No. 17-55208

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, *et al.*,

Plaintiffs - Appellees,

— v. —

JEFFERSON B. SESSIONS III,
ATTORNEY GENERAL OF THE UNITED STATES, *et al.*,

Defendants - Appellants.

On Appeal from the
United States District Court for the Central District of California
District Court Case No. 2:85-cv-04544-DMG (AGRx)

BRIEF OF AMICI CURIAE SAFE PASSAGE PROJECT CLINICAL COURSE AT NEW YORK LAW SCHOOL AND TWENTY-THREE PROFESSORS IN LAW SCHOOL CLINICS AND CLINICAL COURSES THROUGHOUT THE UNITED STATES WHO REPRESENT UNACCOMPANIED IMMIGRANT YOUTH, IN SUPPORT OF PLAINTIFFS-APPELLEES

Austin Manes
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700
Attorney for Amici Curiae Safe Passage Project Clinical Course and 23 Professors who Represent Unaccompanied Youth

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the undersigned states that Amici Curiae do not issue stock or have parent corporations that issue stock.

RULE 29 STATEMENT

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the undersigned states that he filed this brief with the consent of both parties. Neither party authored this brief in whole or in part. Neither the parties nor any other individual (other than Amici and their counsel) contributed money that was intended to fund the preparation or submission of this brief.

Dated: March 17, 2017

/s/ *Austin Manes*
Austin Manes
Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF AMICI CURIAE

Amici Curiae are the Safe Passage Project clinical course at New York Law School along with twenty-three professors in law school clinics and clinical courses throughout the United States who represent unaccompanied immigrant youth. These professors are (with institutional names provided for identification purposes only): **Lenni Benson**, Director, along with **Claire Thomas** of the Safe Passage Project at New York Law School; **Deborah Anker**, Director, along with **Sabrineh Ardalan**, **Nancy Kelly**, **Phil Torrey**, and **John Willshire Carrera** of the Harvard Immigration and Refugee Clinical Program at Harvard Law School; **Evelyn Cruz**, Director of the Immigration Law & Policy Clinic at Sandra Day O'Connor College of Law at Arizona State University; **Lauren Aronson**, Director of the Immigration Law Clinic at Louisiana State University Law Center; **Geoffrey Hoffman**, Director of the Immigration Clinic at the University of Houston Law Center; **Beth Lyon**, Director of the Immigration Law Clinic at Cornell University; **Caitlin Barry**, Director of the Farmworker Legal Aid Clinic of Villanova Law School; **Theo Liebman**, Director of Clinical Programs and Attorney-in-Charge at the Hofstra Youth Advocacy Clinic at Hofstra University School of Law; **Sarah Rogerson**, Director of the Immigration Law Clinic at Albany Law School; **Elizabeth Keyes**, Director of the Immigrant Rights Clinic at the University of Baltimore School of Law; **Gemma Solimene**, Clinical Professor of Law at the

Immigrant Rights Clinic at Fordham University School of Law; **Randi Mandelbaum**, Director of the Child Advocacy Clinic at Rutgers Law School; **Veronica Thronson**, Director, along with **David Thronson** of the Immigration Law Clinic at Michigan State University, College of Law; **Denise Gilman**, Director, along with **Elissa Steglich** of the Immigration Clinic at the University of Texas School of Law; **Farrin Anello**, Visiting Assistant Clinical Professor of the Immigrants' Rights/International Human Rights Clinic at Seton Hall University School of Law; and **Joanne Gottesman**, Director of the Immigrant Justice Clinic at Rutgers Law School.

All Amici share a common interest in ensuring that detained unaccompanied immigrant youth are considered in the resolution of this appeal. The experiences of immigrant youth set forth in this brief reveal the distorting effect that Appellants' practices have on outcomes in the immigration system, effectively warehousing unaccompanied children in detention facilities. Appellants' attempt to detain non-citizen youths without oversight or any opportunity to challenge their detention is in direct violation of a settlement agreement designed to protect such youth from arbitrary detention. Accordingly, Amici file this brief seeking affirmation of the district court's order enforcing that settlement agreement.

SUMMARY OF ARGUMENT

This case asks whether the Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232, (the "TVPRA") supersedes Paragraph 24 of the Flores Settlement Agreement, which provides that minors in deportation proceedings must be "afforded a bond redetermination hearing in every case." Amici submit this brief to support and elaborate on the reasons why the ruling below should be affirmed, and why the enactment of the TVPRA does not abrogate Defendants' responsibilities under the Flores Settlement Agreement.

This case highlights the government's attempt to detain non-citizen youths without oversight or any opportunity to challenge their detention and to do so in direct violation of the Flores Settlement Agreement designed to protect such youth from arbitrary detention. The Flores Settlement Agreement dictated minimum standards for the detention of minor aliens and provided detained minors in removal proceedings the opportunity to challenge their detention. While the Homeland Security Act (the "HSA") and the TVPRA expressly codified some provisions of the Flores Settlement Agreement, other aspects, including the due process right to a bond redetermination hearing, remain uncodified and unregulated. Notably, the need for this particular due process protection has not abated in the time since the Flores Settlement Agreement was entered. In fact,

Plaintiffs' enforcement motion demonstrates that the Department of Health and Human Services cannot be trusted to act in good faith without sufficient oversight.

Additionally, the district court properly applied the canon of constitutional avoidance in declining to interpret the TVPRA in a manner that might deprive unaccompanied children of the same due process rights to which adults and accompanied children are entitled. Appellants' arguments that the district court erroneously held that these due process rights were "constitutionally essential" is factually inaccurate, as the district court held no such thing. Rather, the district court applied the canon of constitutional avoidance in exactly the manner that has been set forth by the Supreme Court. Similarly, Appellants' arguments regarding a constitutional challenge to the TVPRA are misplaced; neither the district court opinion nor Plaintiffs-Appellees' motion sought to challenge the TVPRA. However, notwithstanding the proper application of the canon of constitutional avoidance in the district court's opinion, Amici believe that unaccompanied children *should* be entitled to the same due process rights that adult and accompanied children enjoy. To deny them those rights raises grave constitutional concerns, especially in the case of unaccompanied children who are apprehended in the interior, as opposed to at the border, as over 100 years of Supreme Court precedent holds that individuals who are apprehended inside the United States are

afforded due process regardless of their immigration status. For all of these reasons, this Court should affirm the district court's ruling.

ARGUMENT

I. THE DISTRICT COURT PROPERLY FOUND THAT THE TVPRA DOES NOT SUPERSEDE PARAGRAPH 24 OF THE FLORES SETTLEMENT AGREEMENT

On January 20, 2017, the district court determined that "the bond hearing provision of the *Flores* Agreement was not superseded by operation of law because both the TVPRA and the Homeland Security Act are silent on the subject of bond hearings." Appellants' Excerpts of Record ("EOR"), Dkt. No. 10 at EOR 52. For that reason, and those that follow, the district court's decision should be affirmed.

A. The HSA and TVPRA Did Not Supersede Paragraph 24 of the Flores Settlement Agreement

The district court correctly found that the plain language of the HSA and the TVPRA demonstrates that Paragraph 24 of the Flores Settlement Agreement has not been superseded. In particular, the district court properly determined that (1) the savings clause of the HSA—included in the TVPRA—preserved Paragraph 24 of the Flores Settlement Agreement, and (2) Paragraph 24 has not been superseded by operation of law or otherwise set aside. *See* Dkt. No. 10 at EOR 50-51. Amici agree with the district court's rationale and urge this court to affirm its decision on the same basis.

Consistent with the district court's ruling, the Supreme Court has recognized that when Congress is silent on a particular issue—as with the bond redetermination provision of the Flores Settlement Agreement—that silence is construed in favor of interpreting provisions to be in conformity with prevailing jurisprudence or existing law. *See Cannon v. Univ. of Chi.*, 441 U.S. 677, 696-99 (1979) ("[I]t is not only appropriate but also realistic to presume that Congress was thoroughly familiar with these unusually important precedents from this and other federal courts and that it expected its enactment to be interpreted in conformity with them."); *see also Abrego Abrego v. Dow Chemical Co.*, 443 F. 3d 676, 683-84 (9th Cir. 2006) (finding that silence on a particular issue precludes a finding of ambiguity). Thus, Congress' silence on the particular issue of bond redetermination hearings in the HSA and TVPRA means that the statutes unambiguously preserve Paragraph 24 of the Flores Settlement Agreement because "Congress is, of course, presumed to know existing law pertinent to any new legislation it enacts." *United States v. LeCoe*, 936 F.2d 398, 403 (9th Cir. 1991).

B. The Legislative History of the HSA and the TVPRA Support the Continued Application of Paragraph 24 of the Flores Settlement Agreement

To the extent that this Court finds on appeal that the status of Paragraph 24 of the Flores Settlement Agreement is ambiguous in view of the intervening change in law, the Court should consider the legislative history of the HSA and the

TVPRA. *See Abrego Abrego v. The Dow Chemical Co.*, 443 F. 3d 676, 683 (9th Cir. 2006) (holding legislative history is only considered where it sheds "a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms"). If considered, the legislative history of the HSA and TVPRA weighs in favor of continued application of Paragraph 24 of the Flores Settlement Agreement.

1. The HSA and TVPRA Were Passed to Increase, Not Decrease, Protections for Unaccompanied Alien Children.

The inclusion of additional protections for unaccompanied alien children in the TVPRA was the culmination of nearly ten years of continuous effort by Senator Diane Feinstein and Representative Zoe Lofgren to pass the Unaccompanied Alien Child Protection Act (or the Unaccompanied Alien Minor Act). *See* 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008) ("This trafficking bill includes a provision I authored over 8 years ago—the Unaccompanied Alien Minor Act—to ensure that unaccompanied children receive humane and appropriate treatment while in the custody of the U.S. Government. Today Congress took an important step to protecting unaccompanied alien children, the most vulnerable immigrants."); *see also, e.g.*, 151 Cong. Rec. E2106 (daily ed. Oct. 21, 2003); 151 Cong. Rec. E383 (daily ed. Mar. 8, 2005).

Senator Feinstein introduced the Unaccompanied Alien Child Protection Act to address the problem of children being detained and jailed despite not having committed a crime. S. Hrg. 107-867, at 5 (2002). Of particular concern was "INS'

dual mission of enforcing immigration laws and providing services," which made "impartial considerations of the children's best interests almost impossible." *Id.* at 4. The bill proposed improving conditions for these children by providing an office particularly dedicated to unaccompanied alien children, ensuring that these children had access to an attorney, and providing minimum standards for housing the children while in custody. *Id.* at 6.

During Senate hearings on the bill, the Director of Government Relations and U.S. Programs for the Women's Commission for Refugee Women and Children specifically testified regarding the importance of Paragraph 24 of the Flores Settlement Agreement:

> Any child placed in a medium secure or secure facility must also be provided a written notice of the reasons why.
>
> The Flores agreement has become a critical yardstick against which to evaluate INS practices with regard to children in its custody. ***It also provides the opportunity to challenge in federal court the placement of a child in a secure setting***.
>
> However, at least until recently, INS compliance with Flores has remained almost entirely self-initiated and self-monitored.

Id. at 39 (citing Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1996)) (emphasis added).

This testimony runs directly contrary to Appellants' assertion that "silence on the subject of bond hearings gives every reason to construe the HSA and

TVPRA as intentional decisions by Congress to place UAC custody decisions, and the review procedures for those decisions, in the hands of HHS, and out of the hands of immigration judges and other agencies outside of HHS." Appellants' Brief, Dkt. No. 9 at 23–24. Indeed, this testimony demonstrates that key stakeholders understood that the Flores Settlement Agreement, including Paragraph 24 of that Agreement, formed the foundation that the Unaccompanied Alien Child Protection Act would be built upon, a foundation that Appellants now seek to undermine.

Although the Unaccompanied Alien Child Protection Act was never passed, both the HSA and the TVPRA incorporated aspects of that bill. As Representative Lofgren noted in 2003, when an amended version of the Unaccompanied Alien Child Protection Act was introduced, the positive changes introduced by the HSA did not fully address the myriad issues faced by unaccompanied children:

> It is true that Congress last year transferred ***care, custody, and placement*** of unaccompanied alien children from the Department of Justice to the Department of Health and Human Services to improve the treatment children receive when encountered at our borders. This is certainly a big step in the right direction and I commend the Department of Health and Human Services for taking important steps to improve the care and custody of these vulnerable children. Unfortunately, Health and Human Services inherited a system that relied upon a variety of detention facilities to house children and was given little legislative direction to implement their new responsibilities. As a result, some children from repressive regimes or abusive families continue to fend

> for themselves in a complex legal and sometimes punitive system, without knowledge of the English language, with no adult guidance, and with no legal counsel.
>
> ***Now is the time for new legislation to complete the positive steps we have already taken to ensure that unaccompanied alien minors are not locked up without any legal help or adult guidance***. This is why I have introduced the Unaccompanied Alien Child Protection Act of 2003. It will ensure minimum standards for the care and custody of unaccompanied children and require a smooth transfer of minors from the Department of Homeland Security to the Department of Health and Human Services. It will also ensure that children receive adult and legal guidance as they navigate through our immigration system.

151 Cong. Rec. E2106 (daily ed. Oct. 21, 2003) (emphasis added). Thus, as reintroduced, the Unaccompanied Alien Child Protection Act was intended to fill in gaps in protections accorded to a very vulnerable group, not to dismantle them as Defendants now suggest doing.

As finally passed into law—as part of 2008's TVPRA—the Unaccompanied Alien Child Protection Act was intended to protect children "sent to detention facilities—often with adults or hardened criminals ***with no idea that they might be eligible for foster care or immigration relief***." 154 Cong. Rec. S10866 (emphasis added). Additionally, while Senator Feinstein noted that "[t]his legislation does not expand the current immigration rights of any child," it also did not set out to ***reduce*** the protections accorded to these children or "remove the jurisdiction and

responsibility for adjudicating immigration status from the Department of Homeland Security or the Executive Office for Immigration Review, where such jurisdiction and responsibilities currently reside." *Id.* at S10887.

In fact, the House Report discussing the TVPRA specifically notes that "Subsection (c) requires ***better*** care and custody of unaccompanied alien children to be provided by the Department of Health and Human Services (HHS)," rather than the stripped down protections Appellants now espouse. H.R. Rep. No. 110-430, at § 235 (2007) (emphasis added).

Moreover, nowhere in the legislative history of the HSA or the TVPRA is it suggested that bond redetermination hearings should be provided for adults and accompanied minors while denying such hearings for unaccompanied children. However, that is the pill that Appellants ask this Court to swallow: that after nearly eight years of attempting to increase the protections accorded to the most vulnerable group of alien, Congress actually intended to strip them of the protections routinely afforded to adults and accompanied children.[1] *See* 8 U.S.C. § 1226. We ask that this Court reject Appellants' request.

[1] Although narrow exceptions exist in 8 U.S.C. § 1226(c), such as mandating detention for adults convicted of certain crimes, adults and accompanied children are generally entitled to a hearing. *See Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring) (noting an individualized hearing regarding detention is the general rule); *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016) (upholding hearings for accompanied minors); Dkt No. 10 at EOR 52-53 (citing *Rodriguez v. Robbins*, 804 F.3d 1060, 1081-84 (9th Cir. 2015), *cert. granted sub nom. Jennings*

2. The Government Acknowledges the Continued Application of Other Sections of the Flores Settlement Agreement.

Appellants acknowledge that "the savings clause maintained the Agreement in effect as a consent decree." Dkt. No. 9, n.13. Indeed, as recently as 2014, the government recognized the continued application of the Flores Settlement Agreement and its attempts to meet its provisions:

> Yes, we are very well aware of the Flores settlement agreement. We are aware of the requirements, which are vast. I mean, our family residential standards is a 5-inch book, so there is a lot of requirements we must meet under Flores, and we have an entire team there that has been there for 2 weeks to make sure we address as many of those Flores requirements as necessary.

An Administration Made Disaster: The South Texas Border Surge Of Unaccompanied Alien Minors: *Before the H. Comm. on the Judiciary*, 113th Cong. at 145 (2014) (testimony of Tom Homan, Executive Associate Director for Enforcement and Removal operations, Immigration and Customs Enforcement). For at least these reasons, Amici request that this Court affirm the district court's decision to prevent Defendants from attempting to pick and choose which provisions of the Flores Settlement Agreement to continue to enforce while excusing non-compliance with post-hoc rationalizations.

---

v. Rodriguez, 136 S. Ct. 2489 (2016)). Further, even if the Department of Homeland Security alleges that an adult is subject to mandatory detention, he or she is entitled to a hearing to determine if that classification is accurate and supported. *See In Re Joseph*, 22 I&N Dec. 799 (B.I.A 1999) (holding that an Immigration Judge must evaluate who is subject to mandatory detention)

II. THE DISTRICT COURT PROPERLY AVOIDED RAISING SERIOUS CONSTITUTIONAL CONCERNS

The Supreme Court has long held that courts should interpret statutes in a manner that avoids deciding substantial constitutional questions under the canon of constitutional avoidance. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (describing the canon as a "cardinal principle" that "has for so long been applied by this Court that it is beyond debate."). The Ninth Circuit has repeatedly applied the canon in the immigration context, referring to it as a "paramount principle of judicial restraint." *See, e.g.*, *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1106 (9th Cir. 2001) (discussing the canon while interpreting an immigrant detention and removal statute). The canon is properly considered in every instance of statutory interpretation as "a tool for choosing between competing plausible interpretations of a statutory text" to avoid raising serious constitutional concerns. *Clark v. Martinez*, 543 U.S. 371, 381 (2005); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1076 (9th Cir. 2006).

In the underlying action, Appellants asked the district court to construe the TVPRA as "an intentional decision by Congress" to supersede bond hearings for unaccompanied children. *Flores v. Lynch*, Case No. 2:85-cv-04544-DMG-AGRx, Defendant's Opposition Brief, Dkt. No. 247 at 12. Because Appellants requested and received statutory interpretation from the district court, the district court properly and necessarily considered the canon while evaluating the statutory

interpretation set forth in Appellants' Opposition. Indeed, Appellants do not argue that the issues of liberty, due process, and indefinite detention are anything less than serious constitutional concerns.

On appeal, Appellants now offer a red herring by arguing that the district court erroneously concluded that bond hearings for unaccompanied children are "constitutionally essential" and "constitutionally required." Dkt. No. 9 at 31-32. But the district court concluded no such thing, nor was such a conclusion necessary for the district court to apply the canon of constitutional avoidance. Dkt. No. 10 at EOR 52-53.

In particular, one of the canon's "chief justifications is that it allows courts to *avoid* the decision of constitutional questions." *Clark*, 543 U.S. at 381 (emphasis original). Here, the district court simply and correctly noted that one plausible interpretation of the TVPRA could result in unaccompanied children being denied the same due process rights to which adults are entitled. Dkt. No. 10 at EOR 52-53. Rather than decide the constitutional question of whether this due process should also apply to unaccompanied children, the district court applied the canon and chose a "competing plausible interpretation" of the TVPRA that avoided such constitutional questions. Thus, the district court properly applied the canon in the same manner as the Supreme Court contemplated in *Clark v. Martinez* – a case that also dealt with prolonged detention of immigrants without review.

III. UNACCOMPANIED CHILDREN SHOULD BE GIVEN THE SAME CUSTODY REVIEW THAT ADULTS AND ACCOMPANIED CHILDREN RECEIVE IN IMMIGRATION PROCEEDINGS

Appellants' argument that a challenge to the constitutionality of the TVPRA should come in a separate proceeding is misplaced. Neither the underlying motion nor the district court's order challenged the constitutionality of the TVPRA in any manner. However, notwithstanding the district court's appropriate application of the canon of constitutional avoidance in this case, we take this opportunity to voice our strong conviction that unaccompanied children *should* be entitled to the same custody review that adults and accompanied children receive in immigration proceedings. We also consider it beyond question that the issues of liberty, due process, and indefinite detention without an opportunity to be heard raise grave constitutional concerns for any human being in the United States, and especially for unaccompanied children with no adult caregiver. *See Demore*, *supra*, 538 U.S. at 532 (Kennedy, J., concurring).

As such, we join with and fully support our fellow Amici Curiae and the Appellees on the issues of due process and the devastating impact that detention has on youth. Without repeating those arguments here, we direct the Court's attention to Section II of the Amicus Brief filed by the ACLU (Dkt. No. 24); Sections II and III of the Amicus Brief filed by Youth Advocacy Organizations (Dkt. No. 17); and Section III of the Appellees' Answering Brief (Dkt. No. 20).

IV. APPELLANTS' INTERPRETATION OF TVPRA, AS APPLIED TO INDIVIDUALS APPREHENDED WITHIN THE U.S., RAISES HEIGHTENED CONSTITUTIONAL CONCERNS AND SHOULD BE REJECTED

Appellants' attempt to deny a bond hearing to unaccompanied children raises heightened constitutional concerns where Appellants' interpretation of the TVPRA is applied to certain class members – specifically, individuals who have substantial and long standing ties to the United States and are apprehended within the United States as opposed to being apprehended in customs or at the border. Such a result would be plainly inconsistent with well-established Supreme Court precedent.

More particularly, one of the class members, B_O_, has lived with his parents in the United States since the age of three. As B_O_ is now 19 years old, nearly his entire life experience has been in the United States. *See* Appellees' Supplemental Excerpts of Record ("PER"), Dkt. No. 21 at PER 117. Moreover, both of his parents and his siblings legally live in the United States. *Id.*

Notwithstanding this, B_O_ was apprehended as a minor while in Texas and, as a result, he became subject to the American juvenile justice system and spent time in juvenile detention facilities. *Id.* Upon his completion of his sentence for delinquency, however, he was placed under ORR's custody, which continued until he was finally released on bond when he turned 18. *Id.* at PER 122-123. The district court below referenced B_O_'s story as an evidence of an "anomalous

result" that somehow denies bond hearings for minors but allows these hearings as soon as they turn 18. Dkt. No. 10 at EOR 52-53.

By way of further example, C_V_ was arrested in the United States in July of 2015 on charges that were ultimately dismissed. *See id.* at PER 242-245. His mother lives in Baltimore, Maryland and is exhausting every avenue to have her son released from the ORR's custody, but has not succeeded to date. As explained below, these unaccompanied children are a part of the class that has consistently been protected by due process.

For more than one hundred years, the Supreme Court has consistently recognized and afforded due process protections to individuals who are apprehended inside the United States, regardless of their immigration status. *See Kaoru Yamataya v. Fisher*, 189 U.S. 86, 101 (1903) ("it is not competent for the Secretary of the Treasury or any executive officer…to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard . . . ."); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent") (citations omitted). Thus, removing these

unaccompanied children's right to be heard goes against the well-established body of Supreme Court precedent and should be avoided.

Here, the district court construed the TVPRA properly by preserving this century-old right, and we join our fellow Amici Curiae in regarding Appellants' interpretation of the TVPRA incorrect as applied to all unaccompanied children. We further seek to elucidate the serious constitutional issue that Appellants' position raises when it is applied to the unaccompanied children who have been a part of the population of the United States of America. This issue is particularly relevant today, where the current executive branch has repeatedly affirmed its willingness to deport an increasing number of individuals. Under the current administration, it is foreseeable that more minors will be apprehended within the United States and potentially face the same lack of due process. Accordingly, we respectfully request that the Court uphold the district court's careful and correct construction of the TVPRA and the enforceability of Paragraph 24 of the Flores Settlement Agreement.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order.

Respectfully submitted,

Dated: March 17, 2017

By: /s/ *Austin Manes*

Austin Manes
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700
Attorney for Amici Curiae Safe Passage Project Clinical Course and 23 Professors who Represent Unaccompanied Youth

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5) because this brief contains 4,177 words, exclusive of the corporate disclosure statement, table of contents, table of citations, certificate of service, certificate of digital submission and this certificate of compliance, which are exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared using Microsoft Word in a proportionally spaced typeface, namely Times New Roman 14 point font.

Dated: March 17, 2017

/s/ *Austin Manes*
Austin Manes
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 17, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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

Dated: March 17, 2017

/s/ *Austin Manes*
Austin Manes
Counsel for Amici Curiae