
15 b) Documents concerning the justification and implementation directives for vetting
16 “sponsors” of separated parents and/or children, including treating parents as
17 sponsors unrelated to their children;
18 c) Documents concerning financial and procedural prerequisites to reunification
19 including the justification and implementation directives for requiring Separated
20 Parents to comply with any financial or administrative requirements prior to
21 reunifying them with their children, including paying for costs of reunification or
22 submitting to fingerprinting;
23 d) Documents sufficient to identify the number of Separated Parents who have been
24 deported by Defendants without their children since January 1, 2018.

19 **REQUEST FOR PRODUCTION NO. 4:** To the extent such documents are not already
20 included and produced in response to RFP No. 1, documents regarding the rollout and
21 implementation of the family separation policy at the Southwestern border, including documents
22 concerning the justification for such policy and directives to those who were charged with
23 implementing, overseeing, and tracking the individuals affected by the policy.

1
2 **REQUEST FOR PRODUCTION NO. 5:** To the extent such documents are not already
3 included and produced in response to RFP No. 1, documents concerning the justification for and
4 implementation of U.S. Immigration and Customs Enforcement’s “Separated Parent’s Removal
5 Form,” Dkt. 27-1, Exhibit W, including the number of Separated Parents provided with such
6 form, the number of Separated Parents who signed such form, and the number of Separated
7 Parents who were deported after signing such form.

8
9 **REQUEST FOR PRODUCTION NO. 6:** To the extent such documents are not already
10 included and produced in response to RFP No. 1, documents concerning whether hearings on
11 parental fitness were provided to Separated Parents prior to Defendants separating them from their
12 children.

13
14 **REQUEST FOR PRODUCTION NO. 7:** To the extent such documents are not already
15 included and produced in response to RFP No. 1, documents sufficient to ascertain the number of
16 Separated Parents against whom an allegation of unfitness has been made, the number of such
17 Parents found to be unfit after judicial hearing, the number of child trafficking prosecutions or other
18 felony criminal charges brought against such parents in 2018, and the number of such prosecutions
19 that resulted in conviction.

20
21
22 **REQUEST FOR PRODUCTION NO. 8:** Documents reflecting Defendants’ knowledge
23 of the practice of refusing to permit persons who seek asylum to present themselves at valid ports
24 of entry along the U.S.-Mexico border, including discussion of “metering”, numerical or space

1 limits on asylum claims, administrative or other limits on asylum claim processing, or requiring
2 asylum seekers to return to ports of entry at a later day or time, including any directives to
3 Defendants' employees at the Southwestern border concerning same.

4
5 **REQUEST FOR PRODUCTION NO. 9:** Documents concerning Defendants' pilot
6 program separating families in the El Paso sector of the U.S.-Mexico border was alleged in
7 paragraphs 45- 46 and 120 of the Complaint (Dkt. 1), including directives to Defendant
8 employees charged with implementing and monitoring such program.

9
10 **REQUEST FOR PRODUCTION NO. 10:** Documents concerning the implementation
11 of a family detention policy, including information regarding potential sites within the Plaintiff
12 States for family detention centers and any proposed or enacted regulatory changes related to
13 family detention.

14
15 **REQUEST FOR PRODUCTION NO. 11:** Documents concerning implementation of
16 Defendants' "Northern Border Strategy" as alleged in paragraph 136 of the Complaint (Dkt. 1).

17
18 **REQUEST FOR PRODUCTION NO. 12:** Documents, including medical studies,
19 concerning any negative effects on psychological, emotional, and physical health, that family
20 separation might have on Separated Children or Separated Parents.
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DATED this day of July, 2018.

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NOAH G. PURCELL, WSBA #43492
Solicitor General
COLLEEN M. MELODY, WSBA #42275
Civil Rights Division Chief
LAURA K. CLINTON, WSBA #29846
MEGAN D. LIN, WSBA #53716
Assistant Attorneys General
Attorneys for Plaintiff State of Washington

CERTIFICATION

The undersigned attorney certifies that he/she has read each response and objection to these discovery requests, and that to the best of his/her knowledge, information, and belief, formed after a reasonable inquiry, each is: (1) consistent with the Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

DATED this ____ day of _____, 2018

ATTORNEY NAME, WSBA #
Attorneys for Plaintiffs

VERIFICATION

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STATE OF WASHINGTON)
) ss.
County of _____)

I, _____, being first duly sworn, upon oath, state as follows:

That I am a Defendant authorized to sign these Answers and Responses to the Plaintiffs' First Set of Discovery Requests for Expedited Discovery; that I have read the foregoing Interrogatories and Requests for Production and the Answers and Responses thereto, know the contents thereof, and swear that the foregoing are true and correct.

DATED this ____ day of _____, 2018.

By: _____
Defendant

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2018.

NOTARY SIGNATURE

NOTARY PRINTED NAME

Notary Public

State of Washington

My Commission Expires: _____

Exhibit B

1 CHAD A. READLER
 2 Acting Assistant Attorney General
 3 WILLIAM C. PEACHEY
 4 Director
 5 WILLIAM C. SILVIS
 6 Assistant Director
 7 SARAH B. FABIAN
 8 Senior Litigation Counsel
 9 NICOLE N. MURLEY
 10 Trial Attorney
 11 U.S. Department of Justice
 12 Office of Immigration Litigation
 13 District Court Section
 14 Box 868, Ben Franklin Station
 15 Washington, DC 20442
 16 Telephone: (202) 616-047
 17 Fax: (202) 616-8962
 18 *Attorneys for Federal Respondents- Defendants*

ADAM L. BRAVERMAN
 Acting United States Attorney
 SAMUEL W. BETTWY
 Assistant U.S. Attorney
 California Bar No. 94918
 CAROLINE J. PRIME
 Assistant U.S. Attorney
 California Bar No. 220000
 Assistant U.S. Attorney
 Office of the U.S. Attorney
 880 Front Street, Room 6293
 San Diego, CA 92101-8893

14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 MS. L., et al.,)
 17)
 18 Plaintiffs/Petitioners) Case No.: 3:18-cv-00428-DMS
 19)
 20 v.)
 21)
 22 U.S. IMMIGRATION AND)
 23 CUSTOMS ENFORCEMENT, et al.,)
 24)
 25 Respondents/Defendants.)
 26)
 27)
 28)

24 **STIPULATION AND [PROPOSED] PROTECTIVE ORDER GOVERNING**
 25 **THE HANDLING OF CONFIDENTIAL MATERIAL**

1 I. Plaintiffs and Defendants (collective, the “Parties”) in the above
2 captioned action *Ms. L., et al., v. U.S. Immigration and Customs Enforcement, et*
3 *al.*, Case No. 3:18-cv-00428-DMS (“Litigation” or “Action”) recognize that
4 information about putative or confirmed class members and their children
5 exchanged by the Parties in the Litigation for the purpose of facilitating compliance
6 with the Court’s preliminary injunction order may include private information
7 related to individuals in the custody and care of the United States Government and
8 that such materials may reasonably, in good faith, be confidential and protected
9 from disclosure to the public or to one or more of the Parties under Rule 26(c) of
10 the Federal Rules of Civil Procedure.

11
12 II. The Parties desire to enter into this stipulation to facilitate the
13 exchange of documents and information while protecting against the unauthorized
14 disclosure of confidential documents and information.

15
16 IV. The Parties believe good cause exists for approving the stipulation
17 because it seeks to protect against injury caused by the dissemination of protected
18 materials. The materials to be protected include personally identifiable information,
19 the disclosure of which could be prohibited by the Privacy Act or other law.
20 However, the Privacy Act provides, as an exception, that such materials may be
21 released “pursuant to the order of a court of competent jurisdiction.” 5 U.S.C. §
22 552a(b)(11). An order of this Court, therefore, would provide a basis for release of
23 the requested materials pursuant to the Privacy Act and Fed. R. Civ. P. 26(c). The
24 parties also seek to protect other personal information regarding putative or
25 confirmed class members or their children.

26 **Stipulation**

27 NOW, THEREFORE, the Parties stipulate and agree, through their
28 undersigned counsel, to the following terms and conditions to govern the

1 production of information that the producing party reasonably and in good faith
2 deems confidential, and request that the Court enter a protective order (hereafter
3 “Protective Order” or “Order”) consistent with the terms of this stipulation.

4 **1. Scope.** The following terms govern with respect to class information
5 exchanged by the Parties in the Litigation for the purpose of facilitating compliance
6 with the Court’s preliminary injunction order (collectively “Protected Material”).

7 **2. Protected Material.** The categories of Protected Material include:

8 **a.** Information, documents or tangible things protected by the
9 Privacy Act, 5 U.S.C. § 552a, *et seq.*, or information that would be covered by the
10 Privacy Act if the subject of the information had been a U.S. citizen or a person
11 lawfully admitted for permanent residence.

12 **b.** Personally Identifying Information (PII), Protected Health
13 Information (PHI), and any information that is protected or restricted from
14 disclosure by statute or regulation.

15 **c.** All other protected documents, information or tangible things
16 not identified above that the parties agree in writing or the Court orders qualify for
17 protection under Federal Rule of Civil Procedure 26(c).

18 **d.** Defendants do not waive their right to assert other or further
19 privileges over the information and redact such information. For instance,
20 Defendants may withhold or redact information that is protected by statute for
21 which no exceptions permitting disclosure apply or exist or information that is
22 subject to a claim of privilege or exemption from disclosure such as withholding
23 classified national security information the Deliberative Process Privilege, Law
24 Enforcement Privilege, Attorney-Client Privilege or Attorney Work Product.

25 **3. Designations.** It shall be the duty of the party producing the Protected
26 Material (“Producing Party”) to give notice of material that is to be considered
27 covered by this Protective Order in the manner set forth in paragraphs 5, 8 and 11
28 below. Protected Material may be designated as “PROTECTED MATERIAL” if

1 the Producing Party believes in good faith that such material is covered by this
2 Protective Order. A Party may designate material that it obtained from a Third
3 Party pursuant to this Protective Order, if it believes in good faith that it qualifies as
4 Protected Material under this Order.

5 **4. Duties.** The duty of the Party or Parties receiving the Protected
6 Material (“Receiving Party”) and of all other persons bound by this Protective
7 Order to maintain the confidentiality of Protected Material so designated shall
8 commence with such notice. Protected Material shall be designated by the
9 Producing Party, subject to the provisions of this Order, with the designation of
10 “PROTECTED MATERIAL.” No person subject to this Protective Order may
11 disclose, in public or private, any Protected Material designated by a Party as
12 “PROTECTED MATERIAL,” except as provided for in this Protective Order or as
13 further ordered by the Court.

14 **5. Method Of Designation.** Each page of any material the Producing
15 Party wishes to designate as Protected Material must be labeled PROTECTED
16 MATERIAL, at the time the material, or a copy thereof, is provided to the
17 Receiving Party. In the case of material contained in or on media other than paper,
18 the Producing Party shall affix such a label to the material or use its best efforts to
19 identify the material as Protected Material and affix the applicable designation.

20 **6. Access To Protected Material.** Only the following persons shall have
21 access to or retain material designated as PROTECTED MATERIAL pursuant to
22 this Order:

- 23 **a.** The Court and its official personnel;
- 24 **b.** Counsel for any Party and any of Defendants’ personnel with
25 whom Counsel for Defendants determines it is appropriate to share such
26 information for the purpose of this litigation. For the purposes of this Protective
27 Order, “Counsel” means the attorneys representing the Parties for this Action,
28

1 including paralegals, office clerks, secretaries, and other support staff assisting
2 those attorneys, working on the Action;

3 **c.** For information designated as PROTECTED MATERIAL
4 relating to an individual member of the class, to the individual class member and
5 counsel who represent individual class members, or any prospective counsel that is
6 evaluating whether to take on the representation of a class member. The individual
7 class member and counsel shall only be provided PROTECTED MATERIAL
8 relating to the individual class member, and the individual may not be provided any
9 information pertaining to other class members. Prospective counsel must execute
10 Exhibit A, the Acknowledgment Regarding the Order before receiving this limited
11 PROTECTED MATERIAL;

12 **d.** Outside experts, consultants retained by the Receiving Party's
13 Counsel to assist in this Litigation (and the experts' or consultants' staff whose
14 duties and responsibilities require access to such materials);

15 **e.** Court reporters and translators;

16 **f.** Outside litigation support personnel retained by Counsel to
17 assist in the preparation and/or litigation of the Action, including contract attorneys
18 or outside copying service vendors or electronic document management vendors;

19 **g.** Any person not otherwise covered by subparagraph (a), (b), (c),
20 or (d) who was involved in the preparation of such material or who received or
21 reviewed such material for purposes other than this Action or who has been alleged
22 to have received or reviewed such material for purposes other than this Action;

23 **h.** Witnesses at deposition not otherwise covered by subparagraphs
24 (a), (b), (c) or (d);

25 **i.** Persons whom the Producing Party agrees in writing or on the
26 record at a deposition may be shown PROTECTED MATERIAL.

27 **j.** Any individuals or persons who Class Counsel designates for
28 the purpose of facilitating the reunification of Class Members and their children,

1 including (but not limited to) nonprofit organizations, lawyers, faith-based groups,
2 shelters, or any other organization or individuals who may be able to assist in the
3 reunification process. Given the urgency of the deadlines in the Court's preliminary
4 injunction order, the individuals or persons described in this paragraph may receive
5 a limited set of PROTECTED MATERIAL as follows prior to executing Exhibit A,
6 the Acknowledgment, as long as the information is treated as protected under this
7 Order, and an Acknowledgment is signed within a reasonable time thereafter.
8 Information which may be shared for the purpose of facilitating the reunification of
9 Class Members and their children includes Class Members' names and the name(s)
10 of the class member's child(ren); Alien Number for the Class Member and his or
11 her child(ren); detention location or other location information regarding the Class
12 Member and his or her child(ren). The individuals or persons described in this
13 paragraph may receive any additional PROTECTED MATERIAL necessary to
14 assist in facilitating reunification related to the class member(s) they are serving or
15 being consulted to serve after signing the Acknowledgment. The individual or
16 organization may not receive information about any other class members.

17 **7. Agreement By Persons Accessing Protected Materials.** All persons
18 identified in paragraph 6 (d), (e), (f), (g), (h) (i), and (j) who in the course of the
19 case may be given access to Protected Material shall be required to read this
20 Protective Order and agree, in writing, to be bound by this Protective Order by
21 executing an acknowledgment in the form of Exhibit A that is annexed to this
22 Protective Order. All such acknowledgments shall be maintained in the files of the
23 counsel allowing access by such person to the Protected Material.

24 **8. Treatment Of Protected Material During Inspection Of**
25 **Documents.** It is contemplated that a Party might make available certain of its files
26 for inspection by other Parties, which files may contain protected material as well
27 as non-protected material, and that following such inspection, the inspecting party
28 will designate documents to be copied and the copies will be furnished or produced

1 to it. All documents and their contents made available for such inspection shall be
2 treated as PROTECTED MATERIAL until the Party allowing inspection has had a
3 reasonable opportunity, not to exceed twenty one (21) calendar days absent an
4 agreement by the parties, to designate and mark those documents which were
5 copied as PROTECTED MATERIAL.

6 9. **Copies, Summarizations, Extracts Protected.** Protected Material
7 designated under this Order shall include, without limitation: (a) all copies, extracts,
8 and complete or partial summaries prepared from such documents, things, or
9 information so designated; (b) portions of deposition transcripts and exhibits to
10 deposition transcripts that contain, summarize, or reflect the content of any such
11 documents, things, or information; and (c) portions of briefs, memoranda, or any
12 other writings filed with the Court and exhibits thereto that contain, summarize, or
13 reflect the content of any such documents, things, or information. The Parties agree
14 that information regarding the aggregated numbers for any category of individuals
15 contained in the chart may be excluded from this paragraph. Moreover, a Party may
16 make a request to the producing Party that certain material contained in such
17 copies, extracts, and complete or partial summaries not be treated as PROTECTED
18 MATERIAL. The Parties will meet and confer in good faith within five days of any
19 such request to resolve the request.

20 10. **Pleadings And Briefs Containing Protected Material.** Before any
21 materials produced in discovery, answers to interrogatories, responses to requests
22 for admissions, deposition transcripts, or other documents which are designated as
23 confidential information are filed with the Court for any purpose, the party seeking
24 to file such material must seek permission of the Court to file the material under
25 seal, unless the Parties agree that the documents can be redacted to remove the
26 Protected Material. The receiving party shall meet and confer with the producing
27 party regarding any proposed redactions before seeking leave from the Court, and
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1 the producing party shall not unreasonably withhold its consent to the filing of a
2 redacted copy of the Protected Material.

3 **11. Court Hearings And Other Proceedings.** Nothing contained in this
4 Protective Order shall be construed to prejudice any Party’s right to use before the
5 Court any Protected Material. Before doing so, however, and to the extent not
6 otherwise authorized to be so used hereunder, the Party intending to use Protected
7 Material shall so inform the Court and the Producing Party, so that any Party or
8 Third Party may apply to the Court for appropriate protection, including clearing
9 the hearing room or courtroom of persons not entitled to receive Protected Material
10 pursuant to paragraph 6.

11 **12. Testimony At Pretrial Court Hearings And Other Proceedings.**
12 All testimony elicited during hearings and other proceedings that counsel for a
13 Party or Third Party indicated on the record may be subject to the protections of this
14 Order shall be deemed PROTECTED MATERIAL until the expiration of twenty
15 one (21) calendar days after delivery of a copy of the transcript of the testimony by
16 the court reporter to counsel who requested a copy of the transcript. Within the
17 twenty one (21) calendar day period following such mailing of the transcript, any
18 Party may move to seal the transcript under LRCiv 79-5, designating all or any
19 portion of the testimony as PROTECTED MATERIAL. Upon being informed that
20 certain portions of a transcript are designated as PROTECTED MATERIAL, each
21 Party must have each copy in their custody, possession or control immediately
22 marked with the appropriate designation at the appropriate pages. Such designation
23 must remain until the Court rules on the motion to seal.

24 **13. This Order Only Applies To The Exchange of Information About**
25 **Putative or Confirmed Class Members and Their Children For The Purpose**
26 **Of Facilitating Compliance With The Court’s Preliminary Injunction Order.**
27 Nothing contained in this Order shall restrict or limit any Party’s right to present
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1 Protected Material to the Court during a trial in the Action. The use of Protected
2 Material at trial shall be governed by the pretrial order.

3 14. **This Order Does Not Apply To Non-Private Information.** The
4 restrictions set forth in this Protective Order shall not apply to documents, things, or
5 information that: (a) have been publicly disclosed by either Party; or (b) have been
6 independently obtained by the Receiving Party through lawful means. If the
7 Producing Party challenges the Receiving Party's invocation of this provision, then
8 the Receiving Party shall provide written documentation showing the material falls
9 within categories of non-private information referenced in this provision. This
10 paragraph does not purport to waive or in any other way limit any protection that
11 exists under law, including the Privacy Act, 5 U.S.C. § 552a, *et seq.*

12 15. **Challenge To Designations.** If a Party may objects to a designation
13 of the materials as Protected Material on the ground that such protection is not
14 warranted under controlling law, the following procedure shall be used: The Party
15 objecting to the designation of Protected Material must notify, in writing, counsel
16 for the other Party of the objected-to materials and the grounds for the objection.
17 The writing shall be by email to all counsel for the other Party, followed by a hard
18 copy sent next business day courier. The objecting Party shall request to meet and
19 confer with the other Party prior to submitting the dispute to the Court for a ruling.
20 If the dispute is not resolved consensually between the parties within ten (10)
21 business days of receipt of such a notice of objections, the objecting party may
22 move the Court for a ruling on the objection. The materials at issue must be treated
23 as Protected Material, until the Court has ruled on the objection or the matter has
24 been otherwise resolved.

25 16. **No Waiver By Failure To Challenge Designation.** For purposes of
26 the Action or any other action, no Party concedes that any material designated as
27 PROTECTED MATERIAL does in fact contain or reflect Protected Material. A
28 Party shall not be obligated to challenge the propriety of the designation of

1 Protected Material at the time made, and failure to do so shall not preclude a
2 subsequent challenge.

3 **17. Inadvertent Disclosure Of Protected Material.** The failure by a
4 Producing Party to designate specific documents or materials as Protected Material
5 shall not, by itself, be deemed a waiver in whole or in part of a claim of
6 confidentiality as to such documents or materials. Upon written notice to the
7 Receiving Party of such failure to designate, or of incorrect designation, the
8 Receiving Party shall cooperate to retrieve disseminated copies, and restore the
9 confidentiality of the inadvertently disclosed information beyond those persons
10 authorized to review such information pursuant to paragraph 6, and shall thereafter
11 take reasonable steps to ensure that the Protected Material is treated in accordance
12 with the designation. No person or Party shall incur any liability under this
13 Protective Order with respect to disclosure that occurred prior to the receipt of
14 written notice of the mistaken designation.

15 **18. Disclosure To Producing Party's Personnel.** Nothing in this
16 Protective Order shall affect the right of the Producing Party to disclose to its client
17 agency personnel, employees, consultants, or experts, any documents, things, or
18 information designated by it as Protected Material pursuant to this Order; such
19 disclosure shall not waive the protection of this Protective Order and shall not entitle
20 other Parties or their attorneys to disclose such information, documents, things, or
21 information in violation of this Order.

22 **19. Disclosure To Unauthorized Persons.** If information subject to this
23 Protective Order is disclosed to any unauthorized person either through
24 inadvertence, mistake, or otherwise without authorization by the Producing Party,
25 or other than in the manner authorized by this Protective Order, the person
26 responsible for the disclosure shall immediately (a) inform the Producing Party of
27 all pertinent facts relating to such disclosure, including without limitation, the
28 name, address, and telephone number of the recipient and his or her employer;

1 (b) use his or her best efforts to retrieve the disclosed information and all copies
2 thereof; (c) advise the recipient of the improperly disclosed information, in writing,
3 of the terms of this Protective Order; (d) make his or her best efforts to require the
4 recipient to execute an agreement to be bound by the terms of this Protective Order
5 in the form of the declaration attached to this Protective Order as Exhibit A; and
6 (e) take all other reasonable steps to prevent further disclosure by or to the
7 unauthorized person who received the Protected Material.

8 20. **“Admissibility” Of Protected Material.** This Protective Order shall
9 not constitute a waiver of any Party’s or non-party’s right to object to the
10 admissibility into evidence of any Protected Material under Federal law.

11 21. **All Objections Preserved.** This Protective Order is intended to
12 provide a mechanism for handling the disclosure or production of Protected
13 Material to which there is no objection other than confidentiality. The protection
14 afforded by this Order shall in no way affect a Producing Party’s right to withhold
15 or redact documents as: (a) privileged under the attorney-client or other privilege,
16 (b) protected by the work product doctrine, or (c) otherwise exempted from
17 discovery under Rule 26 of the Federal Rules of Civil Procedure or under any law.
18 Additionally, this Protective Order shall not prejudice the right of a Party to:
19 (a) seek additional protective treatment for any information it considers to be very
20 highly sensitive, or otherwise exempt from disclosure, such that the protections in
21 this Protective Order would be insufficient, (b) object to the designation of any
22 document or information as PROTECTED MATERIAL, or (c) seek any
23 modification of or relief from any provision of this Protective Order, either
24 generally or as to any particular Protected Material, by properly noticed motion
25 with notice to all Parties and their respective counsel.

26 22. **Advice To Client.** Nothing in this Protective Order shall prevent or
27 otherwise restrict counsel from rendering legal advice to the clients in this
28 Litigation and, in the course of this Litigation, relying generally on examination of

1 designated p Protected Material; provided, however, that in rendering such advice
2 and otherwise communicating with such client, counsel shall not disclose the
3 specific contents of Protected Materials to persons not authorized to receive such
4 material pursuant to the Protective Order.

5 **23. Inadvertent Disclosure Of Privileged Information.**

6 **a.** The inadvertent disclosure of Material covered by the attorney-
7 client privilege, the work-product doctrine, or any other recognized privilege shall
8 be governed by Federal Rule of Evidence 502 and this Protective Order.

9 **b.** If, in connection with the pending Litigation, a Producing Party
10 inadvertently discloses information subject to a claim of a privilege or protection
11 described in paragraph 26(a) (“Inadvertently Disclosed Information”), such
12 disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of
13 privilege or work-product protection that the Producing Party would otherwise be
14 entitled to assert with respect to the Inadvertently Disclosed Information and its
15 subject matter.

16 **c.** If a claim of inadvertent disclosure is made by a Producing Party
17 with respect to Inadvertently Disclosed Information, the Receiving Party shall,
18 within five (5) business days, return or destroy all copies of the Inadvertently
19 Disclosed Information and provide a certification of counsel that all such
20 Inadvertently Disclosed Information has been returned or destroyed.

21 **d.** Within twenty-one (21) calendar days of the notification that
22 such Inadvertently Disclosed Information has been returned or destroyed, or within
23 a different time upon written agreement of the Parties or order of the Court, the
24 Producing Party shall produce a privilege log with respect to the Inadvertently
25 Disclosed Information.

26 **e.** Nothing in this Protective Order shall limit the right of any Party
27 to petition the Court for an order compelling production of such Inadvertently
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1 Disclosed Information, or for an in-camera review of the Inadvertently Disclosed
2 Information.

3 **24. Good Faith Designations.** Each Party agrees that designation of
4 Protected Material and responses to requests to permit further disclosure of
5 Protected Material shall be made in good faith and not: (a) to impose burden or
6 delay on an opposing Party, or (b) for tactical or other advantage in litigation.
7 Further, each Party agrees to make best efforts to avoid as much as possible
8 inclusion of Protected Material in briefs and other captioned documents filed in
9 court, in order to minimize sealing and designating such documents as Protected
10 Material.

11 **25. Use Of Information Subject To Protective Order.** The Receiving
12 Party's use of any information or documents obtained from the Producing Party
13 subject to this Protective Order, including all information derived therefrom, shall
14 be restricted to use in this Litigation (subject to the applicable rules of evidence and
15 subject to the confidentiality of such materials being maintained) and shall not be
16 used by anyone subject to the terms of this agreement, for any purpose outside of
17 this Litigation or any other proceeding between the Parties, except as otherwise
18 provided in this Order.

19 **26. Meet And Confer.** Prior to filing any motion or application before the
20 Court to enforce this Protective Order, the moving party shall notify the other
21 Party(ies) in writing and meet and confer in good faith in an attempt to resolve their
22 dispute(s).

23 **27. Injunctive Relief.** In the event anyone violates or threatens to violate
24 any of the terms of this Protective Order, the Parties and Third Parties agree that the
25 aggrieved party may, subject to the "meet and confer" requirement set forth above,
26 apply to the Court to obtain injunctive relief against any such person violating or
27 threatening to violate any of the terms of this Protective Order. In the event the
28 aggrieved party brings such motion or application, the responding person subject to

1 the provisions of this Protective Order shall not employ as a defense the claim that
2 the aggrieved party possesses an adequate remedy at law. The Parties and Third
3 Parties shall not use or reveal, directly or indirectly, any information in violation of
4 this Protective Order. Because of the confidential and proprietary nature of the
5 information contemplated to be covered by this Protective Order, the Parties and
6 Third Parties' agree that legal remedies are inadequate. Therefore, the Parties and
7 Third Parties stipulate that injunctive relief is an appropriate remedy to prevent any
8 person from using or disclosing Protected Material in violation of this Protective
9 Order. The Parties and Third Parties waive and release any and all requirements for
10 a bond or undertaking to support any injunctive relief for enforcement of this
11 Protective Order.

12 **28. Other Actions.** If any Party is (a) subpoenaed in another action,
13 (b) served with a demand in another action to which it is a Party, or (c) served with
14 any legal process by one not a party to this action, seeking information or material
15 which was produced or designated as Protected Material by someone other than that
16 Party, the Party shall give prompt actual written notice, by hand or facsimile
17 transmission, within ten (10) calendar days of receipt of such subpoena, demand, or
18 legal process, to those who produced the Protected Material prior to compliance
19 with the subpoena so as to allow the Producing Party to seek protection from the
20 relevant court(s). Nothing in this Protective Order shall be construed as requiring
21 the Party or anyone else covered by this Protective Order to challenge or appeal any
22 order requiring production of information or material covered by this Protective
23 Order, or to subject itself to any penalties for noncompliance with any legal process
24 or order, or to seek any relief from this Court.

25 **29. Survival And Final Disposition Of Designated Material.** Final
26 termination of the Litigation, including exhaustion of appellate remedies, shall not
27 terminate the limitations on use and disclosure imposed by the Protective Order.
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1 a. Within sixty (60) days of the final termination of the Litigation
2 by final judgment (whether by settlement, trial, or otherwise), including the time for
3 filing and resolution of all appeals, or within such other period as the Parties may
4 agree upon, all Protected Material and copies of Protected Material, including such
5 material in the hands of outside experts or consultants or attorneys who considered
6 or accepted representation of a class member or child, shall be delivered by counsel
7 of record for the Receiving Party to counsel of record for the Producing Party of
8 such material or destroyed, with confirmation of that destruction to the producing
9 Party in writing.

10 b. Any Protected Material filed or lodged with and retained by the
11 Court shall not be subject to the provisions of this paragraph 32.

12 c. Notwithstanding the foregoing, counsel may retain copies of
13 briefs and other papers filed with the Court, deposition transcripts, discovery
14 responses, and attorney work product that contains or constitutes Protected
15 Material. Further, counsel are not required to delete information that may reside on
16 their firm's electronic back-up systems that are over-written in the normal course of
17 business. Any such archival copies that contain or constitute Protected Material
18 remain subject to this Protective Order and shall be maintained in a safe and secure
19 manner.

20 **30. Amendment Or Termination Of Protective Order.** No part of the
21 restrictions imposed by this Protective Order may be terminated, except by written
22 stipulation executed by counsel of record for each Producing Party or by an Order
23 of this Court for good cause shown. The terms of this Protective Order shall
24 survive termination of the Action.

25 **31. Jurisdiction For Enforcement.** The Court retains jurisdiction
26 subsequent to settlement or entry of judgment to enforce the terms of this Protective
27 Order. Each person to whom disclosure of any Protected Information is made
28 agrees to subject himself to the jurisdiction of the Court in which this action is

1 pending for the purpose of proceedings relating to the performance under,
2 compliance with, or violation of this Protective Order.

3 **32. Limitations.** Nothing in this Order shall be deemed to restrict in any
4 manner the use by any party of its own documents or materials. Nothing in this
5 Protective Order should be construed as prohibiting a non-party from seeking
6 additional protections of records or information that it owns or controls.

7 Dated: July 8, 2018 AMERICAN CIVIL LIBERTIES UNION
8 FOUNDATION
9 IMMIGRANTS' RIGHTS PROJECT
10 /s/ Lee Gelernt
11 LEE GELERNT
12 Email: LGELERNT@aclu.org
13
14 Counsel for Plaintiffs

15 Dated: July 8, 2018 UNITED STATES DEPARTMENT OF
16 JUSTICE, OFFICE OF IMMIGRATION
17 LITIGATION
18 /S/ Sarah B. Fabian
19 SARAH B. FABIAN
20 Email: Sarah.B.Fabian@usdoj.gov
21
22 Counsel for Defendants

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ORDER

For good cause shown, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, all discovery and other materials exchanged by the Parties or Third Parties, or filed with the Court, in *Ms. L, et al., v. U.S. Immigration and Customs Enforcement et al.*, 3:18-cv-00428 (S.D. Cal.) shall be provided subject to the conditions set forth in the foregoing Stipulated Protective Order. This order shall be construed as a lawful order pursuant to the Privacy Act permitting release consistent with the terms of this Order.

IT IS SO ORDERED

Date: _____

Hon. Dana M. Sabraw
United States District Judge

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STIPULATION EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT CONCERNING
PROTECTED INFORMATION**

1. My name is _____ (first, middle initial, last).

2. I live at _____ (street address), _____ (city), _____ (state) _____ (zip code).

3. I am employed as a/an _____ by _____ (company), which is located at _____ (street address), _____ (city), _____ (state) _____ (zip code). Its telephone number is _____.

I have read the attached Stipulated Protective Order entered in the action of *Ms. L, et al. v. U.S. Immigration and Customs Enforcement et al.*, pending in the Southern District of California and bearing Case No. 3:18-cv-00428, and a copy of the Stipulated Protective Order has been given to me.

4. I agree to be bound by the terms of the Stipulated Protective Order, and agree that any Protected Material, within the meaning of the Stipulated Protective Order, will be used by me only to assist counsel in connection with the above-referenced litigation or as otherwise authorized by the Stipulated Protective Order.

5. I agree that I will not disclose or discuss Protected Material so designated with anyone other than the persons described in paragraph 6 of the Stipulated Protective Order.

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6. I understand that any disclosure or use of Protected Material in any manner contrary to the provisions of the Stipulated Protective Order may subject me to sanctions for contempt of the Court’s Order.

7. I agree to be subject *in personam* to the jurisdiction of the Southern District of California in connection with any proceeding relating to the enforcement of the Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

(date)

(signature)