May 28, 2019

VIA FED EX AND EMAIL

U.S. Department of Homeland Security
Office of the General Counsel
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528
ogc@hq.dhs.gov

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

Office of the Principal Legal Advisor
Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20224

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

Re: Claims for Damages under the Federal Tort Claims Act —

[Redacted] on behalf of himself and his minor son. [Redacted]

Dear Sir or Madam:

Morningside Heights Legal Services, Inc. and the Asylum Seeker Advocacy Project represent [Redacted] and his one-year old son [Redacted] ("Claimants"). Enclosed please find administrative claims we are filing on their behalf under the Federal Tort Claims Act. The claims consist of: (1) a Claim Authorization Form; (2) a Standard Form 95 for each Claimant; and (3) an Attachment to the Standard Form 95s detailing the basis of their claims.

We are submitting these claims without the benefit of formal discovery. Claimants reserve the right to amend or supplement their claims.

The identity of the Claimants is confidential, and we ask that their identity be treated accordingly. Should any U.S. government agency receive a request under the Freedom of Information Act ("FOIA") related to the enclosed claims, or any other information that would reveal the identity of the Claimants, we ask that the government: (1) notify the undersigned before responding to the requestor; and (2) redact any information identifying the Claimants pursuant to the FOIA privacy exemption under 5 U.S.C. § 552(b)(6), or any other applicable statute or regulation protecting the privacy of the Claimants.
Very truly yours,

[Signature]

Elora Mukherjee  
Jerome L. Greene Clinical Professor of Law  
Director, Immigrants’ Rights Clinic  
Morningside Heights Legal Services, Inc.  
Columbia Law School  
435 W. 116th Street  
New York, NY 10027  
Phone: (212) 854-4291  
Fax: (212) 854-3554  
Email: [redacted]

Conchita Cruz  
Elizabeth Willis  
Asylum Seeker Advocacy Project (ASAP)  
[Redacted]  
New York, NY 10006  
Phone: [Redacted]  
Fax: [Redacted]  
Email: [Redacted]

Enclosures:
1. Claim Authorization Form
2. FTCA Form 95 Claim
3. Claim Attachment
AUTHORIZATION TO FILE ADMINISTRATIVE TORT CLAIM

I hereby authorize Elora Mukherjee of Morningside Heights Legal Services to file an Administrative Tort Claim on my behalf pursuant to the Federal Tort Claims Act to pursue damages arising out of the tortious and unlawful conduct of federal law enforcement officials and corrections officers.

I hereby declare under penalty of perjury pursuant to 28 U.S.C. Section 1746 that the foregoing is true and correct:

Print Name: ____________________________

Signature: ___________________________

Date of Birth: _________________________

Date: ________________________________
CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

1. Submit to Appropriate Federal Agency:

U.S. Department of Homeland Security; U.S. Department of Immigration and Customs Enforcement; U.S. Customs and Border Protection; U.S. Department of Health & Human Services

2. Name, address of claimant, and claimant’s personal representative if any.

[Redacted] c/o Elora Mukherjee, Morningside Heights Legal Services, Inc., 435 W. 116th Street, New York, NY 10027

3. TYPE OF EMPLOYMENT

☐ MILITARY  ☒ CIVILIAN

4. DATE OF BIRTH

5. MARITAL STATUS

6. DATE AND DAY OF ACCIDENT

See attachment.

7. TIME (A.M. OR P.M.)

See attachment.

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

See attachment.

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

Not applicable.

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED.

(See instructions on reverse side).

Not applicable.

10. PERSONAL INJURY/WRONGFUL DEATH

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.

See attachment.

11. WITNESSES

NAME

ADDRESS (Number, Street, City, State, and Zip Code)

See attachment.

12. AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE

12b. PERSONAL INJURY

3,000,000

12c. WRONGFUL DEATH

12d. TOTAL (Failure to specify may result in forfeiture of your rights).

3,000,000

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).

[Redacted]

13b. PHONE NUMBER OF PERSON SIGNING FORM

[Redacted]

14. DATE OF SIGNATURE

[Redacted]

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine, imprisonment, or both. (See 18 U.S.C. 267, 1001.)

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NSN 7540-00-634-4045
STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
26 CFR 14.2

96-108
INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT HIS OR HER AUTHORIZED AGENT, OR AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, c.f. if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage or property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 301 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. Principal Purpose: The information requested is to be used in evaluating claims.

C. Routine Use: See the Notice of Systems of Records for the agency to whom you are submitting this form for this information.

D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Paperwork Reduction Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.
CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

1. Submit to Appropriate Federal Agency:
   U.S. Department of Homeland Security; U.S. Department of Immigration and Customs Enforcement; U.S. Customs and Border Protection; U.S. Department of Health & Human Services

2. Name, address of claimant, and claimant's personal representative if any. (See Instructions on reverse). Number, Street, City, State and Zip Code.
   [Redacted], c/o Elora Mukherjee, Morningside Heights Legal Services, Inc., 435 W. 116th Street, New York, NY 10027

3. TYPE OF EMPLOYMENT
   - [ ] MILITARY
   - [X] CIVILIAN

4. DATE OF BIRTH

5. MARITAL STATUS
   - [ ] SPOUSE
   - [ ] SINGLES
   - [ ] WIDOW
   - [ ] WIDOWER
   - [ ] DIVORCING
   - [ ] SPOUSE DECEASED
   - [ ] OTHER

6. DATE AND DAY OF ACCIDENT

7. TIME (A.M. OR P.M.)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).
   See attachment.

9. PROPERTY DAMAGE
   NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).
   Not applicable.

   Not applicable.

10. PERSONAL INJURY/WRONGFUL DEATH
   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.
   See attachment.

11. WITNESSES
   NAME
   ADDRESS (Number, Street, City, State, and Zip Code)
   See attachment.

12. (See instructions on reverse).
   AMOUNT OF CLAIM (in dollars)
   12a. PROPERTY DAMAGE
   12b. PERSONAL INJURY
   12c. WRONGFUL DEATH
   12d. TOTAL (Failure to specify may cause forfeiture of your rights).
   3,000,000
   3,000,000

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

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13b. PHONE NUMBER OF PERSON SIGNING FORM
14. DATE OF SIGNATURE

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM
The claimant is liable to the United States Government for a civil penalty of up to $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS
Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

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95-109

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28CFR 14.2
**INSURANCE COVERAGE**

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance?  ☐ Yes  ☒ No  If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number.  ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible?  ☐ Yes  ☒ No  17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

Not applicable.

19. Do you carry public liability and property damage insurance?  ☐ Yes  ☒ No  If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code).  ☒ No

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Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESEntATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN OCCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

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If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

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STANDARD FORM 95 REV. (2/2007) BACK
8. **Basis of Claim**

This claim concerns an unprecedented policy issued at the highest levels of the federal government to separate parents from their children. The extraordinary trauma inflicted on parents and children alike was no incidental byproduct of the policy—it was the very point. The federal government sought to inflict so much distress on parents and children seeking asylum that other families would be deterred from trying to seek refuge in this country. Indeed, while serving as Secretary of the Department of Homeland Security (“DHS”), John Kelly stated that he “would do almost anything to deter the people from Central America” from migrating to the United States, including separating children from their parents.\(^1\) After the forced separations began, former Attorney General Jeff Sessions confirmed that the goal was deterrence.\(^2\) In May 2018, Kelly, who had since become President Trump’s Chief of Staff, callously dismissed any concern about the government’s forced separation of a child from her mother, remarking: “[t]he children will be taken care of—put into foster care or whatever.”\(^3\) Despite widespread condemnation and legal challenges, President Trump continued to defend the policy as a deterrent to migration from Central America when he tweeted, “[I]f you don’t separate, FAR more people will come.”\(^4\)

In total, the U.S. government has admitted to separating more than 2,800 children from their parents or guardians after they crossed the Southwestern U.S. border.\(^5\) Recent reports indicate that the number of families separated may have been much higher.\(^6\) Shockingly, families continue to be separated at the border.\(^7\) The victims of this cruel and unconstitutional policy

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\(^1\) Philip Bump, *Here are the administration officials who have said that family separation is meant as a deterrent*, WASH. POST, June 19, 2018, https://www.washingtonpost.com/news/politics/wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-deterrent/.

\(^2\) *Id.*


\(^5\) Joint Status Report at 9, Ms. L. v. Immigration and Customs Enforcement, No. 18-cv-428 DMS MDD, (S.D. Cal. Dec. 12, 2018); see also OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF HEALTH & HUMAN SERVS., OEI-BL-18-00511, SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESettlement CARE at 11 (Jan. 17, 2019) [hereinafter HHS OIG REPORT]; Order at 2, Ms. L. v. Immigration and Customs Enforcement, No. 18-cv-428 DMS MDD, (S.D. Cal. Mar. 8, 2019) (“Pursuant to the Court’s Orders, 2,816 children were identified as having been separated from their parents at the border . . . .”).

\(^6\) See HHS OIG REPORT, supra note 5, at 1, 6, 13 (reporting that “thousands of children may have been separated during an influx that began in 2017, before the accounting required by [the court in Ms. L. v. Immigration and Customs Enforcement], and HHS has faced challenges in identifying separated children”); Joint Status Report at 11, Ms. L. v. Immigration and Customs Enforcement, No. 18-cv-428 DMS MDD, (S.D. Cal. Feb. 20, 2019) (‘‘Defendants have identified 245 new separations of children and parents that occurred between June 27, 2018 and January 31, 2019, and four cases which require more time to assess.’’); Catherine E. Shoichet, At least 1,712 more kids may have been separated from their parents at the border, CNN, May 17, 2019, https://www.cnn.com/2019/05/17/politics/family-separation-lawsuit/index.html.

include [REDACTED] and his then four-month-old son, C.R.M., whose forced separation lasted for approximately 158 days.

A. The Forced Separation of [REDACTED] from His Four-Month Old Son C.R.M.

[REDACTED] is from Romania. He is thirty-five years old and has been married to his wife [REDACTED] for approximately seventeen years. They have five children together. Their youngest child is C.R.M. [REDACTED], and their children are Romani. Throughout their lives they have suffered discrimination and persecution on the basis of their ethnicity. [REDACTED] gave birth to C.R.M. on October 11, 2017 via a cesarean section. At that time, she was forcibly sterilized without her knowledge or consent.

On or about February 11, 2018, [REDACTED] and C.R.M. crossed the border into Brownsville, Texas at a port of entry. [REDACTED] presented his own passport and C.R.M.’s passport to U.S. Customs and Border Protection (“CBP”) agents and requested asylum. Officers immediately took [REDACTED] and C.R.M. into immigration custody.

Immigration officers detained [REDACTED] and C.R.M. in a room. None of the officers spoke Romanian. Hours later, an officer interviewed [REDACTED] using an interpreter by phone. During this interview, C.R.M. was crying. Following the interview, [REDACTED] was not provided with any information about what would happen to him or C.R.M. While detained, C.R.M. cried and was distraught at times, and [REDACTED] cradled and comforted his baby.

More time passed. Suddenly, officers entered the room and forcibly seized C.R.M. from [REDACTED]’s arms. C.R.M. began crying and screaming. [REDACTED] felt extremely distressed and struggled to get his baby back. Immigration officers handcuffed [REDACTED] and dragged him on the floor. A telephonic interpreter told [REDACTED] that the officers were taking his baby away from him. It was the last time [REDACTED] saw C.R.M. for more than five months.

B. [REDACTED] Learns About C.R.M.’s Whereabouts

After officers forcibly separated [REDACTED] and C.R.M., [REDACTED] was moved to the South Texas Detention Complex in Pearsall, Texas. [REDACTED] was detained there for almost four months until early June 2018. Before arriving at the South Texas Detention Complex, while in transit, and upon arriving there, [REDACTED] repeatedly asked officers about his baby. No officers gave him any responsive information.

While detained at the South Texas Detention Complex, [REDACTED] suffered extreme distress and grief because he had been separated from C.R.M. [REDACTED] sobbed and could not bear to eat. Other detainees beat him because he could not stop crying. Because of his extreme distress, [REDACTED] was forced to go to the psychiatric unit on multiple occasions. Because he could not eat properly, [REDACTED] repeatedly required medical treatment that could not be offered at the South Texas Detention Complex. He was taken off-site for treatment that included being given fluids through an IV. At times, [REDACTED] felt very weak and dizzy and could not stand on his feet. At the South Texas Detention Complex, he was required to swallow pills each day, but was not told what the pills were for other than to make him feel calmer. Because of his separation from
C.R.M. and the lack of information about his baby’s whereabouts and well-being, became suicidal. He threatened to kill himself if he did not receive information about his child.

After weeks of detention, eventually learned that C.R.M. was with a foster family in the United States. During this period, no immigration officer provided with any information about his son’s whereabouts or well-being nor assisted him in locating his son. Instead, learned about his son’s whereabouts as a result of the efforts of both Bethany Christian Services, the foster care agency that had been given custody over C.R.M., and the Michigan Immigrant Rights Center, which offered pro bono legal representation to C.R.M.

Throughout his detention, – an Orthodox Christian – prayed to be reunited with his son. On or about April 14, 2018, was forcibly baptized without his consent at the South Texas Detention Complex and told that he was now a Catholic.

C. Is Deported Without C.R.M.

While detained at the South Texas Detention Complex, repeatedly begged to be reunited with C.R.M. Immigration officers told that if he did not pursue an asylum claim, he would be sent back to Romania with his baby. In reliance on that promise and desperate to be with his son, gave up his asylum claim, expecting to return to Romania with C.R.M.

On or around June 3, 2018, was deported to Romania. While leaving the detention center and being forced to board a plane, desperately and frantically searched for C.R.M. but did not see his baby anywhere. In extreme distress and panic, told officers that he did not want to get on the plane without C.R.M. Officers then ordered on the plane and promised that they would bring his baby to him on the plane. But C.R.M. was never brought to on the plane. was devastated when the plane took off without C.R.M. When his plane landed in Bucharest, again searched for C.R.M. but did not find him. held out hope that when he finally returned to his family home in Ramnicu Valcea, he would find his baby there. But when he got home, C.R.M. was not there. was overcome with grief, as were and their other children upon seeing return without C.R.M. Shortly after returning to Romania, suffered from heart problems and stress-related conditions because of the continued separation from C.R.M.

D. After More Than Five Months, and C.R.M. Are Finally Reunited in Romania

After returning to Romania, continued to beg that C.R.M. be reunited with him. Neither he nor understood why C.R.M. remained in the United States.

On June 14, 2018, C.R.M. appeared for a Master Calendar Hearing before the Detroit Immigration Court. His pro bono counsel from the Michigan Immigrant Rights Center sought voluntary departure on his behalf. Counsel for U.S. Immigration and Customs Enforcement (“ICE”) objected to voluntary departure. The Immigration Judge granted C.R.M. voluntary departure, concluding, “I find that [the] government’s position to not only be legally unsustainable but it is contrary [to the] position that the government has been taking before this
court for the past two years.” The Immigration Judge further rejected “the government’s position . . . that the Respondent should be responsible for making his own way back to Romania as an 8 month old.” ICE counsel reserved appeal and was instructed by the Immigration Judge that the appeal period would last until July 16, 2018.

After the conclusion of the appeal period, C.R.M. was scheduled to board a flight to Romania on July 18, 2018. But several days before July 18, 2018, C.R.M. was told by officials that C.R.M. would not be on that flight and that the baby’s ticket had been cancelled. Again, C.R.M. suffered severe emotional distress and devastation. Thanks to advocacy by the Michigan Immigrant Rights Center, C.R.M. was subsequently cleared to board the flight to Romania on July 18, 2018. He reunited with his family at the Bucharest airport on July 19, 2018.

As a result of the government’s actions described above, C.R.M. suffered, and continues to suffer, severe emotional distress. The terrifying circumstances of the forced separation, not knowing C.R.M.’s whereabouts or well-being for weeks, and the five-month separation—during which C.R.M. was deported without his baby—have tormented him and continue to torment him.

C.R.M. also has experienced similar fear and mental anguish as a result of being forcibly separated from his father for over five months. After being reunited with his family, C.R.M. was very agitated, cried constantly, had trouble sleeping, and did not eat well for months.

E. The Trump Administration’s Family Separation Policy

1. The Purpose of the Policy

Curbing asylum has been a central focus of the Trump Administration’s immigration policy. On April 6, 2018, President Trump issued a memo entitled “Ending ‘Catch and Release’ at the Border of the United States and Directing Other Enhancements to Immigration Enforcement.” The memo, among other things, directs the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, and the Secretary of Health and Human Services to submit a report to the President that details all of the measures their respective departments have pursued or are pursuing to end “catch and release” practices. “Catch and Release” refers to a
federal policy that allows people who are seeking asylum to wait for their hearings in the community, not in government custody.\textsuperscript{13}

On the same day that President Trump issued his directive, then-Attorney General Jeff Sessions announced that the government would institute a “Zero Tolerance” policy, mandating the prosecution of all persons who cross the United States border between ports of entry. The purpose of the “Zero Tolerance” policy was to deter Central Americans from seeking asylum or otherwise coming to the United States.\textsuperscript{14} Through this policy, the United States intentionally inflicted trauma on immigrant parents and their children who crossed the border, by separating the children from their parents in violation of the United States Constitution.\textsuperscript{15} The U.S. Government has admitted to forcibly separating more than 2,800 children from their parents and placing them in government custody.\textsuperscript{16} A recent HHS OIG report and other sources indicate that the actual number is “thousands” higher.\textsuperscript{17} Family separations at the border continue.\textsuperscript{18}

Administration officials at the highest levels knew well before implementing the policy that it would harm the people it affected.\textsuperscript{19} Yet, once the separations began to generate public outrage and condemnation, administration officials changed their tune. They insisted that their hardline stance on prosecuting border crossings was not intended to discourage immigration, and, shockingly, even denied the existence of a family separation policy.\textsuperscript{20} The administration,

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\textsuperscript{14} 60 Minutes: Chaos on the Border, Robots to the Rescue, To Kill a Mockingbird (CBS television broadcast Nov. 25, 2018) (revealing an un-redacted copy of the memo implementing the “Zero Tolerance” policy that stated that the policy’s purpose was deterrence).
\textsuperscript{16} Joint Status Report, supra note 5, at 9; HHS OIG REPORT, supra note 5, at 11; Order at 2, Ms. L. v. Immigration and Customs Enforcement, No. 18-cv-428 DMS MDD (S.D. Cal. Mar. 8, 2019) (“Pursuant to the Court’s Orders, 2,816 children were identified as having been separated from their parents at the border . . . .”).
\textsuperscript{17} HHS OIG Report, supra note 5, at 13. The HHS OIG Report notes that the figure reported in the Ms. L. litigation does not include children whom, beginning in mid-2017, DHS forcibly separated from their parents but were released from HHS custody prior to the June 26, 2018 order in Ms. L. enjoining the practice of child separation. HHS estimates that there are “thousands of children whom DHS separated during an influx that began in 2017 and whom ORR released prior to Ms. L. v. ICE.” HHS OIG REPORT, supra note 5, at 13. The figure is understated because it also does not include children who were apprehended with and separated from a family member other than a parent, such as a grandparent or older sibling. \textit{Id.} at 7. On March 8, 2019, the Court overseeing Ms. L. v. ICE issued an order expanding the protected class to include families who entered the United States on or after July 1, 2017. Order at 14, Ms. L. v. Immigration and Customs Enforcement, No. 18-cv-428 DMS MDD (S.D. Cal. Mar. 8, 2019). Now the government is in the process of reviewing more than 47,000 additional files dating to July 1, 2017 to identify separated families. See Shoichet, supra note 6. On May 17, 2019, the government admitted that it had identified 1,712 cases with “some preliminary indication of separation” from an initial pool of 4,108 children’s case files. \textit{Id.}
\textsuperscript{18} Jervis & Gomez, supra note 7; Hoffman, supra note 7; O’Toole, supra note 7.
\textsuperscript{19} Jeremy Stahl, \textit{The Trump Administration Was Warned Separation Would Be Horrific for Children, Did It Anyway}, SLATE (July 31, 2018), https://slate.com/news-and-politics/2018/07/the-trump-administration-was-warned-separation-would-be-horrific-for-children.html. Commander Jonathan White, a former HHS senior official, testified before Congress that he had warned the administration that implementing a family separation policy would involve a significant risk of harm to children. The policy was launched a few weeks after he raised his concerns. \textit{Id.}
\textsuperscript{20} Christina Wilkie, \textit{White House denies separating families is ‘policy,’ but insists it is needed ‘to protect
however, could not expunge the numerous statements made by high-level officials confirming that family separation was the express policy and that its purpose was deterrence.

In a December 16, 2017 memorandum exchanged between senior officials at DOJ and DHS, the officials proposed a “Policy Option” of “Increased Prosecution of Family Unit Parents.”21 Under the proposal, “parents would be prosecuted for illegal entry . . . and the minors present with them would be placed in HHS custody as [unaccompanied alien children].”22 The memorandum asserted that “the increase in prosecutions would be reported by media and it would have substantial deterrent effect.”23

When asked about the policy by NPR on May 11, 2018, John Kelly, President Trump’s Chief of Staff, responded that “a big name of the game is deterrence . . . It could be a tough deterrent—would be a tough deterrent.”24 As for the children affected, he said: “[t]he children will be taken care of—put into foster care or whatever.”25

On June 19, 2018, on Fox News’ “The Ingraham Angle,” host Laura Ingraham asked then-Attorney General Jeff Sessions, “[I]s this policy in part used as a deterrent? Are you trying to deter people from bringing children or minors across this dangerous journey? Is that part of what the separation is about?” Sessions replied, “I see that the fact that no one was being prosecuted for this was a factor in a fivefold increase in four years in this kind of illegal immigration. So, yes, hopefully people will get the message and come through the border at the port of entry and not break across the border unlawfully.”26

And President Trump himself has indicated that deterrence was the motivation behind his Justice Department’s “Zero Tolerance” policy. When speaking with reporters at the White House on October 13, 2018, he said, “If they feel there will be separation, they don’t come.”27 On December 16, 2018, the President tweeted, “[I]f you don’t separate, FAR more people will come.”28

Thus, the trauma inflicted by the family separation policy was entirely intentional and premeditated. This point cannot be overstated: the most senior members of the U.S. government intentionally chose to cause parents and small children, including infants, extraordinary pain and suffering in order to accomplish their policy objectives. The unspeakable pain and suffering

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22 Id. at 1.
23 Id.
24 Transcript: White House Chief Of Staff John Kelly’s Interview With NPR, supra note 3.
25 Id. (emphasis added).
26 Bump, supra note 1.
28 Donald Trump, supra note 4 (emphasis in original).
experienced by parents and small children was seen as a useful device by the most senior members of the U.S. Government to accomplish their policy objective of deterring Central Americans from seeking asylum in the United States.

2. The Implementation of the Policy

Once the policy was implemented and immigration officers separated children from their parents, DHS deemed separated children to be unaccompanied and transferred them to the HHS Office of Refugee Resettlement (“ORR”), which is responsible for the long-term custodial care and placement of “unaccompanied [noncitizen] children.”29 But DHS failed to take even the most basic steps to record which children belonged to which parents, highlighting the government’s utter indifference to the dire consequences of the policy on the separated families. The DHS Office of Inspector General (“DHS OIG”) noted that the “lack of integration between CBP’s, ICE’s and HHS’ respective information technology systems hindered efforts to identify, track, and reunify parents and children separated under the Zero Tolerance policy” and that “[a]s a result, DHS has struggled to provide accurate, complete, reliable data in family separations and reunifications, raising concerns about the accuracy of its reporting.”30

Generally, CBP officers—the first to encounter individuals entering the United States—were the officers who separated parents and children. Following the separation, CBP transferred many of the parents into ICE custody.31 When the “Zero Tolerance” policy went into effect, ICE’s system “did not display data from CBP’s systems that would have indicated whether a detainee had been separated from a child.”32 As a result, when ICE was processing detained individuals for removal, “no additional effort was made to identify and reunite families prior to removal.”33 Even more alarming, in order to keep track of the children, ICE manually entered the child’s identifying information into a Microsoft Word document, which was then e-mailed as an attachment to HHS, a process described by the DHS OIG as particularly “vulnerable to human error,” and one which “increas[ed] the risk that a child could become lost in the system.”34

As emphasized by Judge Sabraw in Ms. L. v. Immigration and Customs Enforcement, the agencies’ failure to coordinate tracking of separated families was a “startling reality” given that:

[t]he government readily keeps track of personal property of detainees in criminal and immigration proceedings. Money, important documents, and automobiles, to name a few, are routinely catalogued, stored, tracked and produced upon a detainee’s release, at all levels—state and federal, citizen and alien. Yet, the government has no system in

30 See id. at 9–10 (noting, among other things, that agencies’ incompatible computer systems erased data that connected children with their families); see also HHS OIG Report, supra note 5, at 2, 13 (reporting that the lack of an integrated data system to track separated families across HHS and DHS added to the difficulty in HHS’s identification of separated children).
32 Id. at 9–10.
33 Id. at 10.
34 Id.
place to keep track of, provide effective communication with, and promptly produce alien children. The unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as property. Certainly, that cannot satisfy the requirements of due process.  

The government’s inhumane treatment of separated families described by Judge Sabraw was not merely the result of indifference or incompetence. Commander Jonathan White, a former senior HHS official, testified before Congress that he repeatedly warned those devising the policy that separating children from their parents would have harmful effects on the children, including “significant potential for traumatic psychological injury to the child.” But those in charge willfully disregarded Commander White’s warnings. Imposing trauma on these parents and children was their very goal.

Only after the family separation policy garnered widespread condemnation and became bad politics did President Trump, on June 20, 2018, sign an executive order (“EO”) purporting to end it. The EO states that it is the “policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources.” The EO, however, did not explain whether or how the federal government would reunify children who had been previously separated. In fact, on June 22, 2018, the government admitted that it had no reunification procedure in place.

It was not until a federal judge ordered the government on June 26, 2018 to reunify families that the government began taking steps to do so. What followed was chaos. DHS claimed that DHS and HHS had created a centralized database containing all relevant information regarding parents separated from their children; however, the DHS OIG found “no evidence that such a database exists.” According to the DHS OIG, whatever data was collected was incomplete, contradictory, and unreliable. Because no single database with reliable information existed, the Government Accountability Office found that agencies were left to resort to a variety of inefficient and ineffective methods to determine which children were

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35 Ms. L., 310 F. Supp. 3d at 1144 (emphasis in original).
36 Stahl, supra note 19.
38 See Ms. L., 310 F. Supp. 3d at 1140–41; see also U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-163, UNACCOMPANIED CHILDREN: AGENCY EFFORTS TO REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER 21 (2018) [hereinafter GAO REPORT] (“HHS officials told [the GAO] that there were no specific procedures to reunite children with parents from whom they were separated at the border prior to the June 2018 court order.”). The only procedure in place capable of reuniting children with their parents was the procedure developed to place unaccompanied children with sponsors in compliance with the Trafficking Victims Protection Reauthorization Act. Under this procedure, however, a parent could only be reunited with his or her child if the government deemed them eligible to be a sponsor. Id. Judge Sabraw noted that this procedure was inadequate because it was created to address “a different situation, namely what to do with alien children who were apprehended without their parents at the border or otherwise,” and further, that the procedure was not developed to address situations such as this one where family units were separated by government officials after they crossed the border together. Id. at 27 (quoting Order Following Status Conference, Ms. L. v. Immigration and Customs Enforcement, No. 18-0428-DMS-MDD (S.D. Cal. July 10, 2018)).
39 Ms. L., 310 F. Supp. 3d at 1149–50.
40 DHS OIG REPORT, supra note 29, at 10.
41 Id. at 11–12.
subject to Judge Sabraw’s injunction. These methods included officers hand sifting through agency data looking for any indication that a child in HHS custody had been separated from his or her parent and calling in the Office of the Assistant Secretary for Preparedness and Responses, an HHS agency whose normal prerogative involves response to hurricanes and other disasters, to review data provided by CBP, ICE, and ORR. The method for determining which family units required reunification changed frequently, sometimes more than once a day, with staff at one ORR shelter reporting that “there were times when [they] would be following one process in the morning but a different one in the afternoon.” Judge Sabraw criticized the agencies for their lack of preparation and coordination at a status conference proceeding on July 27, 2018: “[W]hat was lost in the process was the family. The parents didn’t know where the children were, and the children didn’t know where the parents were. And the government didn’t know, either.”

The government’s cruel policy of separating children from their parents, and its failure to track the children once they were separated, violated the claimants’ constitutional right to family integrity. The government instituted and implemented this policy to intentionally inflict emotional distress on the parents and children who were separated. It succeeded, with devastating consequences for parents and children like and C.R.M.

42 GAO REPORT, supra note 38, at 23–25.
43 Id. at 24.
44 Id. at 23.
45 Id. at 27.
47 See Ms. L., 302 F. Supp. 3d at 1161–67 (finding that plaintiffs had stated a legally cognizable claim for a violation of their substantive due process rights to family integrity under the Fifth Amendment to the United States Constitution based on their allegations that the Government had separated them from their minor children while they were held in immigration detention and without a showing that they were unfit parents or otherwise presented a danger to their children); Ms. L., 310 F. Supp. 3d at 1142–46 (finding that plaintiffs were likely to succeed on their substantive due process claim when assessing their motion for a preliminary injunction). See also Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977) (liberty interest in family relationships has its source in “intrinsic human rights”). DHS employees are responsible for supervising and managing detainees at CBP and ICE facilities, including those located in Texas. And HHS employees are responsible for supervising and managing the detention of unaccompanied children, including at facilities in Michigan. DHS and HHS employees are federal employees for the purposes of the Federal Tort Claims Act.