

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

J.E.C.M., a minor, by and through his next friend)	
JOSE JIMENEZ SARA VIA, <u>et al.</u> ,)	
)	
Plaintiffs/Petitioners,)	
)	
v.)	1:18-cv-903 (LMB/MSN)
)	
CINDY HUANG, Director, Office of Refugee)	
Resettlement, <u>et al.</u> ,)	
)	
Defendants/Respondents.)	

ORDER

This civil action and habeas petition was originally filed in 2018. Pending before the Court are the parties' cross-motions for summary judgment, which were first argued and taken under advisement on November 22, 2019 and have been supplemented many times since. See [Dkt. No. 280 et seq.]. On June 15, 2021, plaintiffs voluntarily dismissed the majority of the claims in the operative Third Amended Complaint, including Count III in its entirety, as well as significant parts of Counts I (Trafficking Victims Protection Reauthorization Act or "TVPRA"), II (Procedural Due Process), and IV (Administrative Procedure Act or "APA"). [Dkt. No. 331].

On June 17, 2021, both parties filed supplemental memoranda describing what they maintain are issues still needing resolution in this action. Specifically, defendants contend that plaintiffs' sole remaining claim, in essence, is Count II, which alleges a violation of procedural due process.¹ Although plaintiffs represent that they still seek summary judgment on Counts I, II,

¹ Defendants argue that ORR is not a proper defendant in a claim based on the TVPRA, and they do not address the portions of Counts IV and VI which were not dismissed by the Court's June 2021 Order.

and IV,² their argument likewise comes down to whether ORR's reunification policies provide sufficient due process protections for the plaintiffs. The Court is satisfied that it can fairly adjudicate the remaining issues in the case as a single issue. Accordingly, to focus argument, all remaining allegations in Counts I, II, and IV will be combined as a single count ("Count II") complaining that ORR's current reunification policy, insofar as that policy allows no notice and hearing for discretionary decisions that delay reunification after a child has been in custody for 60 days or more, violates plaintiffs' constitutional due process rights, which seems to be the remaining dispute. See also Third Amended Complaint [Dkt. No. 93] at ¶¶ 132-133.

Further, the Court has reviewed the parties' many filings in support of their summary judgment motions and concludes that it cannot fully analyze plaintiffs' procedural due process claim without the proposed remedies, as these remedies go toward the second Matthews factor, which includes "the probable value, if any, of additional or substitute procedural safeguards," as well as the third Matthews factor, which includes the "administrative burdens that the additional or substitute procedure requirement would entail." Sansotta v. Town of Nags Head, 724 F.3d at 540 (4th Cir. 2013); Matthews v. Eldridge, 424 U.S. 319 (1976).

Plaintiffs have filed a notice of supplemental authority regarding a recent decision in Lucas R., et al. v. Becerra, et al., No. 2:18-cv-05741 (DMG/PLA) (C.D. Cal. Mar. 11, 2022) [Dkt. No. 340]. In light of that decision, and to focus the parties' arguments and discuss any further briefing that may be needed, it is hereby

² Count VI, which requests habeas relief, is not a substantive count, although plaintiffs also include it in their motion.

ORDERED that the parties appear in person for oral argument on Friday, April 8, 2022 at 10:00 a.m., or file a notice rescheduling argument for a Friday available for all counsel; and it is further

ORDERED that Counts I and IV be and are dismissed as all remaining disputes are encompassed within Count II; and it is further

ORDERED that counsel be prepared to discuss the following:


- The parties' efforts to settle and resolve this dispute;
- Any and all potential remedies that the Court should consider;³
- The impact of the Lucas decision on this civil action;
- The status and number of current class members;
- Any arguments on the remaining issues pending before the Court.

Plaintiffs are reminded that no proposed remedy should require legislative decisions or budgetary discretion, as "the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government," and courts do not engage in policymaking. Reno v. Flores, 507 U.S. 292, 305 (1993). Defendants are reminded, in contrast to their briefing, that the plaintiff class in this action is made up of the small minority of children who remain in ORR custody "for 60 days or more" [Dkt. No. 149] at 3. Accordingly, any arguments that ORR usually reunites families in less time are irrelevant, because they do not address the class of plaintiffs before this Court.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 25th day of March, 2022.

Alexandria, Virginia



Leonie M. Brinkema
United States District Judge

³ The parties do not need to provide supplemental briefing of remedies or any other topic at this time, although the Court may request post-argument briefing after discussing the outstanding issues.