



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

**What You Need to Know About the
*Dora v. Sessions, Ms. L v. ICE, and
M.M.M. v. Sessions Preliminary
Settlement Agreement***

Presenters

- **Moderator:** Michelle Mendez, [Catholic Legal Immigration Network, Inc.](#) (CLINIC)
- Liz Willis, [Asylum Seeker Advocacy Project](#) (ASAP)
- Zachary Best, Hogan Lovells – *MMM* counsel
- Stephen Kang, ACLU – *Ms. L* counsel
- Sirine Shebaya, Muslim Advocates – *Dora* counsel

Road Map

- This training will discuss:
 - Issues that led to the litigation
 - Ongoing issues faced by separated families
 - Who is included in the litigation classes
 - Key provisions of the preliminary settlement agreement

“Zero Tolerance” and “Family Separation”

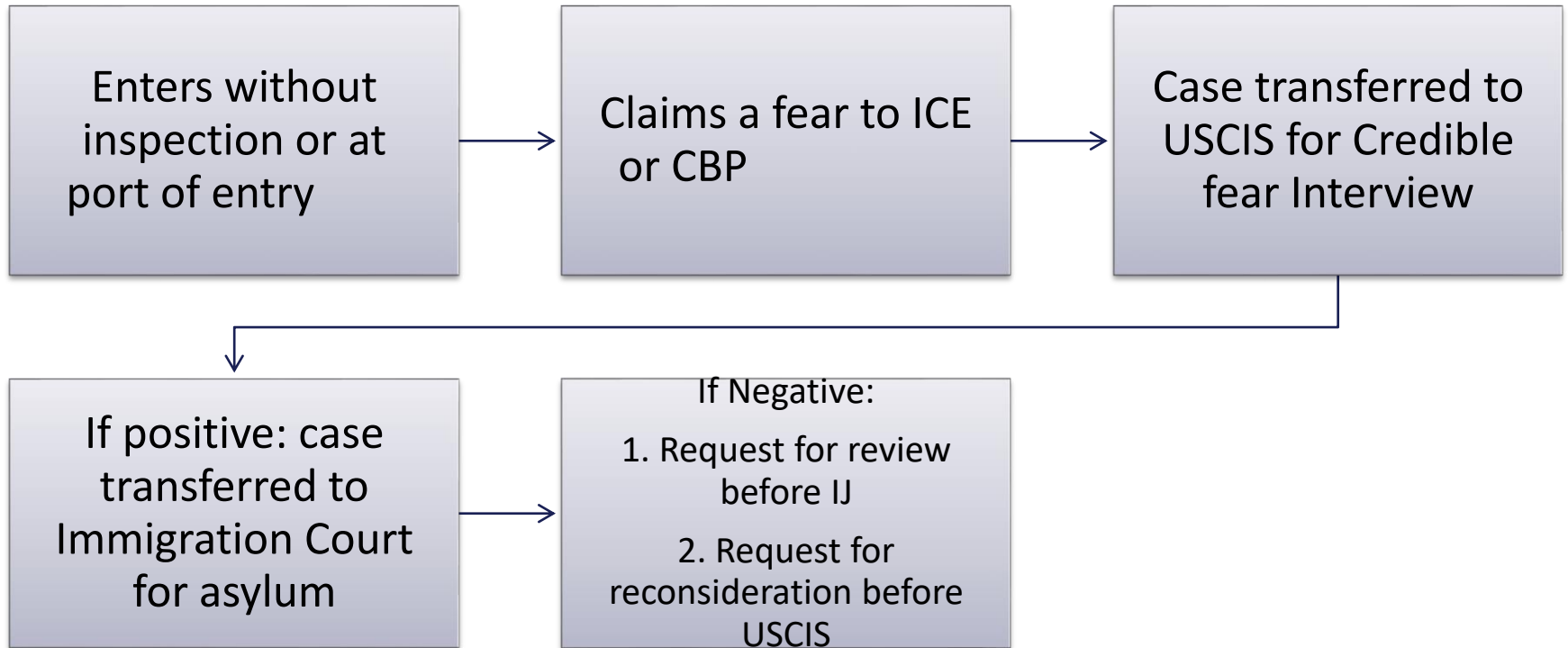
- Spring 2018 Trump administration began separating children from parents



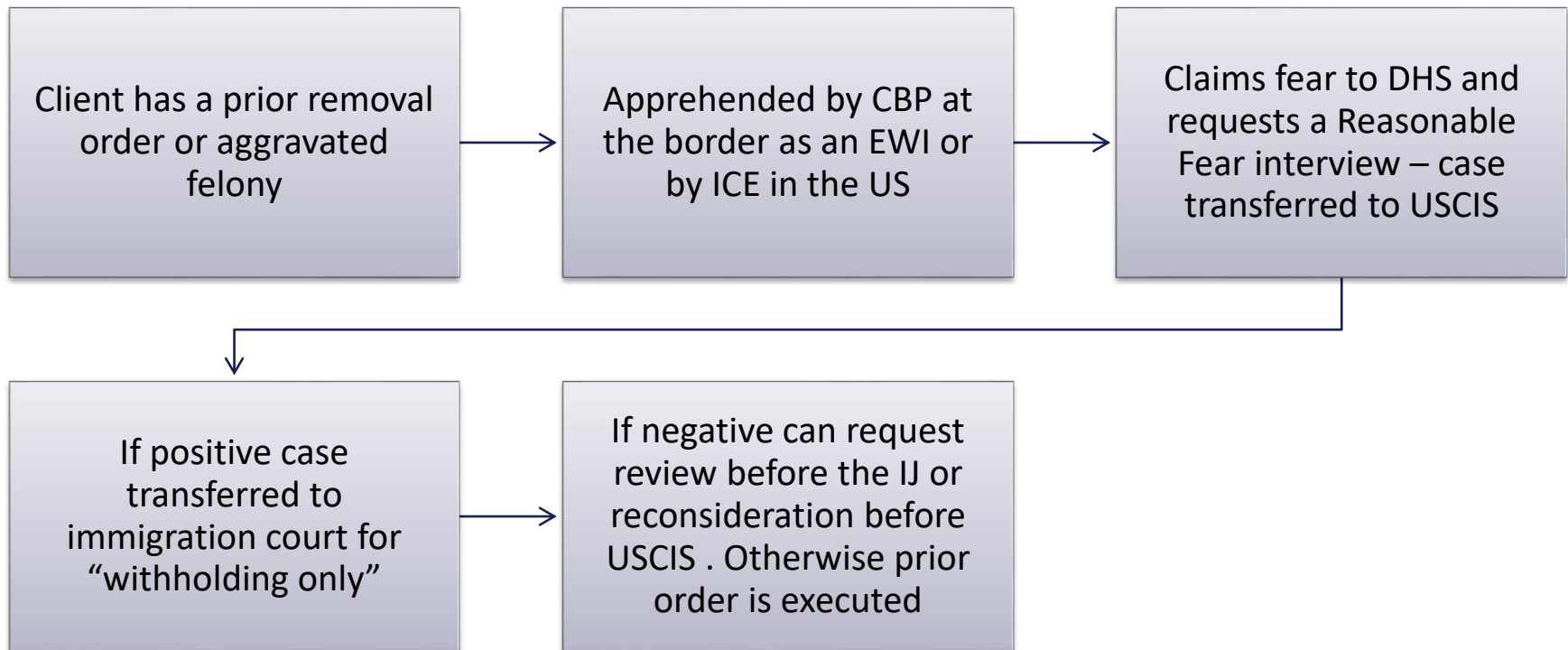
Family Separation

- Parents prosecuted under 8 U.S.C. § 1325 – “Improper entry by alien”
- Children taken from parents because children cannot be in federal criminal custody
- No plan by government to reunite children with parents

Credible Fear Process



Reasonable Fear Process Reinstatement of Removal or Administrative Removal



Post-Release Issues

- Parents lack case documents
- Transportation issues
- School enrollment
- Change of venues
- In absentia removal orders
- Lack of non-profits providing legal representation in certain areas

CLINIC and ASAP Efforts

- Contact families and obtain case information
- Assist with school enrollment
- Assist with transportation to ICE check-ins
- Monitor Facebook Group “[Familias Inmigrantes Separadas por El Gobierno Estadounidense](#)”
- Submit pro se Change of Venues
- Request for CFI results from Asylum Offices
- Recruit competent legal representation

Litigation Overview

- *Ms. L. v. ICE* (ACLU)
- *MMM v. Sessions* (Hogan Lovells)
- *Dora v. Sessions* (Muslim Advocates, LAJC, Eversheds Sutherland)
 - Claims have now been incorporated in *Ms. L*

Preliminary Settlement Reached on Behalf of Both Parent and Child(ren) Classes



Settlement Classes *Parents*

Parents who entered the United States with their child(ren) and:

1. were detained in immigration custody by DHS;
2. have a child who was or is separated from them by DHS and, on or after June 26, 2018, was housed in ORR custody, ORR foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child; and
3. have been (and whose child(ren) have been) continuously physically present within the United States since June 26, 2018, whether in detention or released

Settlement Classes *Children*

Children under the age of 18 at the time the agreement is entered into who:

1. entered the United States at or between designated ports of entry with an alien parent, and who were separated from their parents, on or before the effective date of this settlement agreement;
2. have been or will be reunified with that parent pursuant to the preliminary injunction issued by the Court in *Ms. L v. U.S.*; and
3. have been continuously physically present in the United States since June 26, 2018.

Purpose of Settlement

- Provide procedures for class member, previously separated families who wish to remain in the United States to pursue asylum
- Emphasizes that families should be able to pursue relief together

Parents with negative credible fear determinations

- USCIS asylum officers will:
 - Conduct de novo good faith review of CFI finding
 - Conduct interviews with each parent, with counsel present in person (or via telephone in certain cases)
 - Allow submission of new evidence
- If parent gets positive determination, he or she will be placed in 240 removal proceedings along with child(ren) in single consolidated case
- If parent gets negative determination again, child will be given CFI
 - If child gets positive CF determination, parent and child are placed in 240 proceedings together

Parents with negative reasonable fear determinations

- If parent is detained and has negative *reasonable* fear determination, USCIS asylum officers will:
 - Conduct de novo good faith review of RFI finding
 - Conduct interview with parent with counsel present in person (or by phone in certain cases)
 - Allow submission of new evidence
- If parent received positive reasonable fear determination, he or she will be placed in withholding- only proceedings, and child will be given CFI
- If parent does not pass RFI and child passes CFI, child will be placed in 240 proceedings, and parent can remain in U.S. to assist child with asylum proceedings

Children with Removal Orders

- If child was ordered removed before being reunited, DHS will join motions to reopen within 45 days of settlement approval
- If parent has passed CFI, child will have case consolidated with parent
- If parent has not passed CFI, child will have his or her own CFI

Children Who Have Been Served with a Notice to Appear

- ICE will seek to cancel NTAs not filed in court and move to dismiss NTAs that were filed
- If parent passes CFI, the parent and child will be placed in removal proceedings together
- If parent does not pass CFI, child will be given his or her own CFI
 - If child passes, parent and child will be placed in removal proceedings together

Parents and Child(ren) Who Are not Detained

- Parents and child(ren) who are not detained can file for asylum affirmatively if:
 - they do not have a final order of removal; and
 - an NTA has not been filed in court.
- If the parent and child are in removal proceedings, they are subject to ordinary INA 240 removal proceedings.
- If the parent has a final expedited order of removal, he or she will also get a de novo good faith review of their credible fear determination
 - (including interview with counsel present, submission of new evidence)

Children not Reunited with Parents

- Children who remain “unaccompanied minors” are subject to protections under the INA including the right to an affirmative asylum interview even if the child is in removal proceedings
- If the child is later reunited with a parent and one or both is a class member, then the terms of the settlement will apply.

Families Wishing to Be Removed

- The settlement includes a waiver of rights for those families who wish to be removed
- The waiver is available at the following links:
 - English: <https://www.muslimadvocates.org/wp-content/uploads/Notice-and-Waiver-Form-English.pdf>
 - Spanish: <https://www.muslimadvocates.org/wp-content/uploads/Notice-and-Waiver-Form-Spanish.pdf>

Parents Who Were Already Removed

- Under the agreement, removed parents do not get class-wide relief
- Counsel may bring “rare and unusual” cases to the attention of the government within 30 days of approval of the settlement for the government to “consider” return
- Parents will be given greater latitude to participate in children’s removal proceedings from abroad

What Happens Next with the Settlement?

- The court has ordered the government to begin implementation immediately as to detained class members who have executed notice forms.
 - For non-detained class members, the timeline will likely be somewhat more extended.
- Final Approval Hearing will be held on November 15, 2018 at 10:30AM (Pacific Time) at Courtroom 13A, 13th Floor, Suite 1310, 333 West Broadway, San Diego, CA 92101
- Class members can object to terms of settlement in writing by November 2

Separated Families Need Legal Counsel

- *Non-profits interested in providing legal assistance for CFI or RFIs or for merits representation should complete this [CLINIC web form](#)*
- *If you are a private attorney interested in providing legal assistance for CFI or RFIs or for merits representation, contact:*
 - *Michelle Mendez at Mmendez@cliniclegal.org*

Further Questions?

- *If you have further questions about the settlement agreement, please contact class counsel at:*
 - MMMSettlementQuestions@hoganlovells.com
(Class counsel for child class)
 - parentsasylumclass@eversheds-sutherland.com
(Class counsel for parents in the United States)
 - familyseparation@aclu.org (Class counsel for removed parents)



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