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17

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 A.P.F. on his own behalf and on behalf of his
minor child, O.B.; J.V.S. on his own behalf and
21 on behalf of his minor child, H.Y.; J.D.G. on his
own behalf and on behalf of his minor child,
22 M.G.; H.P.M. on his own behalf and on behalf
of his minor child, A.D.; M.C.L. on his own
23 behalf and on behalf of his minor child, A.J.;
and R.Z.G. on his own behalf and on behalf of
24 his minor child, B.P.,

25 Plaintiffs,

26 v.

27 United States of America,

28 Defendant.

No. CV20-00065-PHX-SRB

FIRST AMENDED COMPLAINT

INTRODUCTION

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1. This action seeks damages for six asylum-seeking families forcibly separated by the United States government: A.P.F. and his son, O.B.; J.V.S. and his daughter, H.Y.; J.D.G. and his daughter, M.G.; H.P.M. and his daughter, A.D.; M.C.L. and his son, A.J.; and R.Z.G. and his daughter B.P.¹

2. When federal agents came to take Herlinda from her father José, she was just five years old. She clutched her dad, and screamed, “Papi, don’t leave me! Don’t let me go!”

3. When federal agents came to take Obet from his father Abel, he was just seven years old—a frail child with a serious heart condition. He clung desperately to his father’s neck, and screamed as agents physically tore him from his father’s arms.

4. When federal agents came to take Mariela from her father Joel, she pleaded with Joel that she did not want to go. Mariela, then eleven years old, cried as Joel hugged her.

5. When federal agents came to take Alicia away from her father, Heriberto, Alicia tried to stay with her father, but an officer pushed her away. Alicia, then six years old, threw herself to the floor and began crying and screaming.

6. When federal agents came to take Antonio from his father, Mario, he was just seven years old. Antonio cried desperately as he saw two agents grab his father. Other agents then grabbed Antonio and took him away as Mario watched helplessly.

7. When federal agents called Rolando out of his cell, Bertha—who was then nine years old—ran up behind him. But before she could reach her father, an agent

¹ For ease of reference and to protect Plaintiffs’ identities, A.P.F. will be referenced hereafter by the pseudonym Abel; O.B. by the pseudonym Obet; J.V.S. by the pseudonym José; H.Y. by the pseudonym Herlinda; J.D.G. by the pseudonym Joel; M.G. by the pseudonym Mariela; H.P.M. by the pseudonym Heriberto; A.D. by the pseudonym Alicia; M.C.L. by the pseudonym Mario; A.J. by the pseudonym Antonio; R.Z.G. by the pseudonym Rolando; and B.P. by the pseudonym Bertha. Plaintiffs will file a separate motion to proceed with pseudonyms.

1 closed the door. Through the door, Rolando heard his daughter screaming in despair
2 “Papá! Papá!”

3 8. José, Abel, Joel, Heriberto, Mario, and Rolando (“Plaintiff Fathers”) were
4 forced to watch, helplessly, as their children were taken away to an unknown fate.

5 9. The United States government tore these families apart pursuant to a cruel
6 and unconstitutional policy: The government intended to inflict terror and harm on these
7 small children and their fathers, as a means of deterring others from seeking to enter the
8 United States.

9 10. The Plaintiff children and their fathers fled persecution in their home
10 countries, only to find it in the very place they sought refuge — the United States of
11 America.

12 11. Starting in 2017, the United States government tore thousands of young
13 children away from their parents. The children and their parents were not told when—or
14 even if—they would ever see each other again. The children were sent to facilities and
15 foster homes hundreds or thousands of miles away from their parents, and in many cases
16 were subject to abuse and neglect while in the custody of the United States government.

17 12. Although the full number of separations is yet unknown, it is estimated that
18 the U.S. government has separated more than 5,000 children from their parents at the
19 southern border since 2017.

20 13. After the separations, government officers inflicted additional trauma by
21 refusing to inform parents and children of each other’s whereabouts or well-being, failing
22 to facilitate communication between separated parents and children, and failing to
23 implement any tracking system to ensure families could be reunited.

24 14. The government did not allow children and their parents to communicate in
25 any way for weeks or months. Parents did not know where their children were, or even if
26 they were safe—and had no way to comfort or protect them. Children were terrified and
27 could not understand what had happened to them or why it happened. Why had their
28 parents abandoned them to strangers?

1 15. The government’s policy of forcibly taking children from their parents
2 caused extraordinary trauma to thousands of families, including Plaintiffs—six fathers
3 and their six children who were separated for months after being detained at the U.S.-
4 Mexico border in Arizona.

5 16. Herlinda, Obet, Mariela, Alicia, Antonio, and Bertha (“Plaintiff Children”)
6 were taken away from their fathers and remained separated from them, in the custody of
7 strangers, for periods ranging from eight weeks to eight months. In addition, Obet,
8 Herlinda, and Bertha suffered abuse while in U.S. government custody.

9 17. For days and weeks, the fathers, despite desperate pleas for information,
10 were told nothing about the safety or location of their children—and had no way to
11 communicate with their children.

12 18. Later, the government provided only limited information about the
13 children’s locations and safety and afforded only minimal opportunities for the families
14 to communicate, often at the fathers’ expense. On those limited occasions when the
15 fathers were able to communicate with their children, the conversations were painful
16 reminders of the trauma the children were suffering.

17 19. Heriberto, Mario, and Rolando were deported without their children. They
18 had no idea what would happen to their children, who remained alone in the custody of
19 the U.S. government while their fathers were sent back to their home countries.

20 20. The government understood the harm that it was inflicting on these
21 families. Indeed, it took children from their parents not despite the harm, but because of
22 it: The government intended to use the terror inflicted on these families to deter other
23 families from migrating to the United States.

24 21. Plaintiffs suffered, and continue to suffer, physical, mental, and emotional
25 harm because of the intentional, reckless, and negligent acts of U.S. government
26 policymakers at the highest levels, whose goal was to inflict harm and instill terror.
27 Plaintiffs suffered, and continue to suffer, further harm because of the intentional,
28 reckless, and negligent acts and omissions of federal actors who used unreasonable force

1 and cruelty to separate Plaintiff Fathers from their children and failed to exercise basic
2 care or even simple human decency.

3 22. Even after reunification, the effects of the government's inhumane conduct
4 continue to exact a toll on Plaintiffs. Children, especially those young and vulnerable
5 like the Plaintiff Children, suffer trauma when they are separated from their parents, even
6 temporarily. Such childhood trauma harms cognitive development and emotional growth
7 and increases the risk of disease and mental health disorders.

8 23. As a result of the separation, Obet exhibits symptoms of post-traumatic
9 stress disorder ("PTSD") and suffers from traumatic flashbacks, nightmares, and extreme
10 separation anxiety. Herlinda also exhibits PTSD symptoms and has nightmares, is quick
11 to anger, and suffers from low self-esteem. Mariela exhibits symptoms of PTSD and
12 anxiety. She has nightmares related to the separation and worries constantly about her
13 father. Alicia, Antonio, and Bertha also exhibit symptoms of PTSD, separation anxiety,
14 and depression.

15 24. The fathers also suffered emotional trauma— as would any parent who is
16 deprived of any ability to protect their child, and later learns that their child has suffered
17 and lives with continued pain. Abel experiences acute headaches, struggles to handle
18 stress, and is overcome with sadness and fear at random times. José is deeply depressed,
19 constantly sad, and has difficulty concentrating. Joel experiences reoccurring nightmares
20 and developed stomach pains as a result of the separation. He also experiences
21 headaches and difficulty concentrating. As for Heriberto, he experiences sadness,
22 frustration and anger. He also experiences unrelenting, acute headaches which extend
23 around the back of his ears and down to his jaw causing his jaw to tremble
24 uncontrollably. Mario wakes up in the middle of night screaming for his son and is
25 frequently overcome with guilt and anxious thoughts. Rolando experiences loss of
26 appetite, constant worriedness, nightmares, and anxiety. These parents and their children
27 now face an increased risk of developing additional mental health disorders, including
28 severe anxiety, depression, and suicidal ideation.

1 34. Abel and Obet, then seven years old, were forcibly separated in a CBP
2 facility in Arizona. Abel was then detained by ICE in Arizona, Georgia, and Texas, while
3 Obet was sent thousands of miles away from his father and placed in ORR custody at a
4 facility in New York. They were separated for approximately ten weeks. Abel and Obet
5 are currently seeking asylum in the United States.

6 35. Plaintiffs Joel and Mariela are Guatemalan nationals who currently reside
7 in Tennessee. Joel brings this action on behalf of himself and his minor child Mariela,
8 age 13. In 2018, Joel fled to the United States with Mariela, seeking asylum.

9 36. Joel and Mariela, then 11 years old, were forcibly separated in a CBP
10 facility in Arizona. Joel was then detained by ICE in Arizona, Georgia, and Texas, while
11 Mariela was placed in ORR custody at a facility in Texas. They were separated for
12 approximately eight weeks. Joel and Mariela are currently seeking asylum in the United
13 States.

14 37. Plaintiffs Heriberto and Alicia are Guatemalan nationals who currently
15 reside in Guatemala. Heriberto brings this action on behalf of himself and his minor
16 child, Alicia, age eight. In 2018, Heriberto fled to the United States with Alicia, seeking
17 asylum.

18 38. Heriberto and Alicia, who was then six years old, were forcibly separated in
19 a CBP facility in Arizona. Heriberto was then detained by ICE in Arizona, thousands of
20 miles away from his daughter. Alicia was sent away on her own by airplane—the first
21 flight she'd ever taken—and placed in ORR custody at a facility in Michigan.

22 39. Heriberto and Alicia were separated for approximately fifteen weeks,
23 during which time Heriberto was deported without Alicia. After Heriberto was deported,
24 Alicia spent an additional twelve weeks in the United States.

25 40. Plaintiffs Mario and Antonio are Guatemalan nationals who currently reside
26 in Guatemala. Mario brings this action on behalf of himself and his minor child, Antonio,
27 age nine. In late 2017, Mario fled to the United States with Antonio, seeking asylum.
28

1 41. Mario and Antonio, then seven years old, presented themselves at an
2 official port of entry in Nogales, Arizona, and were then forcibly separated in a CBP
3 facility. Mario was then detained by ICE in Arizona, while Antonio was sent away on his
4 own by airplane—his first flight ever—and placed in ORR custody at a facility in New
5 York, thousands of miles away from his father. Mario was deported to Guatemala
6 without his son. They were separated for more than eight months.

7 42. Plaintiffs Rolando and Bertha are Guatemalan nationals who currently
8 reside in Guatemala. Rolando brings this action on behalf of himself and his minor child
9 Bertha, age eleven. In 2017, Rolando fled to the United States with his daughter, seeking
10 asylum.

11 43. Rolando and Bertha, then nine years old, presented themselves at an official
12 port of entry in Nogales, Arizona, and were then forcibly separated in a CBP facility.
13 Rolando was then detained by ICE in Arizona, while Bertha was sent away on her own
14 by airplane—her first flight ever—and placed in ORR custody at a facility in New York,
15 thousands of miles away from her father. Rolando was deported to Guatemala without
16 his daughter. They were separated for more than eight months.

17 44. Defendant is the United States of America, acting through DHS, HHS, and
18 DOJ, “federal agencies” of the United States under 28 U.S.C. § 2671, and their
19 employees, officers, and agents, including but not limited to CBP and ICE, subcomponent
20 agencies of DHS that are under the direction, authority, and control of the Secretary of
21 Homeland Security; ORR, a subcomponent agency of HHS that is under the direction,
22 authority, and control of the Secretary of Health and Human Services; and the Office of
23 the Attorney General within the DOJ.

24 45. The federal officers referenced in this Complaint were at all relevant times
25 employees of the United States, working within the scope and course of their
26 employment with the federal agencies listed above.

27 46. DHS employees were responsible for separating Plaintiff Fathers from their
28 children. DHS employees were also responsible for supervising and managing detained

1 individuals at CBP and ICE facilities, including those located in Arizona, Georgia, and
2 Texas where Plaintiff Fathers were detained.

3 47. HHS employees are responsible for supervising and managing the detention
4 of children the government classifies as unaccompanied, including at facilities and foster
5 homes in New York, Texas, and Michigan where Plaintiff Children were detained while
6 separated from their fathers.

7 48. High-ranking officials from DHS, HHS, and DOJ worked together to
8 design and promulgate the unlawful and unconstitutional family separation policy,
9 pursuant to which Plaintiffs were subject to significant harm.

10 49. At all relevant times, all DHS employees referenced in this Complaint who
11 interacted with Plaintiffs were acting as investigative or law enforcement officers. 28
12 U.S.C. § 2680(h).

13 STATEMENT OF FACTS

14 A. The United States Developed and Implemented the Inhumane 15 Separation Policy for the Improper Purpose of Deterring Future 16 Asylum Seekers

17 50. The United States took thousands of children from their parents, intending
18 to cause terror, anguish, and harm. It deliberately used cruelty to deter future migrants
19 from seeking asylum in the United States. The policy violated the Constitution, statutory
20 and common law, and basic human decency.

21 1. Beginning in Early 2017, the United States Began Planning a 22 Family Separation Policy with Knowledge of and Intent to 23 Cause Harm

24 51. Beginning in February 2017, DHS officials began considering a policy of
25 separating and holding parents and children arriving at the U.S.-Mexico border as a
26 means of deterring the arrival of asylum seekers at this border. On March 3, 2017, press
27 reports showed that DHS had been considering this policy, which DHS acknowledged in
28 a statement explaining that “the Department of Homeland Security continually explores

1 options that may discourage those from even beginning the journey” north from Central
2 America to the U.S. border.⁵

3 52. The federal government *knew*—long before it instituted the family
4 separation policy to which Plaintiffs were ultimately subjected—of the harm it would
5 cause by separating children from their parents. For example, in 2016, the DHS Advisory
6 Committee on Family Residential Centers concluded that “the separation of families for
7 purposes of immigration enforcement or management, or detention is never in the best
8 interest of children,” and that “[f]amily separation in these circumstances raises serious
9 concerns and violates the best interests of the child—which requires prioritizing family
10 integrity and the maintenance of emotional ties and relationships among family
11 members.”⁶

12 53. Nonetheless, in February 2017, a meeting of high-ranking federal officials
13 from ORR, DOJ, CBP and ICE took place at the office of the CBP Commissioner, and a
14 proposal to separate asylum-seeking parents from their children at the border was
15 discussed.⁷ Commander Jonathan White, a high-ranking HHS official and then Deputy
16 Director of ORR’s Unaccompanied Children program who attended the meeting, later
17 expressed his concerns about the harms of family separation directly to then-ORR
18 director Scott Lloyd and other top officials.⁸ Commander White has testified before
19

20 ⁵ Julia Edwards Ainsley, *Exclusive: Trump Administration Considering Separating*
21 *Women, Children at Mexico Border*, REUTERS (Mar. 3, 2017), [https://perma.cc/P7DE-](https://perma.cc/P7DE-HX5A)
22 [HX5A](https://perma.cc/P7DE-HX5A).

23 ⁶ U.S. IMMIGRATION & CUSTOMS ENF’T, DEP’T OF HOMELAND SEC., REP. OF THE DHS
24 ADVISORY COMMITTEE ON FAMILY RESIDENTIAL CENTERS 2, 10 (2016), *available at*
<https://perma.cc/TZ9C-CUMC>.

25 ⁷ House of Representatives, Subcommittee on Oversight and Investigations, Committee
26 on Energy and Commerce Hearing (Feb. 7, 2019), Unofficial transcript, *available at*
<https://perma.cc/F2EV-ZS9W> 1006-1024; 1131-1138 (testimony of Commander
27 Jonathan White, U.S. Public Health Service Commissioned Corps, U.S. Department of
Health and Human Services).

28 ⁸ *Id.*

1 Congress that because “[s]eparating children poses significant risk of traumatic
2 psychological injury to the child,’ . . . neither he nor anyone he worked with ‘would ever
3 have supported such a policy.’”⁹

4 54. The publication of the March 3, 2017 news reports that DHS was
5 considering a deterrence policy of separating migrant parents and children at the border
6 was immediately met with an outcry of warnings from the medical community. The
7 American Academy of Pediatrics (“AAP”), among others, warned that such a policy
8 would affect “vulnerable, scared children” and urged policymakers to “exercise caution
9 to ensure that the emotional and physical stress children experience as they seek refuge in
10 the United States is not exacerbated by the additional trauma of being separated from
11 their siblings, parents, or other relatives and caregivers.”¹⁰

12 55. Nonetheless, the Secretary of Homeland Security, John Kelly, confirmed
13 that DHS was considering this policy “in order to deter more movement” along the route
14 north from Central America taken by many asylum seekers.¹¹

15 56. When confronted by the growing backlash to the then-proposed family
16 separation policy, Secretary Kelly soon appeared to change course, assuring the Senate
17 Committee on Homeland Security and Governmental Affairs in April 2017 that children
18 would be separated from their parents only “if the child’s life is in danger” or if the parent
19 was “an addict,”¹² rather than as a matter of course for families arriving at or crossing the
20 border.

22 ⁹ Colleen Long, *Official Who Oversaw Migrant Kids: Separation Causes Trauma*, AP
23 NEWS (Feb. 7, 2019), <https://perma.cc/BQ3T-U6RJ> (quoting testimony of Commander
Jonathan White, U.S. Public Health Service Commissioned Corps.).

24 ¹⁰ Fernando Stein & Karen Remley, Am. Acad. of Pediatrics, AAP Statement Opposing
25 Separation of Mothers and Children at the Border (Mar. 4, 2017),
<https://perma.cc/AZ5Q-TN38>.

26 ¹¹ Daniella Diaz, *Kelly: DHS is considering separating undocumented children from their*
27 *parents at the border*, CNN (Mar. 7, 2017), <https://perma.cc/L4Q9-KVAW>.

28 ¹² Brooke Singman, *Kelly Says Full-scale Border Wall ‘Unlikely,’ Clarifies Position on*
Family Detentions, FOX NEWS (Apr. 5, 2017), <https://perma.cc/RAE5-7N85>.

1 57. The Administration’s own comments and the government’s response to the
2 many public warnings of the dire effects of a family separation policy show that the
3 Administration was well aware of the harms family separation would cause before it
4 implemented its family separation policy.

5 58. In response to the concerns raised by Commander White that a family
6 separation policy would “expose children to unnecessary risk of harm,” and “exceed the
7 capacity of the [ORR Unaccompanied Alien Children, or UAC] program,” White was
8 repeatedly assured by the then-Director of ORR, among others, that “there was no policy
9 that would result in the separation of children and parent,” and that, accordingly, the
10 UAC program need not plan for continued increases in children classified as
11 unaccompanied as a result of being separated from their parents.¹³

12 **2. After Piloting Family Separation in 2017, the United States**
13 **Launches a Full-Scale Policy of Separating Parents from Their**
14 **Minor Children in April 2018**

15 59. Despite Secretary Kelly’s public assurance to Congress in April 2017 that
16 families crossing the border would be separated only in specific circumstances for the
17 welfare of the child, the government covertly began instituting a general policy of
18 widespread separation of families who crossed the southern border. It did so knowing the
19 separations would cause harm and intending to leverage that harm to deter future
20 immigrants from seeking to enter the United States.

21 60. Between July and November 2017, a pilot program of family separation
22 began in CBP’s El Paso sector.¹⁴ Under the program, the government prioritized the

23 ¹³ House of Representatives, Subcommittee on Oversight and Investigations, Committee
24 on Energy and Commerce Hearing (Feb. 7, 2019), Unofficial transcript, *available at*
25 <https://perma.cc/F2EV-ZS9W> 1012-1024; 1131-1138; 2058-2064 (testimony of
26 Commander Jonathan White, U.S. Public Health Service Commissioned Corps, U.S.
27 Department of Health and Human Services).

28 ¹⁴ 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 3 (Jan. 17, 2019), *available at*
<https://perma.cc/2XX7-GBYR> [hereinafter HHS OIG REPORT I] (“From July through

1 prosecution of the misdemeanor charge of improper entry, including the prosecution of
2 parents who crossed the border into the United States with young children. It detained
3 parents as criminals, and forcibly took their children away. DHS re-classified the children
4 as unaccompanied minors and placed them in the custody of ORR.¹⁵ The government did
5 not reunify the parents following the completion of any misdemeanor criminal sentence.
6 CBP separated approximately 280 families during the El Paso program.

7 61. Because the unaccompanied minors who typically arrived at ORR prior to
8 2017 had arrived at the border genuinely unaccompanied by a parent or guardian, ORR
9 did not have any formal means of noting that children artificially classified as
10 unaccompanied by CBP in fact had parents in DHS custody, nor of tracking the
11 whereabouts of those parents. As a result, some staff began to informally track such
12 relationships upon learning of them during a child's intake interview.¹⁶

13 62. By late 2017, the government was separating families along the length of
14 the U.S.-Mexico border, including families arriving through official ports of entry.
15 Notwithstanding the alarm bells raised by many within ORR that it lacked the systems
16 needed to handle the steady increase in children who had been separated from their
17 parents and re-classified as unaccompanied, DHS discouraged HHS from taking steps to
18 formalize and better prepare for continued increases.¹⁷

19
20 _____
21 November 2017, the El Paso sector of Customs and Border Protection (CBP), an agency
22 within DHS, implemented new policies that resulted in 281 individuals in families being
separated.”).

23 ¹⁵ See, e.g., *United States v. Dominguez-Portillo*, No. 17-MJ-4409, 2018 WL 315759, at
24 *1 (W.D. Tex. Jan. 5, 2018), *aff'd sub nom. United States v. Vasquez-Hernandez*, 314 F.
Supp. 3d 744 (W.D. Tex. 2018), *aff'd*, 924 F.3d 164 (5th Cir. 2019).

25 ¹⁶ HHS OIG REPORT I at 6.

26 ¹⁷ See House of Representatives, Subcommittee on Oversight and Investigations,
27 Committee on Energy and Commerce Hearing (Feb. 7, 2019), Unofficial transcript,
28 *available at* <https://perma.cc/F2EV-ZS9W> 1012-1024; 1131-1138; 2058-2064 (testimony
of Commander Jonathan White, U.S. Public Health Service Commissioned Corps, U.S.
Department of Health and Human Services).

1 63. On December 16, 2017, senior DOJ and DHS officials jointly prepared and
2 reviewed a memorandum titled “Policy Options to Respond to Border Surge of Illegal
3 Immigration.”¹⁸ The first section of this memorandum, titled “Increase Prosecution of
4 Family Unit Parents,” suggests action to “[i]nstruct CBP and ICE to work with DOJ to
5 significantly increase the prosecution of family unit parents when they are encountered at
6 the border,” nothing that “[t]he parents would be prosecuted for illegal entry
7 (misdemeanor) or illegal reentry (felony) and the minors present with them would be
8 placed in HHS custody as UACs.”

9 64. The memorandum’s second section, titled “Separate Family Units,”
10 suggests “[a]nnounc[ing] that DHS is considering separating family units, placing the
11 adults in adult detention, and placing the minors under the age of 18 in the custody of
12 HHS as unaccompanied alien children (UACs),” and concludes, “[o]nce legal
13 coordination between DHS, HHS, and DOJ is complete, begin separating family units, as
14 stated above.”

15 65. On April 6, 2018, the U.S. Attorney General announced a “Zero Tolerance
16 Policy,” extending the practices of criminal prosecution and family separation tested in
17 the El Paso pilot program to the entirety of the southern border. The Zero Tolerance
18 Policy “fundamentally changed DHS’ approach to immigration enforcement,” which,
19 until 2017, did not separate a child from an accompanying adult except in very limited
20 circumstances, such as where CBP determined that the adult was not the child’s parent or
21 guardian or the adult posed a danger to the child.¹⁹

22
23 ¹⁸ Policy Options to Respond to Border Surge of Illegal Immigration,
24 <https://perma.cc/7KRZ-PXW7>; see Anne Flaherty & Quinn Owen, *Leaked Memo Shows*
25 *Trump Administration Weighed Separating Families at Border, Sen. Merkley Wants*
Nielsen Investigated for Perjury, ABC NEWS (Jan. 18, 2019), [https://perma.cc/6SVC-](https://perma.cc/6SVC-9Q3D)
9Q3D.

26 ¹⁹ See, e.g., OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OIG-18-84,
27 SPECIAL REVIEW - INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES
28 UNDER THE ZERO TOLERANCE POLICY 2 (2018), available at [https://perma.cc/4E35-](https://perma.cc/4E35-DQR5)
DQR5 [hereinafter DHS OIG REPORT I].

1 66. In early May 2018, CBP estimated to the Office of Management and
2 Budget (“OMB”) that it would separate *more than 26,000 children* from May through
3 September 2018 because of the Zero Tolerance Policy.²⁰

4 67. Several aspects of the Zero Tolerance Policy and officials’ comments on it
5 confirm that the Policy’s goal was to harm families through forcible separation in an
6 effort to deter future immigrants from seeking entry to the United States, and that
7 prosecution of underlying criminal offenses of improper entry was pretextual.

8 68. For example, the December 2017 joint DOJ and DHS memorandum noted
9 that the “prosecution of family units” and “separat[ion] [of] family units” “would be
10 reported by media and . . . have substantial deterrent effect” on future migration.²¹

11 69. On May 11, 2018, John Kelly, President Trump’s then Chief of Staff, stated
12 on NPR that “a big name of the game is deterrence It could be a tough deterrent —
13 would be a tough deterrent.”²² He added, “[t]he children will be taken care of — put into
14 foster care *or whatever*.”²³

15 70. On June 19, 2018, Steve Wagner, Assistant Secretary of HHS said, “[w]e
16 expect that the new policy will result in a deterrence effect”²⁴

18 ²⁰ OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF HOMELAND SEC.,
19 OEI-09-18-00431, DHS LACKED TECHNOLOGY NEEDED TO SUCCESSFULLY
20 ACCOUNT FOR SEPARATED MIGRANT FAMILIES 17 (Nov. 2019), *available at*
<https://perma.cc/GY3G-F8TG> [hereinafter DHS OIG REPORT II].

21 ²¹ Policy Options to Respond to Border Surge of Illegal Immigration,
22 <https://perma.cc/7KRZ-PXW7>; see Anne Flaherty & Quinn Owen, *Leaked Memo Shows*
23 *Trump Administration Weighed Separating Families at Border, Sen. Merkley Wants*
Nielsen Investigated for Perjury, ABC NEWS (Jan. 18, 2019), [https://perma.cc/6SVC-](https://perma.cc/6SVC-9Q3D)
24 [9Q3D](https://perma.cc/6SVC-9Q3D).

25 ²² Transcript: *White House Chief of Staff John Kelly’s Interview with NPR*, NPR (May 11,
2018), <https://perma.cc/ZN5N-VN5R>.

26 ²³ *Id.* (emphasis added).

27 ²⁴ Philip Bump, *Here Are the Administration Officials Who Have Said that Family*
28 *Separation Is Meant as a Deterrent*, WASH. POST, June 19, 2018, [https://perma.cc/LTB8-](https://perma.cc/LTB8-878Y)
[878Y](https://perma.cc/LTB8-878Y).

1 71. While the government claimed that it separated families only when the
2 parents were referred for improper entry prosecution, it also separated many families who
3 presented at official ports of entry seeking asylum and were not subject to prosecution.²⁵

4 72. The government also separated families who crossed the border between
5 ports of entry when the parents were not criminally charged.

6 73. When the government prosecuted parents for misdemeanor improper entry,
7 the typical sentence was 48 hours or less of “time served.” Rather than reunifying the
8 parents with their children after the completion of the misdemeanor sentence, the
9 government sent their children to far-flung ORR facilities, sometimes thousands of miles
10 away.

11 74. Although the government claimed that it applied the “Zero Tolerance”
12 prosecutions evenhandedly, CBP targeted parents arriving with their children over single
13 adults when making criminal referrals to DOJ.²⁶

14 75. During six weeks at the height of the Zero Tolerance period, between
15 May 7, 2018 and June 20, 2018, the government separated at least 2,231 children from
16 their parents.²⁷

17 76. A DHS directive, issued on June 23, 2018, suggested that once families
18 were separated, only parents who were subject to removal would be reunited with their
19 children, and only “for the purposes of removal.”²⁸ This directive imposed an impossible
20 choice on parents: They had to choose between seeing their children again or continuing

21 _____
22 ²⁵ See *Ms. L. v. U.S. Immigration & Customs Enforcement*, 310 F. Supp. 3d 1133, 1143
23 (S.D. Cal. 2018) (“[T]he practice of family separation was occurring before the zero
24 tolerance policy was announced, and that practice has resulted in the casual, if not
deliberate, separation of families that lawfully present at the port of entry, not just those
who cross into the country illegally.”).

25 ²⁶ See TRAC Immigration, Syracuse University, “Zero Tolerance” at the Border:
26 Rhetoric vs. Reality, available at <https://perma.cc/EK2Q-CJ7G> (July 24, 2018).

27 ²⁷ House Oversight Staff Report (Jul. 2019), available at <https://perma.cc/ZE5H-9FJZ>.

28 ²⁸ *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification*, U.S. DEP’T OF
HOMELAND SEC. (June 23, 2018), <https://perma.cc/4X33-8C8D>.

1 to seek asylum in the United States. The Administration would not allow them to do
2 both.

3 77. In response to intense public backlash against the policy, on June 20, 2018,
4 President Trump issued an executive order purporting to end the policy of family
5 separation. Exec. Order No. 13841, Affording Congress an Opportunity to Address
6 Family Separations (Fed. Register at 83 FR 29,435, June 25, 2018).

7 78. On June 26, 2018, Judge Sabraw of the U.S. District Court for the Southern
8 District of California issued a preliminary injunction prohibiting the government from
9 separating parents from their children absent a finding of parental unfitness or danger to
10 the child. He ordered the government to reunify children under age five within fourteen
11 days and children age five and older with their parents within thirty days of the order.²⁹

12 79. The President of the United States continued to openly discuss the
13 deterrence rationale for pursuing the family separation policy well after the Zero
14 Tolerance aspect of the policy was officially ended, declaring in December 2018 that “[I]f
15 you don’t separate, FAR more people will come.”³⁰

16 **B. The United States Forcibly Separated Abel and Obet**

17 **1. Abel and Obet Seek Asylum in the United States**

18 80. Abel and Obet came to the United States fleeing persecution in Guatemala
19 and seeking medical care for Obet’s heart and chest conditions.

20 81. Abel and Obet are of the indigenous Q’anjob’al tribe. While in Guatemala,
21 the family faced violent persecution, including attempted murder because of their
22 indigenous background and Abel’s environmental advocacy.

23 _____
24 ²⁹ *Ms. L.*, 310 F. Supp. 3d at 1146, 1149.

25 ³⁰ *See* Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 16, 2018, 8:25 AM),
26 <https://perma.cc/4EMP-JC34>; *see also* Fox News, Interview: Maria Bartiromo Interviews
27 Donald Trump on Fox Sunday Morning Futures (Apr. 28, 2019),
28 <https://www.youtube.com/watch?v=hvUc7ONNTp4> at 1:32-2:21; Kimberly Kindy et al.,
Trump says ending family separation practice was a ‘disaster’ that led to surge in border crossings, WASH. POST (Apr. 28, 2019), 2019 WLNR 13234400.

1 82. When Obet was six, his family learned he had only a year to live unless he
2 underwent major heart surgery. With the support of a charitable organization, Obet had
3 the surgery in Guatemala City, which involved cutting through his back to place a metal
4 clip in one of his heart valves. The surgeons told Abel that Obet needed regular check-
5 ups with a cardiologist to ensure his survival—something Abel knew was nearly
6 impossible given their income and the lack of access to cardiologists in Guatemala.

7 83. Facing persecution in their village and Obet’s health condition, Abel made
8 the difficult decision to flee to the United States.

9 84. The two-week journey from Guatemala to northern Mexico taxed Obet’s
10 body. After the surgery, Obet had developed a chest condition. His lungs and throat
11 would sometimes become blocked by thick mucus, and he would choke and wheeze.
12 Coughing also caused Obet great pain because of his wounds from the surgery. Obet’s
13 surgeon had said Obet could choke on his mucus and instructed Abel on the Heimlich
14 maneuver. Sometimes, Obet was too weak to cough and clear his congestion. Abel
15 worried Obet could choke to death.

16 85. On the journey, Abel realized Obet’s condition worsened when he was cold,
17 so Abel covered him with his sweater and a small blanket and held him close.

18 86. Abel and then seven-year-old Obet reached Arizona around May 15, 2018.

19 87. Abel reached and crossed the U.S. border. He walked for hours carrying
20 Obet, who was wheezing and choking. Around 2:00 A.M., it was too cold to continue.
21 Abel stopped and built a small fire to warm Obet and to signal Border Patrol so that he
22 could ask for asylum.

23 **2. Abel and Obet Are Taken into Custody by CBP**

24 88. A single Border Patrol agent soon found them. Abel felt relieved but was
25 soon terrified. Whereas Abel is 5 feet 3 inches tall, the agent was much taller, had a gun,
26
27
28

1 and seemed enraged. He screamed, calling the father and small child *pendejos, jodidos*
2 *animales* (“stupid, fucking animals”).³¹

3 89. With his hand on his gun, the agent demanded Abel explain “why you came
4 to my country.” Terrified, Abel kept his head down, held Obet, and did not speak.
5 Eventually Abel tried to explain that he was fleeing his home country and that his son had
6 a severe medical condition. Though the agent spoke Spanish, he did not acknowledge
7 anything Abel said.

8 90. The agent put them in the back of a covered truck with the air conditioning
9 on. Abel held Obet, but they could not get warm. They were in the truck for about three
10 hours.

11 91. At the Border Patrol station, several agents worked in a single office. The
12 agents made Abel and Obet sit on the floor with several other families.

13 92. With urgency, Abel asked for help for Obet, but the agents told him he was
14 not allowed to speak. He tried to stand up but was ordered to sit back down and stay still.

15 93. Afterward, an officer sat Abel and Obet down to ask Abel questions. This
16 agent spoke Spanish proficiently. Abel gave the agent paperwork verifying his identity
17 and relationship to his son, as well as evidence of Obet’s medical condition, but the agent
18 would not listen to his pleas for medical care for Obet. The agent aggressively asked
19 Abel “what you came to do in this country.” Abel told him they were seeking asylum.
20 He also told the agent, “my son had a heart surgery a few months ago, is very sick, and
21 can barely breathe.”

22 94. The agent told Abel he “did not care,” and that he and Obet should not have
23 come to “my country” because “you do not belong here.” Abel tried to show the agent
24 Obet’s surgery scars and insisted that Obet needed medical help. Abel began to cry. Obet
25 started crying too. The agent continued to ignore both of them, staring at his computer.
26

27 ³¹ This exchange, and any other exchange described herein unless otherwise noted, took
28 place in Spanish.

1 95. The agent put Abel and Obet into a small cell with more than twenty
2 parents and children. Abel again asked for medical attention for Obet, but the agent
3 ignored him.

4 96. The cell had concrete floors and walls and a single bench. Cold air blasted
5 from vents. It was so cold that Abel and others called it the “hielera,” meaning “icebox.”
6 There was no space to lie down, so Abel sat with Obet in his lap. They were both
7 freezing.

8 97. After a few hours, Obet complained of chest pain. Abel went to the cell
9 door to seek attention. When an agent walked by, Abel knocked on the door and asked
10 for help.

11 98. The agent opened the door, and Abel again explained his son needed
12 medical attention. The agent’s response was to take Obet’s sweater because it was
13 contraband.

14 99. Abel asked several more times for medical attention for Obet to no avail.
15 The agents ignored his pleas, and their only reaction was to order him to sit down.

16 100. The agents began threatening not to give Abel his “next Maruchan” if Abel
17 kept talking to them. Every twelve hours, agents provided the families with a single
18 Maruchan Ramen soup for adults and one cookie and small juice box for each child.
19 Abel and Obet remained hungry after eating these meager rations. Because they were so
20 hungry, Abel stopped asking for medical help as frequently. He feared losing what little
21 food they were given.

22 101. Abel and Obet spent more time in the cell, crammed in with many other
23 people, freezing, hungry, and exhausted. There were several kids who appeared sick and
24 were consistently coughing. Abel worried the children were contagious and spreading
25 germs.

26 102. The hielera was so full that there was no space to sleep and barely any to
27 sit. It was difficult to tell how many days passed; there were no windows and the lights
28 were kept on at all times.

1 103. Abel and Obet were freezing and had no blankets. Some families had thin
2 foil sheets, but Abel and Obet were not provided any. After the first day in the hielera,
3 Abel found a small piece of foil another family had left. He tried to cover Obet with it,
4 but the sheet disintegrated and fell off, and the pieces of foil got into Obet's mouth and
5 eyes, exacerbating his condition.

6 104. Obet's health got progressively worse. He was cold, hungry, afraid, and
7 crying constantly. Abel told stories about dragons to distract him. If Abel expressed any
8 discomfort, Obet became inconsolable. And so Abel, despite his own feelings, tried to
9 appear calm.

10 105. After some time without medical care, Obet developed a greenish hue to his
11 skin. Despite the agents' threats to withhold food, Abel again asked for medical attention
12 and was ignored.

13 106. At one point, Obet began severely choking, and Abel gave him the
14 Heimlich maneuver, dislodging mucus blocking his airway. Only then did agents bring
15 them to a hospital.

16 107. The doctor who saw Obet did not speak Spanish, so Abel did not follow
17 much of what happened. He later learned Obet was diagnosed with an acute respiratory
18 infection.

19 108. After the hospital, Abel and Obet were placed back in the same freezing
20 cell, despite Abel's attempts to explain that the cold made Obet's condition worse.

21 **3. The United States Takes Obet from Abel**

22 109. On or around their second day in the cell, Abel and Obet witnessed a
23 horrifying scene. An agent much larger than anyone in the cell, with a gun in his holster,
24 called a father and son to the door and told the father to give up his son. When the father
25 refused, the agent grabbed the man by his neck and shoved him back into the cell,
26 forcibly grabbing and taking his small son. The child was led away desperately crying
27 and screaming, "Daddy, I do not want him to take me!"
28

1 110. Seeing this, Obet started screaming and crying. Other children also began to
2 cry in fear. Panicked, Obet asked his father, “Are they going to do that to us?” Abel tried
3 to calm his son and said no, but Obet wailed, “Do not lie to me, they are going to take me!”

4 111. Abel and Obet then witnessed other children being taken by force from their
5 parents. Abel became terrified that if Obet were taken by force, he could hurt his surgery
6 wounds. Abel explained this to Obet and coached him not to struggle. Obet refused to
7 agree to be taken willingly. Despite feeling a sense of dread he had never before
8 experienced, Abel tried to be calm and told Obet that everything was going to be okay.

9 112. When the moment came, Abel had Obet in his arms. Three armed agents
10 came into the cell and told Abel to put his son down. Abel asked to speak with an officer
11 about Obet’s health. The agent said no. Abel then requested a few seconds to hug Obet,
12 but the officer demanded he give up his son. They trembled with fear and clutched each
13 other.

14 113. The agents yelled threateningly that Abel needed to obey and put Obet down.
15 More agents approached, and they forcibly wrenched Obet out of Abel’s arms. Abel and
16 Obet kept holding hands. The agents ripped their hands apart and took Obet away.

17 114. Obet looked back at Abel, screaming, almost fainting, as he was taken
18 away. Abel saw a fear on his son’s face that he will never forget, and he knows his son
19 saw that same fear on Abel’s face. His son screamed and cried, “Daddy, why are you
20 letting them take me?”

21 115. Abel tried to follow the agents out of the cell to comfort Obet, but the
22 agents forced him to stay in the cell. Abel cried for his son, feeling “totally destroyed.”

23 **4. Abel and Obet Are Lost to Each Other for Weeks**

24 116. Agents took Abel out of the hielera and led him to a different room. This
25 room had approximately seventy adults. It was so crowded that Abel felt he could not
26 breathe. There was no bathroom, and the room stank of urine and bodies. The smell was
27 nauseating. There was no space to lie down or even sit. People often fainted and an
28 agent would take them away.

1 117. Abel was held here for approximately 10 days. He stood in a corner most
2 of this time. He received just one Maruchan Ramen every twelve hours and felt constant
3 hunger. But Abel's extreme physical discomfort paled in comparison to the terror of
4 losing his young, frail son.

5 118. Abel was distraught. He thought his son had been taken away permanently,
6 and he was terrified that the officers did not know of or did not care about Obet's medical
7 condition. If his son started choking, who would help? Would he get to see a
8 cardiologist? He felt he would never see his son again. Abel had suicidal thoughts
9 during this time.

10 119. The agents provided no explanation for why they had taken Obet or what
11 would happen to him. Not knowing any information—or even if his son was alive—
12 tortured Abel. Over nearly three months, Abel would never receive any explanation from
13 any government agent.

14 120. About ten days after taking Obet away, agents put chains on Abel's wrists,
15 waist, and ankles. They boarded him on a bus and then a plane to a different detention
16 center.

17 121. Upon information and belief, Abel was never charged with any criminal
18 offense.

19 122. Abel was transferred like this multiple times to detention facilities in
20 Arizona, Georgia, and Texas, with no explanation or notice. Based on ICE records and on
21 information and belief, it appears that Abel was held for various amounts of time in at least
22 the following facilities: a CBP facility near San Luis, Arizona; Folkston ICE Processing
23 Center in Folkston, Georgia; Stewart Detention Center in Lumpkin, Georgia; and Port
24 Isabel Detention Center in Los Fresnos, Texas. At each new facility, Abel was initially held
25 in a hielera for many hours and then transferred to a cell. Every time, Abel tried to ask
26 about Obet he was either ignored or told he did not have the right to speak to the agents.

27 123. During his time in CBP and ICE detention, other detained parents who had
28 been separated from their children told Abel about a phone number he could call to try to

1 speak with Obet. He tried calling it collect almost daily, but the calls did not go through.
2 During all of this time, Abel's pain, hunger, and discomfort remained in the background.
3 His fear for Obet's safety and well-being dominated his mind.

4 124. Abel was consistently ignored by ICE agents. He begged one officer to be
5 put in touch with his son, and told the officer that his son was very sick. The officer
6 responded, "We know nothing about your case, much less your family."

7 125. Later, other officers told Abel and other fathers that the government had
8 taken away their kids for good and that they would be deported without their children.
9 Being told that he had lost his son forever caused Abel grave terror and anguish. Abel
10 again had suicidal thoughts.

11 126. Other parents suffered as Abel did, and many eventually "drove themselves
12 mad with sadness, regret, and fear." There was a desperation that permeated the
13 detainees. Abel succumbed to constant agony and "feeling dead." He lost hope of ever
14 being with his son again.

15 127. Approximately a month and a half after Obet was taken, Abel and several
16 other detainees were brought to a large room to "sign some papers." The ICE agents in
17 the room gave the detainees papers in English and refused to explain what they meant.

18 128. Abel walked up to an ICE officer to ask what happened to his son and what
19 the paper was. The ICE officer yelled at Abel, refused to answer, and told him to go sit
20 down. Demoralized, Abel did not say another word. ICE officers told the detainees that
21 if they did not sign these forms, there would be "problems with ICE." Abel felt obligated
22 to sign and did so.

23 129. The English language form that ICE coerced Abel into signing was titled
24 "Separated Parent's Removal Form." It had his information and that of Obet pre-
25 populated at the top and referenced the *Ms. L.* litigation. The form provided only two
26 options: reunification with children for purposes of joint removal, or removal without
27 one's children, where the children would remain in the United States alone to pursue their
28

1 independent immigration cases. The form did not allow parents to choose reunification
2 with their children in the United States to pursue their immigration cases together.

3 130. Around two weeks later, ICE agents brought Abel another paper, this time
4 with a Spanish translation, that included the option of being deported with Obet or
5 relinquishing his son and being deported alone. Abel recalls signing this form to indicate
6 that he wanted to be with his son.

7 **5. After About Fifty Days Apart, Abel and Obet Are Finally**
8 **Allowed to Speak—Once**

9 131. About fifty days after Obet was taken, in or around early July 2018,
10 advocates visited Abel’s detention center. Abel met with them and explained that his ill
11 son had been taken away and that he desperately wanted more information. The
12 advocates talked to ICE, and later ICE let Abel call Obet.

13 132. On or about July 7, 2018, Abel and several others were put in a line and
14 given approximately ten minutes each to talk to their children in front of everyone else.
15 While waiting, one father did not stand in line correctly, and an ICE officer yelled and
16 threatened to hurt him.

17 133. Eventually it was Abel’s turn. When Obet answered, Abel had no words.
18 He could only cry. He says of that moment, “My life returned to me when I heard his
19 voice.”

20 134. Abel and Obet cried, neither able to speak. But, knowing their time was
21 limited, they tried to catch up quickly. Obet told Abel he had talked with his mother in
22 Guatemala. He told Abel he rode on a train, had gotten lost on the train, and went on a
23 plane. Obet told his father that his heart hurt and that he felt pain at night. Then their
24 time was up. Abel had to say goodbye. He told Obet to be strong and that they would
25 see each other soon.

26 135. After the call, Abel became even more worried about Obet’s health.

27 136. This was the only time, in approximately seventy days of detention, that the
28 government allowed father and son to speak to each other.

1 137. Although Abel asked, he was unable to place any other calls to his son
2 because he could not pay for them.

3 **6. Abel Learns Obet Was Sexually Abused While in the Custody of**
4 **the United States**

5 138. Advocates who visited the Folkston, Georgia ICE detention center helped
6 Abel contact his wife in Guatemala and his brother in California. Abel had no money to
7 place calls, but his wife and brother set up accounts so that they could receive collect
8 calls from Abel.

9 139. Thereafter, Abel spoke with his wife, who had been able to speak with Obet
10 on the phone. Abel learned something that broke him all over again: after Obet had been
11 taken away from Abel, Obet had been sexually abused in a foster home in New York.

12 140. When Abel learned this, he felt hysterical and powerless. His mind raced
13 with questions: “Why couldn’t the government protect my son? Why couldn’t the
14 government tell me what was going on and help? The laws of the United States were
15 supposed to protect us, but why did everything turn out the reverse?” Abel had self-
16 destructive thoughts. Knowing that his son had been victimized, he felt terrorized by
17 guilt and pain. He felt like a bad father.

18 141. After learning about his son’s sexual abuse, Abel increased his efforts to ask
19 ICE for information about his son. Still, no officers paid attention to Abel’s requests.

20 142. In early July, Abel saw on television a Univision report on a policy called
21 “Zero Tolerance.” A court had ordered the government to reunite children and parents it
22 had separated. Abel and other detainees crowded around the television. As soon as the
23 ICE officer noticed this, he changed the channel. This was the first time Abel understood
24 why his son had been taken from him.

1 143. On June 26, 2018, Judge Sabraw issued the preliminary injunction in the
2 *Ms. L.* case and ordered the government to reunite the families like Abel and Obet, within
3 thirty days.³²

4 **7. After Approximately Seventy Days, Father and Son Are Reunited**

5 144. Several weeks later, on or about July 25, 2018, Abel and several other
6 fathers were put in chains and transferred to Port Isabel, Texas, again with no
7 explanation. When Abel arrived, he noticed a mother walking with a child. He felt a
8 glimmer of hope but tried to temper his optimism. He was scared to even hope to see his
9 son again.

10 145. As time passed, he watched as other fathers were reunited with their
11 children and released, but he was passed over and given no explanation why.

12 146. A few days later, officers returned Abel's clothes to him, brought him and
13 about thirty other fathers to a room, and took off their chains. The fathers waited.
14 Sometime later, the door opened, and children walked in, disoriented, crying, and frantic.
15 Abel finally let himself have hope and was overcome with emotion. Abel then spotted
16 Obet, fearful and crying.

17 147. Obet looked at Abel but did not recognize him.

18 148. Crying, Abel called his son's name. Obet looked at him again, still
19 unrecognizing, but walked slowly toward him. Obet then jumped into his father's
20 embrace. They both sobbed and hugged each other for several minutes. Overcome with
21 grief, they were at first unable to speak. Abel felt deep sorrow that his son had endured
22 terrible suffering.

23 149. Obet began to say over and over, "Daddy, don't let them take me away
24 again. Daddy, we have to leave right now so they don't take us again." Clutching his
25 son, Abel told Obet that everything had only been a bad dream, and that they would not
26 be separated again.

27 _____
28 ³² *Ms. L.*, 310 F. Supp. 3d at 1149.

1 150. Abel and Obet were detained for two more days together. During those days,
2 Obet clung to Abel and reacted in panic whenever an ICE agent approached. Obet asked
3 repeatedly when they could leave and whether the agents were going to take him away
4 again, and Abel reassured Obet each time that they were not going to be separated again.

5 151. Around July 27, 2018, approximately ten weeks after Abel and Obet were
6 forcibly separated from each other, they were released together.

7 152. The release occurred with no notice to Abel, Abel's and Obet's counsel, or
8 Abel's brother in California, who was Abel and Obet's sponsor. As a result, they had no
9 money and nowhere to go when released. They sought refuge in a Catholic Charities
10 shelter in Texas until Abel's brother could arrange for their travel to California.

11 153. After being reunited, Abel learned some of what his son suffered through,
12 but he laments that he will "never know everything that happened," both because his son
13 is too young to explain everything, and because it upsets Obet to talk about the subject, so
14 Abel avoids it.

15 154. Abel learned most of what happened to Obet through paperwork from
16 ORR, but that paperwork was often inaccurate and incomplete.

17 **8. Obet Suffered Clinical Trauma from the Separation from His**
18 **Father and Sexual Abuse in U.S. Government Custody**

19 155. After he was taken from his father, Obet was sent to New York and placed
20 in an institution operated by a government contractor, Cayuga Centers. Obet spent the
21 days at the Center and spent nights at a foster home with several other children.

22 156. ORR records reflect that, on various nights, children climbed into Obet's
23 bed and touched his penis, buttocks, and chest. In reality, the sexual abuse went beyond
24 external touching and was much more severe.

25 157. Obet told the foster adult what happened each time, and the adult told the
26 kids to go back to their beds each time. Still, the sexual abuse persisted.

27 158. When Obet reported the abuse to a counselor, who reported it to the foster adults
28 and the New York Police Department ("NYPD"), the foster parent claimed no knowledge.

1 159. Obet’s mental health deteriorated in the face of the emotional harm the
2 government inflicted upon him by forcibly separating him from his father and exposing
3 him to sexual abuse. His suffering was registered in several assessments of his mental
4 health, even if the individuals evaluating him all but ignored the government-inflicted
5 sources of trauma.

6 160. On June 13, 2018, ORR evaluated Obet for trauma using an analytical form
7 for children and adolescents. Fifteen points or higher on the evaluation is defined as
8 “clinical” trauma. Obet registered thirty-six points. Obet indicated on the form that
9 someone close to him had suddenly or violently passed away. The evaluation stated that
10 Obet “almost always” had nightmares and disturbing thoughts or images in his mind
11 about “what happened.” It also stated that Obet had negative thoughts about himself or
12 others, thoughts like “I will not have a good life,” “I can’t trust anyone,” and “the world
13 is unsafe.”

14 161. A Cayuga Centers counselor in New York also found Obet was exhibiting
15 symptoms of PTSD. Obet told the counselor that he prayed for his father, whom he
16 missed very much. Obet described almost always feeling hyper-vigilant and suffering
17 from flashbacks and nightmares. He reported feelings of guilt, isolation, and disinterest.

18 162. On June 28, 2018, Obet disclosed to a Cayuga worker that he was being
19 sexually abused in his foster home. Obet was placed in a new foster home the same day.
20 The next day, June 29, 2018, NYPD officers visited the new home to interview him.
21 However, Obet was asleep. The NYPD scheduled a date for the interview with Obet, on
22 or about July 26, 2018, and instructed that Obet was not to leave the state before then.

23 163. But the day before the scheduled NYPD interview, on or about July 25,
24 2018, the government transported Obet to Port Isabel Detention Facility in Texas. The
25 transfer occurred without notifying NYPD or allowing them to conduct Obet’s interview.

26 164. One week later, the NYPD Special Victims Unit recommended closing the
27 investigation into the sexual abuse of Obet. A police report indicates “all leads [were]
28

1 exhausted” because Obet had left New York before the scheduled interview, and Cayuga
2 Centers “does not have any forwarding information to contact the child or his father.”

3 165. Obet was unable to talk to his mother about the sexual abuse for over two
4 weeks and was not able to tell his father until they were reunited.

5 **9. Abel and Obet Continue to Suffer After Being Reunited**

6 166. In the weeks after their reunification, Obet blamed Abel for the separation,
7 asking why Abel let the officers take Obet away. He asked, “If you are my Daddy, why
8 didn’t you do anything? Why didn’t you defend me?” Abel explained it was the law and
9 there was nothing he could do. Eventually Obet stopped asking. It caused Abel deep
10 pain that his son felt this way.

11 167. Abel could not leave Obet’s side without Obet becoming terrified, crying,
12 and begging his father not to leave him.

13 168. Obet told his father that every night he had been alone, he thought about his
14 father and asked God to let him have his father back. He also said he asked every day
15 “where his Daddy is,” and “when is he coming,” but the adults just told Obet he had to
16 wait.

17 169. Obet said that he felt sick throughout the separation and went to a doctor
18 once.

19 170. Abel has noticed that Obet is traumatized and his behavior has changed.

20 171. Whereas before he was a happy and adjusted child, outgoing, friendly, and
21 trusting of adults, he is now hyper-vigilant, withdrawn, and often sad.

22 172. Obet’s emotions sometimes change quickly and without warning; he can go
23 from being happy to deeply sad, or from being sad to angry. Obet has tantrums for no
24 apparent reason and one time became aggressive with Abel and tried to hit him.

25 173. Obet has nightmares and wakes up crying, calling, and reaching for his
26 father.

27 174. Obet often expresses fear that Abel will be taken and deported without
28 Obet.

1 175. Obet sometimes says that he feels that he has no family. Abel tries to
2 explain that he has his father and mother, but Obet seems stuck on the thought that he has
3 no one.

4 176. Obet is terrified of any adult that appears to be a law enforcement officer,
5 including security guards, and grabs onto his father's hand in fear if he sees someone in
6 uniform. For fear of triggering Obet if they see someone in uniform, Abel rarely takes
7 him out in public except when they go to and from Obet's cardiologist appointments and
8 Obet's elementary school, where he is in the third grade.

9 177. Obet avoids discussing what occurred during his separation from his father,
10 including his time at Cayuga and the abuse incidents in foster care, and Abel tries to only
11 talk about happy subjects with Obet to avoid upsetting him.

12 178. Abel continues to suffer physical and emotional harm from the separation.
13 He tries to forget everything that happened but he cannot. Abel often feels sadness and
14 fear at random times. Sometimes Abel does not want to get out of bed in the morning
15 when he thinks of everything that happened.

16 179. Since being reunified with his son, Abel has experienced unrelenting, acute
17 headaches behind his eyes and along his temples when he becomes stressed, especially
18 when he thinks about his ever-present fear that immigration will separate him from his
19 son again and deport him without his son. Before the separation from his son, he never
20 had headaches as a response to stressful thoughts.

21 180. Abel and Obet resettled in Southern California, where they are pursuing
22 their immigration cases.

23 **C. The United States Forcibly Separated José and Herlinda**

24 **1. José and Herlinda Seek Asylum in the United States and Are**
25 **Taken into CBP Custody**

26 181. In late April 2018, José and Herlinda fled violence and extortion in their
27 home in Guatemala to seek asylum in the United States. Every night of their journey to
28

1 the United States, José held Herlinda — his only child — as they slept. Though the trip
2 was challenging, Herlinda remained in good spirits throughout and laughed often.

3 182. José and Herlinda reached the United States, near Yuma, Arizona, on or
4 about May 8, 2018. They encountered immigration officials shortly after crossing the
5 border. The agents placed José and Herlinda, along with a group of other migrants that
6 included several children, in a pickup truck, and then a van with benches, and transported
7 them to a CBP facility.

8 183. At the facility, immigration agents processed José and Herlinda. One agent
9 asked José if he had been watching the news and said, “You know what’s going to
10 happen, don’t you? We’re going to take the girl away and send her to a detention center
11 for minors and you’re going to be imprisoned.” José was alarmed. He hoped that what
12 the official had told him was not true, but he remained very anxious about what they were
13 going to do with him and Herlinda.

14 184. José and Herlinda spent their first approximately two days and nights in the
15 United States shivering on the concrete floor of the CBP facility crowded with other
16 migrant families. At this hielera, José and Herlinda were crowded into a “cage” — a
17 concrete space surrounded by fencing — with about thirty other people.

18 185. The facility had several more cages that held scores of additional migrants,
19 including many children. Each cage had just one bathroom for use by all those detained,
20 and the bathrooms had only half-doors. To use the bathroom, they had to walk over
21 people lying on the floor.

22 186. The agents denied the detainees showers, soap, and toothpaste. A trash can
23 in the cage was overflowing, and a foul smell emitted from the bathroom into the areas
24 where José, Herlinda, and the other migrants spent all day and all night. The lights were
25 always on, and there were no windows, making it difficult for José to know whether it
26 was day or night.

27 187. When they arrived at the facility, José and Herlinda had to hand over their
28 belongings to CBP agents. Although José had a few changes of clothes for Herlinda in a

1 backpack, he was not allowed to bring any of them into the cage, nor was he allowed to
2 take the sheet that he had packed for her to use on cold nights. Instead, the agents issued
3 José and Herlinda only thin aluminum sheets to shield themselves from the bitter
4 temperatures.

5 188. The sheets were flimsy and ripped after one night, so José collected pieces
6 of sheets left behind by others to try to keep Herlinda warm. In the cage where José and
7 Herlinda were held, there were no beds. The migrants, including children, were pressed
8 together on the floor. But the space was so cramped there was not enough room for every
9 person to lie down, so José sat up on the concrete bench. He mainly stayed awake,
10 watching over Herlinda, who slept on the floor, with only the thin aluminum sheet to
11 protect her against the freezing concrete.

12 189. The agents gave the families nothing to eat but undercooked instant ramen
13 noodle soup, and, for the children, some crackers and juice. The agents brought the
14 noodles in tepid water, and there was no hot water available to warm up the soup or cook
15 the noodles. It broke José's heart that he could only feed his daughter these undercooked
16 noodles. Herlinda told her father that she was hungry, but she was reluctant to eat the
17 undercooked noodle soup. She ate it three times during their first day in the hielera, but
18 by the second day, she would only take a bite and then refuse to eat the rest. Herlinda
19 asked why they could only eat the undercooked soup. José told her to be patient and tried
20 to reassure her that they would not be eating soup forever.

21 190. The water that came out of the sink at the hielera was foul-smelling and
22 foul-tasting. They spent twenty-four hours a day in the cage and were not permitted to go
23 outside.

24 2. The United States Takes Herlinda from José

25 191. After about two days, agents called the name of one of the other detained
26 migrants and escorted him, along with his daughter, out of the cage. Only the father
27 returned to the cage. The father cried and explained that the agents had taken his
28

1 daughter away. Several others asked the father where they had taken his daughter. The
2 man could not answer.

3 192. At that moment, José realized that the threat the agent had made when José
4 and Herlinda first arrived was true—they really were taking children from their parents.
5 Still, José held out hope that they would not take very young children like Herlinda, who
6 was just five years old. But his hope was short-lived. An agent called José and Herlinda
7 out of the cage next.

8 193. José was filled with dread. After briefly questioning José, the official said,
9 echoing the threats that had been made when José first arrived, “We’re going to take the
10 girl away and send her to a detention center for minors. You’re going to be imprisoned.”

11 194. José was horrified at the thought of separation. He pleaded to the official
12 that his five-year-old daughter was too small to be taken from him and that he could not
13 leave her. The official only told him, “She can’t stay here longer; we’re going to send her
14 away.”

15 195. A different official, who José believed was a social worker, told José to
16 bathe Herlinda and change her clothes before she was taken. This official handed José
17 clothes and a pair of sandals that were far too big for Herlinda, and directed them to an
18 area with showers.

19 196. José bathed Herlinda and put her belongings (a few clothes and some
20 orthotic inserts from Guatemala) into a bag. José had about ten minutes to bathe Herlinda
21 and dress her.

22 197. Although José treasured the few remaining minutes that he had with
23 Herlinda, they were also intensely painful—he was in anguish about the impending
24 separation.

25 198. Through tears, José struggled to explain to his daughter what was
26 happening. He told her that the officials would take her somewhere else. He told her to
27 behave herself, to be strong, and to have patience—that he didn’t know exactly when
28 they would see each other again, but that he would never leave her. José reminded

1 Herlinda that God would protect them. While he attempted to maintain a strong face for
2 his daughter, José wondered if this was the last time he would see her. Herlinda did not
3 say anything, but José could tell she seemed worried.

4 199. After José bathed Herlinda, the officials told José, along with the parents of
5 about eight other children, to say goodbye to their children.

6 200. José thought of how innocent his daughter was and describes the moment
7 as one of the most painful in his life. He felt as if the officials were “taking half of [his]
8 life from [him].”

9 201. When the social worker approached Herlinda, she latched onto her dad,
10 screaming, “Papi, don’t leave me! Don’t let me go!” Herlinda, who had been upbeat and
11 smiled often on the journey from Guatemala, began crying uncontrollably. José
12 attempted to comfort her, telling her not to be sad because they would “only be apart for a
13 few moments.”

14 202. Agents ordered the children to line up on one side of the room, with the
15 parents across from them. The crying children lined up, wearing their government-issued
16 clothes.

17 203. José—standing with the other parents apart from their children—felt
18 powerless to stop the separation. The moment was excruciating for José and Herlinda.
19 Although Herlinda kept crying, José said with “all the pain in [his] heart [he] had to let
20 them take her.” The agents then led the children in a line out the door, while José and the
21 other parents stood there watching, not knowing when—or even if—they would ever see
22 their children again.

23 204. The officials took José and other parents back to the cages. José describes
24 the scene as being “like a funeral,” with grown men and women openly and
25 uncontrollably weeping. As soon as Herlinda was gone, José began crying. In anguish,
26 his mind went to the thought of being deported without his daughter. He did not know
27 whether he would see his daughter again.

28

1 **3. José Is Kept in Detention After Separation and Has Limited**
2 **Contact with Herlinda**

3 205. José wept every day of the next week that he was kept in the hielera after
4 Herlinda was taken. Left with no information about his daughter, José could not sleep.

5 206. The agents refused to tell him what would happen to him and his daughter.
6 Were they going to be deported? Would U.S. officials deport only José, leaving Herlinda
7 alone in the United States? What would happen to Herlinda? Overcome with confusion
8 and fear, José and the other separated parents in the hielera cried for their children.

9 207. José recalls comforting another father who could not stop thinking about
10 what could happen to his child. Although José reassured him that they would someday be
11 reunited with their children, privately he was deep in despair.

12 208. José and other parents constantly asked officials about their children but
13 were denied any information. Often, the officers would shut the door to silence the
14 parents' pleas.

15 209. The detainees continued to eat nothing but the undercooked instant noodle
16 soup. Each time, José was painfully reminded that Herlinda was only able to eat the
17 undercooked soup for their last meals together. Whenever he ate he wondered if Herlinda
18 was eating properly. He hoped that wherever she was, she at least had better food.

19 210. After approximately a week in the hielera, José and several other detainees
20 were taken to a courthouse. Officials told José was told he had been sentenced to "time
21 served" for having entered the United States without authorization, but he has no
22 recollection of going before a judge, making any kind of plea, or actually being charged
23 or sentenced. Upon information and belief, José was never charged with or sentenced for
24 any criminal offense. He was transferred to ICE custody and placed in a detention center
25 in Florence, Arizona.

26 211. In ICE detention, José continued to ask officers about his daughter, with no
27 response. José had not heard anything about his daughter since their separation. The lack
28 of information or even response put José in a state of hopelessness. He cried most nights.

1 212. In late May 2018, José was transferred to the Folkston ICE Processing
2 Center in Folkston, Georgia, again shackled at the hands, waist, and feet during the flight.

3 213. Again, José asked about his daughter, but agents at Folkston ignored him.

4 214. José was soon transferred again, shackled, this time to Stewart ICE
5 Detention Center in Lumpkin, Georgia.

6 215. After arriving at Stewart Detention Center he contacted the Guatemalan
7 consulate to seek information about Herlinda. The consulate tracked down a number for
8 a worker at Lutheran Social Services (“Lutheran Services”) in New York, where Herlinda
9 was being held. José could not call Herlinda right away because he could not afford the
10 expensive calling card PINs needed for detainees to make calls from within the detention
11 center.

12 216. José began work as a janitor at the detention center, earning about two
13 dollars a day, to talk to his daughter. All of the money went toward purchasing PIN-
14 based calling cards.

15 217. After saving enough, José called the Lutheran Services case manager from
16 detention on or about May 26, 2018, expressing his desperation to know his daughter’s
17 whereabouts and to speak with her. Throughout the entire process of attempting to locate
18 and speak with his daughter, José received no help from anyone working for the U.S.
19 government.

20 218. José and Herlinda talked for the first time on or about May 31, 2018—three
21 weeks after their separation in Arizona. When they finally connected by phone, it was
22 nearly impossible for them to speak because they were overcome with emotion and both
23 crying uncontrollably. They only had time to greet each other and weep for a few
24 minutes before the time on José’s calling card expired and the call disconnected.

25 219. Hearing Herlinda’s voice after so long apart, but still being unable to see
26 her or know when they would be reunited, was agony for José. Herlinda’s crying so
27 distressed José that he began to doubt whether he should have even called her. He
28

1 worried the call made things worse for Herlinda because he could not tell his daughter
2 whether they would see each other again.

3 220. Deeply concerned for his daughter, José confirmed to the worker at
4 Lutheran Services that if he were to be deported, he wanted Herlinda to return to
5 Guatemala with him. The case worker was able to reach José's wife (Herlinda's mother)
6 in Guatemala who agreed with this decision. Although José feared the persecution and
7 danger that awaited them in Guatemala, he also feared what would happen to Herlinda if
8 she were left alone in a foreign land.

9 221. During the next seven weeks of their separation, José and Herlinda were
10 able to speak only about five more times for short periods of a few minutes.

11 222. José's detention in Stewart was deeply discouraging and degrading. He
12 cried every night thinking about what was happening to Herlinda. For a month, José sat
13 in his small cell and wondered if he would ever see his daughter again.

14 223. Although José wanted to pursue his immigration case in the United States,
15 he was increasingly desperate to see Herlinda again. Seeing the other asylum-seekers
16 languishing in ICE detention for months and even years, José began to believe that the
17 only way to be reunited with his daughter was if he chose not to pursue his asylum claim
18 and agreed to be deported.

19 224. On June 18, 2018, José appeared before an immigration judge at Stewart
20 Detention Center. Desperate to see his daughter and believing deportation to be the only
21 way to be reunited with her, José relinquished his asylum claim before the immigration
22 judge, who then ordered José removed.

23 225. Eight days after José appeared before the immigration judge, Judge Sabraw
24 in the *Ms. L.* case ordered the government to reunite the families like José and Herlinda
25 within 30 days and prohibited the government from deporting any parent who had been
26 separated from his child at the border before they could be reunified.

27 226. In late June, José was sent back to Folkston ICE Processing Center, again in
28 shackles.

1 227. There, ICE and/or HHS officials presented him with a form in English that
2 they instructed José to sign. Because the forms were in English, José did not fully
3 understand them. However, officials explained in Spanish that the form had two options:
4 1) he could be deported with Herlinda, or 2) he could be deported alone and he could
5 leave Herlinda in the United States. He recalls additional language on the form, but he
6 does not know what it said.

7 228. Unable to read or understand the forms, José refused to sign them. On or
8 about July 16, 2018, José’s legal representatives attempted to meet with him at Folkston
9 but were told that they could not see him. On July 18, 2018, an immigration judge re-
10 opened José’s case in light of the “totality of the circumstances” surrounding the previous
11 removal order.

12 **4. Herlinda Is Placed in ORR Custody More than 1,000 Miles**
13 **Away from Her Father and Faces Abuse There**

14 229. After Herlinda was separated from her father, she spent a night or two at an
15 unknown location before being put on a flight across the country—her first time ever on
16 an airplane, without any family by her side.

17 230. She arrived in New York City on or about May 11, 2018. She was placed at
18 Lutheran Social Services of New York, Safe Haven for Children Program run under the
19 auspices of ORR, where she spent some of her daytime hours. Herlinda spent her nights
20 in a foster home associated with Lutheran Services.

21 231. Herlinda’s ORR records reflect that about a day after her arrival in New
22 York, she cried when discussing the separation with the case manager. On May 17,
23 Herlinda, who “presented sad and timid,” told her case manager that she missed her
24 parents and wanted to talk to her dad.

25 232. While in ORR custody, Herlinda suffered multiple instances of harm. On
26 or about May 21, Herlinda was watching television at her foster home when a male minor
27 residing at the same home inappropriately touched her chest. In one of her weekly
28 meetings with her clinician, Herlinda reported that this made her feel uncomfortable.

1 Child Protective Services was informed and law enforcement officers came to the home
2 to investigate the incident. According to an ORR Counseling Progress report, Herlinda
3 was scared when she saw the law enforcement officers and “did not understand why they
4 were in the home.”

5 233. Following the inappropriate touching at the first foster home, Herlinda was
6 moved to another foster home. However, the same boy remained in her “class” at Lutheran
7 Services, and on May 24, staff noted that he attempted to grab Herlinda’s face and kiss her.
8 Their teacher separated them and explained to both that the behavior was wrong.

9 234. Herlinda and the minor were “monitored,” but ORR records do not indicate
10 they were placed in separate classes. Herlinda had difficulty focusing in school after
11 these incidents.

12 235. Herlinda reported to a case worker that the grandmother in the foster home
13 where Herlinda resided had spoken to Herlinda harshly, using offensive words that made
14 her uncomfortable. The words were “pendeja ” (“stupid,” “dumbass,” or “asshole”) and
15 “carajo” (“fuck,” “shit,” or “damn it”). The grandmother claimed that she had only said
16 “pendejada” (“foolishness” or “stupid thing”). A caseworker told the grandmother that
17 such words were offensive to people from Guatemala, like five-year-old Herlinda.

18 236. In several instances, Herlinda was locked alone in a room as “punishment.”

19 **5. Herlinda and José Are Reunited and Face the Effects of**
20 **Separation**

21 237. Around July 16, 2018, ICE transferred José, shackled again by the wrists,
22 waist, and feet, by plane to another detention center in Port Isabel, Texas.

23 238. Before he left Folkston for Port Isabel, José was given a DNA test.

24 239. José was unsure what would happen once he arrived in Port Isabel but
25 believed he was getting closer to finally reuniting with Herlinda.

26 240. At Port Isabel, officials told him that he was going to be reunited with his
27 daughter and released on parole.

28

1 241. ORR records reflect that Herlinda left her foster home in New York and
2 boarded a plane for Texas around 2:00 A.M. on July 21, 2018.

3 242. Later that day, an official called José to speak with his attorney on the
4 phone. Before José could take the call, another official told him to go back to his cell to
5 gather his belongings.

6 243. Although José was never told he was going to meet his daughter, he
7 followed the officers, hoping to see her. They then stopped and entered an office where
8 José saw Herlinda watching television. José immediately began crying tears of joy. He
9 realized that at times during the separation he had lost hope that he would ever see her
10 again.

11 244. José also felt immediate anxiety when he saw Herlinda. He was concerned
12 about how the separation had affected her emotionally and was unsure how she would
13 react now.

14 245. When José stepped into the room Herlinda looked over at him with
15 uncertainty. For a brief moment, it seemed that she did not recognize him. But then —
16 realizing that her father was finally standing in front of her — she ran over to him and
17 cried as she embraced him. José describes this as a “beautiful moment” that “brought
18 [him] to life again.”

19 246. Because they had nowhere to go, the two spent a few days at a Catholic
20 Church in Texas before they were released together.

21 247. During that time, as joyous as he felt at having his beloved daughter back
22 with him, José was also deeply troubled at the thought of the harm Herlinda experienced
23 in foster care and of his inability to protect her from those harms.

24 248. José and Herlinda resettled in Massachusetts, where they are pursuing their
25 immigration cases.

26 249. The two and a half months of separation “emotionally destroyed both” José
27 and Herlinda. In the eight months since the reunification with his daughter, José has
28 noticed the ongoing and lasting effects that the trauma of separation has had on Herlinda.

1 250. Herlinda is far more sensitive than she was before the separation and cries
2 frequently for no apparent reason.

3 251. Since the separation, Herlinda exhibits symptoms of PTSD.

4 252. José notices that she is now impatient and quick to anger, on occasion
5 hitting him.

6 253. In calls with her mother, Herlinda suddenly and inexplicably becomes
7 angry and hangs up. She was not like this before the separation.

8 254. After reunifying with her father, Herlinda did not want to go to school.

9 255. José perceived that Herlinda's self-esteem has suffered.

10 256. Even now, Herlinda has nightmares about the separation and her detention
11 that wake her at night and make it difficult for her to sleep. José finds it difficult and
12 shocking to see his previously happy daughter act this way, but tells himself he must
13 "remember what she went through."

14 257. The prolonged separation has also impacted José deeply.

15 258. While José was separated from Herlinda, he wept constantly and had
16 trouble sleeping. The insomnia persisted for months even after he and Herlinda were
17 reunited and continues to the present.

18 259. José did not learn of all the incidents of harm that Herlinda endured in ORR
19 custody until after their reunification. When he learned of this additional harm to
20 Herlinda, it caused José further distress.

21 260. At night José still remembers the "pain of it all."

22 261. José has had difficulty concentrating on tasks and finds that these events
23 have left him with constant sadness.

24 262. José often does not feel like speaking with anyone, including family
25 members in Guatemala.

26 263. José feels deeply depressed and at times is unable to enjoy life.

27 264. The separation deeply damaged José and Herlinda, and José attempts to
28 seek solace in his faith.

1 **D. The United States Forcibly Separated Joel and Mariela**

2 **1. Joel and Mariela Seek Asylum in the United States and Are**
3 **Taken into CBP Custody**

4 265. Joel and Mariela arrived at the U.S.-Mexico border around May 19, 2018
5 after fleeing violence in their home in Guatemala.

6 266. Soon after Joel and Mariela entered the United States near San Luis,
7 Arizona, they encountered several immigration officers. The officers questioned them
8 and reviewed Joel's Guatemalan identification card and Mariela's birth certificate.

9 267. An officer then put Joel, Mariela and other families in the back of a truck.
10 Despite their detention, Mariela told Joel, "As long as I'm with you, I'm protected."

11 268. Joel and Mariela were taken to a detention facility nearby and put in a
12 hielera with about 15 other adults and their children. Through the window in the door,
13 Joel could see other cells containing more children and their parents.

14 269. In an initial interview by an immigration officer, Joel claimed fear of
15 persecution or torture if he was returned to Guatemala.

16 270. The hielera where Joel and Mariela were detained was freezing cold, and
17 there was no space to lie down, bathe, or use the bathroom privately for approximately
18 six days. They received only instant ramen to eat, and they had no pillows or mats for
19 sleeping or additional clothes or blankets for warmth. The lights were always on.

20 271. While detained in the hielera, Joel and Mariela witnessed officers forcibly
21 separate families. Joel felt distraught at this sight, and Mariela also became upset and
22 worried that the same thing would happen to her and her father.

23 272. Mariela began declining physically and emotionally in the hielera. She
24 became pale, lethargic and despondent. Joel worried that she was becoming dehydrated.
25 She was not sleeping and was constantly cold, and sat in a corner crying to herself. Joel
26 felt helpless and overwhelmed. He held Mariela close while they both cried. Seeing his
27 child cry because she was suffering broke Joel's heart. He feared that Mariela would
28 become seriously sick.

1 **2. The United States Takes Mariela From Joel**

2 273. After Joel and Mariela had been in the hielera for almost a week, officers
3 came to take Mariela. The officers told Joel that they were going to take Mariela to a
4 shelter. Mariela pleaded with Joel that she did not want to go and that she wanted to stay
5 with him. Mariela cried as Joel hugged her. He did not want to let her go but felt he had
6 no choice. At this point, Mariela was pale, weak, and very sick. Joel worried that if
7 Mariela stayed in the hielera longer, her health would continue to deteriorate. Joel told
8 Mariela they would see each other soon. Crying, Mariela walked out with the officers.

9 274. At this time, Joel believed that he would see his daughter soon. An officer
10 had told him that the separation was temporary and that as soon as Joel resolved his
11 “situation,” they would be reunited. He assured Joel that Mariela would be okay.

12 275. Joel asked the officers where Mariela was being taken and how to contact
13 her, but no one gave him any information. Joel felt destroyed by the separation.

14 **3. Joel Is Kept in Detention After Separation as His Health Declines**

15 276. While Joel was still in the hielera, he asked several officers where his
16 daughter had been taken. The officers said they did not have any information about
17 Mariela and did not know where she was.

18 277. A few days after the separation, Joel was transferred to a detention center in
19 Florence, Arizona. He was detained there for several days.

20 278. Joel was never charged with any criminal offense.

21 279. At the detention center in Florence, Joel became severely ill with a fever
22 and body ache. His pleas for medical attention were repeatedly denied.

23 280. Joel was sad and in despair over his daughter. He inquired repeatedly about
24 Mariela, but he was told that no information was available, and that he had to wait. Joel
25 was in such deep despair that he considered taking his own life.

26 281. With his wrists and ankles shackled, Joel was placed on an airplane with
27 other detainees and sent to Stewart ICE Detention Center in Lumpkin, Georgia
28 (“Stewart”). His health worsened. Throughout the flight, Joel coughed up blood.

1 282. Joel was chained for many hours during the journey by plane and bus. The
2 only food that Joel and the other detained immigrants were given during this trip was
3 bread, cheese, and one small cup of water.

4 283. As soon as Joel arrived at Stewart, he was placed in quarantine because
5 medical staff there thought that he had rotavirus. He continued to cough up blood.
6 Debilitated by his illness and in deep distress over having been separated from his
7 daughter, Joel felt that he did not want to live anymore. Medical staff gave him pills for
8 his condition, which he considered saving and then taking all at once to end his life.

9 284. Before the separation from his daughter, Joel had never experienced
10 suicidal thoughts.

11 **4. Joel and Mariela Speak for the First Time in One Month**

12 285. An officer told Joel that the asylum process could take several months,
13 during which time he would be detained. Joel could not imagine being separated from
14 Mariela for that long.

15 286. While Joel was at Stewart, an officer conducted a credible fear interview
16 for Joel over the phone. Believing it was the only way he could be reunited with his
17 daughter, Joel decided not to proceed with an asylum claim. He asked to be sent back to
18 Guatemala with Mariela. The officer promised to tell ICE that Joel wanted to know
19 where his daughter was, and that he wanted to return to Guatemala with her.

20 287. An officer presented Joel with a paper to sign titled “Request for
21 Dissolution of Credible Fear Process,” which stated: “I . . . have decided to stop pursuing
22 protection from removal through the credible fear process.” Wanting to be with Mariela
23 again, Joel signed the form.

24 288. Joel was still unable to locate Mariela, and he worried about her health. An
25 officer told Joel that he needed Mariela’s identification number to locate her. Joel had
26 never been told this number or how to obtain it.

27 289. Joel called his wife. She had been able to speak with Mariela. Joel felt
28 relieved that Mariela was alive, but he also felt anger and frustration that the United

1 States government had done nothing to help him communicate with—or even locate—his
2 daughter.

3 290. Joel and Mariela were separated for approximately one month before Joel
4 was able to speak with Mariela.

5 291. On or about June 25, 2018, an officer told Joel that he could speak with his
6 daughter. The officer gave him only a few minutes to speak to Mariela on the phone.
7 During this short phone call, Mariela and Joel cried.

8 292. Mariela asked Joel when they would be leaving and when Joel would see
9 her. He did not know the answers but tried to comfort her by saying he would see her
10 soon. Mariela told her father that she did not want to be at the shelter. She said that other
11 children were bothering her. Joel told her that she needed to report it to staff. Joel felt
12 distraught upon hearing Mariela's pleas and recognizing his own powerlessness to end
13 her suffering.

14 293. Shortly after Judge Sabraw issued the Preliminary Injunction in the *Ms. L.*
15 case, which promised relief for Joel and Mariela, Joel was again shackled and taken to a
16 different ICE detention center in Folkston, Georgia.

17 294. Officers at the Folkston detention center asked Joel to provide a DNA
18 sample to prove that he was Mariela's father. He explained that he had provided other
19 officers with Mariela's birth certificate and his government identification card. The
20 officers responded that they needed DNA confirmation and that without the test, Joel
21 would not be reunited with Mariela. Joel agreed to a cheek swab.

22 295. Joel tried to call his daughter on multiple occasions, but no one answered at
23 the Southwest Key facility where she was being held. Joel and Mariela spoke
24 infrequently. When they did speak, he could not get a full sense of how Mariela was
25 doing because the calls were so short.

26 296. Joel came to believe that he would never again see Mariela and that the
27 government might put her up for adoption. He felt desperate.

28

1 297. When Joel was in Folkston, he and other separated fathers were given a
2 document in English to sign. Upon information and belief, the document related to Joel's
3 deportation. Joel told the officers that he did not want to sign it and only wanted to see
4 his daughter. The officers told him that if he did not sign the document, he would never
5 see his daughter again. Fearing that this threat was true, Joel signed the document even
6 though it was in a language he could not understand.

7 298. From Folkston, officers transferred Joel to two additional detention centers
8 in Texas. During the duration of those transfers, which on one occasion lasted
9 approximately 16 hours, he was shackled and received very little food and water.

10 **5. After Approximately Two Months Apart, Joel and Mariela Are**
11 **Reunited**

12 299. Late in the night on or about July 21, 2018, an officer at the detention center
13 in Port Isabel, Texas, where Joel was then detained, ordered Joel to gather his belongings.

14 300. The officer told Joel to sign several documents and said that they were going
15 to return his daughter to him. Because he longed to see his daughter again, he hastily
16 signed several documents in English and Spanish, not fully understanding their contents.

17 301. Joel was escorted to a different section of the detention center where
18 Mariela was waiting. When Joel and Mariela saw each other, they were overjoyed.
19 Mariela ran toward Joel, and they hugged and cried together.

20 302. Joel was released from detention with Mariela. They settled in Tennessee,
21 where they are pursuing their immigration cases.

22 **6. Joel and Mariela Remain Traumatized After Being Reunited**

23 303. Mariela had been held at the Southwest Key Nueva Esperanza facility in
24 Brownsville, Texas, a privately contracted facility for children in ORR custody. In late July
25 2018, Mariela reported to shelter staff that another minor was bullying and harassing her.
26 ORR records show that staff removed a minor from Mariela's dorm room after this report.

27 304. After their reunification, Joel noticed changes in Mariela. She was not the
28 same child as before the separation. She insisted on being with Joel at all times. She

1 worried constantly about her father. Since the reunification, she has seemed sad,
2 distracted, and unable to focus. She has avoided interactions with others and kept to
3 herself. She has also experienced stomach pains and nightmares related to the separation.
4 She has had a poor appetite. Since the reunification, Mariela has also exhibited
5 combative and even rebellious behavior, which was a change from her previous
6 demeanor.

7 305. Mariela has symptoms of PTSD and anxiety stemming from the separation.

8 306. The separation has had a significant impact on Joel's mental and physical
9 well-being. He developed stomach pains after the separation. He has struggled with
10 feelings of guilt and sadness. Recounting the details of the separation has made him feel
11 depressed and experience extreme headaches. He has also had trouble concentrating.
12 His self-esteem has plummeted due to the powerlessness he felt. He has had repeated
13 nightmares of his daughter being taken away. He has been haunted by memories of
14 officers yanking crying babies from their parents. He fears that the government will
15 separate him from his daughter again.

16 307. Joel demonstrates symptoms of PTSD, depression, and anxiety resulting
17 from the separation.

18 **E. The United States Forcibly Separated Heriberto and Alicia**

19 **1. Heriberto and Alicia Seek Asylum in the United States and Are**
20 **Taken into CBP Custody**

21 308. Heriberto and Alicia reached Arizona on or around May 12, 2018, after
22 fleeing violence in their hometown in Guatemala.

23 309. Immediately after they crossed the U.S. border near San Luis, Arizona, a
24 CBP agent approached them. The officer asked Heriberto if he was Guatemalan, and
25 Heriberto responded yes. The officer ordered Heriberto and Alicia to get into a CBP
26 vehicle with other migrants, and drove them to another location.

1 310. Alicia, then six years old, became very nervous and asked where they were
2 going. Heriberto reassured her that everything was going to be all right, but he did not
3 know where the officer was taking them.

4 311. The CBP agent asked Heriberto if Alicia was his daughter. Heriberto
5 responded that Alicia was his daughter and that he had Alicia's birth certificate. The
6 officer stated that parents would be separated from their children if they tried to cross into
7 the United States together. The officer said: "You can't use children as tickets to enter
8 anymore." Heriberto did not understand what the agent meant. He felt despair and
9 feared he would be separated from Alicia.

10 312. Heriberto and Alicia were driven to a detention center, and escorted into a
11 building where agents told them to remove their outer garments, belts, backpacks, and
12 shoelaces. The agents then gave Heriberto and Alicia one aluminum blanket each and
13 escorted them to a hielera where approximately 40 other adults and children were being
14 held. Both Heriberto and Alicia wore only sleeveless shirts because their outer garments
15 had been taken from them.

16 313. The hielera had vents that blasted freezing air, and Alicia struggled to
17 withstand the frigid temperature. The lights were always on. There was nowhere to sit or
18 lie down except on the floor. There were no windows.

19 314. On the first day in the hielera, the agents brought pieces of bread and juice.
20 The bread was hard, and Alicia could not eat it even though she was hungry. On
21 approximately their second day in the hielera, agents gave Heriberto and Alicia each a
22 cookie and juice. Alicia was very hungry, so Heriberto gave her his cookie.

23 315. Soon after, Alicia told Heriberto that she felt bad, that her head hurt, and
24 that she was sleepy. Heriberto could tell that she was losing her strength.

25 316. Alicia fell asleep and did not wake up for hours. She was almost non-
26 responsive. Seeing his daughter in that condition, Heriberto began to cry. Heriberto tried to
27 get an officer's attention through the glass in the door, but the officers who walked by ignored
28 him. He felt desperate to help Alicia but did not know what to do. He held her closely.

1 **2. The United States Takes Alicia from Heriberto**

2 317. On approximately their third day in detention, an officer opened the door to
3 the hielera and called Heriberto to him. The officer gave Heriberto soap and clothes and
4 told him to give Alicia a bath. The officer also asked Heriberto to confirm Alicia’s name
5 and date of birth. While he bathed Alicia, Heriberto noticed that she was very weak and
6 sad. She could barely stand up.

7 318. As Heriberto exited the bathroom with Alicia, officers instructed Heriberto
8 to move to one side of the hallway and instructed Alicia to go to the opposite side with
9 other children. Heriberto immediately objected, saying: “But this is my daughter!” An
10 officer told Heriberto that they had to take Alicia. The officer said that she would be
11 cared for and that she and Heriberto would be reunited later.

12 319. Heriberto told Alicia to go with the other children and that he would see her
13 soon. He did not want to make the moment any harder for her. Alicia tried to stay with
14 Heriberto, but an officer pushed her back. Alicia threw herself to the floor and began
15 crying and screaming. Heriberto was devastated.

16 320. As the officers led Heriberto away in a different direction, Alicia got up
17 from the floor and again attempted to run towards Heriberto. This time an officer
18 grabbed Alicia and threw her onto his shoulder.

19 321. Heriberto was brought to a different hielera. He felt despair and frustration
20 at not knowing what to do. He cried, and constantly thought about Alicia.

21 **3. Heriberto Is Told Nothing About Alicia’s Whereabouts or Well-**
22 **Being for Two Weeks**

23 322. After Heriberto was separated from Alicia, officers shackled Heriberto and
24 transported him first to one detention center, and then to another detention center, both in
25 Arizona. Heriberto asked every officer he encountered about Alicia’s location. Some of
26 the officers ignored Heriberto’s questions. Others responded that they did not know
27 anything about his daughter. Some officers told Heriberto that Alicia would be brought
28 to him soon. But days passed and Alicia never arrived.

1 323. Heriberto was never charged with any criminal offense.

2 324. While he was detained without Alicia, Heriberto met with an ICE officer
3 who asked him if he wanted to be deported. Heriberto said no and told the officer that he
4 was waiting for his daughter, who had been separated from him. The officer appeared
5 confused and asked Heriberto for his daughter's name. Heriberto provided Alicia's name
6 and showed the officer her birth certificate.

7 325. The officer said Alicia was in the country but that she was an
8 unaccompanied minor who had arrived in the United States alone, without a mother or
9 father. The officer told Heriberto that Alicia would be put up for adoption. Heriberto
10 told the officer that the officer's information was incorrect and explained that he and
11 Alicia arrived together, but that Alicia had been separated from him and taken by
12 officers. The officer said he did not believe that Alicia was Heriberto's daughter.

13 326. Heriberto constantly thought about Alicia and worried about her. At nights
14 Heriberto cried and was unable to sleep from the stress. He began to suffer from constant
15 headaches. Sometimes the headaches were so severe that they lasted three or four days.
16 Not knowing where his daughter was and how she was doing tortured Heriberto.
17 Heriberto began to think that he might never see Alicia again.

18 327. Approximately two weeks after he was separated from Alicia, Heriberto
19 was able to call his sister-in-law in Florida. His sister-in-law told Heriberto that she had
20 received a call from a social worker stating that Alicia was in Michigan. Heriberto
21 understood that the social worker told Heriberto's sister-in-law that Alicia had arrived in
22 the United States alone.

23 328. Heriberto did not know where Michigan was or why the social worker told
24 his sister-in-law that Alicia arrived alone, but he felt immense relief at learning Alicia's
25 location.

26 **4. Heriberto Is Finally Able to Speak with Alicia**

27 329. Around May 29, 2018, an officer took Heriberto to a phone and gave him a
28 phone number. When Heriberto dialed the number, he spoke with a case manager for

1 Alicia, who put Alicia on the phone. This was the first time Heriberto was able to speak
2 with Alicia since being separated approximately two weeks earlier.

3 330. Alicia began to cry. She asked Heriberto, “Why did you leave me? Where
4 are you?” Heriberto felt heartbroken. The phone call lasted only a couple of minutes.
5 Heriberto was relieved that he was able to speak to his daughter, but he also felt hopeless
6 and anxious not knowing when or how he could reunite with her.

7 331. Heriberto spoke with the case manager and Alicia only two more times
8 before he was deported in early June 2018. Often when he tried to call the case manager,
9 no one answered. When the case manager answered and put Alicia on the phone, Alicia
10 cried and seemed inconsolable. Alicia told Heriberto that she wanted to be with him.
11 Heriberto also heard Alicia tell the case manager to go get her dad because she wanted to
12 leave with him.

13 5. Heriberto Is Deported to Guatemala Without Alicia

14 332. Heriberto was transferred to another detention center where he could not
15 call Alicia.

16 333. In early June, several officers approached Heriberto and told him to sign
17 some papers. An officer said that if he signed the papers, he and his daughter would be
18 deported together to Guatemala. The officer said that if he did not sign, Heriberto would
19 never get his daughter back.

20 334. A second officer told Heriberto that after he signed, Heriberto would be
21 taken to the airport, where his daughter would be waiting for him. Heriberto asked to see
22 the papers in Spanish. The officers told Heriberto to just sign the documents to facilitate
23 the process of reuniting him with his daughter and returning to Guatemala.

24 335. Heriberto signed the papers because he wanted desperately to see Alicia and
25 felt that he had no choice. According to ORR records, on or about June 5, 2018,
26 Heriberto “was informed that if he signed his order of deportation he would be sent back
27 with the minor [Alicia] to Guatemala, so he signed.”
28

1 336. The day after he signed the papers, Heriberto was shackled and escorted
2 with other detainees outside the detention facility, where they were forced to wait for
3 more than 12 hours without food or water. Heriberto and the other detainees were then
4 escorted onto large buses. Heriberto felt a sense of relief at leaving the detention center,
5 thinking he would soon be reunited with Alicia.

6 337. When the buses pulled into the airport, Heriberto scanned the parking lot,
7 looking for his daughter. He asked an officer where he could pick up his daughter. He
8 told the officer that he had signed papers saying he would be deported with his daughter.
9 The officer responded, “You should not have signed those papers; those were just lies.”
10 Heriberto could not believe what he heard. He felt like he was straining to breathe and
11 could think of nothing other than Alicia being left behind.

12 338. Heriberto was deported to Guatemala without Alicia. His flight landed in
13 Guatemala City on or around June 7, 2018.

14 **6. Alicia Suffers Trauma Due to the Separation from Her Father**

15 339. After the separation, Alicia was placed in ORR custody. On or about May
16 15, 2018, Alicia was transferred from the Yuma Border Patrol Station and arrived at
17 Bethany Christian Services (“BCS”) shelter in Kalamazoo, Michigan. The next day,
18 Alicia was placed in a transitional foster care program. During the day, Alicia attended
19 school with other children in ORR custody. Alicia spent nights at a foster home.

20 340. A case manager at BCS contacted Alicia’s maternal aunt and informed her
21 that Alicia would remain in the care of BCS until a decision could be made about her
22 case. Alicia’s aunt was confused. She did not understand why Alicia was now in
23 Michigan without Heriberto.

24 341. The case manager also contacted Alicia’s mother and Heriberto’s wife,
25 Anna,³³ in Guatemala, and explained the same information to her.

26
27 _____
28 ³³ To protect Plaintiffs H.P.M.’s and A.D.’s identities, a pseudonym has been adopted for
H.P.M.’s wife.

1 342. The case manager searched for Heriberto in the ICE Online Detainee
2 Locator System but did not find him. As of May 28, 2018, the case manager still had not
3 located Heriberto.

4 343. ORR’s initial intake form notes that upon arrival, Alicia appeared confused
5 and exhausted. At her first meeting with the case manager on May 15, 2018, Alicia cried
6 and would barely speak. All she said was that she had been separated from her father and
7 that she wanted to be reunited.

8 344. Two days later, the case manager conducted an Unaccompanied Minor Risk
9 Assessment. The assessment indicated that Alicia was “greatly missing her father” and
10 “wanting to be with her father to help her feel more comfortable and safe.”

11 345. During the more than three months that Alicia remained in the care of BCS,
12 case reports and assessments note that Alicia cried easily, was distracted and unfocused,
13 and continued to ask for her father.

14 346. On June 4, 2018, Alicia’s primary care physicians approved Alicia to take
15 melatonin at night because Alicia had so much trouble sleeping.

16 347. On June 26, 2018, educational staff reported Alicia was “punched and
17 kicked . . . in the chest and face” by another child during recess.

18 348. Reports from BCS also suggest that Alicia had difficulty learning and
19 sitting still at school. A BCS Educational Coordinator recommended occupational
20 therapy for Alicia given certain behaviors that she developed while in ORR care.

21 349. After Heriberto was deported, he and Anna were only able to have
22 facilitated calls approximately once a week with Alicia. Whenever Alicia’s parents spoke
23 to her, she cried and was mostly unable to speak. She told her parents that she wanted to
24 be with them, and that she missed them. She also told them she was scared of being in
25 her foster home because the family had a large dog.

26 350. On one occasion, Anna was informed that Alicia had cut her own hair using
27 a pair of scissors found at her foster home. Heriberto became intensely worried that
28 Alicia was not being carefully watched or cared for.

1 351. Alicia was referred to a psychologist “[d]ue to trauma and educational
2 concerns.” Further, a Clinical Closing report by BCS dated August 30, 2018, notes that
3 Alicia exhibited an “Acute Stress Reaction that caused neurological difficulties” and
4 became “emotionally dysregulated” in school and during phone calls with family, during
5 which she always became anxious and cried.

6 352. On or about June 11, 2018, Heriberto spoke with the case manager about
7 the possibility of obtaining an order for voluntary departure so that Alicia could return to
8 Guatemala. The case manager obtained pro bono counsel for Alicia at the Michigan
9 Immigrant Rights Center.

10 353. On June 14, 2018, a clinical supervisor at BCS told Alicia that because
11 Heriberto was now in Guatemala, Alicia would remain in BCS’s care for a few months.
12 Alicia broke down in tears.

13 354. On June 26, 2018, Judge Sabraw issued the preliminary injunction in the
14 *Ms. L.* case and ordered the government to reunite families like Heriberto and Alicia
15 within thirty days.

16 355. On July 28, 2018, Alicia was transferred to another foster family that had
17 some experience in “trauma informed” care after the case manager expressed concern for
18 Alicia’s well-being and her need to be in a more stable environment. Alicia remained
19 with the new foster family until her return to Guatemala.

20 **7. After Approximately 108 Days of Separation, Heriberto and**
21 **Alicia Are Reunited**

22 356. After being deported, Heriberto felt depressed and anxious without his
23 daughter. He was desperate to learn more about Alicia’s return. The case manager
24 initially said Alicia would not be able to return to her family for about a year.

25 357. On or about August 1, 2018, Alicia’s attorney and an ICE attorney
26 submitted a joint motion in immigration court, seeking an order of voluntary departure
27 for Alicia to return to Guatemala. The motion stated that Alicia “cries for much of the
28 day ever since her arrival in Michigan, and she is extremely anxious and has even begun

1 expressing desires to self-harm.” On or around August 7, 2018, an immigration judge
2 granted Alicia’s motion.

3 358. On August 30, 2018, after approximately 108 days of separation, Alicia was
4 discharged from BCS and placed on a flight to Guatemala City. Heriberto and Anna
5 traveled five hours to the capital to meet her.

6 359. Heriberto felt an enormous sense of relief when he saw Alicia. But Alicia
7 stood before him and Anna with a blank stare. Alicia then recognized Heriberto and went
8 over to give him a hug, saying nothing. Alicia initially appeared not to recognize Anna,
9 her own mother. Alicia also did not recognize her brother, and she did not want to talk to
10 her aunts who had traveled to Guatemala City with the family to meet her.

11 **8. Heriberto and Alicia Continue to Suffer After Being Reunited**

12 360. After Heriberto and Alicia were reunited, Alicia remained distressed. When
13 she first returned home, Alicia stayed in her room in bed.

14 361. For almost a week, Alicia refused to eat more than a few bites at a time.
15 Alicia cried for hours, both during the day and at night. Heriberto and Anna were unable
16 to console her.

17 362. As time went on, it became clear to Heriberto and Anna that Alicia had
18 changed. Before the separation, she was a happy and well-adjusted child, who was
19 outgoing, friendly, and trusting of adults. After the separation, she is quiet, distant, and
20 cries easily.

21 363. Alicia was scared to go back to school. While in school, she did not
22 interact with the other children. Alicia stared blankly at walls or other things, and she did
23 not respond when called or when spoken to.

24 364. Heriberto took Alicia to a doctor, who prescribed medicine because she was
25 anemic. The doctor also explained to Heriberto that Alicia showed signs of trauma and
26 needed regular therapy. Heriberto inquired about therapy but was unable to afford it.

27 365. Alicia experiences symptoms of PTSD, separation anxiety, and depression
28 stemming from the separation.

1 366. Heriberto also continues to suffer physical and emotional harm from the
2 separation. He tries to forget everything that happened but cannot. He often feels
3 sadness, frustration, anger, guilt, and remorse about what happened.

4 367. Heriberto experiences symptoms of PTSD resulting from the separation.

5 368. Even after being reunified with Alicia, Heriberto continues to experience
6 acute headaches. The headaches extend around the back of his ears and down to his jaw,
7 causing his jaw to tremble uncontrollably. Before the separation from his daughter, he
8 never had such headaches.

9 **F. The United States Forcibly Separated Mario and Antonio**

10 **1. Mario and Antonio Seek Asylum in the United States and Are**
11 **Taken into CBP Custody**

12 369. On or about November 19, 2017, Mario and his son Antonio presented
13 themselves at the DeConcini Port of Entry in Nogales, Arizona, seeking asylum.

14 370. Mario and Antonio had left their village located in the San Marcos
15 Department of Guatemala due to increasingly violent land disputes.

16 371. At the port of entry, Mario provided an officer his name, Guatemalan
17 identification card, and Antonio's birth certificate, demonstrating he was Antonio's father.
18 The officer said he was going to take Antonio. Mario was shocked and told the officer
19 that the government could not take his son away.

20 372. Presenting oneself at a port of entry is not a crime, and Mario was not
21 charged with any criminal offense.

22 373. For the next two days, Mario and Antonio were detained in hieleras within
23 the CBP facility. For bedding, they had a single mattress pad to share and a thin foil
24 sheet, which did little to shield them from the facility's extremely cold temperatures. The
25 lights were always kept on. Mario and Antonio were not able to bathe or shower, and
26 they received no hygiene products such as soap or toothpaste. They were given only
27 burritos to eat. They also had to ask permission to use the restroom.

28

1 **2. The United States Takes Antonio from Mario**

2 374. After about two days, an officer told Mario that the officers would take
3 Antonio in two hours and that Mario should tell Antonio to behave.

4 375. Mario was in a state of disbelief, and he started to cry. He refused to be
5 separated from his son, but the officer told Mario, “It doesn’t matter what you want. It’s
6 going to happen.” Feeling helpless and in pain, Mario told Antonio that they were going
7 to be separated. Antonio started to cry. Back in the cell, Mario and Antonio held each
8 other and cried themselves to sleep. After about two hours, officers returned with chains
9 and handcuffs. They ordered Mario and Antonio to follow them.

10 376. Mario asked the officers if they were sending Antonio back to
11 Guatemala and pleaded that he needed to go with his son. An officer stood on each side
12 of Mario, grabbed his arms, and forced him down onto a bench. Antonio cried.

13 377. The officers grabbed Antonio and took him away. Mario could not bear
14 to watch. He hunched over, feeling powerless. Antonio’s cries became distant, and then
15 Mario could not hear his son anymore.

16 **3. Mario Tries to Locate His Son**

17 378. On or about November 21, 2017, Mario was shackled and taken on a bus
18 with other detainees to a detention center in Eloy, Arizona.

19 379. Over the course of the next two weeks, Mario submitted numerous written
20 requests to ICE for assistance in locating and contacting his son. Because he did not
21 speak or write English, he relied on the assistance of other detainees.

22 380. ICE officers repeatedly told Mario that Antonio was not in ICE custody,
23 and that he should contact his family or consulate to locate him. Mario’s calls to the
24 consulate went unanswered. His wife also did not know Antonio’s whereabouts.

25 381. On or around December 8, 2017, Mario made his sixth request to ICE with
26 the assistance of a translator, stating: “Please I need the right directions and contacts to
27 get ahold [sic] of my son [Antonio],” providing his son’s full name.

28 382. Finally, an ICE officer gave Mario a phone number to the facility where

1 Antonio was being held in New York. Because Mario did not have any personal funds,
2 he had to request ICE officers' permission to call the facility.

3 383. On or around December 8, 2017, with the assistance of an ICE officer,
4 Mario spoke with Antonio's case manager. He learned that Antonio had been placed at
5 Cayuga Centers in New York City. The case manager told Mario that Antonio had been
6 crying most of the time.

7 384. Antonio then picked up the phone. This was the first time Mario spoke to
8 Antonio since they had been separated more than two weeks earlier. Antonio cried and
9 was generally unable to speak to Mario. Although Mario felt some relief upon
10 speaking with his son, he was pained by Antonio's obvious distress.

11 385. Mario wanted to talk to his son as often as possible, but he did not have the
12 personal funds required by the government to place calls from ICE detention. Mario
13 pleaded with officers to allow him to call his son, but they often refused. When calls
14 were allowed, they were short, lasting about five minutes at most. Antonio usually cried
15 throughout the calls.

16 **4. Believing It Would Expedite Reunification with His Son, Mario**
17 **Agrees to Deportation**

18 386. Mario appeared before an immigration judge in Eloy on or about December
19 6, 2017. Mario told the judge that he wanted to find out where his son was and that he
20 did not have any information about him. The judge told Mario that he did not know
21 anything about Mario's son.

22 387. Soon afterward, an ICE officer presented Mario with papers that the officer
23 said were related to Mario's deportation. The officer told Mario that his son would be
24 returned to him immediately after he was deported. Mario signed the documents
25 believing the official's assurances that he would be reunited with Antonio in Guatemala.

26 388. Mario was deported to Guatemala in January 2018. He was very distressed
27 about leaving his son alone in a foreign country.
28

1 389. When Mario landed in Guatemala City, he called his wife, Margarita.³⁴ He
2 told her that he had been deported and that Antonio was not with him. His wife was
3 devastated and cried inconsolably. At that moment, Mario felt worthless and ashamed.

4 **5. Despite the Government's Promises, Antonio Is Not Returned to**
5 **His Family**

6 390. Antonio was not returned to Guatemala until approximately six months after
7 Mario's deportation. During these six months, communication with Antonio and Cayuga
8 Centers was infrequent. When Mario and Margarita were able to talk to Antonio's case
9 manager, they asked for their son to be returned to Guatemala as soon as possible.

10 391. Months passed without a call from the case manager, and Mario and his wife
11 feared that they had lost Antonio forever. Desperate, Mario and Margarita borrowed money
12 to travel to Guatemala City in June 2018 to seek assistance from the Guatemalan
13 government. The trip took over seven hours and cost 1,500 Quetzales (approximately \$196).

14 392. When Mario and Margarita arrived in the capital, they received a call from
15 Antonio's case manager. She told them that Antonio would be returned to Guatemala on
16 July 9, 2018. Ecstatic, Mario and Margarita returned to their village.

17 393. On June 26, 2018, Judge Sabraw issued the preliminary injunction in the
18 *Ms. L.* case and ordered the government to reunite families like Mario and Antonio within
19 thirty days.

20 394. On July 9, 2018, Mario and Margarita again traveled to Guatemala City
21 using borrowed funds. They travelled by car with Rolando, who lived in the same village.
22 Rolando was going to meet Bertha, who was also scheduled to return to her family after
23 being taken from her father in Arizona.

24 395. Antonio's case manager had told Mario and Margarita to go to the office of
25 Casa del Migrante. But when they arrived at that office, they were told that Antonio's
26 flight had been canceled for unknown reasons.

27 _____
28 ³⁴ To protect the Plaintiffs' identities, Mario's wife will be referred to by the pseudonym
Margarita.

1 396. Mario and his wife were devastated. They felt as if they had been lied to.
2 They were afraid that Antonio had been hurt, or that the United States government no
3 longer had custody of him. They called Antonio's case manager several times, but she
4 did not return any of their calls.

5 **6. After Eight Months of Separation, Antonio Is Finally Reunited**
6 **with His Father**

7 397. On or about July 24, 2018, a Casa del Migrante employee called Mario and
8 his wife to tell them that Antonio would be returned to Guatemala on July 26, 2018. It
9 had been about eight months since Mario had seen his son.

10 398. Mario again borrowed money and traveled to Guatemala City with his
11 family and Rolando's family. They all waited nervously at Casa del Migrante with other
12 parents who were hoping to be reunited with their children.

13 399. When Antonio was brought into the room where his family was waiting,
14 Mario and his wife rushed to hug him. Antonio held his mother's hand tightly, refusing
15 to let go. The family was overjoyed.

16 **7. Antonio and Mario Continue to Suffer After Being Reunited**

17 400. Soon after the reunification, Mario and his wife noticed that the Antonio
18 who had returned to them was very different from the child who had traveled to the
19 United States with Mario.

20 401. Since his return to Guatemala, Antonio has repeatedly woken up in the
21 middle of the night sobbing. He sometimes walks to the front door and tries to leave his
22 family's home in the middle of the night. When this happens, Mario or his wife carry
23 Antonio back to bed and comfort him until he falls asleep. In the morning, Antonio
24 cannot remember waking up the previous night.

25 402. Since returning to Guatemala, Antonio has experienced anxiety around
26 people who look and dress differently from most of the people in his village. The
27 community in Antonio's village is formed largely of indigenous Mam-speaking people.
28 The women traditionally wear handwoven dresses and blouses. On his first day of school

1 after his return, Antonio refused to enter his classroom because his teacher did not wear
2 the traditional clothing of the women in his village. Antonio told Mario that he was
3 afraid of his teacher because she dressed like the nurses in the United States. He
4 remembered the nurses giving him many shots, and the memories filled him with fear.

5 403. In the months since his return to Guatemala, Antonio has continued to
6 express reluctance to go to school.

7 404. Antonio also becomes upset very easily. He has cried in desperation and
8 fear when taken to the local health clinic. He has also expressed fear of police officers,
9 often hiding when he sees one. When other children have asked Antonio if he has been to
10 the United States, he has broken down in tears. He has cried when asked what he would
11 like to eat.

12 405. Mario and Margarita worry because Antonio's crying episodes are not like
13 typical temper tantrums. Sometimes he cries for no apparent reason.

14 406. Since returning to Guatemala, Antonio has spent a lot of time by himself
15 and has often refused to play with his sister or cousins who are close in age and live in
16 the same house.

17 407. Since returning to Guatemala, Antonio—an otherwise healthy boy—has
18 fainted at least seven times.

19 408. Antonio's behavior since returning to Guatemala is a stark difference from
20 the child Antonio was before he was separated from his father. Before the separation,
21 Antonio was a normal, happy child. He did not experience faintness. He did not fear
22 people from outside his community. He attended school with little protest. Trips to the
23 health clinic did not overwhelm him with fear. He ate well and slept well. He played
24 with his cousins at all hours of the day and was curious and expressive. Mario and
25 Margarita worry that Antonio will never overcome the lasting effects of the separation.

26 409. Antonio has refused to talk about his time in the United States and has told
27 his parents that he does not want to remember it.

28

1 410. Antonio has been diagnosed with PTSD, separation anxiety, and depression
2 resulting from the separation.

3 411. Mario also suffers from lasting effects of the separation. He is tormented by
4 memories and recurring nightmares of the separation. He cannot forget Antonio's cries as
5 immigration officers took him away. Mario is tormented by the fact that he does not, and
6 may never, know exactly what happened to Antonio during the eight-month separation.
7 Margarita has often found him sitting alone, lost in thought. Mario has trouble
8 remembering basic information and often forgets what he was doing or was supposed to
9 do. He feels guilt, shame, and sadness that his son is not the same happy boy anymore.

10 412. Mario has been diagnosed with PTSD and depression resulting from the
11 separation.

12 **G. The United States Forcibly Separated Rolando and Bertha**

13 **1. Rolando and Bertha Seek Asylum in the United States and Are**
14 **Taken into CBP Custody**

15 413. Rolando and his daughter Bertha, then nine years old, presented themselves
16 to immigration officials at the DeConcini Port of Entry in Nogales, Arizona, on
17 November 13, 2017, seeking asylum.

18 414. Rolando and Bertha had left their rural community in Guatemala due to
19 increasing violence over land disputes.

20 415. At the port of entry, Rolando showed an official his Guatemalan
21 identification card and his and Bertha's birth certificates. Rolando told officials about his
22 fear of returning to Guatemala, including the violence in his community.

23 416. Presenting oneself at a port of entry is not a crime, and Rolando was not
24 charged with any criminal offense.

25 417. Officials forced Rolando and Bertha to turn over their personal belongings,
26 including extra clothing and toiletries.

27 418. Rolando and Bertha were kept in a room with about 20 other fathers and
28 children at the Nogales facility. This hielera was made almost entirely of cement and

1 contained a cement bench that only accommodated a few people. There were no
2 windows or fresh air. The room was at times very cold, and Rolando and Bertha could
3 not keep warm because government officials confiscated their sweaters. They had only a
4 thin plastic mat for sleeping and a foil sheet to cover themselves. They were not
5 permitted to bathe or change clothes, and they received no hygiene products. The room
6 had one foul-smelling toilet, which was exposed to everyone's view. For food, they were
7 given only burritos, which were sometimes still frozen.

8 419. On the afternoon of the second day, they were moved to another detention
9 facility. Rolando and Bertha were put in a small room. They slept on the same thin,
10 plastic mats on the floor and had only a foil sheet for cover. Bertha repeatedly told
11 Rolando that she was very hungry. Eventually, they were given frozen burritos and
12 Bertha was given milk.

13 2. The United States Forcibly Separates Rolando and Bertha

14 420. On or around November 15, 2017, Rolando was again interviewed by
15 immigration officials, and he again explained that he had come because of the violent
16 conflict in his town.

17 421. Later that evening, Rolando and Bertha heard chains rattling. Rolando is
18 still haunted by the sound of the chains. Officials opened the door and told Rolando that
19 he needed to go with them because he had court. As soon as Rolando walked out of the
20 room, an official closed the door behind him before Bertha could follow her father.

21 422. Rolando saw Bertha through the window of the door and heard her
22 screaming "Papá, Papá!" Flailing and crying inside the room, Bertha begged to go with
23 her father.

24 423. Two officials grabbed Rolando and cuffed his hands and feet. Rolando
25 asked the officials, "Why are you taking me away? Why are you separating us?" but he
26 was not given any information. The officials did not permit Rolando to hug Bertha or say
27 goodbye before he was forced to leave her.

28

1 424. Two officials, each holding one of Rolando's arms, led him down the
2 hallway. A third official waited outside the door of the room where Bertha was locked
3 inside alone, crying hysterically. Rolando heard Bertha screaming and crying
4 uncontrollably. It was the most painful moment of Rolando's life.

5 425. Rolando began to cry and wondered what the officials would do to Bertha
6 and whether they would take care of her. Rolando told the officials, "She's a young girl.
7 She is only nine. You can't take her from me."

8 426. Rolando did not go to court. He was put on a bus with other men and taken
9 to a detention center.

10 427. After arriving at the detention center, Rolando asked an official about
11 Bertha. The official replied that he had no information.

12 428. Rolando was placed in a large room crowded with other detainees. He
13 could not sleep because he was thinking about Bertha. He cried all night, not knowing
14 how or when he would see his daughter again.

15 **3. After a Week Without Any Information, Rolando Speaks to**
16 **Bertha for the First Time**

17 429. The next evening, Rolando was shackled and taken by bus to another
18 detention center. Upon information and belief, this detention center was in Eloy, Arizona.

19 430. Rolando was placed in a small prison-like cell made entirely of cement.
20 The cell had only two beds, a toilet, and a small window. Rolando was constantly
21 freezing.

22 431. Each day, Rolando asked officials at the detention center for information
23 about Bertha's whereabouts and well-being. He asked repeatedly how he could
24 communicate with her. Officials gave him no information.

25 432. After several days, officials met with Rolando and told him to sign some
26 documents written in English. Rolando did not understand the contents of these
27 documents but signed the paperwork as instructed.

28

1 433. Rolando finally learned from an official that Bertha was in New York.
2 Rolando was relieved to know where Bertha was but desperately wanted to speak with her.

3 434. About a week after the separation, an official facilitated a call between
4 Rolando and the case manager in charge of Bertha's case at a facility in New York City.

5 435. Rolando then spoke with Bertha for the first time since the separation.
6 Both Rolando and Bertha cried. Rolando asked Bertha how she was, and Bertha replied
7 that she wanted to be with Rolando. Bertha told Rolando that she had been taken to New
8 York and had been scared to travel by airplane for the first time. They were only able to
9 speak for a few minutes before the official who facilitated the call told Rolando that his
10 time was up.

11 436. After the first call with Bertha, Rolando could not stop worrying about
12 Bertha. He was miserable and could not sleep or eat. Rolando worried that Bertha would
13 not be able to express her needs to strangers because she was just a little girl.

14 **4. Rolando Learns that Bertha Was Beaten and Abused in Custody**

15 437. In total, Rolando spoke with Bertha about three times while he was in
16 detention in Arizona. After his first conversation with Bertha, Rolando tried every two
17 or three days to call the facility, but most calls went unanswered.

18 438. During one of his calls with Bertha, Rolando learned that Bertha had been
19 physically abused by an immigration official after he and Bertha were separated.

20 439. Bertha told him that she had watched through the glass window in the door
21 as he was handcuffed, shackled, and taken away from her. She felt alone and terrified.
22 She had no idea what would happen next, and she screamed and cried uncontrollably to
23 be able to go with her father.

24 440. Then an immigration official wearing a uniform threatened to hit her if she
25 did not stop crying. When Bertha did not stop crying, the official removed her belt and
26 beat Bertha on the arm and leg several times. Bertha told Rolando that she was injured
27 from the beating and had purple bruises after being hit.

28

1 441. The case manager spoke briefly with Rolando about the incident and told
2 him that she was sorry for what happened to Bertha.

3 442. After hearing what had happened to his daughter, Rolando went back to his
4 cell and cried. He felt sad and angry with himself. He regretted that he was far away and
5 unable to protect Bertha from the abuse.

6 **5. Rolando Is Deported to Guatemala Without Bertha**

7 443. On or around December 4, 2017, Rolando was brought before an
8 immigration judge in Eloy. He was ordered deported to Guatemala.

9 444. A few days after his court appearance, Rolando spoke with a Guatemalan
10 consular official who informed him of his removal date. The official told Rolando that he
11 would be going back to Guatemala without his daughter and that Bertha would be
12 deported later.

13 445. Rolando was terrified by the prospect of leaving his daughter behind and
14 overwhelmed with worry about what would happen to her. Rolando felt hopeless.

15 446. Rolando was deported to Guatemala, arriving in Guatemala City on or
16 around December 13, 2017.

17 447. When Rolando arrived home, his wife Carmen³⁵ was crying and refused to
18 speak to him. She was angry and wanted an explanation, asking Rolando, “Where is
19 Bertha? How could you leave her?” Rolando cried and tried to explain what happened,
20 and that he had done everything possible to get his daughter back.

21 448. Every one to two weeks after Rolando was deported to Guatemala, Rolando
22 and Carmen received brief calls from Bertha. Bertha often told her father that she did not
23 understand why he had not come to get her in New York.

24 449. In mid-April 2018, Rolando and Carmen hired an attorney in Guatemala to
25 formalize their request that Bertha’s return to Guatemala be expedited, and they faxed
26

27 ³⁵ To protect the Plaintiffs’ privacy, Rolando’s wife will be referred to by the pseudonym
28 Carmen.

1 this document to Bertha’s caseworker. A final determination to allow Bertha to return to
2 Guatemala to reunite with her family was not made until her immigration court hearing
3 on May 31, 2018.

4 **6. Bertha Suffers During Her Time in ORR Custody**

5 450. The day after Bertha was separated from her father—after being physically
6 abused by an immigration official, and still crying and in pain—Bertha was shoved into a
7 car with other children.

8 451. Bertha was put on two flights and transported across the country. This was
9 the first time Bertha had been on an airplane, and she felt scared and alone.

10 452. Bertha arrived in New York City on or about November 17, 2017, and was
11 placed in ORR custody at Cayuga Centers. She received services at Cayuga Centers
12 during the day and lived in a foster home with several other children.

13 453. During her time at Cayuga, Bertha was not able to communicate with
14 anyone in Mam, her native language. Bertha also was not able to wear her traditional
15 dress that includes a huipil (blouse) and corte (woven skirt), adding to the disorientation
16 of being separated from her father in a strange country.

17 454. Additionally, other minors inflicted harm on Bertha on two occasions, with
18 both instances documented in Bertha’s ORR file as “Significant Incident Reports.” A
19 minor in Bertha’s foster family bit her on the back when she was trying to go outside and
20 play. Another minor pushed Bertha at the “Learning Center.”

21 **7. Bertha is Reunited with Her Family After More Than Eight**
22 **Months Apart**

23 455. In June and early July 2018, Rolando and Carmen awaited news about
24 plans for Bertha’s return to Guatemala, and they stayed in touch with Bertha through calls
25 and texts from her case manager. Bertha sometimes cried on the phone and told Rolando
26 and Carmen that she missed them and wanted to come home. Bertha was also very
27 worried about her mom, who she knew was sick and unwell. When Bertha would call,
28 Carmen would cry inconsolably and could not get out of bed.

1 456. On June 26, 2018, Judge Sabraw issued the preliminary injunction in the
2 *Ms. L.* case and ordered the government to reunite families like Rolando and Bertha
3 within thirty days.

4 457. In June 2018, Rolando received a call from the case manager, who notified
5 him that Bertha would be returning to Guatemala on July 9, 2018.

6 458. Rolando spoke with an employee at Casa del Migrante in Guatemala City
7 who told him he could pick up Bertha there. Rolando was elated that Bertha would
8 finally be coming home.

9 459. Rolando and Carmen borrowed money and traveled with Mario and
10 Margarita, who were also traveling to Casa del Migrante to meet their son Antonio.

11 460. After a journey lasting several hours, they arrived at Casa del Migrante and
12 waited for several hours before they were notified that Bertha's flight had been canceled.
13 Rolando contacted the case manager, but she did not know when the flight would be
14 rescheduled.

15 461. Rolando returned to his village for the second time without his daughter.
16 He began to worry that Bertha was never coming home.

17 462. About a week later, the case manager called Rolando and told him that
18 Bertha would be scheduled for another flight sometime later in July. It was not until July
19 23, 2018, that Rolando learned that Bertha was scheduled to arrive in three days.

20 463. Rolando and Carmen made hurried arrangements to again travel to the
21 capital to pick up Bertha, again with Mario and Margarita. They arrived at Casa del
22 Migrante and anxiously waited with other parents who had also been separated from their
23 children.

24 464. On July 26, 2018, Rolando, Carmen, and Bertha's younger brother were
25 taken to the room where the children were arriving. Rolando and Bertha cried as they
26 hugged and Bertha whispered, "I love you a lot, Papá." Rolando saw the look of relief on
27 Bertha's face, but he also noticed that she was not able to say much.

28

1 **8. Rolando and Bertha Continue to Suffer After Being Reunited**

2 465. Bertha was separated from Rolando for over eight months. She continues
3 to suffer from the effects of the separation.

4 466. Since her return to Guatemala, Bertha has had a poor appetite. A month
5 after her return, Rolando was so concerned about Bertha not eating that he decided to
6 take her to a doctor. The doctor told Rolando that Bertha was still very frightened and
7 prescribed some medicine for her to take.

8 467. Since her return to Guatemala, Bertha has expressed fear of traveling or
9 leaving her community. She has expressed fear of being separated from her father again
10 and has not wanted to let him out of her sight.

11 468. Several months after Bertha's return, officials from a Guatemalan
12 governmental agency called Rolando and asked him to return to the capital with Bertha
13 for an interview. Bertha told Rolando that she was afraid that officials would take her
14 away again.

15 469. Bertha has experienced frequent nightmares—sometimes as often as several
16 times per week—that involve being separated from her parents and being abused by the
17 immigration official who struck her in the United States. She has refused to go to sleep
18 without being near her parents and has insisted on sleeping with the light on. She has
19 experienced fear and anxiety around yelling or loud noises.

20 470. It is difficult for Bertha to talk to Rolando about the separation or the abuse
21 she suffered in detention.

22 471. Bertha has been diagnosed with PTSD, depression and separation anxiety
23 resulting from the separation.

24 472. The prolonged separation has also deeply impacted Rolando. Rolando has
25 felt easily startled and has suffered from anxiety, constantly worrying that something bad
26 could happen. Rolando has lost weight and has experienced loss of appetite. He has
27 experienced frequent headaches and gastric issues. He has had trouble concentrating and
28 has had nightmares about the separation.

1 473. Rolando has been diagnosed with PTSD resulting from the separation.

2 **H. The Government’s Forcible Separation of Parents and Children**
 3 **Caused Irreparable Harm**

4 474. Forcible parent-child separations have long been known to cause significant
 5 short- and long-term damage to mental, physical, and emotional health.

6 475. Keeping parents separated from their children with “little or no direct
 7 access to basic information about their health or general well-being, *plainly causes*
 8 *irreparable harm.*”³⁶ Children attach to their caregiver from the time they are born, and
 9 the children’s sense of safety “depends on that relationship.”³⁷ Disrupting that
 10 relationship causes “the parts of the brain that deal with attachment and fear” to “develop
 11 differently.”³⁸ It is not surprising, then, that “[s]eparation irreparably harms [families]
 12 every minute it persists.”³⁹

13 476. The AAP explained the effects of separation on children: “[H]ighly stressful
 14 experiences, like family separation, can . . . disrupt[] a child’s brain architecture and
 15 affect[] his or her short- and long-term health. This type of prolonged exposure to serious
 16 stress—known as toxic stress—can carry lifelong consequences for children.”⁴⁰ Children
 17 who experience trauma like forced separation from a parent “are at a much greater risk of

18 _____
 19 ³⁶ *Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enft*, 319 F. Supp. 3d
 20 491, 502 (D.D.C. 2018) (emphasis added).

21 ³⁷ William Wan, *What Separation from Parents Does to Children: ‘The Effect is*
Catastrophic, WASH. POST (Jun. 18, 2018), <https://perma.cc/7MA6-X7MB>.

22 ³⁸ *Id.*

23 ³⁹ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 503.

24 ⁴⁰ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 503 (quoting Colleen Kraft, Am.
 25 Acad. of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the
 26 Border (May 8, 2018), <https://perma.cc/23ET-GN7S>); *see also* Allison Abrams, LCSW-
 27 R, *Damage of Separating Families: The Psychological Effects on Children*, PSYCHOL.
 28 TODAY (Jun. 22, 2018), <https://perma.cc/H967-BBWV> (Because a child’s “secure
 attachment comes from the child’s perceptions of his or her caregiver’s availability
 (physical accessibility) . . . separations as brief as one week in duration could negatively
 impact the quality of attachments.”).

1 developing mental health disorders such as depression, anxiety, addiction, Attention
2 Deficit Hyperactivity Disorder (‘ADHD’) and PTSD. Their physical health is also
3 negatively affected.”⁴¹ The materials cited here barely scratch the surface of the wealth
4 of expert material describing the harms caused by family separation. Given the
5 “extensive evidence,” the irreparable harm caused by forcibly separating parents and
6 children is indisputable.

7 477. All of these circumstances show that the government intentionally inflicted
8 the severe harm caused by forcible separation on families, like Plaintiffs, who crossed the
9 U.S. border. The government did so to deter future immigrants from coming to the
10 United States.

11 **I. The Government’s Policy of Forcible Separation Was Unconstitutional**
12 **and Illegal**

13 478. In addition to the harm it caused, the separation policy intentionally
14 violated the constitutional rights of those separated, including the right to family integrity
15 and to equal protection.

16 479. For decades, this nation’s highest court has recognized the fundamental
17 right to family integrity protected by the Constitution: “It is cardinal with us that the
18 custody, care and nurture of the child reside first in the parents, whose primary function
19 and freedom include preparation for obligations the state can neither supply nor hinder.”⁴²
20 These constitutional protections extend to citizens and non-citizens alike, even when
21 confined by the government.⁴³

22 480. Through its family separation policy, in the name of deterrence, the United
23 States tore immigrant children from their parents, sent the children thousands of miles

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25 ⁴¹ Abrams, *supra* note 40.

26 ⁴² *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

27 ⁴³ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 500 (“The fact that [families are]
28 lawfully detained in immigration custody does not eliminate [their] due process right to family integrity.”).

1 away, refused to inform parents and children of each other’s whereabouts or well-being,
2 refused to provide adequate means for parents and children to talk with each other, and
3 failed to have any system for tracking the children or ensuring that families could ever be
4 reunited.

5 481. As Judge Sabraw concluded in *Ms. L. v. U.S. Immigration and Customs*
6 *Enforcement*, the government’s actions “shock[] the conscience.”⁴⁴ “[N]othing in federal
7 law suggests that deterring immigration by indefinitely separating families once the
8 parents have been transferred to immigration custody is a compelling or legitimate
9 government objective.”⁴⁵

10 482. The United States’ family separation policy was also motivated by
11 discriminatory animus against arriving Latino immigrants of Central American origin,
12 who were targeted for deprivation of their fundamental right to family integrity.

13 483. The United States’ discriminatory purpose is evidenced by the pretextual
14 nature of the stated justification for separating only those families (the vast majority of
15 whom are Latino and Central American) arriving at the southern United States border, the
16 unusual sequence of events leading to the promulgation of the policy, and
17 contemporaneous statements by policymakers showing a marked animus toward Latino
18 immigrants from Central America.⁴⁶

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20
21
22 _____
23 ⁴⁴ *Ms. L.*, 310 F. Supp. 3d at 1142.

24 ⁴⁵ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502.

25 ⁴⁶ See, e.g., Josh Dawsey, *Trump Derides Protections for Immigrants from ‘Shithole’*
26 *Countries*, WASH. POST (Jan. 12, 2018), <https://perma.cc/2HP4-PFYK> (including El
27 Salvador as a “shithole” country from which immigration to the United States should not
28 be welcomed, and expressing a preference for immigrants “from countries such as
Norway”); Donald J. Trump (@realDonaldTrump), TWITTER (Jun. 19, 2018, 6:52 AM),
<https://perma.cc/MLC6-8VX5> (characterizing “illegal immigrants” as “pour[ing] into and
infest[ing] our Country”).

1 484. The family separation policy disproportionately impacted individuals from
2 Central America: more than 95 percent of the members in the *Ms. L.* certified class are
3 from Central American countries.

4 485. As with the fundamental right to family integrity, the Constitutional right to
5 equal protection under the law, and to freedom from invidious discrimination by the
6 government on the basis of race or national origin has also long been recognized as
7 “extend[ing] to anyone, citizen or stranger, who is subject to the laws of a State,” even
8 those not lawfully present. *Plyler v. Doe*, 457 U.S. 202, 215 (1982) (emphasis removed).

9 **J. The United States Applied the Already Cruel Separation Policy in a**
10 **Deliberately Inhumane Manner to Further Harm Families**

11 486. Defendants made the harm suffered by Plaintiffs and others subject to its
12 family separation policy far worse by implementing its policy with carelessness and
13 callous disregard for the physical safety and emotional well-being of Plaintiffs.

14 487. The Administration then multiplied the harm it intended to cause by the
15 shocking and intentional carelessness with which it implemented its policy. The Attorney
16 General announced the Zero Tolerance Policy without any prior notice to certain DHS
17 and HHS (including ORR) officials,⁴⁷ purposely giving those employees no time to plan
18 for or coordinate implementation.⁴⁸

19 488. ORR was aware as of at least November 2017 of an increase in the number
20 of children in ORR custody separated from their parents, many of whom were very
21

22
23 ⁴⁷ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-163, UNACCOMPANIED CHILDREN:
24 AGENCY EFFORTS TO REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER
25 12 (2018), *available at* <https://perma.cc/UYZ9-UBYQ> [hereinafter GAO REPORT] (“DHS
and HHS officials told us that the agencies did not take specific planning steps because
they did not have advance notice of the Attorney General’s April 2018 memo.”).

26 ⁴⁸ A high-ranking HHS official testified before Congress that ORR considered planning
27 for the increase but was specifically told not to. *Id.*; *see also id.* at 14 (“DHS officials
28 told [HHS leadership] that DHS did not have an official policy of separating parents and
children.”).

1 young children.⁴⁹ Yet the government failed to adequately prepare for the increased
2 number of children separated from parents in its custody.

3 489. Among other things, this deliberate lack of planning resulted in the
4 government failing to provide adequate detention facilities, failing to track separated
5 families, failing to communicate with parents about their children's welfare, and failing to
6 take basic care to comply with child welfare standards, all of which compounded the
7 harms already inflicted on families who had been forcibly separated.

8 490. The government's family separation policy and deliberate lack of planning
9 and coordination among agencies also caused children to be detained in CBP facilities
10 beyond the 72-hour legal limit. During the Zero Tolerance period, thirty-nine percent of
11 separated children were detained by CBP for more than seventy-two hours.⁵⁰

12 **1. Defendant Subjected Plaintiffs to Dangerous Detention Facilities**
13 **Unsuited for Families with Children**

14 491. As a direct result of the indiscriminate and reckless apprehension, under the
15 pretext of intending to prosecute, thousands of families like Plaintiffs seeking entry into the
16 United States,⁵¹ the CBP-run hieleras in which Plaintiffs were initially detained were
17 dangerously overcrowded and in egregious violation of federal health and safety requirements.

18 492. Defendant failed to provide Plaintiffs with basic hygiene items, failed to
19 provide access to safe and sanitary restrooms, and failed to provide proper food and clean
20 drinking water, proper clothing, bedding, hygiene products, and appropriate meals.

21
22 _____
23 ⁴⁹ See *id.* at 12-13; DHS OIG REPORT I at 15, 24.

24 ⁵⁰ DHS OIG REPORT I at 36.

25 ⁵¹ The U.S. government has separated more than 5,000 families at the southern border since
26 2017. Joint Status Report at 1, 12, *Ms. L. v. U.S. Immigration and Customs Enf't*, No. 18-
27 cv-00428 DMS MDD (S.D. Cal. November 6, 2019), ECF No. 495 (the government
28 acknowledged that, for the original class, as many as 2,814 children were separated from
their parents, and has thus far recognized an additional 1,556 children as part of the
expanded class); ECF 439-1 (Pls.' Mem. in Support of Mot. to Enf. Prelim. Inj.) at 7 (noting
that government reported 911 child separations between June 26, 2018 and June 29, 2019,
after the preliminary injunction was entered); see also HHS OIG REPORT I at 11.

1 493. Defendant detained Plaintiffs in conditions that were so overcrowded—
2 with adults and children alike—that in some cases the detainees did not have enough
3 room to sit or lie down to rest. The overcrowding, lack of mattress and blankets, and
4 constant lighting in the hieleras deprived Plaintiffs of sleep.

5 494. Defendant placed Plaintiffs in freezing cold cages and in some cases
6 deprived Plaintiffs of warmth by taking away their clothing and belongings.

7 495. In subjecting Plaintiff Children to inhumane and unsafe conditions in CBP
8 detention, Defendant violated federal law and policy requiring that minors who are
9 detained by CBP or other DHS agencies, or who are held in HHS custody, be held in
10 “facilities that are safe and sanitary,” and that account for “the particular vulnerability of
11 minors.”⁵² Defendant violated requirements that minors detained by CBP be provided
12 access to toilets and sinks, adequate temperature control and ventilation, drinking water
13 and food, as well as “medical assistance if the minor is in need of emergency services.”⁵³

14 496. Defendant failed to provide Obet with medical assistance once it became
15 apparent that he was likely in need of emergency services, in violation of the mandatory
16 *Flores* consent decree.⁵⁴

17 **2. Defendant Failed to Track Parent and Child Relationships and**
18 **to Communicate with Parents About Children’s Whereabouts**
19 **and Safety, and Interfered with Plaintiffs’ Asylum Claims**

20 497. Despite the fact that tracking separated children was as simple as adding a
checkbox to an ORR / DHS referral page,⁵⁵ these two agencies primarily responsible for
21

22 _____
23 ⁵² *Flores v. Reno*, Stipulated Settlement Agreement ¶ 12.A, No. 85-CV-4544 (C.D. Cal.
Jan. 17, 1997); see also U.S. Customs & Border Prot., *U.S. Border Patrol Policy: Hold*
24 *Rooms and Short Term Custody* (2008); *Flores v. Barr*, 934 F.3d 910, 916 (9th Cir. 2019).

25 ⁵³ *Flores v. Reno*, Stipulated Settlement Agreement ¶ 12.A, No. 85-CV-4544 (C.D. Cal.
Jan. 17, 1997). See also *Flores*, 913 F.3d at 916.

26 ⁵⁴ *Flores v. Reno*, Stipulated Settlement Agreement ¶ 12.A, No. 85-CV-4544 (C.D. Cal.
Jan. 17, 1997).

27 ⁵⁵ *Oversight of the Trump Administration’s Family Separation Policy: Hearing Before*
28 *the H. Comm. on the Judiciary* (Feb. 26, 2019) (statement of Scott Lloyd, Senior Advisor,

1 implementing the policy instituted no “consistent way to indicate in their data systems
2 children and parents separated at the border” until the summer of 2018 at the earliest.⁵⁶

3 498. The El Paso pilot program in place from July through November 2017
4 revealed that DHS was woefully underprepared to track separated families through its
5 information technology systems. According to the DHS Office of the Inspector General
6 (OIG), CBP personnel “relied on local spreadsheets to document family separations,”
7 which led to data errors and “prevented ICE and CBP personnel in other locations from
8 seeing where El Paso Sector Border Patrol agents had separated family members.”⁵⁷

9 499. El Paso sector CBP officials raised concerns to CBP headquarters about the
10 lack of functionality to track family separations in their computer systems but
11 headquarters failed to make any changes in response to those concerns.⁵⁸

12 500. The U.S. government thus was on notice at least as of November 2017 that
13 government databases could not properly track families once the child was separated
14 from the parent. It was also aware that DHS component agencies needed to better
15 coordinate with each other and with ORR before a vast expansion of family separation
16 across the length of the southern border. But the government plowed ahead with its
17 policy of mass family separation despite these identified defects and without making any
18 improvements to its IT systems.

19 501. When the government ramped up family separations during the Zero
20 Tolerance Policy, these deficiencies were predictably multiplied on a mass scale, and with
21 devastating results.

22 502. CBP entered inaccurate and incomplete information in its systems,
23 including failing to link parents and children as separated families. These initial errors

24 _____
25 Center for Faith and Opportunity Initiatives, U.S. Department of Health and Human
26 Services, at 4), *available at* <https://perma.cc/P97Q-JB58>.

26 ⁵⁶ GAO REPORT, *supra* note 47, *Highlights*; *see also id.* at 16-19.

27 ⁵⁷ DHS OIG REPORT II at 14–15.

28 ⁵⁸ *Id.*

1 had a ripple effect through other government tracking systems: ICE could not readily
2 identify parents in its custody who were separated from their children and HHS/ORR
3 systems lacked even a field to indicate that a child had been separated from her parents
4 until July 2018—after a federal court halted the practice of family separation.⁵⁹

5 503. The most staggering result of this failure was that the Administration had
6 no ready records of where thousands of parents' children were located, and could not
7 promptly reunite parents and children,⁶⁰ even when ordered to do so by a U.S. District
8 Court.⁶¹

9 504. After separation, parents and children often did not know each other's
10 whereabouts for days, weeks or months, as was the case with Plaintiffs. When the
11 children were taken, "officers often failed to fully explain to parents what was happening
12 and how the adults could get in touch with their kids."⁶²

13 505. The government failed to provide parents with any "paperwork"
14 documenting the location or well-being of their children, or to enable communication
15 between parents and their separated children.⁶³ One Texas federal district court
16 magistrate judge observed in January 2018, when addressing the government's failure to
17 track families separated during the 2017 pilot of the family separation policy, that "[t]he
18

19 ⁵⁹ *Id.* at 13, 21.

20 ⁶⁰ *Id.* at 9–11; see Kevin Sieff, *The Chaotic Effort to Reunite Immigrant Parents with*
21 *their Separated Kids*, WASH. POST (June 21, 2018), <https://perma.cc/HQ6W-HLBK>;
22 Miriam Jordan, *Torn Apart by Zero Tolerance, Kept Apart by Red Tape*, N.Y. TIMES
(June 24, 2018), <https://perma.cc/EY2J-XYPT>.

23 ⁶¹ See Evan Halper, *Federal Investigators Find Many Failures in Trump's Family*
24 *Separation Policy*, L.A. TIMES (Oct. 2, 2018), <https://perma.cc/ZP4B-HQVE>. These
25 circumstances led the court to conclude that the "unfortunate reality" of the family
26 separation policy was that "migrant children [were] not accounted for with the same
efficiency and accuracy as *property*." *Ms. L.*, 310 F. Supp. 3d at 1144.

27 ⁶² Halper, *supra* note 61.

28 ⁶³ See *United States v. Dominguez-Portillo*, No. EP-17-MJ-4409-MAT, 2018 WL
315759, at *1–*2, *9 (W.D. Tex. Jan. 5, 2018).

1 practical effect” of this failure was “to create a ‘blackout’ period where parent and child
2 are wholly incommunicado from each other.”⁶⁴

3 506. Plaintiffs here experienced the devastating effects of the government’s
4 failure to link the parents’ cases with those of their children and to provide information to
5 the parents about the children’s whereabouts.

6 507. The anguish of Plaintiff Fathers’ separations from their children was
7 exacerbated by the government’s failure to provide information about their children’s
8 whereabouts, well-being, and plan for custody. Plaintiff Children suffered further harm
9 from not knowing where their fathers were and being unable to communicate with them.

10 508. Even after Plaintiff Fathers were finally able to obtain contact information
11 for their children as the result of their own efforts, phone calls were logistically difficult
12 and expensive to make, severely limiting their communication.⁶⁵

13 509. Defendant’s failure to link the cases of Heriberto, Mario and Rolando with
14 those of their children as “family units” also resulted in the devastation of being deported
15 without their children, while the children remained alone in government custody with no
16 plan for reunification.

17 510. Defendant also violated federal law and policy requiring children held in
18 ORR custody be provided with “contact with family members.”⁶⁶

19 511. Furthermore, Defendant used separation as a means to pressure Plaintiff
20 Fathers to relinquish their asylum claims. Defendant leveraged the Plaintiff Fathers’
21 separation from their children to compel them to abandon their asylum cases, including
22 by causing extreme duress through the prolonged separations themselves, pressuring the
23

24 ⁶⁴ *Id.* at *9.

25 ⁶⁵ See Halper, *supra* note 61; Jordan, *supra* note 60; Jack Herrera, *A New Report Reveals*
26 *How Family Separation Led Border Officials to Break the Law*, PACIFIC STANDARD
(Oct. 4, 2018), <https://perma.cc/9BGJ-LT8Q> .

27 ⁶⁶ *Flores v. Lynch*, 828 F.3d 898, 903 (9th Cir. 2016) (citing *Flores v. Reno*, Stipulated
28 Settlement Agreement, No. 85-CV-4544 (C.D. Cal. Jan. 17, 1997)); see also ORR Policy
Guide § 3.3.10.

1 Plaintiff Fathers to sign forms they could not understand, and/or deliberately
2 misrepresenting to them that they had to agree to deportation to see their children again.

3 512. Defendant's actions in coercing Plaintiff Fathers to abandon their asylum
4 claims violated its mandatory, nondiscretionary duties under federal statutes and
5 regulations. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. §§ 235.4; 235.3(b)(4); 241.8(e).
6 Defendants' misrepresentations to Plaintiffs Abel, José, Joel, Heriberto, and Mario that
7 they could only reunify with their children if they agreed to accept deportation also
8 violated the constitutional guarantee of procedural due process.

9 **3. Defendants' Actions Created Conditions Ripe for Alarming**
10 **Instances of Child Abuse**

11 513. Defendants ignored applicable child welfare standards in the rush to expand
12 detention capacity to accommodate the influx of families affected by the Policy. In so
13 doing, Defendants violated mandatory, non-discretionary duties.

14 514. The family separation policy caused a sudden increase in the number of
15 children, including very young children, in ORR custody. Despite indicators by mid-
16 2017 that larger numbers of very young children were entering ORR custody, ORR was
17 unprepared to adequately care for these children.⁶⁷

18 515. Children age twelve and under are considered "tender aged." When those
19 children enter ORR custody, they must be placed in special facilities that are licensed to
20 care for younger children.

21 516. The family separation policy caused the number of tender-aged children in
22 ORR custody to increase substantially and exceeded ORR's capacity to house them in
23 congregate care facilities. Upon information and belief, facilities like Cayuga, Lutheran
24 Services, and Bethany Christian Services had to quickly recruit additional foster families
25 and place larger numbers of children in individual foster homes than had been previously
26 lived in those homes.

27 _____
28 ⁶⁷ HHS OIG REPORT II at 6.

1 517. These foster homes were ill-prepared to house the number of children that
2 came into their care. The resulting abuses suffered by children, including Obet and
3 Herlinda, were compounded by ORR’s failure to properly plan for a large number of
4 young children in its custody and to monitor the children in these foster homes.

5 518. Defendant’s failure to ensure that children placed in ORR custody were in
6 “facilities that are safe . . . and that are consistent with the [government’s] concern for the
7 particular vulnerability of minors” violated its duties under the Flores consent decree.⁶⁸

8 519. The Administration’s intent to inflict the trauma of family separation as a
9 deterrent — followed by its failures to provide children with appropriate care and
10 protection from abuse, track separated children, and tell their parents anything about their
11 whereabouts and well-being — evinces an intent to increase their suffering to maximize
12 the deterrent effect of the family separation policy.

13 **CONSEQUENCES OF DEFENDANT’S WRONGFUL ACTS**

14 520. The federal government deliberately violated Plaintiffs’ constitutional
15 rights, including their right to family integrity, and failed in its basic duties not to harm
16 those in its custody.

17 521. The government’s actions and failures were designed to and did cause
18 Plaintiffs severe trauma and emotional distress.

19 522. The government knew that forcibly taking Plaintiffs would fill them with
20 terror, desperation, and anguish.

21 523. The government purposefully inflicted that trauma on Plaintiffs to instill
22 fear in others.

23 524. The government then compounded that trauma by keeping Plaintiffs apart
24 from their children for periods ranging from around eight weeks to around eight months,
25 without telling them anything about the other’s whereabouts or well-being, without

26
27 ⁶⁸ *Flores v. Reno*, Stipulation Settlement Agreement § V ¶ 12.A; *see Flores v. Lynch*, 828
28 F.3d 898 (9th Cir. 2016) (holding that *Flores* consent decree “unambiguously applies to
accompanied minors”).

1 allowing them even to speak to one another for days or weeks, and without any plan for
2 reuniting them.

3 525. And, as a result of the government's actions and failures, Herlinda and Obet
4 were exposed to abuse in a foster care system overburdened with unaccompanied
5 children, and Bertha was exposed to abuse in a detention facility.

6 526. Plaintiffs will carry the harm done to them for the rest of their lives. The
7 government's conduct here is unconscionable, and it cannot be excused in a civilized
8 society.

9 **CLAIMS FOR RELIEF**

10 **COUNT ONE**

11 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

12 527. Plaintiffs re-allege each allegation in the preceding paragraphs 1 through
13 526 as though fully set forth here.

14 528. Defendant, federal officials, and federal employees referenced above
15 engaged in extreme and outrageous conduct with an intent to cause, or at least a reckless
16 disregard of the probability of causing, Plaintiffs to suffer severe emotional distress.

17 529. Defendant, federal officials, and federal employees referenced above
18 intended to cause, and did cause, Plaintiffs to suffer severe emotional distress by forcibly
19 separating Plaintiffs father and child from each other without their consent and despite
20 the obvious terror caused by the separation, flying Obet, Herlinda, Alicia, Antonio and
21 Bertha thousands of miles across the country, and deporting Heriberto, Mario and
22 Rolando without their children.

23 530. Defendant, federal officials, and federal employees referenced above
24 intended to cause, and did cause, Plaintiffs to suffer severe emotional distress by, *inter*
25 *alia*, failing to develop and use a system for tracking the existence of the parent-child
26 relationship, exposing Herlinda, Obet and Bertha to the risk and reality of abuse while in
27 ORR or CBP custody, withholding from the parents any information about their child's
28 location or welfare for days, weeks or months at a time, not allowing families to

1 communicate with each other or severely limiting such opportunities, not giving any
2 indication that the parents and children would ever be reunited, and interfering with
3 Plaintiffs' rights to seek asylum in the United States by using Plaintiffs' distress at their
4 separation to coerce Plaintiffs to sign documents authorizing their removal from the
5 United States.

6 531. Defendant, federal officials, and federal employees referenced above
7 further intended to cause, and did cause, Plaintiffs to suffer severe emotional distress by
8 subjecting Plaintiffs to inhumane detention conditions prior to their separation. This
9 includes (among other acts mentioned above and such acts that may become apparent
10 during discovery) denying Plaintiffs proper food, clean drinking water, hygiene products,
11 clothing, and appropriate restroom facilities during their time in CBP detention,
12 subjecting Bertha to physical abuse, holding Plaintiffs in the freezing cold hieleras that
13 lacked ventilation, and subjecting Plaintiffs to mental anguish through verbal cruelty.

14 532. Defendant, federal officials, and federal employees referenced above
15 confirmed their intent to cause severe emotional distress by failing to plan for or secure
16 resources to accommodate the increase in children designated as UACs as a result of the
17 family separation policy, failing to provide a child welfare or child safety justification for
18 forcibly separating children from their parents, failing to track families, failing to account
19 for all the children separated from their parents, and failing to craft any type of
20 reunification plan until receiving a court order from a federal judge.

21 533. The behavior of Defendant, federal officials, and federal employees
22 referenced above was extreme and outrageous under the circumstances, particularly in
23 light of Plaintiffs' recent flight from abuse and persecution.

24 534. As a direct and proximate result of that conduct, Plaintiffs suffered severe
25 emotional distress throughout their time in Defendant's custody and continue to suffer the
26 lasting effects of that distress today.

27 535. Under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, the
28 United States is liable to Plaintiffs for intentional infliction of emotional distress.

COUNT TWO
NEGLIGENCE

1
2
3 536. Plaintiffs re-allege each allegation in the preceding paragraphs 1 through
4 535 as though fully set forth here.

5 537. Defendant, federal officials, and federal employees referenced above had a
6 legal duty to Plaintiffs to act with ordinary care and prudence so as not to cause harm or
7 injury to Plaintiffs. They also had mandatory, non-discretionary duties including but not
8 limited to, those imposed by the United States constitution, the *Flores* consent decree,
9 federal statute, and federal regulations.

10 538. Defendant, federal officials, and federal employees referenced above acted
11 unreasonably by violating their duties while Plaintiffs were in Defendant's custody.

12 539. Defendant, federal officials, and federal employees referenced above
13 violated those duties by *inter alia* forcibly separating Plaintiffs from their children
14 without their consent, flying Herlinda, Obet, Alicia, Antonio and Bertha thousands of
15 miles across the country, and deporting Plaintiffs Heriberto, Mario and Rolando without
16 their children.

17 540. Defendant, federal officials, and federal employees referenced above
18 violated those duties by *inter alia* failing to develop and use a system for tracking the
19 existence of the parent-child relationship, exposing Herlinda, Obet and Bertha to the risk
20 and reality of abuse while under ORR or CBP custody, withholding from the parents any
21 information about their child's location or welfare for days, weeks or months at a time,
22 not allowing families to communicate with each other or severely limiting such
23 opportunities, not giving any indication that the parents and children would ever be
24 reunited, and interfering with Plaintiffs' rights to seek asylum in the United States by
25 using Plaintiffs' distress at their separation to coerce Plaintiffs to sign documents
26 authorizing their removal from the United States.

27 541. Defendant, federal officials, and federal employees referenced above
28 violated those duties by subjecting Plaintiffs to inhumane detention conditions prior to

1 their separation. This includes (among other acts mentioned above and such acts that
2 may become apparent during discovery) denying Plaintiffs proper food, clean drinking
3 water, hygiene products, clothing, and appropriate restroom facilities during their time in
4 CBP detention, subjecting Plaintiff Bertha to physical abuse, holding Plaintiffs in the
5 freezing cold hieleras that lacked ventilation, and subjecting Plaintiffs to mental anguish
6 through verbal cruelty.

7 542. Defendant, federal officials, and federal employees referenced above
8 further violated those duties by failing to plan for or secure resources to accommodate the
9 increase in children designates as UACs as a result of the family separated policy, failing
10 to provide a child welfare or safety justification for forcibly separating children from
11 their parents, failing to track families, failing to account for all children separated from
12 their parents, and failing to craft any type of reunification plan until receiving a court
13 order from a federal judge.

14 543. Defendant, federal officials, and federal employees referenced above
15 violated their duties to Plaintiffs by unreasonably ignoring Abel's pleas for medical
16 attention for his son, despite their knowledge Obet was suffering from a severe heart
17 condition and developing an acute respiratory infection.

18 544. Defendant, federal officials, and federal employees referenced above
19 violated their duties to Plaintiffs by allowing Obet and Herlinda to be held in locations
20 that did not adequately protect them from sexual assault, and as a result, both children
21 experienced numerous incidences of sexual assault.

22 545. Defendant, federal officials, and federal employees referenced above
23 violated their duties to Plaintiffs by failing to properly supervise other federal employees
24 and federal contractors responsible for the care of Plaintiffs while they were in
25 Defendant's custody.

26 546. By engaging in the acts alleged herein, the federal officers referenced above
27 failed to act with ordinary care and breached their duty of care owed to Plaintiffs.
28

1 Respectfully submitted this 16th day of July, 2020.

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