

# COVINGTON

BEIJING BRUSSELS DUBAI JOHANNESBURG  
LONDON LOS ANGELES NEW YORK SAN FRANCISCO  
SEOUL SHANGHAI SILICON VALLEY WASHINGTON

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 6000

## FOIA EXEMPT

**By FedEx Overnight Delivery**

April 4, 2019

Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Office of the General Counsel  
U.S. Department of Homeland Security  
245 Murray Lane, S.W.  
Mail Stop 0485  
Washington, DC 20528-0485

Office of the Principal Legal Advisor  
Immigration and Customs Enforcement  
500 12th Street, S.W.  
Washington, DC 20536

U.S. Customs and Border Protection  
Office of the Chief Counsel  
1300 Pennsylvania Avenue, N.W.  
Washington, DC 20229

U.S. Department of Health and Human  
Services  
Office of the General Counsel  
200 Independence Avenue, S.W.  
Washington, DC 20201

U.S. Customs and Border Protection  
Tucson Field Office  
4760 N. Oracle Road  
Suite 316  
Tucson, AZ 85705

**Re: Notice of Claims Under the Federal Tort Claims Act —  
[REDACTED], on behalf of himself and his  
minor daughter, [REDACTED]**

Counsel:

Enclosed please find administrative claims against the United States government filed pursuant to the Federal Tort Claims Act on behalf of [REDACTED] and his minor child, [REDACTED] (age 6). The enclosed claims consist of: (1) an executed claim authorization; (2) [REDACTED] birth certificate; and (3) SF-95 Forms completed on behalf of [REDACTED] and [REDACTED] including Attachment A thereto.

Covington & Burling LLP and the Southern Poverty Law Center represent [REDACTED] and his daughter in this matter. We are submitting these claims without the benefit of formal discovery. Claimants reserve the right to amend or supplement their claims.

Please be advised that this submission (including the attachments) contains information about the claimants that is private and confidential, including the claimants' names and address.

## COVINGTON

Such information is exempt from the public access provisions of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). Should any U.S. government agency receive a request for disclosure related to these claims, we ask that the government: (1) notify the undersigned before responding to the requestor; and (2) redact any information, including but not limited to the claimants' names and address, that is exempt from disclosure under FOIA or any other applicable statute or regulation protecting the privacy of the claimants.

We look forward to discussing any proposals you may have for the prompt and fair resolution of these claims. Please feel free to contact us at any time.

Sincerely,



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Matthew J. Schlesinger  
Jason A. Carey  
Swati R. Prakash  
Bethany Theriot  
Jessica R. Hanson  
Covington & Burling LLP  
One CityCenter  
850 10th Street NW  
Washington, DC 20001  
(202) 662-6000  
MSchlesinger@cov.com  
JCarey@cov.com

Michelle Lapointe  
Laura Rivera  
Southern Poverty Law Center  
P.O. Box 1287  
Decatur, GA 30031-1287  
(404) 521-6700  
Michelle.Lapointe@splcenter.org

Enclosures (Claim Authorization Form, Birth Certificate, SF-95 Forms, SF-95 Claim Attachments)

## **ATTACHMENT A**

### **1. Submit to Appropriate Federal Agency**

Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Office of the General Counsel  
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245 Murray Lane, SW  
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Suite 316  
Tucson, AZ 85705

### **2. Claimant's Personal Representative**

Counsel: Matthew Schlesinger, Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, DC 20001-4956

Counsel: Michelle Lapointe, Southern Poverty Law Center, P.O. Box 1287, Decatur, GA 30031-1287

### **6. Date and Day of Accident**

J.V.S. and his daughter H.Y., then five years old, were forcibly separated by agents of the U.S. Department of Homeland Security ("DHS") on or about Thursday, May 10, 2018. H.Y. was put into the custody of the U.S. Department of Health and Human Services ("HHS"), Office for Refugee Resettlement ("ORR"), while J.V.S. remained in DHS custody. J.V.S. and H.Y. were not reunited until Saturday, July 21, 2018.

### **7. Time (A.M. or P.M.)**

J.V.S. believes that he and his daughter were separated in the evening.

## **8. Basis of Claims**

### **A. The Government Forcibly Separated J.V.S. from H.Y.**

Between mid-2017 and late 2018, the United States government forcibly took thousands of children from their parents, sending them to facilities and foster homes hundreds of miles away. These families were fleeing persecution in their home countries, only to encounter it in the very same place they sought refuge. After being separated, children and their parents often could not communicate in any way for weeks or months. Parents did not know whether their children were safe—or even where their children were—and had no way to comfort or protect them. Children could not understand what had happened to them: Why had their mothers and fathers allowed them to be taken away? Why had their parents abandoned them to strangers? The government tore apart families, subjecting children and parents to months of terror, anguish, and torment.

The government understood the harm that it was inflicting on these families. It took children from their parents not in spite of the harm, but because of it, intending that the terror visited on these families would deter other families from migrating to the United States.

J.V.S. and his then-five-year-old daughter, H.Y., are among the families torn apart by the U.S. government. J.V.S. and H.Y. suffered physical, mental, and emotional harm because of the unconstitutional, intentional, reckless, and negligent acts of U.S. government policymakers at the highest levels, whose goal was to cause harm and instill fear and terror. J.V.S. and H.Y. suffered still greater harm because of the unconstitutional, intentional, reckless, and negligent acts and omissions of federal actors, who used unnecessary and unreasonable force and cruelty to separate J.V.S. from his daughter, and failed to exercise the basic care and decency that are the hallmarks of a civilized society.

J.V.S. and H.Y. will carry the trauma of forcible separation with them for the rest of their lives. They seek redress from the government for the harm the government has caused them.

#### **1. J.V.S. and H.Y. are Separated Without Any Information or Explanation.**

In late April 2018, J.V.S. and H.Y. fled their home in Guatemala, where they were plagued by extortion and gang violence, to seek refuge in the United States. Every night of their journey to the United States, J.V.S. held H.Y.—his only child—as they slept. Though the trip was challenging, H.Y. remained in good spirits throughout and laughed often.

J.V.S. and H.Y. reached the United States, near Yuma, Arizona, on or about May 8, 2018. They encountered immigration officials shortly after crossing the border. The immigration agents placed J.V.S. and H.Y., along with a group of other migrants that included several children, in a pickup truck, and then a van with benches, and transported them to a U.S. Customs and Border Protection (“CBP”) facility. At the facility, immigration agents processed

Claimant: J.V.S., on behalf of himself and his minor daughter, H.Y.

J.V.S. and H.Y. One of the agents asked J.V.S. if he had been watching the news and said, “You know what’s going to happen, don’t you? We’re going to take the girl away and send her to a detention center for minors and you’re going to be imprisoned.” J.V.S. was alarmed. He hoped that what the official had told him was not true, but he remained very anxious about what they were going to do with him and H.Y.

J.V.S. and H.Y. spent their first approximately two days and nights in the United States shivering on the concrete floor of the CBP facility crowded with other migrant families. At this facility, known to those detained there as the *hielera* or “icebox” for its frigid temperatures, J.V.S. and H.Y. were crowded into a “cage”—a concrete space surrounded by fencing—with about thirty other people. The facility had several more cages that held scores of additional migrants, including many children. Each cage had just one bathroom for use by all those detained, and the bathrooms had only half-doors. If J.V.S. or H.Y. needed to use the bathroom, they had to walk over people lying on the floor. There were no showers for the detainees to use and no way for them to brush their teeth. The agents denied the detainees showers, soap, and toothpaste. A trash can in the cage overflowing with waste, and a foul smell emitted from the bathroom into the areas where J.V.S., H.Y., and the other migrants spent all day and all night. The lights were on at all times in the *hielera*, and there were no windows visible from the cages, making it difficult for J.V.S. to know whether it was day or night.

When they arrived at the facility, J.V.S. and H.Y. had to hand over their belongings to the CBP agents. Although J.V.S. had a few changes of clothes for H.Y. in a backpack, he was not allowed to bring any of them into the cage, nor was he allowed to take the sheet that he had packed for her to use on cold nights. Instead, the agents issued J.V.S. and H.Y. only thin aluminum sheets to shield themselves from the bitter temperatures in the facility. The sheets were flimsy and ripped after one night, so J.V.S. attempted to find pieces of additional sheets left behind by other migrants to try to keep H.Y. warm. In the cage where J.V.S. and H.Y. were held, there were no beds. The migrants, including children, were pressed together on the floor attempting to sleep. But the space was so cramped, there was not enough room for all the migrants to lie down, so J.V.S. sat up on the concrete bench. He was afraid that if he slept, he would fall off the bench. He mainly stayed awake, watching over H.Y., who slept on the floor, with only the thin aluminum sheet to protect her against the freezing concrete.

The agents gave the families in the cage nothing to eat but undercooked instant ramen noodle soup, and, for the children, some crackers and juice. The agents brought the noodles in tepid water to the detained families, and there was no hot water available to warm up the soup or cook the noodles. It broke J.V.S.’s heart that he could only feed his daughter these undercooked noodles. H.Y. told her father that she was hungry, but she was reluctant to eat the undercooked noodle soup. She ate it three times during their first day in the *hielera*, but by the second day, she would only take a bite and then refuse to eat the rest. H.Y. asked her father why they could only eat the undercooked soup. J.V.S. told her to be patient and tried to reassure her that they

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would not be eating soup forever. The water that came out of the sink at the *hielera* was foul-smelling and foul-tasting. They spent twenty-four hours a day in the cage, and were not permitted to go outside.

After about two days at the *hielera*, the agents called the name of one of the other detained migrants and escorted him, along with his daughter, out of the cage. But only the father returned to the cage—his daughter was gone. The father cried and told the other migrants that the agents had taken his daughter away. Several others in the cage began crying and asked the father where the agents had taken his daughter. The man couldn't answer. At that moment, J.V.S. realized that the threat that the agent had made when J.V.S. and H.Y. first arrived at the *hielera* was true—they really were taking children from their parents. Still, J.V.S. held out hope that they wouldn't take very young children, like H.Y., who was just five years old. But his hope was short-lived, as an agent called J.V.S. and H.Y. out of the cage next.

J.V.S. was filled with dread about what was going to happen. After briefly questioning J.V.S., the official said, echoing the threats that had been made when J.V.S. first arrived, "We're going to take the girl away and send her to a detention center for minors. You're going to be imprisoned." J.V.S. was horrified at the thought of separation. He pleaded to the official that his five-year-old daughter was too small to be taken from him and that he could not leave her. The official treated J.V.S. brusquely and only told him, "She can't stay here longer; we're going to send her away." A different official, who J.V.S. believed was a social worker, told J.V.S. to bathe H.Y. and change her clothes before she was taken away. This official handed J.V.S. clothes and a pair of sandals for H.Y. that were far too big for her, and directed them to an area behind the offices where there were showers.

J.V.S. bathed H.Y. and put her belongings into a bag, which consisted of a few clothes and some orthotic inserts he purchased in Guatemala to help protect her tiny feet. J.V.S. only had about ten minutes to bathe H.Y. and dress her. Although J.V.S. treasured the brief minutes that he had with H.Y., they were also intensely painful—he was anguished about the impending separation as he spent the few remaining moments with his daughter. Through tears, J.V.S. struggled to explain to his daughter what was happening. He told H.Y. that the officials were going to take her somewhere else while he stayed at the detention center. He told her to behave herself, to be strong, and to have patience—that he didn't know exactly when they would see each other again, but that he would never leave her. J.V.S. reminded H.Y. that God would look over and protect them. While he attempted to maintain a strong face for his daughter, J.V.S. wondered internally if this was the last time he would see her. H.Y. didn't say anything, but J.V.S. could tell that she seemed worried while she appeared to be trying to process everything that was going on.

After J.V.S. bathed H.Y., the officials told J.V.S., along with the parents of about eight other children, to say goodbye to their children. J.V.S. thought of how innocent his daughter was and describes the moment as one of the most painful in his life. He felt as if the officials were

Claimant: J.V.S., on behalf of himself and his minor daughter, H.Y.

“taking half of [his] life from [him].” When the social worker approached H.Y., she started crying uncontrollably and latched onto her dad, screaming, “*Papi*, don’t leave me! Don’t let me go!” H.Y., who had been upbeat and smiled often on the journey from Guatemala, began crying uncontrollably. J.V.S. attempted to comfort her, telling her not to be sad because they would “only be apart for a few moments,” and that he would come get her. The officials told the children to line up on one side of the room, with the parents on the other side.

The crying children lined up as ordered, wearing their government-issued clothes. J.V.S.—standing with the other parents apart from their children on the other side of the room—felt powerless to do anything to stop the separation. The moment was excruciating for J.V.S. and H.Y. Although H.Y. kept crying, J.V.S. said with “all the pain in [his] heart [he] had to let them take her.” The agents then led the children in a line out the door, while J.V.S. and the other parents stood there watching, not knowing when—or even if—they would ever see their children again. Then the officials took J.V.S. and other parents back to the cages. J.V.S. describes the scene as being “like a funeral,” with grown men and women openly and uncontrollably weeping. As soon as H.Y. was gone, J.V.S. began crying uncontrollably. His mind raced to the thought of being deported without his daughter. He felt unbearable anguish not knowing whether he would see his daughter again.

## 2. J.V.S. is Kept in Detention After Separation.

J.V.S. wept every day of the next week that he was kept in the *hielera* after H.Y. was taken. Left with no information about his daughter, J.V.S. could not sleep. The agents refused to tell him what would happen to him and his daughter. Were they going to be deported? Would U.S. officials deport only J.V.S., leaving H.Y. alone in the United States? What would happen to H.Y.? Overcome with confusion and fear, J.V.S. and the other separated parents in the *hielera* cried for their children. J.V.S. recalls comforting another father who could not stop thinking about what could happen to his child. Although J.V.S. reassured him that they would someday be reunited with their children, privately he was deep in despair. Desperate for information, J.V.S. and other parents constantly asked the officials at the *hielera* about their children, but were denied any information. Often times the officers would shut the door to silence the parents’ pleas.

While in the *hielera*, the detainees continued to eat nothing but the undercooked instant noodle soup. Each time, J.V.S. was painfully reminded that H.Y. was only able to eat the undercooked soup for their last meals together. Whenever he ate he wondered if H.Y. was eating properly. He hoped that wherever she was, she at least had better food than what she had eaten in the *hielera*.

After approximately a week in the *hielera*, J.V.S. and several other detainees were taken to a courthouse. J.V.S. understood that he was sentenced to “time served” for entering the United States without authorization, although he does not recall having pleaded guilty or even

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going before a judge. The government then put J.V.S. in the custody of U.S. Immigration and Customs Enforcement (“ICE”) and transferred him—shackled at the hands, waist, and feet—to a detention center in Florence, Arizona for about a week. In ICE detention, J.V.S. continued to ask officers about his daughter, with no response. J.V.S. had not heard anything about his daughter since their separation. The lack of information or even response from the officers put J.V.S. in a state of hopelessness, causing him to cry most nights.

In late May, J.V.S. was transferred across the country to the Folkston ICE Processing Center in Folkston, Georgia, again shackled at the hands, waist, and feet during the flight. Again, J.V.S. asked about his daughter, but the officials at Folkston ignored J.V.S.’s pleas. J.V.S. was soon transferred again, shackled, this time to Stewart ICE Detention Center in Lumpkin, Georgia. After arriving at Stewart Detention Center he contacted the Guatemalan consulate to seek information about H.Y. The consulate tracked down a number for a worker at Lutheran Social Services (“Lutheran Services”) in New York, where H.Y. was being held. J.V.S. could not call H.Y. right away because he could not afford the expensive calling card PINs needed for detainees to make calls from within the detention center. J.V.S. began work as a janitor at the detention center, earning about two dollars a day, to talk to his daughter. All of the money went towards purchasing PIN-based calling cards. After saving enough, J.V.S. called the Lutheran Services case manager from detention on or about May 26, expressing his desperation to know his daughter’s whereabouts and to speak with her. Throughout the entire process of attempting to locate and speak with his daughter, J.V.S. received no help from anyone working for the U.S. government.

J.V.S. and H.Y. talked for the first time on or about May 31, 2018—three weeks after their separation in Arizona. When they finally connected by phone, it was nearly impossible for them to speak because they were overcome with emotion and both crying uncontrollably. They only had time to greet each other and weep for a few minutes before the time on J.V.S.’s calling card expired and the call disconnected. Hearing H.Y.’s voice after so long apart, but still being unable to see her or know when they would be reunited, was agony for J.V.S. H.Y.’s crying so distressed J.V.S. that he began to doubt whether he should have even called her. He worried that the call made things worse for H.Y. because they could talk but not be together, nor could he tell his daughter whether they would see each other again.

Deeply concerned for his daughter, J.V.S. confirmed to the worker at Lutheran Services that if he were to be deported, he wanted H.Y. to return to Guatemala with him. The case worker was able to reach J.V.S.’s wife (H.Y.’s mother) in Guatemala who agreed with this decision. Although J.V.S. feared the persecution and danger that awaited them in Guatemala, he also feared what would happen to H.Y. if she were left alone in a foreign land. During the next seven weeks of their separation, J.V.S. and H.Y. were able to speak only five more times for short periods of a few minutes, including one video call.



Claimant: J.V.S., on behalf of himself and his minor daughter, H.Y.

J.V.S.'s detention in Stewart was deeply discouraging and degrading. He shared a small prison cell with a stranger. J.V.S. could only think about what was happening to H.Y. and cried every night. For a month, J.V.S. sat in his prison cell and wondered if he would ever see his daughter again.

Although J.V.S. wanted to pursue his immigration case in the United States, he was increasingly desperate to see H.Y. again. Seeing the other asylum-seekers languishing in ICE detention for months and even years, J.V.S. began to believe that the only way to be reunited with his daughter was if he chose not to pursue his asylum claim and be deported. On June 18, 2018 J.V.S. appeared before an immigration judge at Stewart Detention Center. Desperate to see his daughter, J.V.S., calculating that the only way he would even see H.Y. again was if he abandoned his asylum claim, told the judge that he was not afraid of returning to Guatemala, despite his real fear of return. The immigration judge ordered J.V.S. removed.

Eight days after J.V.S. appeared before the immigration judge in Stewart, Judge Sabraw in the U.S. District Court for the Southern District of California issued a class-wide preliminary injunction prohibiting the government from deporting any parent who had been separated from his child at the U.S. border and detained by the Department of Homeland Security before he was reunified with his child. *Ms. L. v. U.S. Immigration & Customs Enforcement*, 310 F. Supp. 3d 1133, 1146 (S.D. Cal. 2018). Judge Sabraw, finding that the government's policy of separating families at the border likely violated the substantive due process right to family integrity, ordered the government to reunite the families like J.V.S. and H.Y., who was five years old, within 30 days, or by July 26, 2018. *Id.* at 1149.

In late June, J.V.S. was again transferred to Folkston ICE Processing Center, again in shackles. While at Folkston, ICE and HHS officials came by multiple times and presented him with a form in English that they instructed him to sign. Because the forms were in English, J.V.S. did not understand fully what they said. However, officials explained to him in Spanish that the form had two basic options: 1) he could be deported with his daughter, or 2) he could be deported alone and he could leave his daughter in the United States. He recalls additional language at the bottom of the form, but he does not know what it said. Unable to read or understand the forms for himself, J.V.S. refused to sign them. On or about July 16, 2018, J.V.S.'s legal representatives attempted to meet with him at Folkston, but were told that they could not see him because he was being processed to leave the detention center. On July 18, 2018 an immigration judge re-opened J.V.S.'s case in light of the "totality of the circumstances" surrounding the previous removal order.

3. H.Y. is Placed in ORR Custody More than 1,000 Miles Away.

After H.Y. was separated from her father, she spent a night or two at an unknown location<sup>1</sup> before being put on a flight across the country—her first time ever on an airplane, without any family by her side. She arrived in New York City on or about May 11, 2018. She was placed in the custody of Lutheran Social Services of New York, Safe Haven for Children Program run under the auspices of ORR. H.Y. was placed in a foster home affiliated with the program shortly after her arrival in New York City. On or around May 12, the day after her arrival in New York, H.Y.'s ORR records reflect that she cried when discussing her separation from her father with the case manager. On May 17, H.Y., who “presented sad and timid,” told her case manager that she missed her parents and wanted to talk to her dad. H.Y. was not able to speak to her father for approximately twenty-two days after separation.

While in ORR custody, H.Y. suffered multiple instances of harm. On or about May 21, H.Y. was watching television at her foster home when a male minor residing at the same home inappropriately touched her chest. In one of her weekly meetings with her clinician, H.Y. reported that this made her feel uncomfortable. Child Protective Services was informed and law enforcement officers came to the home to investigate the incidents.<sup>2</sup> According to an ORR Counseling Progress report, H.Y. was scared when she saw the law enforcement officers and “did not understand why they were in the home”—the last time she had been in the presence of law enforcement, officials had separated her from her father. Following the inappropriate touching at the first foster home, H.Y. was moved to another foster home. However, the same boy remained in her “class” at Lutheran Services, and on May 24, staff noted that he attempted to grab H.Y.'s face and kiss her. Their teacher separated them and explained to both that the behavior was wrong. H.Y. and the minor were “monitored” more closely, but ORR records do not indicate that they were placed in separate classes. H.Y. had difficulty focusing in school after these incidents.

At her new foster home, H.Y. reported to a case worker that the mother of the foster mother there had spoken to her harshly, using offensive words in Spanish that made H.Y. upset and uncomfortable. The words were “*pendeja*” (which is translated variously as “stupid,” “dumbass,” or “asshole”) or, as the grandmother claimed, “*pendejada*” (“foolishness” or “stupid thing”) and “*carajo*” (“fuck,” “shit,” or “damn it”). A caseworker told the grandmother, who was of Dominican origin, that such words were offensive to people from Guatemala, like five-year-old H.Y. In several instances, H.Y. was locked alone in a room as “punishment.”

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<sup>1</sup> J.V.S. was never told, and government records concerning H.Y. do not indicate, where she spent the first night or two after the government took her from her father in Arizona.

<sup>2</sup> It is unclear what follow-up was conducted by law enforcement or other authorities relating to these incidents.

4. J.V.S. and H.Y. are Reunited and Face the Effects of Separation.

Around July 16, 2018, ICE transferred J.V.S., shackled again by the wrists, waist, and feet, by plane to another detention center in Port Isabel, Texas. Before he left Folkston for Port Isabel, J.V.S. was given a DNA test. J.V.S. was unsure what would happen once he arrived in Port Isabel, but believed he was getting closer to finally reuniting with H.Y. At Port Isabel, officials told him that he was going to be reunited with his daughter and released on parole.

At approximately 2 a.m. on July 21, 2018, H.Y. left her foster home in New York and boarded a plane for Texas. That day, an official called J.V.S. to speak with his attorney on the phone. Before J.V.S. could take the call, another official told him to go back to his cell to gather his belongings. Although J.V.S. was never told that he was going to meet his daughter, he followed officers past other offices and looked into each one, hoping to see her. They then stopped and entered an office where J.V.S. saw H.Y. watching television. J.V.S. immediately began crying tears of joy when he saw his daughter. He realized that he had, at times during the separation, lost hope that he would ever see her again. J.V.S. also felt immediate anxiety when he saw H.Y., because he was concerned about how the separation had affected her emotionally, and he was unsure how she would react when they were reunited. When J.V.S. stepped into the room H.Y. looked over at him with uncertainty: for a brief moment, it seemed that she did not recognize him. But then—realizing that her father was finally standing in front of her—she ran over to him and cried as she embraced him. J.V.S. describes this as a “beautiful moment” that “brought [him] to life again.”

Because they had nowhere to go, the two spent a few days at a Catholic Church in Texas before they were released together. During that time, as joyous as he felt at having his beloved daughter back with him, J.V.S. was also deeply troubled at the thought of H.Y.’s pains—his wife had informed him of some of the harms she experienced in foster care—and of his inability to protect her from those harms. They resettled in Massachusetts, where J.V.S. is pursuing his asylum case.

The two and a half months of separation “emotionally destroyed both” J.V.S. and H.Y. In the eight months since the reunification with his daughter, J.V.S. has noticed the ongoing and lasting effects that the trauma of separation has had on H.Y. She is far more sensitive than she was before the separation and cries frequently for no apparent reason. J.V.S. notices that she is now impatient and quick to anger, on occasion hitting him. In calls with her mother, H.Y. suddenly and inexplicably becomes angry and hangs up. She was not like this before the separation. After reunifying with her father, H.Y. did not want to go to school. J.V.S. perceived that H.Y.’s self-esteem has suffered. Even now, H.Y. has nightmares about the separation and her detention that wake her at night and make it difficult for her to sleep. J.V.S. finds it difficult and shocking to see his previously happy daughter act this way, but tells himself he must “remember what she went through.”

Claimant: J.V.S., on behalf of himself and his minor daughter, H.Y.

The prolonged separation has also impacted J.V.S. deeply. While he was separated from H.Y., he wept constantly and had trouble sleeping. The insomnia persisted for months even after he and H.Y. were reunited. J.V.S. did not learn of all the incidents of harm that H.Y. endured in ORR custody until after their reunification. At night J.V.S. still remembers the “pain of it all.” J.V.S. has had difficulty concentrating on tasks and finds that these events have left him with constant sadness. He often does not feel like speaking with anyone, including family members in Guatemala. They complain about his unwillingness to speak, since he was not like this before. J.V.S. frequently feels deeply depressed and unable to enjoy life. The separation deeply damaged J.V.S. and H.Y., and J.V.S. attempts to seek solace in his faith.

**B. The Government Illegally Separated Families for the Purpose of Deterring Future Migrants.**

The Administration took thousands of children from their parents, intending to cause terror, anguish and harm, and to use that cruelty to deter future migrants from seeking to enter the United States. Both the policy itself, and its implementation, violated the Constitution, the law, and basic human decency.

The many harms that the Administration inflicted on J.V.S. and H.Y., as described in Section A, were not only foreseeable, but intentional. Forcible parent-child separations have long been known to cause significant short- and long-term damage to mental, physical, and emotional health. Knowing this, and indeed because of this, the government cruelly separated J.V.S. and H.Y. and others like them for the purpose of deterring future migrants from entering the United States. It made the harm far worse by implementing its policy with carelessness and callous disregard for the physical safety and emotional well-being of J.V.S. and H.Y. Administration officials have yet to acknowledge or accept any responsibility for the harms they caused. For all of these reasons, J.V.S. and H.Y. seek relief through these claims.

1. The Government’s Forcible Separation of Families Violated the Constitution, the Law, and Norms of Basic Human Decency.

The government’s policy of separating families who, like J.V.S. and H.Y., sought to enter the United States through the U.S. southern border in 2017 and 2018 deliberately violated the constitutional rights of those separated, including the right to family integrity. For decades, this nation’s highest court has recognized the fundamental right to family integrity protected by the Constitution: “It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”<sup>3</sup> These constitutional protections extend to citizens and non-citizens alike, even when confined by the government.<sup>4</sup>

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<sup>3</sup> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

<sup>4</sup> *Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enft*, 319 F. Supp. 3d 491, 500 (D.D.C. 2018) (“The fact that [families are] lawfully detained in immigration custody does not eliminate [their] due process right to family integrity.”).

Through its family separation policy, in the name of deterrence, the government indiscriminately tore immigrant children from their parents, sent the children thousands of miles away, refused to inform parents and children of each other's whereabouts or well-being, refused to provide adequate means for parents and children to talk with each other, and failed to have any system for tracking the children or ensuring that families could ever be reunited.

As Judge Sabraw concluded in *Ms. L. v. U.S. Immigration and Customs Enforcement*, the government's actions "shock[] the conscience."<sup>5</sup> "[N]othing in federal law suggests that deterring immigration by indefinitely separating families once the parents have been transferred to immigration custody is a compelling or legitimate government objective."<sup>6</sup> Both the policy itself and its callous implementation violate the Constitution, the law, and norms of human decency.

2. Forcibly Separating Families Causes Irreparable Harm to Children and Parents.

Keeping parents separated from their children with "little or no direct access to basic information about their health or general wellbeing, *plainly causes irreparable harm.*"<sup>7</sup> Children attach to their caregiver from the time they are born, and the children's sense of safety "depends on that relationship."<sup>8</sup> Disrupting that relationship causes "the parts of the brain that deal with attachment and fear" to "develop differently."<sup>9</sup> It is not surprising, then, that "[s]eparation irreparably harms [families] every minute it persists."<sup>10</sup>

The findings of the *Jacinto-Castanon de Nolasco* court are firmly anchored in scientific studies and literature. As an expert physician testified to Congress, "A century of countless studies across the behavioral and social sciences provide *extensive evidence* of the consequences of separating children from their parents, especially if that separation is unexpected, abrupt, or in a frightening context."<sup>11</sup> For example, research into World War II separations shows "documented far reaching effects of these separations into adulthood, including increased risk for mental health problems, poor social functioning, insecure attachment, disrupted stress reactivity, and mortality."<sup>12</sup>

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<sup>5</sup> 310 F. Supp. 3d 1133, 1142.

<sup>6</sup> *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502.

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> William Wan, *What Separation from Parents Does to Children: 'The Effect is Catastrophic'*, WASH. POST (June 18, 2018), <http://tinyurl.com/yxf6en34>.

<sup>9</sup> *Id.*

<sup>10</sup> *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 503.

<sup>11</sup> *Examining the Failures of the Trump Administration's Inhumane Family Separation Policy: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Commerce*, 116th Cong. (2019) [hereinafter *Oversight & Investigations Hearing*] (testimony of Jack P. Shonkoff, MD, Director, Center on the Developing Child at Harvard University) (emphasis added).

<sup>12</sup> Johayra Bouza et. al., *The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities*, Soc'y for Res. in Child Dev. Statement of the

The American Academy of Pediatrics (“AAP”) explained the effects of separation on children: “[H]ighly stressful experiences, like family separation, can . . . disrupt[] a child’s brain architecture and affect[] his or her short- and long-term health. This type of prolonged exposure to serious stress — known as toxic stress — can carry lifelong consequences for children.”<sup>13</sup> Children who experience trauma like forced separation from a parent “are at a much greater risk of developing mental health disorders such as depression, anxiety, addiction, ADHD and PTSD. Their physical health is also negatively affected.”<sup>14</sup> The materials cited here barely scratch the surface of the wealth of expert material describing the harms caused by family separation. Given the “extensive evidence,” the irreparable harm caused by forcibly separating parents and children is indisputable.<sup>15</sup>

3. The Government Knew of the Harm It Would Cause by Tearing Children from their Parents at the Border.

Moreover, the federal government *knew* of the harm caused by separating children from their parents long before it instituted the family separation policy to which J.V.S. and H.Y. were subjected. Evidence of that is plentiful, both in internal agency comments and in the government’s reaction to the public outcry against the policy when it was initially proposed in 2017. For example:

- In 2016, the U.S. Department of Homeland Security’s (“DHS”) Advisory Committee on Family Residential Centers concluded that “the separation of

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Evid., Jun. 20, 2018, <https://tinyurl.com/y3fkofpb>; *see also, e.g.,* Wan, *supra* note 8 (describing the psychological and physiological responses that “wreak[] dramatic and long-term damage” on children who are forcibly separated from their parents).

<sup>13</sup> *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 503 (quoting Colleen Kraft, Am. Acad. of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (May 8, 2018), <https://tinyurl.com/ycr3rjqh>); *see also* Brittny Mejia, *A 3-Year-Old was Separated from his Father at the Border. Now His Parents are Dealing with his Trauma*, L.A. TIMES (July 3, 2018), <https://tinyurl.com/y79ra9un> (“A child taken from a parent is flooded with anxiety, which quickly turns into panic. . . . Children’s bodies and brains, ‘are absolutely not built to withstand that level of stress.’” (quoting child psychiatrist Dr. Amy Cohen)); Allison Abrams, LCSW-R, *Damage of Separating Families: The Psychological Effects on Children*, PSYCHOL. TODAY (June 22, 2018), <http://tinyurl.com/y844pqsk> (Because a child’s “secure attachment comes from the child’s perceptions of his or her caregiver’s availability (physical accessibility) . . . separations as brief as one week in duration could negatively impact the quality of attachments.”); *id.* (Children who are separated from a parent “develop insecure/disorganized attachment and persisting high levels of stress.”) (quotations omitted).

<sup>14</sup> Abrams, *supra* note 13; *see also* Sarah Reinstein, *Family Separations and the Intergenerational Transmission of Trauma*, CLINICAL PSYCHIATRY NEWS (July 9, 2018), <https://tinyurl.com/y3h7asck> (“[C]hildhood trauma is associated with emotional dysregulation, aggression against self and others, difficulties in attention and dissociation, medical problems, and difficulty with navigating adult interpersonal relationships.”).

<sup>15</sup> Moreover, here, the harm caused by the forced separation of the children from their parents was compounded by the harm caused by the resultant detention of the children. *See, e.g.,* Julie M. Linton, Marsha Griffin, Alan J. Shapiro & Council on Community Pediatrics, *Detention of Immigrant Children*, 139 PEDIATRICS 6 (Mar. 13, 2017), <https://tinyurl.com/yc3sco99> (AAP Policy Statement noting that studies of detained unaccompanied minors in the United States found “high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems” and that the AAP has found “no evidence indicating that *any* time in detention is safe for children” (emphasis added)).

families for purposes of immigration enforcement or management, or detention is *never* in the best interest of children.”<sup>16</sup>

- In February 2017, having noticed a marked uptick in young children separated from parents at the border, a high-ranking HHS official expressed his concerns about the harms of family separation directly to then-ORR director Scott Lloyd and other top officials.<sup>17</sup> This same official has testified before Congress that because “[s]eparating children poses significant risk of traumatic psychological injury to the child,’ . . . neither he nor anyone he worked with ‘would ever have supported such a policy.’”<sup>18</sup>
- In March 2017, when senior officials at DHS told the press that the agency was considering a deterrence policy of separating migrant parents and children at the border,<sup>19</sup> the announcement was met with an immediate wave of warnings from the medical community. The AAP, among others, warned that such a policy would affect “vulnerable, scared children” and urged policymakers to “exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the United States is not exacerbated by the additional trauma of being separated from their siblings, parents or other relatives and caregivers.”<sup>20</sup>

When confronted by public backlash to the then-proposed family separation policy, DHS Secretary John Kelly, who had initially confirmed DHS’s plans to pursue family separation, changed course, assuring the Senate Committee on Homeland Security and Governmental Affairs in April 2017 that children would be separated from their parents only “if the child’s life is in danger” or if the parent was “an addict,”<sup>21</sup> rather than as a matter of due course for families arriving at or crossing the border.

Given the Administration’s own internal comments and the government’s response to the many public warnings opposing a family separation policy, there is no question that the Administration was well aware of the harms family separation would cause — before it implemented its family separation policy.

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<sup>16</sup> U.S. IMMIGRATION & CUSTOMS ENF’T, DEP’T OF HOMELAND SEC., REP. OF THE DHS ADVISORY COMMITTEE ON FAMILY RESIDENTIAL CENTERS 2 (2016) (emphasis added), *available at* <https://tinyurl.com/y5o9d2wc>.

<sup>17</sup> *Oversight & Investigations Hearing*, *supra* note 11 (testimony of Commander Jonathan White, U.S. Public Health Service Commissioned Corps, U.S. Department of Health and Human Services).

<sup>18</sup> Colleen Long, *Official Who Oversaw Migrant Kids: Separation Causes Trauma*, AP NEWS (Feb. 7, 2019), <https://tinyurl.com/y59zw9xo> (quoting testimony of Commander Jonathan White, U.S. Public Health Service Commissioned Corps).

<sup>19</sup> Julia Edwards Ainsley, *Exclusive: Trump Administration Considering Separating Women, Children at Mexico Border*, REUTERS (Mar. 3, 2017), <http://tinyurl.com/y6qpmrpu>.

<sup>20</sup> Fernando Stein & Karen Remley, Am. Acad. of Pediatrics, AAP Statement Opposing Separation of Mothers and Children at the Border (Mar. 4, 2017), <http://tinyurl.com/jzeburx>.

<sup>21</sup> Brooke Singman, *Kelly Says Full-scale Border Wall ‘Unlikely,’ Clarifies Position on Family Detentions*, FOX NEWS (Apr. 5, 2017), <https://tinyurl.com/y425hlq6>.

4. Knowing the Harm, the Government Forcibly Separated Families for the Purpose of Deterring Future Migrants.

Despite Secretary Kelly's public assurance that families crossing the border would be separated only in specific circumstances for the welfare of the child, the Administration instituted a general policy of separating all families who crossed the southern U.S. border. It did so knowing the separations would cause harm, and intending to leverage that harm to deter future immigrants from seeking to enter the United States.

The family separation policy began as a pilot program of family separation in the U.S. Border Patrol's El Paso sector between July and October 2017.<sup>22</sup> Under the program, the government targeted parents who unlawfully crossed the border into the United States with young children for criminal prosecution. It detained parents as criminals, and forcibly took their children away from them. CBP placed the children in the custody of the Office of Refugee Resettlement ("ORR") (a division of HHS), which dispersed the children into institutionalized settings and foster homes throughout the country.

About six months later, on April 6, 2018, the U.S. Attorney General announced a "Zero Tolerance Policy," extending the practices of criminal prosecution and family separation tested in the El Paso pilot program to the entirety of the southern border. The Zero Tolerance Policy "fundamentally changed DHS' approach to immigration enforcement," which, until 2017, did not separate a child from an accompanying adult except in very limited circumstances, such as where CBP determined that the adult was not the child's parent or guardian or the adult posed a danger to the child.<sup>23</sup>

Several aspects of the Zero Tolerance Policy reveal that its goal was to harm families through forcible separation in an effort to deter future immigrants from seeking entry to the United States.

For example, a December 2017 internal DHS memo confirms that "prosecution of family units" and "separat[ion] [of] family units" (as well as the publicity that would accompany such actions) were viewed as differing pathways to deterring future migration.<sup>24</sup> Despite the

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<sup>22</sup> OFF. OF INSPECTOR GEN., U.S. DEP'T OF HEALTH AND HUMAN SERVS., OEI-BL-18-00511, SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE 3 (2019), *available at* <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf> [hereinafter HHS OIG REPORT] ("From July through November 2017, the El Paso sector of Customs and Border Protection (CBP), an agency within DHS, implemented new policies that resulted in 281 individuals in families being separated."); *see also* Lisa Riordan Seville & Hannah Rappleye, *Trump Admin Ran 'Pilot Program' for Separating Migrant Families in 2017*, NBC NEWS (June 29, 2018), <https://tinyurl.com/y7sk25mv>; Katherine Hawkins, *Where Family Separation Began: A Case in El Paso Shows Flores is the Solution, Not the Problem*, JUST SECURITY (June 22, 2018), <https://tinyurl.com/y3zpdkdl>.

<sup>23</sup> *See, e.g.*, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., OIG-18-84, SPECIAL REVIEW - INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY at 2 (2018), *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> [hereinafter DHS OIG REPORT].

<sup>24</sup> Anne Flaherty & Quinn Owen, *Leaked Memo Shows Trump Administration Weighed Separating Families at Border, Sen. Merkley Wants Nielsen Investigated for Perjury*, ABC NEWS (Jan. 18, 2019), <https://tinyurl.com/y48npsbe>.



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“official” federal government policy of “not referring for prosecutions families or individuals arriving at ports of entry or attempting to enter the country through legal means,”<sup>25</sup> many families lawfully crossed the border and yet were separated anyway.<sup>26</sup>

Moreover, while the Zero Tolerance Policy was in effect, CBP limited the number of asylum seekers permitted to lawfully cross the border at ports of entry each day.<sup>27</sup> This drove many families who had fled their home countries in fear “to take other routes into the country, at which point they were prosecuted and had their children taken from them.”<sup>28</sup>

A DHS directive, issued on June 23, 2018, suggested that once families were separated, only parents who were subject to removal would be reunited with their children, and only “for the purposes of removal.”<sup>29</sup> This directive imposed a “Hobson’s choice” on parents: They had to choose between seeing their children again or continuing to seek asylum in the United States. The Administration would not allow them to do both.

All of these circumstances show that the government intentionally inflicted the severe harm caused by forcible separation on families, like J.V.S. and H.Y., who crossed the U.S. border. The government did so to deter future immigrants from coming to the United States.<sup>30</sup>

5. The Government’s Deliberate Lack of Planning Intensified the Harms, Prolonging Separation and Delaying Reunification

The Administration then multiplied the harm it intended to cause by the shocking carelessness with which it implemented its policy. The Attorney General announced the Zero Tolerance Policy without any prior notice to DHS and HHS (including ORR) officials,<sup>31</sup>

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<sup>25</sup> *Myth vs. Fact: DHS Zero-Tolerance Policy*, U.S. DEP’T OF HOMELAND SEC. (June 18, 2018), <https://www.dhs.gov/news/2018/06/18/myth-vs-fact-dhs-zero-tolerance-policy>; see also Jeff Sessions, Attorney General, U.S. Dep’t of Justice, Attorney General Sessions Addresses Recent Criticisms of Zero Tolerance By Church Leaders (June 14, 2018) (prepared remarks available at <https://www.justice.gov/opa/speech/attorney-general-sessions-addresses-recent-criticisms-zero-tolerance-church-leaders>) (“[I]f the adults go to one of our many ports of entry to claim asylum, they are not prosecuted and the family stays intact pending the legal process.”).

<sup>26</sup> See *Ms. L.*, 310 F. Supp. 3d at 1143 (“[T]he practice of family separation was occurring before the zero tolerance policy was announced, and that practice has resulted in the casual, if not deliberate, separation of families that lawfully present at the port of entry, not just those who cross into the country illegally.”).

<sup>27</sup> See DHS OIG REPORT, *supra* note 23, at 5-7.

<sup>28</sup> Evan Halper, *Federal Investigators Find Many Failures in Trump’s Family Separation Policy*, L.A. TIMES (Oct. 2, 2018), <https://tinyurl.com/y2srdo9q>; see also DHS OIG REPORT, *supra* note 23, at 5-7.

<sup>29</sup> *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification*, U.S. DEP’T OF HOMELAND SEC. (June 23, 2018), <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>.

<sup>30</sup> Philip Bump, *Here Are the Administration Officials Who Have Said That Family Separation Is Meant as a Deterrent*, WASH. POST (June 19, 2018), <https://tinyurl.com/y5kcxvl8>; Rafael Bernal, *HHS Official Says Family Separation Policy Will Have ‘Deterrence Effect’*, THE HILL (June 19, 2018), <https://tinyurl.com/y69w9b3r>.

<sup>31</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-163, UNACCOMPANIED CHILDREN: AGENCY EFFORTS TO REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER 12 (2018), available at <https://www.gao.gov/products/GAO-19-163> [hereinafter GAO REPORT] (“DHS and HHS officials told us that the agencies did not take specific planning steps because they did not have advance notice of the Attorney General’s April 2018 memo.”). Indeed, at least one

purposely giving those agencies no time to plan for or coordinate implementation.<sup>32</sup> Among other things, this deliberate lack of planning resulted in the Administration failing to adequately track separated families, failing to communicate with parents about their children's welfare, and failing to take basic care to comply with child welfare standards, all of which compounded the harms already inflicted on families who had been forcibly separated.

*Failure to adequately track separations.* Despite the fact that tracking whether a child had been separated from his or her parent merely required adding a checkbox to an ORR / DHS referral page,<sup>33</sup> these two agencies primarily responsible for implementing the policy instituted no “consistent way to indicate in their data systems children and parents separated at the border” until at least the summer of 2018.<sup>34</sup> The most staggering result of this failure was that the Administration had no ready records of where thousands of parents' children were located, and could not promptly reunite parents and children,<sup>35</sup> even when ordered to do so by a U.S. District Court.<sup>36</sup> The Administration's failure to track separated children meant that, immediately after being separated from their parents, many children were held in CBP short-term detention facilities for longer than the permissible 72-hour period, in some cases for as long as 25 days,<sup>37</sup> before being transferred to ORR custody.

*Failure to communicate with parents about children's whereabouts and safety.* After separation, parents and children often did not know each other's whereabouts for months, as was the case with J.V.S. and H.Y. When the children were taken, “officers often failed to fully explain to parents what was happening and how the adults could get in touch with their kids.”<sup>38</sup> The government failed to provide parents with any “paperwork” documenting the location or well-being of their children, or to enable communication between parents and their separated

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high-ranking HHS official learned of the policy over television. *Oversight & Investigations Hearing, supra* note 11 (testimony of Commander Jonathan White, U.S. Public Health Service Commissioned Corps, U.S. Department of Health and Human Services).

<sup>32</sup> A high-ranking HHS official testified before Congress that ORR considered planning for the increase but was specifically told not to. *Id.*; see also GAO REPORT, *supra* note 31, at 14 (“DHS officials told [HHS leadership] that DHS did not have an official policy of separating parents and children.”).

<sup>33</sup> *Oversight of the Trump Administration's Family Separation Policy: Hearing Before the H. Comm. on the Judiciary* (Feb. 26, 2019) (statement of Scott Lloyd, Senior Advisor, Center for Faith and Opportunity Initiatives, U.S. Department of Health and Human Services, at 4), available at <https://docs.house.gov/meetings/JU/JU00/20190226/108872/HHRG-116-JU00-Wstate-LloydS-20190226.pdf>.

<sup>34</sup> GAO REPORT, *supra* note 31, *Highlights*; see also *id.* at 16-19.

<sup>35</sup> DHS OIG REPORT, *supra* note 23, at 9-11; see Kevin Sieff, *The Chaotic Effort to Reunite Immigrant Parents with their Separated Kids*, WASH. POST (June 21, 2018), <https://tinyurl.com/y4wpora7>; Miriam Jordan, *Torn Apart by Zero Tolerance, Kept Apart by Red Tape*, N.Y. TIMES (June 24, 2018), <https://tinyurl.com/y9t2mnyt>.

<sup>36</sup> See Halper, *supra* note 28. These circumstances led the court to conclude that the “unfortunate reality” of the family separation policy was that “migrant children [were] not accounted for with the same efficiency and accuracy as property.” *Ms. L.*, 310 F. Supp. 3d at 1144 (emphasis in original).

<sup>37</sup> DHS OIG REPORT, *supra* note 23, at 8.

<sup>38</sup> Halper, *supra* note 28.

children.<sup>39</sup> One Texas federal district court observed that “[t]he practical effect” of these failures was “to create a ‘blackout’ period where parent and child are wholly incommunicado from each other.”<sup>40</sup> And even if parents found out where their children were and a correct phone number for that location, phone calls were logistically difficult and expensive to make, severely limiting the few precious minutes that parents and children could hear each other’s voices.<sup>41</sup> The anguish of not knowing for months where their family members were or how they were doing, and then not being able to spend meaningful time talking once they made contact, further exacerbated the anguish and harm parents and children suffered from being torn apart.

*Child welfare standards ignored in the rush to expand detention capacity.* ORR was completely unprepared and unable to properly care for the thousands of vulnerable children referred to its custody by DHS. The shortcuts approved by high-level government officials and implemented by rank-and-file agents and contractors to try to deal with the influx of children led to a shocking series of abuses of children. For example, the rush to set up make-shift facilities resulted in one facility hiring over a thousand staff members without conducting FBI background fingerprint checks and having a “dangerously low number of clinicians serving children” at that facility.<sup>42</sup> A spokeswoman for the HHS’s Inspector General’s Office stated that these deficiencies posed “serious safety and health vulnerabilities.”<sup>43</sup> At some detention centers, staff members were drunk while they were supposed to be caring for separated children.<sup>44</sup> The Justice Department has received reports of unwanted sexual touching, staff members having sexual relationships with children detainees, and staff members showing children pornographic videos.<sup>45</sup> In addition to the pervasive sexual abuse of detained children, there are reports of widespread denial of medical care, including for burn injuries, broken bones, and sexually transmitted diseases.<sup>46</sup> In other reported cases, staff gave children medicine to which they were allergic despite warnings on the children’s medical bracelets.<sup>47</sup>

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<sup>39</sup> See *United States v. Dominguez-Portillo*, No. EP-17-MJ-4409-MAT, 2018 WL 315759, at \*1-\*2, \*9 (W.D. Tex. Jan. 5, 2018).

<sup>40</sup> *Id.* at \*9.

<sup>41</sup> See Halper, *supra* note 28; Jordan, *supra* note 35; Jack Herrera, *A New Report Reveals How Family Separation Led Border Officials to Break the Law*, PACIFIC STANDARD (Oct. 4, 2018), <https://tinyurl.com/y7x44kz6>.

<sup>42</sup> Daniella Silva, *Trump Administration Waived Strict Background Checks for Staff at Migrant Child Detention Camp*, NBC NEWS (Nov. 27, 2018), <http://tinyurl.com/y4asqmw7>.

<sup>43</sup> *Id.*

<sup>44</sup> Bogado, Michels & Swales, *Separated Migrant Children Are Headed Toward Shelters that Have a History of Abuse and Neglect*, TEX. TRIB. (June 20, 2018), <https://tinyurl.com/ydyl6wvb>.

<sup>45</sup> *Id.* From 2014 to 2018, HHS received more than 4,500 complaints of sexual abuse against unaccompanied minors, often involving staff. Sophie Tatum, *HHS Docs Show Thousands of Alleged Incidents of Sexual Abuse Against Unaccompanied Minors in Custody*, CNN (Feb. 26, 2019), <https://tinyurl.com/y65zrqql>.

<sup>46</sup> Bogado, Michels & Swales, *supra* note 44; see also Shefali Luthra & Marisa Taylor, *Immigrant Families Placed in Detention Centers Face Health Care Challenges*, WASH. POST (July 2, 2018), <http://tinyurl.com/y5ezbqk3>; HUMAN RIGHTS WATCH ET AL., *CODE RED: THE FATAL CONSEQUENCES OF DANGEROUSLY SUBSTANDARD MEDICAL CARE IN IMMIGRATION DETENTION 45-54* (June 2018), <http://tinyurl.com/yyzafjq8> (outlining “unreasonable delays in providing care,” “poor practitioner and nursing care,” and “botched emergency responses” as repeated defects in DHS facilities that have consistently led to “deadly failures”).

<sup>47</sup> Bogado, Michels & Swales, *supra* note 44.

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The Administration's express intent to inflict the trauma of family separation as a deterrent — followed by its failures to track children, tell their parents anything about their whereabouts and well-being, and provide them with safe and appropriate care — evidence at best a callous disregard for the anguish of separated parents and children, and at worst an intent to increase their suffering to maximize the deterrent effect of the family separation policy.

**10. State the Nature and Extent of Each Injury or Cause of Death, Which Forms the Basis of the Claim. If Other Than Claimant, State the Name of the Injured Person or Decedent.**

The federal government deliberately violated J.V.S.'s and H.Y.'s constitutional rights, including their right to family integrity, and failed in its basic duties not to harm those in its custody. The government's actions and failures were designed to and did cause J.V.S. and H.Y. severe trauma and emotional distress.<sup>48</sup>

The government knew that forcibly taking H.Y. from J.V.S. would fill them with terror, desperation, and anguish. It purposefully inflicted that trauma on J.V.S. and H.Y. to instill fear in others. It then compounded that trauma by keeping J.V.S. and H.Y. apart for more than 72 days, without telling them anything about the other's whereabouts or well-being, without allowing them even to speak to one another for twenty-two days, and without any plan for reuniting them. And, as a result of the government's actions and failures, H.Y. was exposed to abuse in a foster care system overburdened with unaccompanied children.

J.V.S. and H.Y. will carry the harm done to them for the rest of their lives. The government's conduct here is unconscionable, and it cannot be excused in a civilized society.

**11. Witnesses**

[Redacted]

**13b. Phone Number of Person Signing the Form**

Matthew Schlesinger, Covington & Burling LLP, (202) 662-5581.

Michelle Lapointe, Southern Poverty Law Center, (404) 521-6700.

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<sup>48</sup> Among other causes of action, the facts related herein support claims for infliction of emotional distress (whether intentional or negligent), interference with the parent-child relationship, negligence, battery and/or assault, false imprisonment, and violations of the Fourth and Fifth Amendments to the United States Constitution.