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INTRODUCTION

1. This action seeks damages for two asylum-seeking families forcibly separated by the United States government: A.P.F. and his son, O.B.; and J.V.S. and his daughter, H.Y.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

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

5 16. Plaintiffs suffered, and continue to suffer, physical, mental, and emotional
6 harm because of the intentional, reckless, and negligent acts of U.S. government
7 policymakers at the highest levels, whose goal was to inflict harm and instill terror.
8 Plaintiffs suffered, and continue to suffer, further harm because of the intentional,
9 reckless, and negligent acts and omissions of federal actors who used unreasonable force
10 and cruelty to separate José and Abel from their children and failed to exercise basic care
11 or even simple human decency.

12 17. Even after reunification, the effects of the government's inhumane conduct
13 continue to exact a toll on Plaintiffs. Children, especially those young and vulnerable
14 like the minor Plaintiffs, suffer trauma when they are separated from their parents, even
15 temporarily. Such childhood trauma harms cognitive development and emotional growth,
16 and increases the risk of disease and mental health disorders.

17 18. As a result of the separation, Obet exhibits symptoms of post-traumatic
18 stress disorder ("PTSD") and suffers from traumatic flashbacks, nightmares, and extreme
19 separation anxiety. Herlinda also exhibits PTSD symptoms and has nightmares, is quick
20 to anger, and suffers from low self-esteem.

21 19 .

1 20. A report by the U.S. Department of Health and Human Services (“HHS”)
2 Office of the Inspector General (“OIG”) issued in September 2019 found that “intense
3 trauma” was “common” among children who entered the Office of Refugee Resettlement
4 (“ORR”) facilities in 2018, with children who had been “unexpectedly separated from a
5 parent” facing additional trauma.² According to this report, “separated children exhibited
6 more fear, feelings of abandonment, and post-traumatic stress than did children who were
7 not separated. Separated children experienced heightened feelings of anxiety and loss as
8 a result of their unexpected separation from their parents.”

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1 24. On April 4, 2019, Plaintiffs submitted administrative claims to the U.S.
 2 Department of Justice (“DOJ”), the U.S. Department of Homeland Security (“DHS”),
 3 U.S. Immigration and Customs Enforcement (“ICE”), U.S. Customs and Border
 4 Protection (“CBP”), and HHS. None of the agencies have made a final disposition of any
 5 Plaintiff’s administrative claim, and, as six months have passed since submission of the
 6 claims, they are deemed finally denied. 28 U.S.C. § 2675(a). Accordingly, Plaintiffs have
 7 exhausted all available administrative remedies.

8 25. Venue is proper in this District pursuant to 28 U.S.C. § 1402(b) because the
 9 acts and omissions that give rise to this action took place in this District.

10 **THE PARTIES**

11 26. Plaintiffs José and Herlinda are Guatemalan nationals who currently reside
 12 in Massachusetts. José brings this action on behalf of himself and his minor child,
 13 Herlinda, age seven. In 2018, José fled to the United States with Herlinda, his only child,
 14 seeking asylum.

15 27. José and Herlinda, then five years old, were forcibly separated in a CBP
 16 facility in Arizona. José was then detained by ICE in Arizona, Georgia, and Texas,
 17 thousands of miles away from his daughter. Herlinda was sent away on her own by
 18 airplane—the first flight she’d ever taken—and placed in ORR custody at a facility in
 19 New York. They were separated for approximately ten weeks. José and Herlinda are
 20 currently seeking asylum in the United States.

21 28. Plaintiffs Abel and Obet are Guatemalan nationals who currently reside in
 22 California. Abel brings this action on behalf of himself and his minor child, Obet, age six.
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1 **STATEMENT OF FACTS**

2 **A. The United States Developed and Implemented the Inhumane**
3 **Separation Policy for the Improper Purpose of Deterring Future**
4 **Asylum Seekers.**

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1 the United States is not exacerbated by the additional trauma of being separated from
2 their siblings, parents, or other relatives and caregivers.”¹⁰

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

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

12 43. The Administration’s own comments and the government’s response to the
13 many public warnings of the dire effects of a family separation policy show that the
14 Administration was well aware of the harms family separation would cause before it
15 implemented its family separation policy.

16 44. In response to the concerns raised by Commander White that a family
17 separation policy would “expose children to unnecessary risk of harm,” and “exceed the
18 capacity of the [ORR Unaccompanied Alien Children, or UAC] program,” White was
19 repeatedly assured by the then-Director of ORR, among others, that “there was no policy
20 that would result in the separation of children and parent,” and that, accordingly, the
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23 ¹⁰ Fernando Stein & Karen Remley, Am. Acad. of Pediatrics, AAP Statement Opposing
24 Separation of Mothers and Children at the Border (Mar. 4, 2017),
25 <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 UAC program need not plan for continued increases in children classified as

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1 the border,” nothing that “[t]he parents would be prosecuted for illegal entry
2 (misdemeanor) or
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1 58. The government also separated families who crossed the border between
2 ports of entry when the parents were not criminally charged.

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

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

11 61. During six weeks at the height of the Zero Tolerance period, between
12 May 7, 2018 and June 20, 2018, the government separated at least 2,231 children from
13 their parents.²⁷

14 62. A DHS directive, issued on June 23, 2018, suggested that once families
15 were separated, only parents who were subject to removal would be reunited with their
16 children, and only “for the purposes of removal.”²⁸ This directive imposed an impossible
17 choice on parents: They had to choose between seeing their children again or continuing a*Tw
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1 separation. Exec. Order No. 13841, Affording Congress an Opportunity to Address
2 Family Separations (Fed. Register at 83 FR 29,435, June 25, 2018).

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

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

5 83. After a few hours, Obet complained of chest pain. Abel went to the cell
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1 one's children, where the children would remain in the United States alone to pursue their
2 independent immigration cases. The form did not allow parents to choose reunification
3 with their children in the United States to pursue their immigration cases together.

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

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

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

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

18 119. Eventually it was Abel's turn. When Obet answered, Abel had no words.
19 He could only cry. He says of that moment, "My life returned to me when I heard his
20 voice."

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

27 121. After the call, Abel became even more worried about Obet's health.
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122. This was the only time, in approximately seventy days of detention, that the government allowed father and son to speak to each other.

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

1 129. 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**
5 **Reunited**

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

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

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

18 133. Obet looked at Abel but did not recognize him.

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

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1 son, Abel told Obet that everything had only been a bad dream, and that they would not
2 be separated again.

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

8 137. Around July 27, 2018, approximately ten weeks after Abel and Obet were
9 forcibly separated from each other, they were released together.

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

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

18 140. Abel learned most of what happened to Obet through
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1 143. Obet told the foster adult what happened each time, and the adult told the
2 kids to go back to their beds each time. Still, the sexual abuse persisted.

3 144. When Obet reported the abuse to a counselor, who reported it to the foster
4 adults and the New York Police Department (“NYPD”), the foster parent claimed no
5 knowledge.

6 145. Obet’s mental health deteriorated in the face of the emotional harm the
7 government inflicted upon him by forcibly separating him from his father and exposing
8 him to sexual abuse. His suffering was registered in several assessments of his mental
9 health, even if the individuals evaluating him all but ignored the government-inflicted
10 sources of trauma.

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

19 147. A Cayuga Canters counselor in New York also found Obet was exhibiting
20 symptoms of PTSD. Obet told the counselor that he prayed for his father, whom he
21 missed very much. Obet described almost always feeling hyper-vigilant and suffering
22 from flashbacks and nightmares. He reported feelings of guilt, isolation, and disinterest.

23 148. On June 28, 2018, Obet disclosed to a Cayuga worker that he was being
24 sexually abused in his foster home. Obet was placed in a new foster home the same day.
25 The next day, June 29, 2018, NYPD officers visited the new home to interview him.
26 However, Obet was asleep. The NYPD s()JTJYee daThe N that

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

4 150. One week later, the NYPD Special Victims Unit recommended closing the
5 investigation into the sexual abuse of Obet. A police report indicates “all leads [were]
6 exhausted” because Obet had left New York before the scheduled interview, and Cayuga
7 Centers “does not have any forwarding information to contact the child or his father.”

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

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

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

16 153. Abel could not leave Obet’s side without Obet becoming terrified, crying,
17 and begging his father not to leave him.

18 154. Obet told his father that every night he had been alone, he thought about his
19 father and asked God to let him have his father back. He also said he asked every day
20 “where his Daddy is,” and “when is he coming,” but the adults just told Obet he had to
21 wait.

22 155. Obet said that he felt sick throughout the separation and went to a doctor
23 once.

24 156. Abel has noticed that Obet is traumatized and his behavior has changed.

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

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

C. The United States Forcibly Separated José and Herlinda

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

167. In late April 2018, José and Herlinda fled violence and extortion in their

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

4 **2. The United States Takes Herlinda from José**

5 177. After about two days, agents called the name of one of the other detained
6 migrants and escorted him, along with his daughter, out of the cage. Only the father
7 returned to the cage. The father cried and explained that the agents had taken his
8 daughter away. Several others asked the father where they had taken his daughter. The
9 man could not answer.

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

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

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

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

26 182. José bathed Herlinda and put her belongings (a few clothes and some
27 orthotic inserts from Guatemala) into a bag. José had about ten minutes to bathe Herlinda
28 and dress her.

1 183. Although José treasured the few remaining minutes that he had with
2 Herlinda, they were also intensely painful—he was in anguish about the impending
3 separation.

4 184. Through tears, José struggled to explain to his daughter what was
5 happening. He told her that the officials would take her somewhere else. He told her to
6 behave herself, to be strong, and to have patience—that he didn’t know exactly when
7 they would see each other again, but that he would never leave her. José reminded
8 Herlinda that God would protect them. While he attempted to maintain a strong face for
9 his daughter, José wondered if this was the last time he would see her. Herlinda did not
10 say anything, but José could tell she seemed worried.

11 185. After José bathed Herlinda, the officials told José, along with the parents of
12 about eight other children, to say goodbye to their children.

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

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

21 188. Agents ordered the children to line up on one side of the room, with the
22 parents across from them. The crying children lined up, wearing their government-issued
23 clothes.

24 189. José—standing with the other parents apart from their children—felt
25 powerless to stop the separation. The moment was excruciating for José and Herlinda.
26 Although Herlinda kept crying, José said with “all the pain in [his] heart [he] had to let
27 them take her.” The agents then led the children in a line out the door, while José and the
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211. Eight days after José appeared before the immigration judge, Judge Sabraw in the *Ms. L.* case ordered the government to reunite the families like José and Herlinda within 30 days

1 232. Because they had nowhere to go, the two spent a few days at a Catholic
2 Church in Texas before they were released together.

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

6 234. José and Herlinda resettled in Massachusetts, where they are pursuing their
7 immigration cases.

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

11 236. Herlinda is far more sensitive than she was before the separation and cries
12 frequently for no apparent reason.

13 237. Since the separation, Herlinda exhibits symptoms of PTSD.

14 238. José notices that she is now impatient and quick to anger, on occasion
15 hitting him.

16 239. In calls with her mother, Herlinda suddenly and inexplicably becomes
17 angry and hangs up. She was not like this before the separation.

18 240. After reunifying with her father, Herlinda did not want to go to school.

19 241. José perceived that Herlinda’s self-esteem has suffered.

20 242. Even now, Herlinda has nightmares about the separation and her detention
21 that wake her at night and make it difficult for her to sleep. José finds it difficult and
22 shocking to see his previously happy daughter act this way, but tells himself he must
23 “remember what she went through.”

24 243. The prolonged separation has also impacted José deeply.

25 244. While José was separated from Herlinda, he wept constantly and had
26 trouble sleeping. The insomnia persisted for months even after he and Herlinda were
27 reunited and continues to the present.

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245. José did not learn of all the incidents of harm that Herlinda

1 256. For decades, this nation’s highest court has recognized the fundamental
2 right to family integrity protected by the Constitution: “It is cardinal with us that the
3 custody, care and nurture of the child reside first in the parents, whose primary function
4 and freedom include preparation for obligations the state can neither supply nor hinder.”³⁹
5 These constitutional protections extend to citizens and non-citizens alike, even when
6 confined by the government.

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1 and HHS (including ORR) officials,⁴⁴ purposely giving those employees no time to plan
2 for or coordinate implementation.⁴⁵

3 265. ORR was aware as of at least November 2017 of an increase in the number
4 of children in ORR custody separated from their parents, many of whom were very
5 young children.⁴⁶ Yet the government failed to adequately prepare for the increased
6 number of children separated from parents in its custody.

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

12 267. The government's family separation policy and deliberate lack of planning
13 and coordination among agencies also caused children to be detained in CBP facilities
14 beyond the 72-hour legal limit. During the Zero Tolerance period, thirty-nine percent of
15 separated children were detained by CBP for more than seventy-two hours.⁴⁷

16 **1. Defendant Subjected Plaintiffs to Dangerous Detention Facilities**
17 **Unsuited for Families with Children**

18 268. As a direct result of the indiscriminate and reckless apprehension, under the
19 pretext of intending to prosecute, thousands of families like Plaintiffs' seeking entry into
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21 ⁴⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-163, UNACCOMPANIED CHILDREN:
22 AGENCY EFFORTS TO REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER
23 12 (2018), *available at* <https://perma.cc/UYZ9-UBYQ> [hereinafter GAO REPORT] ("DHS
24 and HHS officials told us that the agencies did not take specific planning steps because
25 they did not have advance notice of the Attorney General's April 2018 memo.").

26 ⁴⁵ 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.").

⁴⁶ *See id.* at 12-13; DHS OIG REPORT I at 15, 24.

⁴⁷ DHS OIG REPORT I at 36.

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1 and ventilation, drinking water and food, as well as “medical assistance if the minor is in
2 need of emergency services.”⁵⁰

3 273. Defendant failed to provide Abel with medical assistance once it became
4 apparent that he was likely in need of emergency services, in violation of the mandatory
5 *Flores* consent decree.⁵¹

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

9 274. Despite the fact that tracking separated children was as simple as adding a
10 checkbox to an ORR / DHS referral page,⁵² these two agencies primarily responsible for
11 implementing the policy instituted no “consistent way to indicate in their data systems
12 children and parents separated at the border” until at least the summer of 2018.⁵³

13 275. The El Paso pilot program in from July through November 2017 revealed
14 that DHS was woefully underprepared to track separated families through its information
15 technology systems. According to the DHS Office of the Inspector General (OIG), CBP
16 personnel “relied on local spreadsheets to document family separations,” which led to
17 data errors and “prevented ICE and CBP personnel in other locations from seeing where
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1 304. Defendant, federal officials, and federal employees referenced above
2 engaged in extreme and outrageous conduct with an intent to cause, or at least a reckless
3 disregard of the probability of causing, Plaintiffs to suffer severe emotional distress.

4 305. Defendant, federal officials, and federal employees referenced above
5 intended to cause, and did cause, Plaintiffs to suffer severe emotional distress by forcibly
6 separating Plaintiffs father and child from each other without their consent and despite
7 the obvious terror caused by the separation, and flying the children thousands of miles
8 across the country.

9 306. Defendant, federal officials, and federal employees referenced above
10 intended to cause, and did cause, Plaintiffs to suffer severe emotional distress by, *inter*
11 *alia*, failing to develop and use a system for tracking the existence of the parent-child
12 relationship,

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1 resources to accommodate the increase in children designated as UACs as a result of the
2 family separation policy, failing to provide a child welfare or child safety justification for
3 forcibly separating children from their parents, failing to track families, failing to account
4 for all the children separated from their parents, and failing to craft any type of
5 reunification plan until receiving a court order from a federal judge.

6 309. The behavior of Defendant, federal officials, and federal employees
7 referenced above was extreme and outrageous under the circumstances, particularly in
8 light of Plaintiffs' recent flight from abuse and persecution.

9 310. As a direct and proximate result of that conduct, Plaintiffs suffered severe
10 emotional distress throughout their time in Defendant's custody and continue to suffer the
11 lasting effects of that distress today.

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

14 **COUNT TWO**
15 **NEGLIGENCE**

16 312. Plaintiffs re-allege each allegation in the preceding paragraphs 1 through
17 311 as though fully set forth here.

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

23 314. Defendant, federal officials, and federal employees referenced above acted
24 unreasonably by violating their duties while Plaintiffs were in Defendant's custody.

25 315. Defendant, federal officials, and federal employees referenced above
26 violated those duties by *inter alia* forcibly separating Plaintiffs from their children
27 without their consent, and flying the children thousands of miles across the country.
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1 316. Defendant, federal officials, and federal employees referenced above
2 violated those duties by *inter alia* failing to develop and use a system for tracking the
3 existence of the parent-child relationship, exposing children to the risk and reality of
4 abuse while under ORR custody, withholding from the parents any information about
5 their child's location or welfare for weeks or months at a time, not allowing families to
6 communicate with each other or severely limiting such opportunities, never giving any
7 indication that the parents and children would ever be reunited, and interfering with
8 Plaintiffs' right to seek asylum in the United States by using Plaintiffs' distress at their
9 separation to coerce Plaintiffs to sign documents authorizing their removal from the
10 United States.

11 317. Defendant, federal officials, and federal employees referenced above
12 violated those duties by subjecting Plaintiffs to inhumane detention conditions prior to
13 their separation. This includes (among other acts mentioned above and such acts that
14 may become apparent during discovery) denying Plaintiffs proper food, clean drinking
15 water, hygiene products, clothing, and appropriate restroom facilities during their time in
16 CBP detention, holding Plaintiffs in the freezing cold hieleras that lacked ventilation, and
17 subjecting Plaintiffs to mental anguish through verbal cruelty.

18 318. Defendant, federal officials, and federal employees referenced above
19 further violated those duties by failing to plan for or secure resources to accommodate the
20 increase in children designates as UACs as a result of the family separated policy, failing
21 to provide a child welfare or safety justification for forcibly separating children from
22 their parents, failing to track families, failing to account for all children separated from
23 their parents, and failing to craft any type of reunification plan until receiving a court
24 order from a federal judge.

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

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II. Basis of Jurisdiction: 2. U.S. Government Defendant

**III. Citizenship of Principal
Parties (Diversity Cases Only)**

Plaintiff:- **3 Citizen of Foreign Country**
Defendant:- **5 Non AZ corp and Principal place of Business outside AZ**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **360 Other Personal Injury**

VI.Cause of Action: **28 U.S.C. §§ 1331, 1346(b), 1402(b), and 2671–2680. Civil tort claims against the United States pursuant to the Federal Tort Claims Act**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand:
