June 6, 2019

VIA FEDEX AND EMAIL

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

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

U.S. Citizenship and Immigration Services
Office of the Chief Counsel
111 Massachusetts Avenue, NW
Washington, DC 20529-2260

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536-5902

U.S. Department 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 –

Dear Counsel:

The Asylum Seeker Advocacy Project represents [REDACTED] and her minor children, [REDACTED] and [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 (4) an Attachment to the Standard Form 95s detailing the basis of their claims.

In the attached, we detail how federal government officers and West Texas Detention Facility employees violated Ms. XXXX and her children’s rights by separating them from each other without notice and detaining them in separate facilities for more than two months. Ms. XXXX and her two minor children, XXX and XXX, were severely traumatized by their separation and prolonged detention, and Ms. XXXX suffered a serious head injury due to the actions of U.S. government officials that continues to impede her daily life. Furthermore, Ms. XXXX and her children have suffered prolonged and ongoing emotional harm from the day they were detained and separated in XXX and all continue to experience emotional suffering due to this experience.

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.

Please do not hesitate to contact me if you have any questions or require additional information.

Dated: June 6, 2019

Sincerely,

Jasmina Nogo
Staff Attorney
Elizabeth Willis
Co-Legal Director
Conchita Cruz
Co-Director
Asylum Seeker Advocacy Project (ASAP)
228 Park Ave. S. #84810
Enclosures:
   1. Claim Authorization Form
   2. Standard Form 95s for each Claimant
   3. Attachment to Standard Form 95s
AUTHORIZATION TO FILE ADMINISTRATIVE TORT CLAIM

I, ______________________ authorize Jasmina Nogo and Elizabeth Willis of the Asylum Seeker Advocacy Project to submit a claim under the Federal Tort Claims Act on behalf of myself and my minor children, ______________________ and ______________________, to the U.S. Department of Homeland Security, the U.S. Department of Health and Human Services, and any other government agency, seeking compensation for the unlawful actions of their employees or agents against me and my minor children.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Printed Name: ______________________
Signature: ______________________
Dated: ______________________

CERTIFICATION OF INTERPRETATION

I, ______________________, certify under penalty of perjury that I am fluent in the English and Spanish languages and that I read this document to ______________________ in Spanish who verified that she understood the translation and that its contents are true and accurate.

Interpreter Signature: ______________________
Interpreter Name: ______________________
Dated: ______________________
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:

2. Name, address of claimant, and claimant’s personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.
   [Redacted] and her minor children. [Redacted] (continued on supplement)

3. TYPE OF EMPLOYMENT
   ☑ CIVILIAN

4. DATE OF BIRTH
   [Redacted]

5. MARITAL STATUS
   [Redacted]

6. DATE AND DAY OF ACCIDENT
   [Redacted]

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

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 attached.

9. PROPERTY DAMAGE
   NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).
   N/A
   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).
   N/A

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 DECEDEENT.
    See attached.

11. WITNESSES
    NAME
    [Redacted]
    ADDRESS (Number, Street, City, State, and Zip Code)
    See attached.
    See attached.

12. AMOUNT OF CLAIM (In dollars)
    12a. PROPERTY DAMAGE
    12b. PERSONAL INJURY
    12c. WRONGFUL DEATH
    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.

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

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 not less than $5,000 and not more than $10,000, plus three times the amount of damages sustained by the Government. (See 31 U.S.C. 3720).

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

Authorized for Local Reproduction
Previous Edition is not Usable

SSN 7540-00-634-4046

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

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).

19. Do you carry public liability and property damage insurance?  
   - Yes  
   - No

### 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 DUTY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANYING A CLAIM FOR MONEY**

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrues 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 will 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.

**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. 501 et seq., 26 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 Notices 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, Torts 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.

STANDARD FORM 95 REV. (2/2007) BACK
**CLAIM FOR DAMAGE, INJURY, OR DEATH**

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

2. **Name, address of claimant, and claimant’s personal representative if any.**
   - (See instructions on reverse). Number, Street, City, State and Zip code. (continued in supplement)

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

4. **DATE OF BIRTH**

5. **MARITAL STATUS**

6. **DATE AND DAY OF ACCIDENT**

7. **TIME (A.M. OR P.M.)**
   - N/A

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 attached.

9. **PROPERTY DAMAGE**
   - **NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT** (Number, Street, City, State, and Zip Code).
   - N/A
   - 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).
   - N/A

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 DECEDED.
    - See attached.

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

12. **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

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

13b. **PHONE NUMBER OF PERSON SIGNING FORM**

14. **DATE OF SIGNATURE**

15. **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).

16. **CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS**
    - Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)
**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 [ ] If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number [ ] No

N/A

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.

0.00

N/A

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).

N/A

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

N/A

**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.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DUTY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, 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 accrues 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.

**PRIVATE ACT NOTICE**

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. § 552(a)(3), and concerns 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. 501 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 Notices 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**

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STANDARD FORM 95 REV. (2/2007) BACK
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:


2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.

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

4. DATE OF BIRTH

5. MARITAL STATUS

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 attached.

9. PROPERTY DAMAGE

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

N/A

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).

N/A

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 attached.

11. WITNESSES

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS (Number, Street, City, State, and Zip Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>See attached.</td>
</tr>
</tbody>
</table>

12. (See instructions on reverse).

12a. PROPERTY DAMAGE
12b. PERSONAL INJURY
12c. WRONGFUL DEATH

3,000,000

12d. TOTAL (Failure to specify may cause 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.

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

13b. PHONE NUMBER OF PERSON SIGNING FORM

14. DATE OF SIGNATURE

13a. 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).

13b. CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)
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
   N/A

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.
   N/A
   0.00

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).
   N/A

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

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 DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 86 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANYING 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 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, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to 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. 501 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 Notices 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."

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FTCA Standard Form 95 – Attachment
Claimants: [Redacted], on behalf of herself and her minor children and [Redacted]

**Answer 1**

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

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

U.S. Citizenship and Immigration Services
Office of the Chief Counsel
111 Massachusetts Avenue, NW
Washington, DC 20529-2260

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536-5902

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

**Answer 2**

Claimants: [Redacted], on behalf of herself and her minor children [Redacted]

Legal Representatives
Answer 6: Date and Day of Accident

The government forcibly separated Ms. Jasmina Nogo ("Ms.
Jasmina Nogo") (A# ) and her minor children, Elizabeth Willis
("Elizabeth Willis") (A# ), and Conchita Cruz ("Conchita Cruz") (A# ) on or
about . The government detained Ms. Nogo until approximately .
Meanwhile, Ms. Nogo's children were held in a shelter operated by the
Department of Health and Human Services ("DHHS"). Ms. Nogo was finally reunited
with her children in , upon her release from detention.

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

The government forcibly separated Ms. Nogo from Elizabeth Willis
and Conchita Cruz in the P.M. on or about . The question is not applicable as to the remainder of their forced
separation and detention.

Answer 8: Basis of Claim

Ms. Nogo is a 46-year-old Honduran woman who fled Honduras with her two
minor children, Elizabeth Willis and Conchita Cruz. They fled after Ms. Nogo received death threats and
was held at gunpoint by individuals searching for her husband due to his involvement in the
political campaign of Teresa Calix, a member of the National Party of Honduras. Ms. Nogo's
husband, , and their son, , fled Honduras in approximately . On , Ms. Nogo reported the threats
she had received to the police. Afraid for her life and the lives of her children, she fled Honduras. The National Immigrant Justice Center (NIJC) and co-counsel David L. Batty of Chapman and
Cutler LLP, are currently representing the entire family on their asylum applications before the
Charlotte Immigration Court.

Ms. Nogo came to the United States with and , following her
husband and other son, in order to seek safety and asylum. However, when they arrived, without
warning or explanation, immigration officials separated Ms. Nogo and her two minor
children from each other, causing all three of them severe emotional distress. Officers detained
them separately for more than two months, and Ms. Nogo and her children suffered
depression and anxiety during, and after, their separation. Ms. Nogo also suffered a
traumatic injury to her head while being transported in a government vehicle.

Their 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, illegal, and unconstitutional policy include Ms. [redacted] and her then fifteen-year-old son, [redacted], whose forced separation has lasted for more than 2 months.

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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., OIG-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.

A. The Forced Separation of [Masked] from her Minor Children, [Masked] and [Masked]

On or about [Masked] at approximately 11:00 PM, Ms. [Masked] entered the United States with her two minor children: [Masked], who was fourteen-years-old at the time, and [Masked], who was five-years-old. Shortly after crossing the U.S. border, approximately four U.S. Customs and Border Patrol (“CBP”) agents approached Ms. [Masked]’ group, questioned them, and arrested them. CBP agents loaded everyone onto a van without offering them food or water. During the drive, CBP agents treated the migrants with disrespect, indicated that they were tired of immigrants, said “we have too many immigrants,” and questioned their motives for coming to the U.S. They also said: “all of you will lose your kids,” to the group. At no point did CBP inform Ms. [Masked] or her children where they were or where they were being taken.

After taking them into custody, CBP officers took Ms. [Masked] and her children to the Ysleta Port of Entry in El Paso, Texas. No CBP officer or Immigration and Customs Enforcement (“ICE”) official revealed to Ms. [Masked] or her children the name of the holding center or its location. They were held at the facility for approximately a day and a half.

A CBP officer searched Ms. [Masked] and confiscated all of her belongings, including her identification card, birth certificates, and 80 Mexican pesos. These belongings were never returned to Ms. [Masked]. While being kept at the holding center, officers insulted Ms. [Masked] and her children and told Ms. [Masked] that her children would be taken away from her and that she would be deported.

After several hours, Ms. [Masked] and her children were each given a small burrito to eat. Ms. [Masked] could not eat anything at this time from the nervousness she was feeling and could only drink water. Ms. [Masked] refers to the holding center as “la hielera,” (“the icebox,” in Spanish) because of the freezing cold temperatures. She and her children were still wet from crossing the river, were shivering, were forced to sit on concrete steps, and were not given any blankets or jackets to keep warm while they waited.

A CBP officer questioned Ms. [Masked] in front of her children and asked her if she was afraid to return to her country. Ms. [Masked] had previously been told by an ICE officer that if she expressed fear she would be separated from her children. She also did not want to distress her children even more, so she told the ICE officer that she was not afraid to return to Honduras, even though she was. After the interview, a CBP agent told Ms. [Masked] that she would go to prison and then back to her country, that her children would be taken away from her, and that a judge would decide what would happen to them.

Several days before arriving to the U.S.-Mexico border, Ms. [Masked] had fallen and hurt her leg, which was swollen and in pain by the time they crossed into the U.S. After Ms. [Masked] complained about the pain and swelling, government officials took her to a nearby hospital. She was handcuffed in front of her children and transported to the hospital by CBP agents. At the hospital she was given ibuprofen to reduce the pain, her leg was wrapped, and she was provided with crutches. But after her appointment, CBP agents confiscated her crutches
and never returned them to her. CBP agents placed the handcuffs back on her and transported her to the holding center, where her children still were.

Shortly after Ms. [REDACTED] returned from the hospital, she was taken by CBP agents and told she was going to federal prison. They did not give her an opportunity to explain anything to her children, or hug and kiss them goodbye. She watched them scream and cry for her to come back through the plexiglass as the agents took her away in handcuffs. Despite her continuous questions about what would happen to them or when she would see them again, officials never gave her an answer and repeated that a judge would decide what would happen to them.

Much later, Ms. [REDACTED] learned that after she was taken away her children were kept confined in a holding center (which she referred to as a jail) for several days before being taken to a U.S. Department of Health and Human Services Heartland Guadalupe shelter for migrant children operated by the Heartland Alliance in Chicago.

**B. The Mistreatment of Ms. [REDACTED] in Federal Custody**

Ms. [REDACTED] was charged with violating 8 U.S.C. § 1325(a)(19), improper entry by an alien, and transferred into the custody of the U.S. Marshals Service at an unknown facility. Despite Ms. [REDACTED] asking where she was being taken, agents did not inform her of the location of the facility and indicated that she was going to “federal prison.” After arriving at the unknown facility, Ms. [REDACTED] was forced to wait for approximately 6 hours in a freezing cold area. She experienced pain in her wrists due to the tightness of the handcuffs and asked officers to loosen them. They refused to loosen them, and instead, insulted her and told her that she had no right to ask for anything. They also told her that no matter what she said or did, she wouldn’t get out. At approximately 3:00 AM, she was taken to the showers by officers, stripped of her clothes, and showered with cold water and anti-lice shampoo. This caused her to experience a severe headache that lasted for several hours. She was given one blue uniform and taken to her cell, where she continued to shiver due to the low temperatures at the facility.

On [REDACTED], she was transported in hand and leg cuffs to the district court of the Western District of Texas, El Paso Division and appeared before a magistrate judge. After her hearing, she was returned to the unknown facility.

Ms. [REDACTED] spent a total of eight days in the unknown facility, during which time she was detained with drug traffickers and other individuals accused of committing serious crimes, causing her severe anxiety and fear.

On [REDACTED], she was transported to the district court again, where she appeared for an arraignment hearing. On [REDACTED] a judgement was entered finding her guilty of improper entry and imposing a one-year sentence of probation on her. She was then transferred back into ICE custody to the West Texas Detention Facility in Sierra Blanca, Texas, which is operated by LaSalle Corrections. At this point she had still not heard from her children and did not know where they were.
It was not until approximately one month after their separation that Ms. [redacted] learned that her children were in the Heartland Guadalupe DHHS shelter in Chicago. She learned this information by telephone from her husband, Mr. [redacted], who was in South Carolina at the time. Ms. [redacted] was never given an opportunity to talk with her children on the phone, even though they requested to speak to their mother frequently and staff at the Heartland Guadalupe shelter attempted to establish contact with the ICE facility to allow them to have a phone call. Staff at the detention center never accepted the call.

C. The Physical Injury Suffered by Ms. [redacted] While in the Custody of ICE

During her confinement at the West Texas Detention Facility, Ms. [redacted] was approached on two occasions by ICE officials who tried to coerce her to sign a deportation order. The ICE officers told her that whether or not she signed it, she would still be automatically deported. The documents were in English and nobody translated them for her. Ms. [redacted] refused to sign the deportation order both times.

Sometime during the month of [redacted] 2018, Ms. [redacted] spoke with the Honduran consulate on the telephone and expressed that she was afraid to return to Honduras. Approximately 11 days after her phone call with the consulate, around 11:00 PM, several ICE officers came into her cell and notified her that she was leaving. For a moment, Ms. [redacted] believed she was being released from detention and reunified with her children. Her clothes were returned to her and she was handcuffed by the wrists and ankles and loaded into the backseat of a government vehicle. No seatbelt was placed on her. Ms. [redacted] asked where she was being taken, but her questions were ignored. During transit, the driver of the vehicle suddenly slammed on the breaks to avoid hitting something in the road. Ms. [redacted] lurched forward and slammed headfirst directly into the metal bars that separated her from the officers. The sudden impact caused an injury to her head and upper body and she was in immediate pain and discomfort. When the vehicle arrived at its destination, Ms. [redacted] realized she was at an airport and was on the brink of being deported back to Honduras by airplane. She was taken from the vehicle by ICE officers and they attempted to execute her deportation by forcing her onto the plane, despite the fact that she was bleeding from her head. Ms. [redacted] refused to get on the airplane and steadfastly indicated that she would not leave without her children.

The ICE officers returned Ms. [redacted] to the West Texas Detention Facility in Sierra Blanca, Texas that night. She was taken to the medical unit at the detention center and medical providers indicated that she should be taken to a hospital. The following day, Ms. [redacted] was taken to a hospital in San Antonio, Texas, where she was examined by doctors. The doctors indicated that she needed to return if her condition did not improve within a few days. However, government officers never facilitated Ms. [redacted] return to see the doctors at the hospital, even though her condition did not improve for several weeks.

D. The Impact of Ms. [redacted]’ Injury

Ms. [redacted] suffered from a fever that lasted for several days following the accident. She couldn’t swallow due to the inflammation and swelling in her neck. She also couldn’t see well for several weeks due to the swelling to her head and eyes. While in this state, she could
not eat solid food and refused her meals. Ms. asked for liquid or soft foods, since she could not swallow, but was denied this request. Instead, on several occasions, officials at the detention center threw her food tray into her cell and yelled that it was all she was going to be given to eat, so she could take it or leave it. Her companions at the detention center bought her oatmeal packets from the commissary and fed her so that she wouldn’t go weeks without any food.

As a result of the injuries, for several weeks Ms. was also unable to bathe herself, navigate around her cell, dress herself, or comb her hair without the assistance of her companions. She continued to experience swelling, vision problems, and pain in her head and right arm for approximately three weeks after the accident. She was given 500-mg. ibuprofen tablets to take twice per day to help with the pain, but nothing else. During this time, government officials did not take Ms. to the hospital again, despite the fact that the condition had not improved, and she did not receive regular visits with the medical staff at the detention center. On at least two occasions, Ms. requested to see a doctor because but was forced to wait at least a day before she was finally taken to see a nurse at the detention center.

E. The Mistreatment of Ms. in Immigration Detention

During her confinement at the detention center, Ms. slept on the bottom bunk bed upon a thin mattress, while another woman slept on the top bunk. She was in a detention pod with approximately 100 other women, who were all tightly packed, and often fights and conflicts arose among the women. She was only given one uniform and one pair of underwear, which she had to wash herself by hand. The women had to clean the bathrooms and the common spaces themselves. Although Ms. did eat the food served at the detention center to avoid starvation, she often got sick from it, experiencing stomachaches and diarrhea. She also often got diarrhea from drinking the tap water. Detention officers would turn lights out at 11:00 PM each night and turn them on again at 4:30 AM. They came and went into the pod throughout the night, yelled, turned lights on and off, and Ms. was never able to get a good night’s sleep at the detention center. While detained, Ms. could not stop thinking about her children, their separation, and the harm that she had escaped from in Honduras.

Ms. suffers from high blood pressure. However, she had never received medication for it prior to her detention. While detained, her blood pressure increased so much that she was prescribed medication to control her blood pressure. She continued to take the medication while in detention but has not taken it since she was released.

F. Ms. ’ Painful Reunification with her Children

After Ms. suffered the head injury, Ms. family hired attorney Ernesto Sanchez to represent her. As a result of Mr. Sanchez’s advocacy, Ms. was finally given an opportunity to have a Credible Fear Interview (CFI) on, which she passed. A Notice to Appear was issued on. On, Mr. Sanchez represented Ms. in a custody redetermination hearing before the Immigration Judge. She was released on a $3,000 bond. After her family posted the bond, Ms. was released from immigration detention and traveled to Charlotte, North
Carolina, where she was reunited with her husband and their three children — , , and .

By the time that Ms. finally saw her children, and , it had been more than two months since they were separated. Although she was grateful to be reunited with them, the reunification experience was painful for Ms.. When she attempted to hug her youngest son, , he rejected her and told her that he hated her for abandoning him and that he never wanted to see her again. He said to her “Why did you leave me? Why did you abandon me? I don’t want you here.” Ms. says that this was the most painful moment of her life. told Ms. that after experiencing the separation from her mother and life in the shelter, she wished she had never been born.

G. The Lasting and Harmful Effects of Separation and Detention on Ms. and her Two Minor Children

As a result of the separation, prolonged detention, and injury of Ms., she and her children, and , continue to experience both physical and psychological symptoms.

Ms. still experiences severe headaches on a daily basis, which she treats on her own with ibuprofen or other over-the-counter pain medications. She also continues to have vision problems. For example, she cannot read for longer than several minutes because her vision blurs and her head hurts. She also has trouble bending over without feeling pain in her upper body. Additionally, she experiences bouts of forgetfulness and has trouble recollecting events, dates, and facts as they occurred. Ms. says that she will never be the same woman again. She feels constant anxiety and deep depression. She feels inadequate as a mother and guilty for what happened to her and her children. She has so much trouble talking about what happened to them at the border, during separation, and during her detention that she’s unable to do much more after discussing it. For example, she is usually unable to work in the afternoons if she discusses her experience with anyone. Ms. still has problems sleeping at night and often wakes up in the middle of the night reaching for her children to make sure that they’re still there. Additionally, she doesn’t have an appetite and often goes days without being able to eat.

keeps to herself and is closed off. She refuses to talk about what happened to her when she was separated from her mother and at the shelter. She is currently not receiving therapy due to financial constraints, though her mother believes she would greatly benefit from it. Ms. indicates that is suppressing pain and has trouble letting herself feel joy because she says, “Everything that I want gets taken away from me.” When comes home from school, she closes herself in her bedroom, pulls down the curtains and just wants to be alone. Ms. believes that is suffering from depression.

Shortly after being released from the DHHS shelter, who was five years old at the time, lost control of his bowel movements and often defecated himself. He also started to regularly urinate himself. continues to have trouble with his bodily functions to this day. He frequently has to urinate due to nervousness, especially when he is outside of the house. While he was at the shelter, he was given sleeping pills to keep him from crying and to make him sleep.
Since he has returned home, he hasn’t been able to maintain a regular sleeping schedule. When his parents send him to sleep, he asks them to come with him so that he doesn’t have to go alone. After returning home from the shelter, he also hid under tables and was afraid to go to school because he had been bullied and beaten up by other kids at the shelter.

 told his parents that, at the shelter, when he would cry at night and ask for his mom, a woman he did not know told him that she would be his mom. Whenever he would cry, he would be punished by having his food taken away from him. Additionally, was punished and forced to remain in the shelter for an additional week after getting into a scuffle with another child at the shelter. says that whenever she has to leave the house to go to work or run an errand, clings to her and asks her if she’ll come back to him. He tells her to stay with him and to not leave, even if she’s just going out for a few hours. currently sees a school counselor, on a weekly basis at his elementary school in Charlotte. The counselor has recommended both family and individual therapy to help him cope with the trauma that he experienced. As recently as May 30, 2019, ’s school counselor, Ms., let Ms. know that is still emotionally and academically blocked and is not making improvements. However, due to financial reasons, the family has not been able to seek therapy for him yet.

DHS arrested, or caused the arrest of, detained and took custody of Ms. and her children for a total of approximately 92 days. While in custody and during transit, DHS and LaSalle Corrections employees grossly mistreated Ms. and denied her adequate medical care. DHS officials engaged in negligence and medical negligence, battery, abuse of process, negligent hiring, training, and supervision, unlawful search and seizure, and the intentional and negligent infliction of emotional distress. Furthermore, and were kept at an adult detention facility without their mother for several days before being placed in a shelter for migrant children in Chicago.

H. 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

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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.

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. 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. The U.S. government has admitted to forcibly separating more than 2,800 children from their parents and placing them in government custody. A recent HHS OIG report and other sources indicate that the actual number is “thousands” higher. Family separations at the border continue.

10 Id.
12 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).
14 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 . . . .”).
15 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. 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. Id.
16 Jervis & Gomez, supra note 7; Hoffman, supra note 7; O’Toole, supra note 7.
Administration officials at the highest levels knew well before implementing the policy that it would harm the people it affected. 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. The administration, 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.” 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].” The memorandum asserted that “the increase in prosecutions would be reported by media and it would have substantial deterrent effect.”

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.” As for the children affected, he said: “[t]he children will be taken care of—put into foster care or whatever.”

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.”

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

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17 Jeremy Stahl, *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. *Id.*


20 *Id.* at 1.

21 *Id.*

22 Transcript: White House Chief Of Staff John Kelly’s Interview With NPR, supra note 3.

23 *Id.* (emphasis added).

24 Bump, supra note 1.
House on October 13, 2018, he said, “If they feel there will be separation, they don’t come.”

On December 16, 2018, the President tweeted, “[I]f you don’t separate, FAR more people will come.”

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 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.

1. 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.” 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.”

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. 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.” As a result, when ICE was processing detained individuals for removal, “no additional effort was made to identify and reunite families prior to

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26 Donald Trump, supra note 4 (emphasis in original).
28 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).
29 DHS OIG Report, supra note 27, at 2.
30 Id. at 9–10.
removal.” 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.”

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 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 families who had been previously separated. In fact, on June 22, 2018, the government admitted that it had no reunification procedure in place.

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31 Id. at 10.
32 Id.
33 Ms. L., 310 F. Supp. 3d at 1144 (emphasis in original).
34 Stahl, supra note 17.
36 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
It was not until a federal judge ordered the government on June 26, 2018 to reunite 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 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 Ms. and her children.

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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)).

37 Ms. L., 310 F. Supp. 3d at 1149–50.
38 DHS OIG REPORT, supra note 27, at 10.
39 Id. at 11–12.
40 GAO REPORT, supra note 36, at 23–25.
41 Id. at 24.
42 Id. at 23.
43 Id. at 27.
45 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.
**Answer 10: Nature and Extent of Injury**

Please see the facts described above in the Basis of Claim. As a result of the actions of the federal government, its employees, and its contractors, [redacted] and her two minor children suffered physical and emotional injury, humiliation, discrimination, emotional distress, physical pain, loss of enjoyment of life, loss of personal property, and damages from their separation, detention and restrictions on liberty. Moreover, [redacted] suffered damages due to the failure of the government and its agents to meet the requisite standard of medical care.

This is not intended to be an exhaustive list of possible causes of action.

**Answer 11: Witnesses**

- Mark W. Howell, Assistant Field Office Director of Facility, West Texas Detention Center, Sierra Blanca, TX
- Mike Shepard, Warden, West Texas Detention Center, Sierra Blanca, TX
- Former Secretary Kirstjen Michele Nielsen, Department of Homeland Security
- Acting Secretary Kevin K. McAleenan
- Ramon Serrano, Border Patrol Agent
- James Hughes, Border Patrol Agent
- Juan Gonzalez-Perez – Border Patrol Agent

Possible witnesses also include multiple employees of DHS, CBP, ICE, and HHS, and each entity’s contractors who had contact with or reviewed records related to [redacted], [redacted], and [redacted], and their apprehension, separation, detention, and Ms. [redacted]’ injury; federal government officials involved in developing and implementing the separation policy; and the many individuals with whom Ms. [redacted] was detained in Texas.

This is not intended to be an exhaustive list of possible witnesses.