

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

P.J.E.S., A MINOR CHILD, by and through
his father and NEXT FRIEND, Mario Escobar
Francisco, on behalf of himself and others
similarly situated,

Plaintiff,

v.

CHAD WOLF, Acting Secretary of Homeland
Security, et al.,

Defendants.

Civil Docket No. 1:20-cv-02245-EGS

DEFENDANTS' NOTICE TO THE COURT

Defendants respectfully submit this Notice to advise the Court that the Department of Homeland Security ("DHS") learned that certain class members in this litigation were expelled in contravention of the Court's preliminary injunction issued on November 18, 2020. Further, DHS submits that it has already begun taking steps to remedy those actions as well as to avoid future expulsions of class members contrary to the injunction.

1. Plaintiff brought a putative class action on behalf of a class of unaccompanied alien minors challenging an Order issued by the Centers for Disease Control and Prevention ("CDC") in March 2020 temporarily prohibiting the introduction into the United States of certain aliens traveling from Mexico and Canada ("CDC Order). Briefing on Plaintiff's motions for class certification and a preliminary injunction and on Defendants' objections to the Magistrate Judge's subsequent Report and Recommendation concluded on October 14, 2020.

2. On November 18, 2020, this Court provisionally certified a class "consisting of all unaccompanied noncitizen children who (1) are or will be detained in U.S. government custody in the United States, and (2) are or will be subjected to expulsion from the United States under the

CDC Order Process, whether pursuant to an Order issued by the Director of the Centers for Disease Control and Prevention under the authority granted by the Interim Final Rule, 85 Fed. Reg. 16559-01, or the Final Rule, 85 Fed. Reg. 56,424-01.” Order at 1-2, ECF No. 79. The Court further ordered that “Defendants, their agents, and any person acting in concert with them are enjoined from expelling the Class Members from the United States under the CDC Order Process, whether pursuant to an Order issued by the Director of the Centers for Disease Control and Prevention under the authority granted by the Interim Final Rule, 85 Fed. Reg. 16559-01, or the Final Rule, 85 Fed. Reg. 56,424-01.” Order at 2, ECF No. 79. Finally, the Court denied Defendants’ request for a stay pending possible appeal of the preliminary injunction. *Id.*

3. On December 10, 2020, DHS’s Office of General Counsel (“OGC”) informed undersigned counsel that approximately 34 class members have been expelled pursuant to the CDC Order contrary to the Court’s injunction. OGC further informed undersigned counsel that nine of those individuals have since returned to the United States, and DHS has processed them pursuant to Title 8.

4. The attached declarations of Rodney S. Scott, Chief of the U.S. Border Patrol of U.S. Customs and Border Protection (CBP), and William A. Ferrara, Executive Assistant Commissioner, CBP, Office of Field Operations, describe the circumstances of the expulsions and the steps DHS has taken or is taking to both address those specific instances of class member expulsions and avoid future instances of the same.

5. Undersigned counsel has informed Plaintiff’s counsel of the expulsions and will work with Plaintiff’s counsel to help further remedy the situation.

6. Defendants regret that class members were expelled contrary to the Court’s injunction and are committed to full compliance with the Court’s injunction going forward.

Dated: December 11, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

JOHN V. COGHLAN
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

/s/ Jean Lin _____
JEAN LIN (NY 4074530)
Special Litigation Counsel
Federal Programs Branch
Civil Division, Department of Justice
1100 L Street, N.W.
Washington, D.C. 20005
(202) 514-3716
Jean.Lin@usdoj.gov
Attorneys for Defendants