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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

20 A.P.F. on his own behalf and on behalf of his
21 minor child, O.B.; J.V.S. on his own behalf and
on behalf of his minor child, H.Y.; J.D.G. on his
own behalf and on behalf of his minor child,
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1 15. The government’s policy of forcibly taking children from their parents
2 caused extraordinary trauma to thousands of families, including Plaintiffs—six fathers
3 and their six children who were separated for months after being detained at the U.S.-
4 Mexico border in Arizona.

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

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

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

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

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

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

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

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

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

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1 25. 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.”³ Some children suffered from
9 “acute grief that caused them to cry inconsolably,” “believed their parents had abandoned
10 them,” experienced “feelings of fear or guilt,” and were “concerned for their parents’
11 welfare.”⁴

12 26. Plaintiffs will endure the trauma of forcible separation for the rest of their
13 lives. They seek redress for themselves and on behalf of their children for the harm the
14 United States has inflicted. The government is liable for this conduct under the Federal
15 Tort Claims Act, 28 U.S.C. §§ 1346(b)(1), 2671, et seq. (“FTCA”).

16 27. Plaintiffs, by this action, seek monetary damages for the extensive injuries
17 they suffered because of the conduct of the United States governmentmoreMCID 19.680.[(mo2h

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29. On April 4, 2019, Plaintiffs Abel and José submitted administrative claims to the U.S. Department of Justice (“DOJ”), the U.S. Department of Homeland Security (DHS), the U.S. Department of State (DOS), the U.S. Customs and Border Protection (CBP), the U.S. Citizenship and Immigration Services (CIS), the U.S. Immigration and Customs Enforcement (ICE), and the U.S. Coast Guard (USCG).

1 41. Mario and Antonio, then seven years old, presented themselves at an
2 official port of

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

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

12 53. Nonetheless, in February 2017, a meeting of high-ranking federal officials
13 from ORR, DOJ, CBP and ICE took place at the office of the CBP Commissioner, and a
14 proposal to separate asylum-seeking parents from their children at the border was
15 discussed.⁷ Commander Jonathan White, a high-ranking HHS official and then Deputy
16 Director of ORR’s Unaccompanied Children program who attended the meeting, later
17 expressed his concerns about the harm-9 (he meetd AMCID,-9.1 (ciaint)-9 (enance of em)-9 (otior

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

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

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

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

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

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

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

13 62. By late 2017, the government was separating families along the length of
14 the U.S.-e

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

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

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

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

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

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

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

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

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

25 ³⁰ See Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 16, 2018, 8:25 AM),
26 <https://perma.cc/4EMP-JC34>; see also Fox News, Interview: Maria Bartiromo Interviews
27 Donald Trump on Fox Sunday Morning Futures (Apr. 28, 2019),
28 <https://www.youtube.com/watch?v=hvUc7ONNTp4> at 1:32-2:21; Kimberly Kindy et al.,
Trump says etio. ~~BHB~~

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82. When Obet was six, his family learned he had only a year to live unless he underwent major heart surgery. With the support of a charitable organization, Obet had .7.37 8.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139. Thereafter, Abel spoke with his wife, who had been able to speak with Obet on the phone. Abel learned something that(other in Ca)-9.7 (lifornia.)-9.3 ()TJ21.398 0 Td[(Ab

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On June 26, 2018, Judge Sabraw issued the preliminary injunction in the *Idfa6 0.* [(Obis)- 1 9t

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

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

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

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

15 195. A different official, who José believed was a social worker, told Jose
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241. ORR records reflect that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2. The United States Takes Alicia from Heriberto

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

318. As Heriberto exited the bathroom with Alicia, officers instructed Heriberto to move to one side of the hallway and instructed Alicia to go to the opposite side with other children. Heriberto immediately objected,

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

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

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

13 **5. Heriberto Is Deported to Guatemala Without Alicia**

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

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

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

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

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

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

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

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

21 363. Alicia was scared to go back to school. While in school, she did not
22 interact with the other children. Alicia stared blankly at walls or other things, and she did
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1 366. Heriberto also continues to suffer physical and emotional harm from the
2 separation. He tries to forget everything that happened but cannot. He often feels
3 sadness, frustration, anger, guilt, and remorse about what happened.

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

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

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

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

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

14 370. Mario and Antonio had left their village located in the San Marcos
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2. The United States Takes Antonio from Mario

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

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

376. Mario asked the officers if they were sending Antonio back to Guatemala

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

3 383. On or around December 8, 2017, with the assistance of an ICE officer 383.383.cry (

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

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

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

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

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

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

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

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

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

13 2. The United States Forcibly Separates Rolando and Bertha

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

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

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

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

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

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

15 461. Rolando returned to his village for the second time without his daughter.
16 He began to worry that Bertha was

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As with the fundamental right to family integrity, the Court has found that the Equal Protection Clause (and the

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

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

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

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

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

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

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

13 **CONSEQUENCES OF DE9.3 (anything) Jf-15.444566.4sTNT (nted tellSTw 14.031**

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1 547. As a direct and proximate result of the referenced conduct, Plaintiffs
2 suffered substantial damages.

3 548. Under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, the
4 United States is liable to Plaintiffs for negligence.

5 **COUNT THREE**

6 **LOSS OF CHILD'S CONSORTIUM**

7 549. Plaintiffs re-allege each allegation in the preceding paragraphs 1 through
8 548 as though fully set forth here.

9 550. Plaintiff Children suffered severe, permanent, and disabling injuries.

10 551. Plaintiff Children must now cope with the long-term mental health effects
11 and trauma caused by Defendant, federal officials, and federal employees referenced
12 above.

13 552. Those injuries substantially interfere with the capacities of Plaintiff
14 Children to interact with their fathers in a normally gratifying way.

15 553. Plaintiff Children continue to struggle to communicate with their fathers,
16 especially about the separation and, in the case of Obet, Herlinda, and Bertha, the abuse
17 they suffered.

18 554. Under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, the
19 United States is liable to Plaintiff Fathers for loss of consortium.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully demand as follows:

22 A. Compensatory damages;

23 B. Attorneys' fees and costs pursuant to, among other provisions, the Equal
24 Access to Justice Act, 28 U.S.C. § 2412; and

25 C. Such other and further relief as the Court may deem just and appropriate.

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Respectfully submitted this 16th day of July, 2020.

COPPERSMITH BROCKELMAN PLC

By s/ Keith Beauchamp
Keith Beauchamp
Shelley Tolman

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