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The Honorable Thomas S. Zilly

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

J.E.F.M., a minor, by and through his Next Friend, Bob Ekblad; J.F.M., a minor, by and through his Next Friend Bob Ekblad; D.G.F.M., a minor, by and through her Next Friend, Bob Ekblad; F.L.B., a minor, by and through his Next Friend, Casey Trupin; G.D.S., a minor, by and through his mother and Next Friend, Ana Maria Ruvalcaba; M.A.M., a minor, by and through his mother and Next Friend, Rosa Pedro; S.R.I.C., a minor, by and through his father and Next Friend, Hector Rolando Ixcoy; G.M.G.C., a minor, by and through her father and Next Friend, Juan Guerrero Diaz; on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

Eric H. HOLDER, Attorney General, United States; Juan P. OSUNA, Director, Executive Office for Immigration Review, Jeh C. JOHNSON, Secretary, Homeland Security; Thomas S. WINDOWSKI, Principal Deputy Assistant Secretary, U.S. Immigration and Customs Enforcement; Nathalie R. ASHER, Field Office Director, ICE ERO; Kenneth HAMILTON, AAFOD, ERO; Sylvia M. BURWELL, Secretary, Health and Human Services; Eskinder NEGASH, Director, Office of Refugee Resettlement,

Defendants.

NO. 2:14-cv-01026-TSZ

STATE OF WASHINGTON’S
MOTION FOR LEAVE TO
PARTICIPATE AS *AMICUS
CURIAE*

Note on Motion Calendar:
August 29, 2014

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I. INTRODUCTION

The State of Washington has a significant interest in ensuring that unaccompanied immigrant children now residing within its borders are not forced to represent themselves in complex immigration proceedings, especially where the consequences of their deportation could be dire. Washington can offer a unique perspective and can focus the Court's attention on the public interest in ensuring these children receive full and fair removal hearings as required by federal law. Because the State could aid the Court as it considers the complex issues raised in this lawsuit, the State seeks to participate as amicus curiae. At this time, the State specifically seeks leave to file the attached amicus brief in support of a preliminary injunction.

II. BACKGROUND

The State of Washington has a history of taking a stand on issues involving refugees fleeing violence in their home countries. In 1975, a wave of Vietnamese refugees arrived in the United States. Daniel J. Evans, *This is not America's first immigration crisis*, Seattle Times, August 2, 2014. Many were being housed at Camp Pendleton in California. *Id.* California's Governor wanted no Vietnamese refugees to settle in that state. *Id.* In response, Washington's then-Governor, Dan Evans, invited hundreds of those refugees to settle in Washington. *Id.* The State then helped to pair the refugees with sponsoring Washington families to ease their transition into life in this state. *Id.* Since that time, many of these refugees and their families have become highly productive members of our Washington community. *Id.*

1 Our country is now feeling the effects of another immigration crisis. Thousands of
2 children fleeing violence and oppression in Central America have entered the United States
3 unaccompanied, resulting in a steep rise in the number of juvenile immigration cases occurring
4 in many states, including Washington. TRAC Immigration, *Juveniles—Immigration Court*
5 *Deportation Proceedings*, <http://trac.syr.edu/phptools/immigration/juvenile> (Chart:
6 Washington—All—Initial Filing).¹ Between January and June 2014, 214 juvenile immigration
7 cases have been initiated in Washington, already more than the total number filed in any other
8 single year between 2005 and 2013. *Id.* In the 2014 Washington cases that have not been
9 transferred to another jurisdiction, only nine percent of children are represented, while
10 91 percent are not. *Id.* (Charts: Washington—Current Status—Represented—Percent and
11 Washington—Current Status—Unrepresented—Percent).

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14 In Washington, whether or not a child is represented has historically made a significant
15 difference in whether the child is permitted to remain in this country. Since 2005, 1,207
16 juvenile immigration proceedings have been conducted in Washington, with 611
17 unaccompanied children (a little more than half) being represented by counsel. *Id.* (Chart:
18 Washington—Current Status—Represented). Of those 611 represented children, 249 (or
19 approximately 41 percent) have had their cases resolved in a way that permits them to remain
20 in this country. *See id.*; *see also*, TRAC Immigration, *About the Data*, [http://trac.syr.edu/](http://trac.syr.edu/immigration/reports/359/include/about_data.html)
21 [immigration/reports/359/include/about_data.html](http://trac.syr.edu/immigration/reports/359/include/about_data.html).² In contrast, of the 596 children not
22 represented by counsel, only 23 (less than four percent) have had their cases resolved in a way
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25 ¹ TRAC is the Transactional Records Access Clearinghouse at Syracuse University. *See*
<http://trac.syr.edu/aboutTRACgeneral.html>.

26 ² Only the “Removal Order” and “Voluntary Departure” categories reflect children who were not
permitted to remain in the country. TRAC Immigration, *About the Data*, [http://trac.syr.edu/immigration/](http://trac.syr.edu/immigration/reports/359/include/about_data.html)
[reports/359/include/about_data.html](http://trac.syr.edu/immigration/reports/359/include/about_data.html).

1 that permits them to remain in this country. *Id.* Approximately 357 cases of the overall 1207
2 remain pending. *Id.*

3 In sum, Washington-specific data reflect a significant recent increase in the number of
4 unaccompanied children residing in Washington as they await juvenile immigration hearings.
5 *Id.*; see also Office of Refugee Resettlement, Unaccompanied Children Released to Sponsors
6 by State, available at [http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-](http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors)
7 placed-sponsors (last visited Aug. 14, 2014). The vast majority of children arriving in 2014 are
8 currently unrepresented, and there is a significant disparity between outcomes for represented
9 children and outcomes for unrepresented children.
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11 III. ARGUMENT

12 District Courts have broad discretion to grant leave to participate as *amicus curiae*.
13 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). An amicus brief should “normally be
14 allowed” in certain circumstances, including “when the amicus has unique information or
15 perspective that can help the court beyond the help that the lawyers for the parties are able to
16 provide.” *Community Ass’n for Restoration of the Environment (CARE) v. DeRuyter Brothers*
17 *Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999).
18

19 Washington has a unique perspective on the issues in this case and a significant interest
20 in ensuring unaccompanied minors now residing in Washington receive a full and fair removal
21 proceeding. The attached amicus brief from the State would serve to focus the Court’s
22 attention on the State’s and the public’s interest in ensuring children are not forced to represent
23 themselves in complex immigration proceedings.
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1 In addition, Washington’s child welfare system and state courts will likely play a role
2 in proceedings involving Special Immigrant Juvenile Status, an option for unaccompanied
3 immigrant children that is underutilized. Wendy Young & Megan McKenna, *The Measure of*
4 *a Society: The Treatment of Unaccompanied Refugee and Immigrant Children in the United*
5 *States*, 45 Harv. C.R.-C.L. Law Review 247, 255 (2010). Special Immigrant Juvenile Status is
6 available to children found to be dependent in a state’s juvenile court because “reunification
7 with [one] or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment,
8 or a similar basis found under State law.” 8 U.S.C.A. § 1101; *see also* 8 C.F.R. § 204.11. The
9 child must be eligible for long term foster care, and the juvenile court must have determined
10 that “it would not be in the [alien child]’s best interest to be returned to the country of
11 nationality or last habitual residence of the beneficiary or his or her parent or parents.”
12 8 C.F.R. § 204.11.³ If a child meets these requirements, he or she becomes eligible to petition
13 the Immigration and Citizenship Services, a bureau of the Department of Homeland Security,
14 or the immigration judge for this special status, which later allows for an application for
15 adjustment to lawful permanent residence. Young & McKenna, 45 Harv. C.R.-C.L. Law
16 Review at 255; *see also Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 253 (C.D. Cal. 2008)
17 (generally describing this option). Thus, federal law anticipates direct state involvement with
18 at least some of these children, and the State has an interest in seeing that this option is
19 exercised, where appropriate, by unaccompanied immigrant children residing in Washington.
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23 Most importantly, Washington has an important interest in ensuring that the
24 unaccompanied immigrant children residing in Washington receive the full protection of the
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26 ³ Children who are in federal custody must first seek consent from Immigration and Customs Enforcement to state court jurisdiction. *Perez-Olano v. Gonzalez*, 248 F. R.D. at 253.

1 rule of law. This includes an interest in seeing that the children receive a full and fair
2 immigration hearing, and that they are not forced to represent themselves in these unusually
3 complex and high-stakes proceedings.

4 **IV. CONCLUSION**

5 Washington has a unique perspective and can focus the Court on the public interest in
6 ensuring unaccompanied children are not forced to represent themselves in immigration
7 proceedings. Washington has a specific interest in seeing that claims for Special Immigrant
8 Juvenile Status granted, when appropriate, in this state. Washington also has a significant
9 interest in ensuring these children receive the protection of the rule of law, including the
10 federal statute requiring a full and fair immigration proceeding. Washington therefore
11 respectfully requests leave to participate as amicus and to file the attached amicus brief in
12 support of a preliminary injunction.
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15 DATED this 14th day of August 2014.

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1 **CERTIFICATE OF SERVICE**

2 I certify, under penalty of perjury under the laws of the state of Washington, that on
3 this date I electronically filed the foregoing Motion for Leave to Participate as Amicus
4 Curiae with the clerk of the court using the CM/ECF system which will send notification of
5 such filing to the following:
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25 DATED this 14th day of August 2014, at Olympia, Washington.

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