

# COVINGTON

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## FOIA EXEMPT

**By FedEx Overnight Delivery**

July 24, 2019

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

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

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

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

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

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

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

Counsel:

Enclosed please find administrative claims against the United States government filed pursuant to the Federal Tort Claims Act on behalf of [REDACTED] and his minor child, [REDACTED] (age 8). The enclosed claims consist of: (1) an executed claim authorization; (2) [REDACTED] birth certificate; and (3) SF-95 Forms completed on behalf of Mr. [REDACTED] and [REDACTED], including Attachment A thereto.

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

Please be advised that this submission (including the attachments) contains information about the claimants that is private and confidential, including the claimants' names. Such information is exempt from the public access provisions of the Freedom of Information Act, 5

## COVINGTON

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

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

Sincerely,



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

## ATTACHMENT A

### 1. Submit to Appropriate Federal Agency

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

Office of the General Counsel  
U.S. Department of Homeland Security  
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Tucson Field Office  
4760 N. Oracle Road  
Suite 316  
Tucson, AZ 85705

### 2. Claimant's Personal Representative

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

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

### 6. Date and Day of Accident

H.P.M. and his daughter, A.P.C., then six years old, were forcibly separated by agents of the U.S. Department of Homeland Security ("DHS") sometime between May 12 and May 15, 2018. A.P.C. was put into the custody of the U.S. Department of Health and Human Services ("HHS"), Office for Refugee Resettlement ("ORR"), while H.P.M. remained in DHS custody. H.P.M. and A.P.C. were not reunited until August 30, 2018.

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

H.P.M. does not know whether he and his daughter were separated in the morning or evening. H.P.M. and his daughter were held in a cell with no windows to the outdoors where the lights were always kept on. H.P.M. lost track of time while in this cell.

## **8. Basis of Claims**

### **A. The Government Forcibly Separated H.P.M. from A.P.C.**

Between mid-2017 and late 2018, the United States government forcibly took thousands of children from their parents, sending them to facilities and foster homes hundreds of miles away. These families often had fled persecution in their home countries only to encounter it in the very place they sought refuge. After being separated, children and their parents often were unable to communicate for weeks or months. Parents did not know whether their children were safe—or even where their children were. Children could not understand what had happened to them. The government tore apart families, subjecting children and parents to months of terror, anguish, and torment.

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

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

H.P.M. and A.P.C. will carry the trauma of forcible separation with them for the rest of their lives. They seek redress from the government for the harm the government has caused them.

#### **1. H.P.M. and A.P.C. Arrive in the United States and are Taken into CBP Custody.**

H.P.M. and A.P.C. reached Arizona on or around May 12, 2018, having fled violence in their hometown in the rural outskirts of Malacatán, Guatemala. Immediately after they crossed the U.S. border into Arizona, a Border Patrol agent approached them. The officer asked H.P.M. if he was Guatemalan. H.P.M. responded yes, and the officer directed him and A.P.C. to get into the Border Patrol vehicle with other migrants. A.P.C. became very nervous and asked where they were going. H.P.M. held her and reassured her that everything was going to be all right, but he did not know where the officer was taking them.

The Border Patrol agent drove H.P.M. and A.P.C. to a location approximately fifteen minutes away, which seemed to be a meeting point where Border Patrol agents brought migrants together before transporting them to further detention or processing centers. The Border Patrol agent told H.P.M. and A.P.C. to get out of the vehicle and join other migrants who were waiting. The agent asked H.P.M. if A.P.C. was his daughter or an unrelated child. H.P.M. responded that A.P.C. was his daughter and that he had A.P.C.'s birth certificate. The agent then stated that

Claimant: H.P.M., on behalf of himself and his minor daughter, A.P.C.

parents could no longer cross into the United States with children, and that they would be separated. The officer said: "You can't use children as tickets to enter anymore." H.P.M. did not understand what the agent meant, and the agent did not provide any further explanations.

Once the agent moved on to question other individuals, H.P.M. felt despair not knowing what the officer meant or whether he would be separated from A.P.C. Various other officers approached H.P.M. and A.P.C. and repeated the same question: "Is this your daughter?" H.P.M. repeatedly said yes. Some of the officers asked A.P.C. whether she was H.P.M.'s daughter, and she also responded that H.P.M. was her father.

A few minutes later, a Border Patrol agent directed H.P.M. and A.P.C. to get into a van with other individuals. The agent did not explain where they were going. After some time, H.P.M. and A.P.C. arrived at another location, which H.P.M. later understood to be a detention center. H.P.M. was never told the name of this detention center and is unsure where exactly it was located. They were escorted into a building where agents told them to remove their outer garments, belts, backpacks, and shoelaces. The agents then gave H.P.M. and A.P.C. one aluminum blanket each and escorted them to a locked room where approximately 40 other adults and children were being held. H.P.M. and A.P.C. stepped into the room and realized that it was extremely cold, like an "*hielera*," or "icebox." H.P.M. and A.P.C. both wore only sleeveless shirts since their outer garments had been taken from them.

At first, H.P.M. held A.P.C. and told her they would leave soon. H.P.M. did not want A.P.C. to panic or be scared. He held her but knew that she was struggling to withstand the frigid temperatures. Hours passed and H.P.M. lost track of time and did not know what day it was. The lights in the *hielera* were always kept on, and there was nothing in the room other than three large vents on three of the room's walls spouting freezing air at all times. There was nowhere to sit or lie down other than the floor. The room had no windows and only one door, which was kept locked at all times. The door had a section that was glass, about the size of a household window, and H.P.M. could see agents walking by.

On the first day in the *hielera*, one of the other children began to cry because he was hungry. The crying boy's father walked up to the door and knocked at the door to get an agent's attention. One of the officers walked by the door but did not open it or respond. Instead, the room seemed to get even colder, making H.P.M. think that the officer turned the vents higher. Later in the day, the agents brought pieces of bread and juice for everyone in the *hielera*. The bread was rock hard and A.P.C. could not eat it even though she was hungry.

On what H.P.M. thinks was their second day in the *hielera*, the agents gave him and A.P.C. each a cookie and juice. A.P.C. was very hungry, so H.P.M. gave her his cookie, too. Soon afterwards, A.P.C. told H.P.M. that she was not feeling well. She told H.P.M. that she felt bad, that her head hurt, and that she was sleepy. H.P.M. could tell that she had been losing her strength, but he did not know what to do to help her. He was afraid that if he asked an agent for help, the agent would make the room colder or make the situation worse for them. A.P.C. fell asleep. Hours seemed to pass in the *hielera*, and A.P.C. did not wake up. She slept continuously and was almost non-responsive. Seeing his daughter in that condition, H.P.M. began to cry. He did not know if A.P.C. was ill or if something else was wrong with her. H.P.M. tried to get an officer's attention through the glass in the door, but officers who walked by only ignored him.

He felt desperate to help A.P.C. but did not know what to do. All he could do was hold her closely.

2. The U.S. Government Takes A.P.C. from H.P.M.

Soon after H.P.M. and A.P.C. were first placed in the *hielera*, H.P.M. began to see officers separating mothers and fathers from their children through the glass panel in the door. He saw officers physically pulling children away from their parents and dragging them down the hallway, while parents were returned to the *hielera* or taken elsewhere. A.P.C. could see the separations occurring outside the *hielera* as well.

During what H.P.M. believes to have been the evening of their third day in detention, an officer opened the door to the *hielera* and called H.P.M. to him. The officer gave H.P.M. soap and clothes and told him to give A.P.C. a bath. The officer also asked H.P.M. to confirm A.P.C.'s name and date of birth. H.P.M. felt relieved, thinking that they would finally be released. While he bathed A.P.C., H.P.M. noticed that she was very weak and sad. She could barely stand up.

As H.P.M. exited the bathroom with A.P.C., he saw a group of officers waiting for them. The officers instructed H.P.M. to move to one side of the hallway and instructed A.P.C. to go to the opposite side with other children. H.P.M. immediately objected saying, "But this is my daughter!" One of the officers told H.P.M. that they had to take A.P.C. The officer said that the officers would take care of her and she and H.P.M. would be back together later. The officer explained that the children were being taken to a place for children about half an hour away. H.P.M. told A.P.C. to go with the other children and that he would see her soon. He did not want to make the moment any harder for A.P.C., and he believed that he would see her soon as the officer had explained. A.P.C. tried to run closer to H.P.M., but an officer put his arm in front of her and pushed her back. A.P.C. threw herself to the floor and began crying and screaming. H.P.M. felt devastated but did not know what to do to prevent the officers from taking A.P.C. After that, the officers led H.P.M. away in a different direction. The last thing H.P.M. saw before being led away was A.P.C. on the floor crying. H.P.M. was brought to a different *hielera*. Unlike before, there were no children in this *hielera*.

H.P.M. felt despair and frustration not knowing what to do. All H.P.M. could do was cry in frustration. He constantly thought about A.P.C., wondering where she was and when he would see her. Days passed and H.P.M. remained in the *hielera* without any information about A.P.C. H.P.M. believes he remained in the *hielera* for several more days after A.P.C. was separated from him, but he is unsure of how many days passed.

3. H.P.M. is Told Nothing of A.P.C.'s Whereabouts or Well-Being for Two Weeks.

A few days after being separated from A.P.C., a group of officers transported H.P.M. and others from the *hielera* to a different detention center. During the trip, H.P.M.'s hands and feet were chained together, and his hands were chained to his waist so that he was unable to move. None of the officers explained where they were going. H.P.M. asked the officers if his daughter would be waiting wherever they were taking him. None of the officers responded.

Upon arrival at the detention center, H.P.M. asked any officers he saw about A.P.C. hoping he could get information about her location. None of the officers at the detention center gave H.P.M. information about A.P.C. The officers either ignored H.P.M.'s questions or told him they knew nothing about his daughter. H.P.M. does not recall how many days he remained at this first detention center. Eventually, H.P.M. was transferred to a second detention center.

At the second detention center, H.P.M. again asked many officers for information about A.P.C. to no avail. H.P.M. particularly recalls meeting with an Immigration and Customs Enforcement ("ICE") officer who asked him if he wanted to be deported. H.P.M. said no and told the officer that he was waiting for his daughter, who had been separated from him. The officer appeared confused and asked H.P.M. for his daughter's name. H.P.M. provided her name and showed the officer her birth certificate, which he carried with him at all times. The officer turned to his computer and began typing. After a few minutes, the officer said A.P.C. was in the country but that she was an unaccompanied minor who had arrived in the United States alone, without a mother or father.

The officer told H.P.M. that she would be put up for adoption.

H.P.M. told the officer that the officer's information was incorrect and explained that he and A.P.C. arrived together, but that A.P.C. had been separated from him and taken elsewhere by ICE officers. The officer said that he didn't believe H.P.M., that A.P.C. wasn't his daughter, and said something in English that H.P.M. didn't understand.

H.P.M. never ceased trying to find information about A.P.C.'s whereabouts. He asked every officer he came across, "Where is my daughter?" Some of the officers ignored H.P.M.'s questions entirely. Others responded that they did not know anything about his daughter. Some officers told H.P.M. that A.P.C. would be brought to him soon. But days passed and A.P.C. never arrived. H.P.M. could do nothing but think of A.P.C. and worry about her. At nights he cried and was unable to sleep from the stress. H.P.M. began to suffer from constant headaches. Sometimes the headaches were so severe that they lasted three or four days.

H.P.M. was taken to see a doctor inside the facility to examine a terrible pain in his molar. H.P.M. told the doctor that he had been separated from his daughter and asked if the doctor knew where she was taken. The doctor responded that he did not know where A.P.C. was but that H.P.M. should continue to ask officers for explanations. He told H.P.M. that if he did not insist on finding A.P.C., A.P.C. would get adopted by another family. H.P.M. began to think that he may never see A.P.C. again.

Although H.P.M. continued to ask officers for information, the officers provided no explanation for why they had taken A.P.C. away or what would happen to A.P.C. Not knowing where his daughter was and how his daughter was doing tortured H.P.M. Approximately twelve days after he was separated from A.P.C., H.P.M. again pleaded with an officer for help finding his daughter. The officer helped H.P.M. write and submit a formal letter asking for information about his daughter.

Claimant: H.P.M., on behalf of himself and his minor daughter, A.P.C.

A day or two later, H.P.M. was able to call his sister-in-law in Florida. His sister-in-law told H.P.M. that she had received a call from a social worker telling her that A.P.C. was in Michigan. H.P.M. understood that the social worker told H.P.M.'s sister-in-law that A.P.C. had arrived in the United States unaccompanied, or alone. H.P.M. did not know where Michigan was or why social workers told his sister-in-law that A.P.C. arrived alone, but he felt immense relief hearing that A.P.C.'s location was known and that she was not lost.

4. H.P.M. is Finally Able to Speak with A.P.C.

On or around May 29, 2018, an officer took H.P.M. to a phone and gave him a phone number. When H.P.M. dialed the number, he spoke with a woman who identified herself as A.A., a social worker. H.P.M. asked Ms. A. if she knew where A.P.C. was. She said yes, that A.P.C. was with her. Ms. A. put A.P.C. on the phone. After almost two and a half weeks of being separated, H.P.M. finally was able to speak with A.P.C. When A.P.C. got on the phone and heard H.P.M., she began to cry. She asked H.P.M., "Why did you leave me? Where are you?" H.P.M. felt heartbroken. The phone call lasted only a couple of minutes, and although H.P.M. was relieved having finally spoken to his daughter, he also felt hopeless and anxious not knowing what, if anything, he could do to reunite with A.P.C.

Following the phone call, the officer gave H.P.M. a piece of paper with a phone number to call A.P.C. H.P.M. tried calling A.P.C. three or four times over the next week. Most of the time, no one answered. H.P.M. spoke with Ms. A. and A.P.C. only two more times before he was deported. When Ms. A. put A.P.C. on the phone, A.P.C. just cried. A.P.C. told H.P.M. that she wanted to be with him. H.P.M. also heard her tell Ms. A. to go get her dad because she wanted to leave with him. H.P.M. felt A.P.C. was inconsolable.

5. H.P.M. is Deported without A.P.C.

H.P.M. was transferred to a third detention center. He was again transported in a van with other migrants, shackled at his hands and feet, with his hands chained to his waist. H.P.M. does not recall the date he arrived at the third detention center and is unsure of how many days he spent there. H.P.M. was not able to call A.P.C. while he was at the third detention center.

In early June, approximately four weeks after being separated from A.P.C., several officers approached H.P.M. and told him to sign some papers. The papers were in English and no Spanish translations were provided, either in writing or by the officers. The officers told H.P.M. that he should sign the papers so that he and his daughter would be deported together to Guatemala. H.P.M. asked the officer what would happen if he did not sign. The officer responded that if he did not sign, H.P.M. would never get his daughter back. A second officer said that after he signed, H.P.M. would be taken to the airport, where his daughter would be waiting for him. H.P.M. was not sure if the officers were telling the truth, so he asked to see the papers in Spanish. The officers told him to just sign and that the process of reuniting him with his daughter and returning to Guatemala would be much easier for him. H.P.M. felt that he had no other option but to sign the papers. He wanted desperately to see A.P.C., and he felt he could not be separated from her any longer. H.P.M. signed the papers.



The next day, around 6:00 a.m., H.P.M. was woken up by officers. The officers took H.P.M. and a group of others from their cells and escorted them single-file down a hallway. When they stepped outside, H.P.M. saw more people waiting in single-file lines, all in chains. The officers then chained H.P.M.'s hands and feet, and chained his wrists to his waist so that he was unable to move. Hours passed but the officers did not tell the men what they were waiting for.

The officers left H.P.M. and other migrants waiting in single-filed lines, in chains, for more than twelve hours without any explanation or relief. The officers did not provide any water, food, or allow anyone to go to the bathroom. After several hours passed, H.P.M. saw men around him begin to drop from exhaustion. Some attempted to sit down or lie down, but were uncomfortable due to the chains and were unable to get back up. H.P.M. forced himself to remain standing, pushing through the pain and exhaustion.

At approximately 7:00 p.m., the officers returned to escort the chained men to large buses. The officers walked over to the men who had tried to sit or lie down, and pulled them up forcefully. H.P.M. felt a sense of relief at the idea of leaving the detention center, thinking he would soon be reunited with A.P.C. When the buses pulled into the airport, H.P.M. scanned the parking lot, looking for his daughter. After the men were escorted off of the bus, H.P.M. heard other men ask about their children. The officers simply turned around and walked away. H.P.M. asked the officer closest to him about A.P.C. He told the officer that he had signed papers saying he would be deported with his daughter. H.P.M. asked where he had to go to pick up his daughter. The officer responded, "You should not have signed those papers; those were just lies." H.P.M. could not believe what he heard. He felt anger, panic, and hollow all at once. He does not recall how he was escorted to the airplane or how long he had to wait before the flight departed. He felt like he was straining to breathe and could think of nothing other than A.P.C. being left behind.

When his flight landed in Guatemala City around June 7, 2018, H.P.M. was escorted off the plane and then processed through customs. H.P.M. explained to a customs officer that A.P.C. was separated from him by U.S. officials and had remained in the United States. He asked the officer to help him get A.P.C. back. The customs officer gave H.P.M. a sheet of paper with a phone number. That same day, H.P.M. called the number multiple times. He continued to call for the next few days, but he never got an answer.

#### 6. A.P.C. Suffers Trauma from the Separation from Her Father.

H.P.M. later learned that after she was taken from him, A.P.C. was placed in ORR custody. On May 14, 2018, A.P.C. was transferred from the Yuma Border Patrol Station to a Bethany Christian Services ("BCS") shelter in Kalamazoo, Michigan, where she was received by Ms. A. The next day, A.P.C. was placed in a transitional foster care program. During the day, A.P.C. attended school with other children in ORR custody. A.P.C. spent nights at a foster mother's home.

According to case note summaries written by Ms. A., Ms. A. contacted A.P.C.'s maternal aunt on May 15th to inform her that A.P.C. would remain in the care of BCS until a decision could be made about her case. A.P.C.'s maternal aunt was very confused and told Ms. A. that H.P.M. had traveled to the United States with A.P.C. She did not understand why A.P.C. was

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now in Michigan without H.P.M. A day later, Ms. A. contacted A.P.C.'s mom and H.P.M.'s wife, A.L., in Guatemala. Ms. A. explained the same information to A.P.C.'s mom. According to her case note summaries, Ms. A. searched for H.P.M. in the ICE Online Detainee Locator System without result. By May 28, Ms. A. still had not located H.P.M.

ORR's initial intake form notes that upon arrival, A.P.C. appeared confused and exhausted. At her first meeting with Ms. A. on May 15, A.P.C. cried and would not speak to a case manager. All she said was that she was separated from her father and that she wanted to be with him. Two days later, Ms. A. conducted an Unaccompanied Minor Risk Assessment. The assessment indicated that A.P.C. was "greatly missing her father" and "wanting to be with her father to help her feel more comfortable and safe."

During the nearly three months that A.P.C. remained in the care of BCS, case reports and assessments note that A.P.C. cried easily, was distracted and unfocused, and continued to ask for her father. A 30-day Case Review report on June 14, 2018 noted that A.P.C.'s foster mom gave her melatonin at night because A.P.C. woke up in the middle of the night and cried for long periods of time. Reports from BCS also suggest that A.P.C. had difficulty learning or sitting still at school. A BCS Educational Coordinator recommended occupational therapy for A.P.C. given certain behaviors that she developed while in ORR care. A Clinical Closing report dated August 30, 2018 notes that A.P.C. exhibited "Acute Stress Reaction" and became "emotionally dysregulated" in school and during phone calls with family, during which she always cried. Case management reports and phone logs from BCS also note that every time A.P.C. spoke to her parents, she became anxious and cried. She repeated to her parents that she wanted to be with them and that she missed them.

On June 11, 2018, a few days after returning to Guatemala, H.P.M. spoke with Ms. A., who explained to H.P.M. the possibility of obtaining an order for voluntary departure so that A.P.C. could be returned to Guatemala. On June 13, 2018, H.P.M. confirmed that he wanted A.P.C. to return. Ms. A. obtained pro bono counsel for A.P.C. at the Michigan Immigrant Rights Center, who requested an expedited hearing and filed a motion for voluntary departure on A.P.C.'s behalf.

On June 14, 2018, a clinical supervisor at BCS met with A.P.C. The supervisor explained to A.P.C. that her father had been deported. H.P.M. and A.L. participated in the conversation by phone. The supervisor stated that now that H.P.M. was in Guatemala, A.P.C. would remain in BCS's care for a few months. A.P.C. broke down in tears upon hearing this.

H.P.M. and A.L. remained in close touch with Ms. A. after H.P.M. was deported to Guatemala. Ms. A. called them approximately once a week to let them speak with A.P.C. Whenever H.P.M. spoke to A.P.C., A.P.C. just cried. Ms. A. explained to H.P.M. that A.P.C. cried a lot during the first few days after being separated. On the phone, A.P.C. told her parents that she wanted to be with them and asked H.P.M. when he was going to pick her up. She told her parents she was scared of being in her foster home because the family had a large dog. On one occasion, A.L. was informed that A.P.C. had cut her own hair when she found a pair of scissors at her foster home. H.P.M. became intensely worried that A.P.C. was not being carefully watched or cared for. He lost sleep at night thinking about what could have happened if A.P.C. had used the scissors on herself to cause more serious damage.

On July 28, 2018, A.P.C. was transferred to another foster family that was more experienced in “trauma informed care” after a case manager expressed concern for A.P.C.’s well-being and need to be in a more stable environment. A.P.C. remained with the new foster family until her return to Guatemala.

7. After Approximately 108 Days of Separation, Father and Daughter are Reunited.

Since being deported, H.P.M. felt depressed and anxious for having returned home without his daughter. A.L. was also desperate to learn more about A.P.C.’s return. Ms. A. initially told her that A.P.C. would not be able to return to her family for approximately a year.

On or around August 9, 2018, an immigration judge granted the motion for A.P.C.’s voluntary departure. A.P.C. had an interview with the Guatemalan consulate a week later and was issued travel documents. Ms. A. contacted A.P.C.’s parents on August 20 and informed them that A.P.C. was scheduled to arrive in Guatemala on August 30. On August 30, after approximately 108 days of separation, A.P.C. was discharged from BCS and ORR and placed on a flight to Guatemala City, and H.P.M. and A.L. traveled five hours to the capital city to meet her. H.P.M. and A.L. anxiously waited for A.P.C. until she was brought to them by social workers. H.P.M. was incredibly happy and felt an enormous sense of relief upon first seeing A.P.C. But A.P.C. simply stood before him and his wife with a blank stare on her face. A.P.C. then recognized H.P.M. and went over to give him a hug, saying nothing. A.L. called her over, but A.P.C. appeared to not recognize her. H.P.M. was shocked that A.P.C. did not recognize her mother immediately. A.P.C. also did not recognize her brother, and she did not want to talk to her aunts who had traveled to Guatemala City with the family to meet her.

8. H.P.M. and A.P.C. Continue to Suffer After Being Reunited.

In the months since H.P.M. and A.P.C. were reunited, H.P.M. has noticed that A.P.C. is still distressed and her behavior has changed. When she first got home, A.P.C. stayed in her room in bed where she slept and played with her stuffed animals. For almost a week, A.P.C. refused to eat. A.P.C. cried for hours, both during the day and at night. H.P.M. and A.L. were unable to console her. As time went on, it became clear to H.P.M. and A.L. that A.P.C. was different. Whereas before she was a happy and adjusted child, who was outgoing, friendly, and trusting of adults, she is now quiet, distant, and still cries easily.

When A.P.C. returned to school, H.P.M. was hopeful that she would become happy again and that she would return to her outgoing, friendly personality. However, A.P.C. was scared to go back to school and cried. While in school, she did not interact with the other children and did not respond when teachers or children spoke to her. A.L. was mainly concerned at how distant she became. A.P.C. stared blankly at walls or other things, and she did not respond when called or when spoken to.

H.P.M. took A.P.C. to a doctor to try to understand what was wrong with her. The doctor told H.P.M. that A.P.C. was anemic and prescribed medicine. The doctor also explained to H.P.M. that A.P.C. showed signs of trauma and needed to attend therapy on a regular basis.

Claimant: H.P.M., on behalf of himself and his minor daughter, A.P.C.

H.P.M. inquired about therapy services for A.P.C. but was unable to pay for the services. H.P.M. felt depressed and guilty and believed that everything A.P.C. suffered was his fault.

H.P.M. also continues to suffer physical and emotional harm from the separation. He tries to forget everything that happened but cannot. He often feels sadness, frustration, or anger at what happened. Sometimes he thinks of everything that happened and feels guilty or remorseful. Even after returning to Guatemala and being reunified with A.P.C., H.P.M. has continued to experience unrelenting, acute headaches. The headaches extend around the back of his ears and down to his jaw, causing his jaw to tremble uncontrollably. Before the separation from his daughter, he never had such headaches.

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

Since 2017, the Administration has taken thousands of children from their parents, intending to cause terror, anguish and harm, and to use that cruelty to deter future migrants from seeking to enter the United States. Both the practice of separating families itself, and its implementation, violate the Constitution, the law, and basic human decency.

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

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

The government's policy of separating families who, like H.P.M. and A.P.C., sought to enter the United States through the U.S. southern border in 2017 and 2018 deliberately violated the constitutional rights of those separated, including the right to family integrity. For decades, this nation's highest court has recognized the fundamental right to family integrity protected by the Constitution: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."<sup>1</sup> These constitutional protections extend to citizens and non-citizens alike, even when confined by the government.<sup>2</sup>

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<sup>1</sup> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

<sup>2</sup> *Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enft.*, 319 F. Supp. 3d 491, 500 (D.D.C. 2018) ("The fact that [families are] lawfully detained in immigration custody does not eliminate [their] due process right to family integrity.").

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

As Judge Sabraw concluded in *Ms. L. v. U.S. Immigration and Customs Enforcement*, the government's actions "shock[] the conscience."<sup>3</sup> The *Jacinto-Castanon de Nolasco* court further stated that "nothing in federal law suggests that deterring immigration by indefinitely separating families once the parents have been transferred to immigration custody is a compelling or legitimate government objective."<sup>4</sup> Both the policy itself and its callous implementation violate the Constitution, the law, and norms of human decency.

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

Keeping parents separated from their children with "little or no direct access to basic information about their health or general well-being, *plainly causes irreparable harm.*"<sup>5</sup> Children attach to their caregiver from the time they are born, and the children's sense of safety "depends on that relationship."<sup>6</sup> Disrupting that relationship causes "the parts of the brain that deal with attachment and fear" to "develop differently."<sup>7</sup>

It is not surprising, then, that "[s]eparation irreparably harms [families] every minute it persists."<sup>8</sup> This finding of the *Jacinto-Castanon de Nolasco* court is firmly anchored in scientific studies and literature. As an expert physician testified to Congress, "[a] *century of countless studies* across the behavioral and social sciences provide *extensive evidence* of the consequences of separating children from their parents, especially if that separation is unexpected, abrupt, or in a frightening context."<sup>9</sup> For example, research into World War II separations shows "documented far reaching effects of these separations into adulthood, including increased risk for mental health problems, poor social functioning, insecure attachment, disrupted stress reactivity, and mortality."<sup>10</sup>

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<sup>3</sup> 310 F. Supp. 3d 1133, 1142 (S.D. Cal. 2018).

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

<sup>5</sup> *Id.* (emphasis added).

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

<sup>7</sup> *Id.*

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

<sup>9</sup> *Examining the Failures of the Trump Administration's Inhumane Family Separation Policy: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Commerce*, 116th Cong. (2019) [hereinafter *Oversight & Investigations Hearing*] (testimony of Jack P. Shonkoff, M.D., Director, Center on the Developing Child at Harvard University, at 1) (emphasis added).

<sup>10</sup> Johayra Bouza et. al., *The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities*, Soc'y for Res. in Child Dev. Statement of the Evid., June 20, 2018, <https://tinyurl.com/y3fkofpb>; see also, e.g., Wan, *supra* note 6 (describing the psychological

The American Academy of Pediatrics (“AAP”) explained the effects of separation on children: “[H]ighly stressful experiences, like family separation, can . . . disrupt[] a child’s brain architecture and affect[] his or her short- and long-term health. This type of prolonged exposure to serious stress — known as toxic stress — can carry lifelong consequences for children.”<sup>11</sup> Children who experience trauma like forced separation from a parent “are at a much greater risk of developing mental health disorders such as depression, anxiety, addiction, ADHD and PTSD. Their physical health is also negatively affected.”<sup>12</sup> The materials cited here barely scratch the surface of the wealth of expert material describing the harms caused by family separation. Given the “extensive evidence,” the irreparable harm caused by forcibly separating parents and children is indisputable.<sup>13</sup>

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

Moreover, the federal government knew of the harm caused by separating children from their parents long before it began separating families like H.P.M. and A.P.C. Evidence of that is plentiful, both in internal agency comments and in the government’s reaction to the public outcry against the policy when it was initially proposed in 2017. For example:

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and physiological responses that “wreak[] dramatic and long-term damage” on children who are forcibly separated from their parents).

<sup>11</sup> *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 503 (quoting Colleen Kraft, Am. Acad. of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (May 8, 2018), <https://tinyurl.com/ycr3rjqh>); see also Brittny Mejia, *A 3-Year-Old was Separated from his Father at the Border. Now His Parents are Dealing with His Trauma*, L.A. TIMES (July 3, 2018), <https://tinyurl.com/y79ra9un> (“A child taken from a parent is flooded with anxiety, which quickly turns into panic. . . . Children’s bodies and brains, ‘are absolutely not built to withstand that level of stress.’” (quoting child psychiatrist Dr. Amy Cohen)); Allison Abrams, LCSW-R, *Damage of Separating Families: The Psychological Effects on Children*, PSYCHOL. TODAY (June 22, 2018), <http://tinyurl.com/y844pqsk> (Because a child’s “secure attachment comes from the child’s perceptions of his or her caregiver’s availability (physical accessibility) . . . separations as brief as one week in duration could negatively impact the quality of attachments.”); *id.* (Children who are separated from a parent “develop insecure/disorganized attachment and persisting high levels of stress.”) (quotations omitted).

<sup>12</sup> Abrams, *supra* note 11; see also Sarah Reinstein, *Family Separations and the Intergenerational Transmission of Trauma*, CLINICAL PSYCHIATRY NEWS (July 9, 2018), <https://tinyurl.com/y3h7asck> (“[C]hildhood trauma is associated with emotional dysregulation, aggression against self and others, difficulties in attention and dissociation, medical problems, and difficulty with navigating adult interpersonal relationships.”); *Oversight & Investigations Hearing*, *supra* note 9 (testimony of Cristina Muñiz de la Peña, Ph.D, Terra Firma Mental Health Director, Center for Child Health and Resiliency, on behalf of the American Psychological Association, at 4) (“Sudden and unexpected family separation is also associated with stress and emotional trauma for children, housing instability, food insecurity, interrupted schooling, and behavioral/emotional responses such as fear, anxiety, aggression and changes to sleep and appetite. Parental separation can have a long-term negative impact on children into adulthood.”).

<sup>13</sup> Moreover, here, the harm caused by the forced separation of the children from their parents was compounded by the harm caused by the resultant detention of the children. See, e.g., Julie M. Linton et al., *Detention of Immigrant Children*, 139 PEDIATRICS e20170483 (2017), <https://tinyurl.com/yc3sco99> (AAP Policy Statement noting that studies of detained unaccompanied minors in the United States found “high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems” and that the AAP has found “no evidence indicating that any time in detention is safe for children” (emphasis added)).

- In 2016, the DHS Advisory Committee on Family Residential Centers concluded that “the separation of families for purposes of immigration enforcement or management, or detention is *never* in the best interest of children.”<sup>14</sup>
- In February 2017, having noticed a marked uptick in young children separated from parents at the border, a high-ranking HHS official expressed his concerns about the harms of family separation directly to then-ORR director Scott Lloyd and other top officials.<sup>15</sup> This same official has testified before Congress that because “[s]eparating children poses significant risk of traumatic psychological injury to the child,’ . . . neither he nor anyone he worked with ‘would ever have supported such a policy.’”<sup>16</sup>
- In March 2017, when senior officials at DHS told the press that the agency was considering a deterrence policy of separating migrant parents and children at the border,<sup>17</sup> the announcement was met with an immediate wave of warnings from the medical community. The AAP, among others, warned that such a policy would affect “vulnerable, scared children” and urged policymakers to “exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the United States is not exacerbated by the additional trauma of being separated from their siblings, parents or other relatives and caregivers.”<sup>18</sup>

When confronted by public backlash to the then-proposed family separation policy, DHS Secretary John Kelly, who had initially confirmed DHS’ plans to pursue family separation, changed course, assuring the Senate Committee on Homeland Security and Governmental Affairs in April 2017 that children would be separated from their mothers only “if the child’s life is in danger” or if the mother was addicted to drugs,<sup>19</sup> rather than as a matter of due course for families arriving at or crossing the border.

Given the Administration’s own internal comments and the government’s response to the many public warnings opposing a family separation policy, there is no question that the

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

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

<sup>16</sup> Colleen Long, *Official Who Oversaw Migrant Kids: Separation Causes Trauma*, AP NEWS (Feb. 7, 2019), <https://tinyurl.com/y59zw9xo> (quoting testimony of Commander Jonathan White, U.S. Public Health Service Commissioned Corps).

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

<sup>18</sup> Fernando Stein & Karen Remley, *Am. Acad. of Pediatrics, AAP Statement Opposing Separation of Mothers and Children at the Border* (Mar. 4, 2017), <http://tinyurl.com/jzeburx>.

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

Administration was well aware of the harms family separation would cause — before it began separating families in mid-2017.

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

Despite Secretary Kelly’s public assurance that families crossing the border would be separated only in specific circumstances for the welfare of the child, in 2017 the Administration began indiscriminately separating families who crossed the southern U.S. border. It did so knowing the separations would cause harm, and intending to leverage that harm to deter future immigrants from seeking to enter the United States.

The roots of the federal government’s practice of separating families include a family separation pilot program instituted in the U.S. Border Patrol’s El Paso sector between July and October 2017.<sup>20</sup> Under the program, the government purportedly targeted for criminal prosecution parents who unlawfully crossed the border into the United States with young children. It detained parents as criminals, and forcibly took their children away from them. Customs and Border Protection (“CBP”) placed the children in the custody of ORR, which dispersed the children into institutionalized settings and foster homes throughout the country.

The federal government’s policy and practice of separating families at the border culminated in the U.S. Attorney General’s announcement, on April 6, 2018, of a “Zero Tolerance Policy.” The Zero Tolerance Policy “fundamentally changed DHS’ approach to immigration enforcement,” which, until 2017, did not separate a child from an accompanying adult except in very limited circumstances, such as where CBP determined that the adult was not the child’s parent or guardian or the adult posed a danger to the child.<sup>21</sup> Several aspects of the U.S. Government’s policy and practice of separating families in 2017 and 2018 reveal that its goal was to deter future immigrants from seeking entry to the United States by harming families through forcible separation.

For example, a December 2017 internal DHS memo confirms that “prosecution of family units” and “separat[ion] [of] family units” (as well as the publicity that would accompany such actions) were viewed as differing pathways to deterring future migration.<sup>22</sup> Despite the “official”

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<sup>20</sup> OFF. OF INSPECTOR GEN., U.S. DEP’T OF HEALTH AND HUMAN SERVS., OEI-BL-18-00511, SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE 3 (2019), *available at* <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf> [hereinafter HHS OIG REPORT] (“From July through November 2017, the El Paso sector of Customs and Border Protection (CBP), an agency within DHS, implemented new policies that resulted in 281 individuals in families being separated.”); *see also* Lisa Riordan Seville & Hannah Rappleye, *Trump Admin Ran ‘Pilot Program’ for Separating Migrant Families in 2017*, NBC NEWS (June 29, 2018), <https://tinyurl.com/y7sk25mv>; Katherine Hawkins, *Where Family Separation Began: A Case in El Paso Shows Flores is the Solution, Not the Problem*, JUST SECURITY (June 22, 2018), <https://tinyurl.com/y3zpdkdl>.

<sup>21</sup> *See, e.g.*, OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OIG-18-84, SPECIAL REVIEW - INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY 3 (2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> [hereinafter DHS OIG REPORT].

<sup>22</sup> Policy Options to Respond to Border Surge of Illegal Immigration, <https://assets.documentcloud.org/documents/5688664/Merkleydocs2.pdf>; *see* Anne Flaherty & Quinn Owen, *Leaked*



federal government policy of “not referring for prosecutions families or individuals arriving at ports of entry or attempting to enter the country through legal means,”<sup>23</sup> many families lawfully crossed the border and yet were separated anyway.<sup>24</sup>

Moreover, while the Zero Tolerance Policy was in effect, CBP limited the number of asylum seekers permitted to lawfully cross the border at ports of entry each day.<sup>25</sup> This drove many families who had fled their home countries in fear “to take other routes into the country, at which point they were prosecuted and had their children taken from them.”<sup>26</sup>

A DHS directive, issued on June 23, 2018, suggested that once families were separated, only parents who were subject to removal would be reunited with their children, and only “for the purposes of removal.”<sup>27</sup> Though in H.P.M. and A.P.C.’s case, the government’s promises of reuniting their family for removal proved false, this directive imposed a “Hobson’s choice” on parents, like H.P.M., who had to choose between the hope of seeing their children again or continuing to seek asylum in the United States. The Administration would not allow them to do both.

All of this evidence shows that the government intentionally inflicted the severe harm caused by forcible separation on families, like H.P.M. and A.P.C., who crossed the U.S. border. The government did so to deter future immigrants from coming to the United States.<sup>28</sup>

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

The Administration then multiplied the harm it intended to cause by the shocking carelessness with which it implemented its policy and practice of separating families. Among

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

<sup>23</sup> *Myth vs. Fact: DHS Zero-Tolerance Policy*, U.S. DEP’T OF HOMELAND SEC. (June 18, 2018), <https://www.dhs.gov/news/2018/06/18/myth-vs-fact-dhs-zero-tolerance-policy>; see also Jeff Sessions, Attorney General, U.S. Dep’t of Justice, Attorney General Sessions Addresses Recent Criticisms of Zero Tolerance By Church Leaders (June 14, 2018) (prepared remarks available at <https://www.justice.gov/opa/speech/attorney-general-sessions-addresses-recent-criticisms-zero-tolerance-church-leaders>) (“[I]f the adults go to one of our many ports of entry to claim asylum, they are not prosecuted and the family stays intact pending the legal process.”).

<sup>24</sup> See *Ms. L.*, 310 F. Supp. 3d at 1143 (“[T]he practice of family separation was occurring before the zero tolerance policy was announced, and that practice has resulted in the casual, if not deliberate, separation of families that lawfully present at the port of entry, not just those who cross into the country illegally.”).

<sup>25</sup> See DHS OIG REPORT, *supra* note 21, at 5-7.

<sup>26</sup> Evan Halper, *Federal Investigators Find Many Failures in Trump’s Family Separation Policy*, L.A. TIMES (Oct. 2, 2018), <https://tinyurl.com/y2srdo9q>; see also DHS OIG REPORT, *supra* note 21, at 5-7.

<sup>27</sup> *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification*, U.S. DEP’T OF HOMELAND SEC. (June 23, 2018), <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>.

<sup>28</sup> Philip Bump, *Here Are the Administration Officials Who Have Said That Family Separation Is Meant as a Deterrent*, WASH. POST (June 19, 2018), <https://tinyurl.com/y5kcxvl8>; Rafael Bernal, *HHS Official Says Family Separation Policy Will Have ‘Deterrence Effect’*, THE HILL (June 19, 2018), <https://tinyurl.com/y69w9b3r>.

other things, a deliberate lack of planning resulted in the Administration failing to adequately track separated families, failing to communicate with parents about their children's welfare, and failing to take care to comply with child welfare standards, all of which compounded the harms already inflicted on families who had been forcibly separated.

*Failure to adequately track separations.* Despite the fact that tracking whether a child had been separated from his or her parent merely required adding a checkbox to an ORR / DHS referral page,<sup>29</sup> these two agencies primarily responsible for implementing the policy instituted no “consistent way to indicate in their data systems children and parents separated at the border” until at least the summer of 2018.<sup>30</sup> The most staggering result of this failure was that the Administration had no ready records of where thousands of parents' children were located, and could not promptly reunite parents and children,<sup>31</sup> even when ordered to do so by a U.S. District Court.<sup>32</sup> The Administration's failure to track separated children meant that, immediately after being separated from their parents, many children were held in CBP short-term detention facilities for longer than the 72-hour period permissible under federal law,<sup>33</sup> in some cases for as long as 25 days,<sup>34</sup> before being transferred to ORR custody.

*Failure to communicate with parents about children's whereabouts and safety.* After separation, parents and children often did not know each other's whereabouts for weeks or months, as was the case with H.P.M. and A.P.C. When the children were taken, “officers often failed to fully explain to parents what was happening and how the adults could get in touch with their kids.”<sup>35</sup> The government failed to provide parents with any “paperwork” documenting the location or well-being of their children, or to enable communication between parents and their separated children.<sup>36</sup> One Texas federal district court observed that “[t]he practical effect” of these failures was “to create a ‘blackout’ period where parent and child are wholly

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<sup>29</sup> *Oversight of the Trump Administration's Family Separation Policy: Hearing Before the H. Comm. on the Judiciary* (Feb. 26, 2019) (statement of Scott Lloyd, Senior Advisor, Center for Faith and Opportunity Initiatives, U.S. Department of Health and Human Services, at 4), <https://docs.house.gov/meetings/JU/JU00/20190226/108872/HHRG-116-JU00-Wstate-LloydS-20190226.pdf>.

<sup>30</sup> GOV'T ACCOUNTABILITY OFFICE, UNACCOMPANIED CHILDREN: AGENCY EFFORTS TO IDENTIFY AND REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER, *Highlights*; *see also id.* at 16-18.

<sup>31</sup> DHS OIG REPORT, *supra* note 21, at 9-11; *see* Kevin Sieff, *The Chaotic Effort to Reunite Immigrant Parents with their Separated Kids*, WASH. POST (June 21, 2018), <https://tinyurl.com/y4wpora7>; Miriam Jordan, *Torn Apart by Zero Tolerance, Kept Apart by Red Tape*, N.Y. TIMES (June 24, 2018), <https://tinyurl.com/y9t2mnyt>.

<sup>32</sup> *See Halper, supra* note 26. These circumstances led the court to conclude that the “unfortunate reality” of the family separation policy was that “migrant children [were] not accounted for with the same efficiency and accuracy as *property*.” *Ms. L.*, 310 F. Supp. 3d at 1144.

<sup>33</sup> Trafficking Victims Protection Reauthorization Act, 8 U.S.C.A. § 1232(b)(3); *see* SARAH HERMAN PECK & BEN HARRINGTON, CONGRESSIONAL RESEARCH SERVICE, THE “FLORES SETTLEMENT” AND ALIEN FAMILIES APPREHENDED AT THE U.S. BORDER: FREQUENTLY ASKED QUESTIONS, at 5 (Sep. 17, 2018), <https://fas.org/sgp/crs/homesecc/R45297.pdf>.

<sup>34</sup> DHS OIG REPORT, *supra* note 21, at 8.

<sup>35</sup> Halper, *supra* note 26.

<sup>36</sup> *See United States v. Dominguez-Portillo*, No. EP-17-MJ-4409-MAT, 2018 WL 315759, at \*1-\*2, \*9 (W.D. Tex. Jan. 5, 2018).

incommunicado from each other.”<sup>37</sup> And even if parents found out where their children were and a correct phone number for that location, phone calls were logistically difficult and expensive to make, severely limiting the few precious minutes that parents and children could hear each other’s voices.<sup>38</sup> The anguish of not knowing for months where their family members were or how they were doing, and then not being able to spend meaningful time talking once they made contact, further exacerbated the anguish and harm parents and children suffered from being torn apart.

*Child welfare standards ignored in the rush to expand detention capacity.* ORR was completely unprepared and unable to properly care for the thousands of vulnerable children referred to its custody by DHS. The shortcuts approved by high-level government officials and implemented by rank-and-file agents and contractors to try to deal with the influx of children led to a shocking series of abuses of children. For example, the rush to set up make-shift facilities resulted in one facility hiring over one thousand staff members without conducting FBI background fingerprint checks and having a “dangerously low number of clinicians serving children” at that facility.<sup>39</sup> A spokeswoman for the HHS’s Inspector General’s Office stated that these deficiencies posed “serious safety and health vulnerabilities.”<sup>40</sup> At one detention center, a staff member was drunk while he was involved with care for separated children.<sup>41</sup> The Justice Department has received reports of unwanted sexual touching, staff members having sexual relationships with children detainees, and staff members showing children pornographic videos.<sup>42</sup> In addition to the pervasive sexual abuse of detained children, there are reports of widespread denial of medical care, including for a burn injury, a broken wrist, and a sexually transmitted disease.<sup>43</sup> In another reported case, staff gave a child medicine to which she was allergic despite warnings on the child’s medical bracelet.<sup>44</sup>

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

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<sup>37</sup> *Id.* at \*9.

<sup>38</sup> See Halper, *supra* note 26; Jordan, *supra* note 31; Jack Herrera, *A New Report Reveals How Family Separation Led Border Officials to Break the Law*, PACIFIC STANDARD (Oct. 4, 2018), <https://tinyurl.com/y7x44kz6>.

<sup>39</sup> Daniella Silva, *Trump Administration Waived Strict Background Checks for Staff at Migrant Child Detention Camp*, NBC NEWS (Nov. 27, 2018), <http://tinyurl.com/y4asqmw7>.

<sup>40</sup> *Id.*

<sup>41</sup> Aura Bogado et al., *Separated Migrant Children Are Headed Toward Shelters that Have a History of Abuse and Neglect*, TEX. TRIB. (June 20, 2018), <https://tinyurl.com/ydyl6wvb>.

<sup>42</sup> *Id.* From 2014 to 2018, HHS received more than 4,500 complaints of sexual abuse against unaccompanied minors, often involving staff. Sophie Tatum, *HHS Docs Show Thousands of Alleged Incidents of Sexual Abuse Against Unaccompanied Minors in Custody*, CNN (Feb. 26, 2019), <https://tinyurl.com/y65zrqql>.

<sup>43</sup> Bogado et al., *supra* note 41; see also Shefali Luthra & Marisa Taylor, *Immigrant Families Placed in Detention Centers Face Health Care Challenges*, WASH. POST (July 2, 2018), <http://tinyurl.com/y5ezbqk3>.

<sup>44</sup> Bogado et al., *supra* note 41.

Claimant: H.P.M., on behalf of himself and his minor daughter, A.P.C.

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

The federal government deliberately violated H.P.M.'s and A.P.C.'s constitutional rights, including their right to family integrity, and failed in its basic duties not to harm those in its custody. The government's actions and failures were designed to and did cause H.P.M. and A.P.C. severe trauma and emotional distress.<sup>45</sup>

The government knew that forcibly taking A.P.C. from H.P.M. would fill them with terror, desperation, and anguish. It purposefully inflicted that trauma on H.P.M. and A.P.C. to instill fear in others. It then compounded that trauma by, among other things, keeping H.P.M. and A.P.C. apart for a total of approximately 108 days, without telling them anything about the other's whereabouts or well-being, without allowing them even to speak to one another for approximately 15 days, and without any plan for reuniting them, by requiring H.P.M. to choose between reunification with his daughter and pursuing their asylum claim, and by deporting H.P.M. without his daughter. As a result of the government's actions and failures, both H.P.M. and A.P.C. continue to suffer from the effects of the separation.

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

**11. Witnesses**

[Redacted]

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

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

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

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<sup>45</sup> Among other causes of action, the facts related herein support claims for infliction of emotional distress (whether intentional or negligent), interference with the parent-child relationship, fraud, negligence, battery and/or assault, false imprisonment, and violations of the Fourth and Fifth Amendments to the United States Constitution.