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FOIA EXEMPT

By FedEx Overnight Delivery

July 24, 2019

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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 11). The enclosed claims consist of: (1) an executed claim authorization; (2) [REDACTED] birth certificate; and (3) SF-95 Forms completed on behalf of Mr. [REDACTED] and [REDACTED], including Attachment A thereto.

Covington & Burling LLP and the Southern Poverty Law Center represent Mr. [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. Such information is exempt from the public access provisions of the Freedom of Information Act, 5

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

ATTACHMENT A

1. Submit to Appropriate Federal Agency

Attorney General
U.S. Department of Justice
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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

R.Z.G. and his daughter, B.Z.E., then nine years old, were forcibly separated by agents of the U.S. Department of Homeland Security ("DHS") on or about Wednesday, November 15, 2017. B.Z.E. was placed in the custody of the U.S. Department of Health and Human Services ("HHS"), Office for Refugee Resettlement ("ORR"), while R.Z.G. remained in DHS custody. R.Z.G. and B.Z.E. were not reunited until Thursday, July 26, 2018, when B.Z.E. returned to Guatemala.

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

R.Z.G. believes he was separated from his daughter in the evening.

8. Basis of Claims

A. The Government Forcibly Separated R.Z.G. from B.Z.E.

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 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. Children could not understand what had happened to them. 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.

R.Z.G. and his then nine-year-old daughter, B.Z.E., are among the families torn apart by the U.S. government. R.Z.G. and B.Z.E. suffered physical, mental, and emotional harm because of a multitude of unconstitutional, intentional, reckless, and negligent acts and omissions by a range of U.S. government actors, some of whom operate at the highest levels of the government, whose goal was to cause harm and instill fear and terror. Among other things, these federal actors unnecessarily and unreasonably separated R.Z.G. from his daughter, employing excessive force and cruelty, and failed to exercise basic care and decency that are hallmarks of a civilized society.

R.Z.G. and B.Z.E. 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. R.Z.G. and B.Z.E. Seek Asylum in the U.S. at a Port of Entry and are Taken into Custody by DHS.

R.Z.G. and his daughter B.Z.E., then nine years old, presented themselves to immigration officials at the Nogales, Arizona Port of Entry on November 13, 2017, seeking asylum. R.Z.G. and B.Z.E. left their rural community in the Western Highlands of Guatemala due to increasing violence over land disputes to seek refuge in the United States.

R.Z.G. and B.Z.E. are part of the Mam indigenous tribe found in southern Mexico and Western Guatemala and speak Mam as their primary language. Both R.Z.G. and B.Z.E. also speak Spanish.

Terrorized by violent conflicts in his community, R.Z.G. decided to leave Guatemala for the United States with B.Z.E., his only daughter and the eldest of his four children, to seek

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asylum. B.Z.E. is R.Z.G.'s "shadow;" she tags along wherever R.Z.G. goes, and he could not imagine leaving her behind. R.Z.G. and B.Z.E. left their community around the end of October 2017 and set off for the United States.

R.Z.G. and B.Z.E. presented themselves to immigration officials at the Nogales Port of Entry on November 13, 2017. R.Z.G. was met by an official who asked him for his documents. After R.Z.G. showed the official their birth certificates and his Guatemalan identification card, he and B.Z.E. were taken to a room. Officials interviewed R.Z.G. and B.Z.E. and asked why they had come to the United States. R.Z.G. told the officials about his fear of returning to Guatemala, including the violence in his community.

R.Z.G. and B.Z.E. were forced to remove their shoe laces and belts and hand over their backpacks with their personal belongings. Officials even confiscated the elastic band that held back B.Z.E.'s hair. R.Z.G. and B.Z.E. were kept in a room along with about 20 other fathers and children at the Nogales facility and waited anxiously to find out what would happen next. There were no windows or fresh air in the overcrowded room, which alternated between being too hot and too cold. The room was made almost entirely of cement and contained a cement bench that only accommodated a few people. The door of the room contained a small glass panel that gave R.Z.G. a limited view of the hallway, and it was locked at all times. One of the walls contained a large glass panel that took up most of the wall. R.Z.G., B.Z.E. and the other families could see the officials that watched them day and night in the room next door. R.Z.G. and B.Z.E. slept on plastic mats that were on the cold, cement floor, along with the other parents huddled together with their children. They were only given thin aluminum sheets to cover themselves.

Twice a day, the officials would give the parents and children burritos to eat. Sometimes, the burritos were still frozen, and the immigration officials would throw them onto the floor of the room. R.Z.G. and the other parents were not given cups or bottles of water, but instead had to request to be escorted out of the room in order to drink from a water fountain in the hallway. B.Z.E. drank the milk she was given, but did not eat the frozen burrito, and she told R.Z.G. that she was very hungry.

On the afternoon of the second day, an immigration official called R.Z.G. and B.Z.E. to the door of the room. R.Z.G. didn't know what was going to happen, but at first was excited because he thought that he and B.Z.E. might be released from detention. R.Z.G. and B.Z.E. were led from the cement room and taken outside and put in a van with approximately 15 other parents and children. Someone in the van asked the driver where they were being taken and the driver responded that they were going about three hours north to another detention facility. They arrived at that facility around 6 p.m. and were put in a small room, just the two of them. The room had the same thin, plastic mats on the floor where they slept, and again only had an aluminum sheet for cover.

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2. The U.S. Government Forcibly Separates R.Z.G. and B.Z.E. Without Any Information or Explanation.

The morning after arriving at the facility, R.Z.G. was again interviewed by immigration officials. The officials took R.Z.G. out into the hallway outside of the small room where he and B.Z.E. were being kept and asked about his reasons for coming to the United States and how he arrived at the border. R.Z.G. again explained that he had come because of the violent conflict in his town.

Later that evening, R.Z.G. and B.Z.E. heard chains rattling as three officials approached the door to their room. R.Z.G. is still haunted by the sound of the chains. The officials opened the door and told R.Z.G. that he needed to go with them because he had court. R.Z.G. walked over to the door of the room and B.Z.E. jumped up to go along with him. But as soon as R.Z.G. walked out of the room, the official closed the door behind him before B.Z.E. could follow her father. R.Z.G. saw B.Z.E. through the window of the door and heard her screaming “*Papá, Papá!*” Flailing and crying inside the room, B.Z.E. begged to go with her father. Two officials grabbed R.Z.G. and began to cuff his hands and feet. R.Z.G. asked the officials, “Why are you taking me away? Why are you separating us?” but he was not given any information. R.Z.G. was not permitted to hug B.Z.E. or say goodbye before he was forced to leave her. B.Z.E. watched as R.Z.G. was chained like a criminal and led away from her.

Two officials, each holding one of R.Z.G.’s arms, led him down the hallway. The third official waited outside the door of the room where B.Z.E. was locked inside alone, crying hysterically. The last thing R.Z.G. heard before he was separated from his daughter was B.Z.E. screaming and crying uncontrollably as he was led down the hallway to another part of the facility. R.Z.G. never imagined that it would be possible to be separated from his daughter. It was the worst moment of his life.

As he was led away from B.Z.E., R.Z.G. began to cry and wondered what they would do to B.Z.E. and if they would take care of her. R.Z.G. had no idea what to do or what was going to happen next, and the officials would not tell him where they were taking him. R.Z.G. told the officials, “She’s a young girl, she’s only nine; you can’t take her from me.” One of the officials responded that she would be fine, but gave no other information.

R.Z.G. did not go to court, as the officials had claimed—he was taken outside of the facility and put on a bus with about 20 other men and taken a few hours away to a detention center. That same evening after arriving at the detention center, R.Z.G. asked an official about B.Z.E., but was told that they didn’t know anything about his daughter. R.Z.G. was placed in a large, crowded room containing about 60 other people. There were bunk beds everywhere, but R.Z.G. couldn’t sleep thinking of B.Z.E. He cried all night, not knowing how or when he would see his daughter again.

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3. After a Week Without Any Information, R.Z.G. and B.Z.E. Speak By Phone and R.Z.G. Discovers She is in New York City.

The next evening, R.Z.G. was taken by bus to another detention center. During transit, R.Z.G. was shackled at the hands, waist, and feet. After he arrived at the new detention center, R.Z.G. was told to shower and was issued a yellow detainee uniform. R.Z.G. was placed in a small prison-like cell made entirely of cement which he shared with another person. The cell had only two beds, a toilet, and a small window. R.Z.G. was constantly freezing.

R.Z.G. continued to ask officials about B.Z.E., but was told that they didn't know anything about his daughter. Each day, R.Z.G. desperately sought information about B.Z.E., giving the officials B.Z.E.'s name and asking over and over how he could communicate with her.

After R.Z.G. had been at this detention center for several days, officials told him that they would contact him when they had more information about B.Z.E. The next day, the officials called R.Z.G. over and told him to sign some documents, which were written in English. The official explained that the papers were related to his court appearance. R.Z.G. did not understand what the documents said, but signed the paperwork as instructed. R.Z.G. again asked about B.Z.E. The official asked for B.Z.E.'s name and details, and told R.Z.G. that B.Z.E. was in New York. R.Z.G. was relieved to finally know where B.Z.E. was, but desperately wanted to speak with her.

The next day, R.Z.G. was finally connected to M.R., B.Z.E.'s social worker. R.Z.G. and B.Z.E. spoke by phone for the first time about a week after they were separated. When R.Z.G. first heard B.Z.E.'s voice on the phone, he initially felt a wave of relief. Both R.Z.G. and B.Z.E. cried as they spoke on the phone. R.Z.G. asked B.Z.E. how she was, and B.Z.E. replied that she was fine, but that she wanted to be with R.Z.G. B.Z.E. told R.Z.G. that she was taken to New York and had been scared to travel by airplane for the first time. B.Z.E. asked R.Z.G. where he was and R.Z.G. explained that he was in jail in Arizona. R.Z.G. also spoke briefly with M.R., who assured R.Z.G. that B.Z.E. was well, that she was studying and being cared for.

R.Z.G. was only able to speak with both B.Z.E. and M.R. for about two minutes total as the official who assisted him with the call told him that his time was up. The last thing that he managed to tell M.R. was to please look after B.Z.E. The call with B.Z.E. was too brief for R.Z.G. to get a sense of how she was doing. R.Z.G. wanted to tell B.Z.E. that he missed her and wanted more than anything to be together with her again.

After the first call with B.Z.E., R.Z.G. felt restless and could not stop thinking and worrying about her. He felt miserable and had no appetite; he could not sleep or eat most days as thoughts about B.Z.E. raced through his mind: "What if she's not well, or what if she isn't eating? What if she's crying all day? What if she can't communicate?" R.Z.G. worried that B.Z.E. would not be able to express her needs because she was just a little girl.

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4. R.Z.G. Finds Out that B.Z.E. Has Been Beaten and Abused in Custody.

In total, R.Z.G. spoke with B.Z.E. about three times while he was in detention in Arizona. Using the phone number that M.R. had given him during the first call, every two or three days R.Z.G. tried to call the facility that was caring for B.Z.E. More often than not, no one would answer the phone at the facility when R.Z.G. called. About a week after his first call with B.Z.E., R.Z.G. asked one of the officials for another call and he got through to B.Z.E. R.Z.G. spoke with both M.R. and B.Z.E., and for the first time learned that B.Z.E. had been physically abused by an immigration official after he and B.Z.E. were separated.

R.Z.G. listened as his nine-year-old child recounted her distress on the night they were separated, which left her inconsolable. B.Z.E. had watched through the glass window in the door as her father was handcuffed, shackled and taken away from her. All of a sudden, she was alone and terrified. She had no idea what would happen next, and she screamed and cried uncontrollably to be able to go with her father. B.Z.E. told R.Z.G. that an immigration official wearing a uniform threatened her and said that if she did not stop crying, the official was going to hit her. The official then removed her belt and beat B.Z.E. on the arm and leg several times because B.Z.E. could not stop crying. B.Z.E. told R.Z.G. that she was injured from the beating and had purple bruises on her leg after being hit.

M.R. spoke briefly with R.Z.G. about the incident and told him that she was sorry for what happened to B.Z.E. and promised to take care of her. Once again, R.Z.G. was only able to speak with B.Z.E. and M.R. for approximately a few minutes before he was told that he needed to end the call. R.Z.G. got off the phone without knowing many details of what had happened. He felt sad and was angry with himself, regretting that he was far away and unable to protect his daughter. After hearing what had happened to his daughter, R.Z.G. went back to his cell and cried, thinking that his daughter should never have had to go through this.

5. R.Z.G. Is Ordered Deported—Without B.Z.E.

After about a couple of weeks at the facility, R.Z.G. was brought before an immigration judge. During his hearing, R.Z.G. asked the judge what would happen to his daughter B.Z.E. The immigration judge told R.Z.G. that B.Z.E.'s case was independent of his case. The judge told R.Z.G. that he would be deported to Guatemala as soon as possible. R.Z.G. again asked what would happen to B.Z.E., but the judge did not respond. About three days after his court appearance, R.Z.G. spoke with the Guatemalan consular official who told him about his removal date. R.Z.G. asked the consular official to help him so that he could be deported with B.Z.E., but the official told R.Z.G. that he would be going back to Guatemala without his daughter, and that B.Z.E. would be deported later.

After learning that he would be forced to return to Guatemala without B.Z.E., R.Z.G. was terrified by the prospect of leaving his daughter behind and overwhelmed with worry about what

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would happen to B.Z.E. after he left the United States. R.Z.G. felt hopeless. He wondered what he had done wrong to be treated so cruelly—as if he were an animal or a criminal—rather than a parent seeking a better life for his family.

The night R.Z.G. was deported, he was taken from detention around 11 p.m. and put on a bus. He spent the entire night sitting on the bus without food or water, cuffed and chained, waiting to be transported to the airport. R.Z.G. thought about B.Z.E. while he waited on the bus, and he wondered what he was going to have to do to get her back.

6. R.Z.G. Arrives in Guatemala Without B.Z.E.

The next morning, R.Z.G. was put on an airplane that would carry him back to Guatemala without B.Z.E. He was cuffed at the hands and ankles and chained at the waist during the flight to Guatemala City. The officials accompanying the flight only removed his handcuffs and ankle cuffs about 10 minutes before landing in Guatemala. During the flight, R.Z.G. was given a sandwich and a small bottle of water. He was not permitted to use the bathroom. After landing in the capital, R.Z.G. was forced to wait on the airplane for an hour until the officials allowed him to get off the plane.

R.Z.G. arrived in Guatemala City on December 13, 2017 without knowing if he would ever see his daughter again. After arriving in the capital and completing paperwork, a few items that were taken from R.Z.G. and B.Z.E. by immigration officials at the border were returned to him. R.Z.G. saw B.Z.E.'s shoe laces and hair tie, and immediately felt sad and guilty, as if B.Z.E. had died and they were returning her belongings to him. He stood in disbelief, again wondering what he had done wrong for the U.S. government to have taken his daughter from him.

R.Z.G. was sad and scared, and he did not have any money. Not knowing the busy capital city well, he was hesitant to stay there for any amount of time. R.Z.G. told strangers what had happened, and he asked for help. R.Z.G. was able to hitch rides with strangers and arrived in San Marcos, a town near his home village, that evening. He spent the night in a hostel and the next morning was able to get a ride back to his hometown.

When R.Z.G. arrived at home, his wife C.E.C. was crying and refused to speak to him. She was angry and wanted an explanation, asking R.Z.G., “Where is B.Z.E.? How could you leave her?” R.Z.G. cried and tried to explain what happened, and that he had done everything possible to get his daughter back. In the days and weeks following R.Z.G.'s return, C.E.C. became ill, suffering from headaches, anxiety and stomachaches. C.E.C. experienced a debilitating depression, and R.Z.G. knew that his wife was broken and empty without her daughter.

B.Z.E.'s younger brothers asked constantly about B.Z.E.: “Where is B.Z.E.? When is she coming home?” B.Z.E.'s friends and cousins, with whom she used to play every day, also asked

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when she would return. R.Z.G. knew the children were small and did not understand, but every time they asked, he was filled with remorse and regret.

Every one to two weeks after R.Z.G. was deported to Guatemala, R.Z.G. and C.E.C. received brief calls from B.Z.E., who was still in New York City. On calls and in text messages, M.R. frequently told R.Z.G. not to worry about B.Z.E. and that she was doing well. B.Z.E. often told her father that she did not understand why he had not come to get her in New York. After it became clear that there was no way for B.Z.E. to remain in the United States with any family members, R.Z.G. requested that M.R. begin the process of returning B.Z.E. to Guatemala. But the anguish of separation would drag on for many more months. In mid-April 2018, R.Z.G. and C.E.C. hired an attorney in Guatemala to formalize their request that B.Z.E.'s return to Guatemala be expedited, and they faxed this document to M.R. A final determination to allow B.Z.E. to return to Guatemala to reunite with her family was not made until her court hearing on May 31, 2018.

7. B.Z.E. Suffers Profoundly During Her Time in ORR Custody.

While R.Z.G. endured the uncertainty of detention and deportation without his daughter, B.Z.E. lived through her own nightmare. The day after her separation from her father, after being physically abused by an immigration official, and still crying and in pain, B.Z.E. was taken from the immigration holding cell and pushed forcefully into a car with about five other children. B.Z.E. was put on two flights and was transported across the country. This was the first time B.Z.E. had even been on an airplane, and she felt scared and alone. B.Z.E. arrived in New York City on or about November 17, 2017 and was placed in ORR custody with an institution operated by a government contractor, Cayuga Centers. She was then sent to live in a foster home with several other children.

During her time at Cayuga, B.Z.E.'s life was utterly disrupted. B.Z.E. was not able to communicate with anyone in Mam, her native language. Medical exam notes from B.Z.E.'s file state, "minor speaks dialect 'chiche' understands some Spanish." B.Z.E. also was not able to wear her traditional dress that includes a *huipil* (blouse) and *corte* (woven skirt), adding to her disorientation at being separated from her father in a strange country.

Additionally, other minors inflicted harm on B.Z.E. on two occasions, with both instances documented in B.Z.E.'s ORR file as "Significant Incident Reports." On one occasion, a younger minor in B.Z.E.'s foster family bit her on the back when she was trying to go outside and play. The second instance took place at the Learning Center and involved another minor pushing B.Z.E.

B.Z.E. remained in ORR custody as her case dragged on. After months of being separated from her family in Guatemala and having limited contact with her mother and father, B.Z.E.'s emotional health began to deteriorate. Notes from B.Z.E.'s meetings with Cayuga staff indicate

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that B.Z.E. was worried about her ill mother. In late May, B.Z.E. told her clinician that she was very sad and missed her family back home. B.Z.E. was so overwhelmed with constant sadness that on May 23, 2018, her foster mother called the Cayuga clinician to report that B.Z.E. had been crying due to missing her family.

8. B.Z.E. is Reunited with Her Family After More Than Eight Months Apart.

In June and early July 2018, R.Z.G. and C.E.C. awaited news about plans for B.Z.E.'s return to Guatemala and stayed in touch with B.Z.E. through calls and texts from M.R. On occasion, B.Z.E. would cry on the phone and tell R.Z.G. and C.E.C. that she missed them and wanted to come home. B.Z.E. was also very worried about her mom, who she knew was sick and not doing well. C.E.C.'s condition became worse as the months dragged on. When B.Z.E. would call, C.E.C. cried inconsolably and could not get out of bed.

In June, R.Z.G. received a call from M.R., who notified him that B.Z.E. would be returning to Guatemala on July 9, 2018. R.Z.G. later spoke with an individual who worked at the *Casa del Migrante* in Guatemala City. She gave R.Z.G. the address where he should arrive to pick up B.Z.E. in the capital. R.Z.G. was elated that finally B.Z.E. would be coming home. R.Z.G. and C.E.C. arranged to travel with another family from their village in the Western Highlands by car to the capital. The other family was also going to meet their child who had been taken from his father in the United States. R.Z.G. and C.E.C. left their village and after an overnight journey of around seven or eight hours, arrived at the address in Guatemala City that had been provided to them. R.Z.G. and C.E.C. waited for several hours inside the *Casa del Migrante* office before they were notified that B.Z.E.'s flight had been canceled and that B.Z.E. would not be returning to Guatemala that day. R.Z.G. contacted M.R., who confirmed that the flight had been canceled. M.R. told R.Z.G. that she did not know when B.Z.E.'s flight would be rescheduled. R.Z.G. and C.E.C. had borrowed money to make the trip to the capital and did not have enough money to pay for an extended stay. R.Z.G. began to worry that B.Z.E. was never coming home, and for the second time he returned to his village without his daughter.

When he arrived back in the village, R.Z.G. was met with more questions and comments from neighbors and community members about his daughter. Stories circulated about the United States government not returning children to their parents, and several people commented to R.Z.G. that B.Z.E. might not be returned until she was 18, or that perhaps he might not ever see her again. R.Z.G. began to feel even more desperate, and wondered if what people were saying was true.

About a week later, M.R. called R.Z.G. and told him that B.Z.E. would be scheduled for another flight later in July. Three days before B.Z.E. was scheduled to arrive, R.Z.G. received another call from M.R., who told him that B.Z.E. would arrive on July 26, 2018. R.Z.G. and C.E.C. made hurried arrangements to again make the long trip to the capital to pick up B.Z.E., along with the same family from their village with whom they had traveled previously. They

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arrived at the same address in the capital, and anxiously waited with other parents desperate to see their children again—children they had not seen since they had been forcibly separated at the U.S. border months earlier.

That afternoon, R.Z.G., C.E.C., and B.Z.E.'s youngest brother S. were taken to the room where the children were arriving. B.Z.E. entered the building, and along with the other children who had been separated from their parents in the United States and finally returned to Guatemala, was led down the hallway, past the room where the parents were waiting, to the dining room. R.Z.G. and C.E.C. made eye contact with B.Z.E. as she passed by the room where they were waiting, but they were not yet allowed to greet their daughter until after she had eaten. Both R.Z.G. and C.E.C. were overwhelmed with joy and relief and cried uncontrollably. B.Z.E. looked older and bigger than what R.Z.G. remembered when he had last seen her over eight months before. After the meal, B.Z.E. returned to where her family was waiting for her and was finally allowed to hug R.Z.G. and C.E.C. R.Z.G. and B.Z.E. cried as they hugged and B.Z.E. quietly whispered, "I love you a lot, *Papá*." R.Z.G. saw the look of relief on B.Z.E.'s face, but he also noticed that she was not able to say much.

On their journey back to their village, B.Z.E. did not want to eat anything and commented that she had a bad headache. R.Z.G. bought medicine for B.Z.E. and tried to encourage her to eat something. B.Z.E. simply commented that she wanted to go home and see her younger brothers.

10. R.Z.G. and B.Z.E. Continue to Suffer After Being Reunited.

B.Z.E. was separated from R.Z.G. for 253 days—over 8 months. In the months since their separation, R.Z.G. has noticed many changes in B.Z.E.'s emotional and physical health. Since her return, B.Z.E. does not eat well and has lost weight. A month after her return, R.Z.G. was so concerned about B.Z.E. not eating that he decided to take her to a doctor. The doctor told R.Z.G. that B.Z.E. was still very frightened and prescribed some medicine for her to take.

Since the separation, B.Z.E. is easily startled and upset, and R.Z.G. believes "the fear has stayed with her." B.Z.E., once a well-adjusted young girl with many friends, now prefers to stay at home with her mother and her brothers. B.Z.E. does not socialize with other children at school, and it has taken constant encouragement for her to play with her cousins like she did before her separation from her father. B.Z.E. is very bright and does well with her school work, but is often bothered and becomes tearful when other children ask her questions or when someone raises their voice.

B.Z.E. is terrified of traveling and being separated from her father again, and does not want to let him out of her sight. Several months after B.Z.E. returned to Guatemala, officials from a Guatemalan governmental agency called R.Z.G. and asked him to return to the capital with B.Z.E. for an interview. R.Z.G. and C.E.C. made plans to return to the capital and told

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B.Z.E. that she had to go as well. B.Z.E., who remains fearful of leaving her community, told R.Z.G. that she was afraid that they would take her away again. R.Z.G. comforted B.Z.E. and promised that they would not be separated again.

The prolonged separation has also deeply impacted R.Z.G. and his wife. C.E.C.'s headaches are less frequent than when her daughter was separated from her family, but continues to struggle with anxiety and depression. R.Z.G. is easily startled and suffers from anxiety, constantly worrying that something bad could happen. Similar to B.Z.E., R.Z.G. has also lost weight and does not have a strong appetite. R.Z.G. does not know how his family will get through this difficult time, but says, "I ask God to carry my family forward."

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

Since 2017, the Administration has taken 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 practice of separating families itself and its implementation violate the Constitution, the law, and basic human decency.

The many harms that the Administration inflicted on R.Z.G. and B.Z.E., 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 R.Z.G. and B.Z.E. and others like them for the purpose of deterring future migrants from entering the United States. It made the harm far worse by implementing a policy with carelessness and callous disregard for the physical safety and emotional well-being of R.Z.G. and B.Z.E. Administration officials have yet to acknowledge or accept any responsibility for the harms they caused. For all of these reasons, R.Z.G. and B.Z.E. 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 R.Z.G. and B.Z.E., 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.”¹ These constitutional protections extend to citizens and non-citizens alike, even when confined by the government.²

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.”³ The *Jacinto-Castanon de Nolasco* court further stated that “nothing 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.”⁴ 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 well-being, *plainly causes irreparable harm.*”⁵ Children attach to their caregiver from the time they are born, and the children’s sense of safety “depends on that relationship.”⁶ Disrupting that relationship causes “the parts of the brain that deal with attachment and fear” to “develop differently.”⁷

It is not surprising, then, that the *Jacinto-Castanon de Nolasco* court found that “[s]eparation irreparably harms [families] every minute it persists.”⁸ This finding is 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

¹ *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

² *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.”).

³ 310 F. Supp. 3d 1133, 1142 (S.D. Cal. 2018).

⁴ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502.

⁵ *Id.* (emphasis added).

⁶ William Wan, *What Separation from Parents Does to Children: ‘The Effect is Catastrophic’*, WASH. POST (June 18, 2018), <http://tinyurl.com/yxf6en34>.

⁷ *Id.*

⁸ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 503.

unexpected, abrupt, or in a frightening context.”⁹ 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.”¹⁰

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.”¹¹ 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.”¹² The materials cited here barely scratch the surface of the wealth of expert material describing the harms caused by family separation. Given

⁹ *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, M.D., Director, Center on the Developing Child at Harvard University, at 1) (emphasis added).

¹⁰ 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 Evid., Jun. 20, 2018, <https://tinyurl.com/y3fkofpb>; see also, e.g., Wan, *supra* note 6 (describing the psychological and physiological responses that “wreak[] dramatic and long-term damage” on children who are forcibly separated from their parents).

¹¹ *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).

¹² Abrams, *supra* note 11; 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.”); *Oversight & Investigations Hearing*, *supra* note 9 (testimony of Cristina Muñiz de la Peña, Ph.D, Terra Firma Mental Health Director, Center for Child Health and Resiliency, on behalf of the American Psychological Association, at 4) (“Sudden and unexpected family separation is also associated with stress and emotional trauma for children, housing instability, food insecurity, interrupted schooling, and behavioral/emotional responses such as fear, anxiety, aggression and changes to sleep and appetite. Parental separation can have a long-term negative impact on children into adulthood.”).

the “extensive evidence,” the irreparable harm caused by forcibly separating parents and children is indisputable.¹³

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 began separating families like R.Z.G. and B.Z.E. 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, DHS’ Advisory Committee on Family Residential Centers concluded that “the separation of families for purposes of immigration enforcement or management, or detention is *never* in the best interest of children.”¹⁴
- 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.¹⁵ 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.’”¹⁶
- 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,¹⁷ the announcement was met with an immediate wave of warnings from the medical community. The AAP, among others, warned that such a policy

¹³ 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 et al., *Detention of Immigrant Children*, 139 PEDIATRICS e20170483 (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)).

¹⁴ U.S. IMMIGRATION & CUSTOMS ENF’T, DEP’T OF HOMELAND SEC., REPORT OF THE DHS ADVISORY COMMITTEE ON FAMILY RESIDENTIAL CENTERS 2 (2016) (emphasis added), <https://tinyurl.com/y5o9d2wc>.

¹⁵ *Oversight & Investigations Hearing*, supra note 9 (testimony of Commander Jonathan White, U.S. Public Health Service Commissioned Corps, U.S. Department of Health and Human Services); see *Migrant Family Separation Policy: Hearing Before the H. Judiciary Comm.*, 116th Cong. 1:11 (2019), <https://www.c-span.org/video/?458199-1/allegations-sexual-abuse-unaccompanied-minors-raised-house-hearing>.

¹⁶ 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).

¹⁷ Julia Edwards Ainsley, *Exclusive: Trump Administration Considering Separating Women, Children at Mexico Border*, REUTERS (Mar. 3, 2017), <http://tinyurl.com/y6qpmrpu>.

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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.”¹⁸

When confronted by public backlash to the then-proposed family separation policy, DHS Secretary John Kelly, who had initially confirmed DHS’ 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 mothers only “if the child’s life is in danger” or if the mother was addicted to drugs,¹⁹ 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 began separating families in mid-2017.

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, in 2017 the Administration began indiscriminately separating families who crossed the southern U.S. border—even those who, like R.Z.G. and B.Z.E. presented at a port of entry seeking asylum and who were not charged with improper entry. 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.

Between October 2017 and April 2018, news reports estimate that 700 children were separated from their parents at the U.S.-Mexico border,²⁰ with later estimates indicating that this

¹⁸ 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>.

¹⁹ Brooke Singman, *Kelly Says Full-scale Border Wall ‘Unlikely,’ Clarifies Position on Family Detentions*, FOX NEWS (Apr. 5, 2017), <https://tinyurl.com/y425hlq6>.

²⁰ Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border*, N.Y. TIMES (Apr. 20, 2018), <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

The roots of the federal government’s practice of separating families include a pilot program of the U.S. Border Patrol’s El Paso sector between July and October 2017. Under the program, the government targeted for criminal prosecution parents who unlawfully crossed the border into the United States with young children. It detained parents as criminals, and forcibly took their children away from them. Customs and Border Protection (“CBP”) placed the children in the custody of ORR (a division of HHS), which dispersed the children into institutionalized settings and foster homes throughout the country. See 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), <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

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number could have reached into the thousands.²¹ As R.Z.G. and B.Z.E.'s experience illustrates, the practice of separating families was not limited to individuals who were found crossing the border without authorization, but rather included families who lawfully presented at a port of entry seeking asylum.²² Like many families fleeing to the United States from Central America, R.Z.G. and B.Z.E. arrived here seeking asylum and lawfully presented themselves at an official port of entry. R.Z.G. was not referred for any criminal proceeding. Yet R.Z.G. and B.Z.E. were cruelly and without any justification forced apart and made to endure eight months of separation, with minimal phone contact and no assurance of ever being reunited. Indeed, R.Z.G. and B.Z.E. are not alone in this experience; many other families who lawfully presented at a port of entry in 2017 and 2018 were nonetheless separated.²³

The federal government's policy and practice of separating families at the border culminated in the U.S. Attorney General's announcement, on April 6, 2018, of a "Zero Tolerance Policy." 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.²⁴ Several aspects of the U.S. Government's policy and practice of separating families in 2017 and 2018 reveal that its goal was to deter future immigrants from seeking entry to the United States by harming families through forcible separation.

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

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>.

²¹ *See Child Separations by The Trump Administration, Staff Report, Committee on Oversight and Reform*, U.S. House of Representatives (July 2019) at 1, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf>.

²² *See, e.g.,* Paloma Esquivel & Brittany Mejia, *The Trump Administration Says It's a 'Myth' that Families that Ask for Asylum at Ports of Entry are Separated. It Happens Frequently, Records Show*, L. A. Times (Jul. 1, 2018), <https://www.latimes.com/local/lanow/la-me-ln-port-of-entry-separations-20180701-story.html>.

²³ *See, e.g.,* Katie Shepherd, *Border Patrol Agents May Have Separated Families at Legal Ports of Entry Despite Promises Not To*, WILLAMETTE WEEK (Jun. 19, 2018), <https://www.wweek.com/news/courts/2018/06/19/border-patrol-agents-may-have-separated-families-at-legal-ports-of-entry-despite-promises-not-to/>; Colleen Long, *Figures Show About 2,000 Minors Separated From Families*, AP NEWS (Jun. 16, 2018) (citing DHS figures and noting, "[t]here were an additional 38 minors separated at ports of entry in May through June 6. There were more than 55 in April and a high of 64 in March, according to the figures."), <https://apnews.com/227a90dbf32a46bf9545b4524aa7af64>.

²⁴ *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 3 (2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> [hereinafter DHS OIG REPORT].

actions) were viewed as differing pathways to deterring future migration.²⁵ Similarly, the fact that many families lawfully presented themselves for asylum at ports of entry yet were separated nonetheless²⁶ further illustrates that the primary purpose of family separation was deterrence, and not concern for the enforcement of immigration laws.²⁷

All of this evidence shows that the government intentionally inflicted the severe harm caused by forcible separation on families, like R.Z.G. and B.Z.E., who crossed the U.S. border.

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

The Administration multiplied the harm it intended to cause by the shocking carelessness with which it implemented its policy and practice of separating families. Among other things, a 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 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,²⁸ 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 2018.²⁹ 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,³⁰ even when ordered to do so by a U.S. District

²⁵ Policy Options to Respond to Border Surge of Illegal Immigration, <https://assets.documentcloud.org/documents/5688664/Merkleydocs2.pdf>; see 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>.

²⁶ 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.").

²⁷ 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>.

²⁸ *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), <https://docs.house.gov/meetings/JU/JU00/20190226/108872/HHRG-116-JU00-Wstate-LloydS-20190226.pdf>.

²⁹ GOV'T ACCOUNTABILITY OFFICE, UNACCOMPANIED CHILDREN: AGENCY EFFORTS TO IDENTIFY AND REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER, *Highlights*; see also *id.* at 16-18.

³⁰ DHS OIG REPORT, *supra* note 24, 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>.

Court.³¹ 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 72-hour period permissible under federal law,³² in some cases for as long as 25 days,³³ 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 R.Z.G. and B.Z.E. 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."³⁴ 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 children.³⁵ 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."³⁶ 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.³⁷ 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 one thousand staff members without conducting FBI

³¹ See Evan Halper, *Federal Investigators Find Many Failures in Trump's Family Separation Policy*, L.A. TIMES (Oct. 2, 2018), <https://tinyurl.com/y2srdo9q>. 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.

³² Trafficking Victims Protection Reauthorization Act, 8 U.S.C.A. § 1232(b)(3); see SARAH HERMAN PECK & BEN HARRINGTON, CONGRESSIONAL RESEARCH SERVICE, THE "FLORES SETTLEMENT" AND ALIEN FAMILIES APPREHENDED AT THE U.S. BORDER: FREQUENTLY ASKED QUESTIONS, at 5 (Sep. 17, 2018), <https://fas.org/sgp/crs/homesecc/R45297.pdf>.

³³ DHS OIG REPORT, *supra* note 24, at 8.

³⁴ Halper, *supra* note 31.

³⁵ 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).

³⁶ *Id.* at *9.

³⁷ See Halper, *supra* note 31; Jordan, *supra* note 30; 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>.

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background fingerprint checks and having a “dangerously low number of clinicians serving children” at that facility.³⁸ A spokeswoman for the HHS’ Inspector General’s Office stated that these deficiencies posed “serious safety and health vulnerabilities.”³⁹ At one detention center, a staff member was drunk while he was involved with care for separated children.⁴⁰ 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.⁴¹ In addition to the pervasive sexual abuse of detained children, there are reports of widespread denial of medical care, including for a burn injury, a broken wrist, and a sexually transmitted disease.⁴² In another reported case, staff gave a child medicine to which she was allergic despite warnings on the child’s medical bracelet.⁴³

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 R.Z.G.’s and B.Z.E.’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 R.Z.G. and B.Z.E. severe trauma and emotional distress.⁴⁴

The government knew that forcibly taking B.Z.E. from R.Z.G. would fill them with terror, desperation, and anguish. It purposefully inflicted that trauma on R.Z.G. and B.Z.E. to

³⁸ Daniella Silva, *Trump Administration Waived Strict Background Checks for Staff at Migrant Child Detention Camp*, NBC NEWS (Nov. 27, 2018), <http://tinyurl.com/y4asqmw7>.

³⁹ *Id.*

⁴⁰ Aura Bogado et al., *Separated Migrant Children Are Headed Toward Shelters that Have a History of Abuse and Neglect*, TEX. TRIB. (June 20, 2018), <https://tinyurl.com/ydyl6wvb>.

⁴¹ *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>.

⁴² Bogado et al., *supra* note 40; *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>.

⁴³ Bogado et al., *supra* note 40.

⁴⁴ 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.

Attachment A to Standard Form 95

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

instill fear in others. It then compounded that trauma by keeping R.Z.G. and B.Z.E. apart for more than eight months, without telling them anything about the other's whereabouts or well-being, without allowing them even to speak to one another for a week, and without any plan for reuniting them. And, as a result of the government's actions and failures, B.Z.E. was physically abused by a CBP officer during her time separated from her father.

R.Z.G. and B.Z.E. 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.

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