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FOIA EXEMPT

By FedEx Overnight Delivery

April 14, 2010

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 20528-0405

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
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

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
400 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 6). The enclosed claims consist of (1) an asserted claim for [redacted] authorization; (2) [redacted] birth certificate; and (3) [redacted] [redacted] on behalf of [redacted] and [redacted] including Attachment A hereto.

Covington & Burling LLP and the Southern Poverty Law Center represent [redacted] and his daughter in this matter. We are representing these claimants 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) is confidential and contains information about the claimants that is private and confidential, including the claimants' names and addresses.

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Such information is exempt from the public access provisions of the Freedom of Information Act, 5 U.S.C. § 552 (b)(7)(D). In addition, the government may receive a request for disclosure relating to these claims, and ask that the government: (1) notify the claimant before responding to the request; and, (2) redact any information, including but not limited to the claimant's name and address, that is exempt from disclosure under FOIA or any other applicable statute or regulation protecting the privacy of the claimant.

We advise that we do not discuss any proprietary information, and we prohibit disclosure resolution of these claims. Please refer to the contract for any terms and conditions.

Sincerely,



Matthew J. Schlesinger
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Swati R. Prakash
Bethany Theodorou
Jessica R. Hanson
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Enclosures (Claim Authorization Form, Birth Certificate, SE-05 Form, UI-9, Claims Attachments)

ATTACHMENT A

1. Submit to Appropriate Federal Agency

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

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

Office of the Principal Legal Advisor
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U.S. Customs and Border Protection
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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

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

J.V.S. and his daughter H.Y., then five years old, were forcibly separated by agents of the U.S. Department of Homeland Security ("DHS") on or about Thursday, May 10, 2018. H.Y. was put into the custody of the U.S. Department of Health and Human Services ("HHS"), Office for Refugee Resettlement ("ORR"), while J.V.S. remained in DHS custody. J.V.S. and H.Y. were not reunited until Saturday, July 21, 2018.

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

J.V.S. believes that he and his daughter were separated in the evening.

Attachment A to Standard Form 95

Claimant: J.V.S., on behalf of himself and his minor daughter, H.Y.

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“taking half of [his] life from [him].” When the social worker approached H.Y., she started crying uncontrollably and latched onto her dad, screaming, “*Papi*, don’t leave me! Don’t let me go!” H.Y., who had been upbeat and smiled often on the journey from Guatemala, began crying uncontrollably. J.V.S. attempted to comfort her, telling her not to be sad because they would “only be apart for a few moments,” and that he would come get her. The officials told the children to line up on one side of the room, with the parents on the other side.

The crying children lined up as ordered, wearing their government-issued clothes. J.V.S.—standing with the other parents apart from their children on the other side of the room—felt powerless to do anything to stop the separation. The moment was excruciating for J.V.S. and H.Y. Although H.Y. kept crying, J.V.S. said with “all the pain in [his] heart [he] had to let them take her.” The agents then led the children in a line out the door, while J.V.S. and the other parents stood there watching, not knowing when—or even if—they would ever see their children again. Then the officials took J.V.S. and other parents back to the cages. J.V.S. describes the scene as being “like a funeral,” with grown men and women openly and uncontrollably weeping. As soon as H.Y. was gone, J.V.S. began crying uncontrollably. His mind raced to the thought of being deported without his daughter. He felt unbearable anguish not knowing whether he would see his daughter again.

2. J.V.S. is Kept in Detention After Separation.

J.V.S. wept every day of the next week that he was kept in the *hielera* after H.Y. was taken. Left with no information about his daughter, J.V.S. could not sleep. The agents refused to tell him what would happen to him and his daughter. Were they going to be deported? Would U.S. officials deport only J.V.S., leaving H.Y. alone in the United States? What would happen to H.Y.? Overcome with confusion and fear, J.V.S. and the other separated parents in the *hielera* cried for their children. J.V.S. recalls comforting another father who could not stop thinking about what could happen to his child. Although J.V.S. reassured him that they would someday be reunited with their children, privately he was deep in despair. Desperate for information, J.V.S. and other parents constantly asked the officials at the *hielera* about their children, but were denied any information. Often times the officers would shut the door to silence the parents’ pleas.

While in the *hielera*, the detainees continued to eat nothing but the undercooked instant noodle soup. Ec the ooulp-1(t)d. Al was deep iDend-2(w)2(1w)2(3d s)-1(oni)-2(e)mp-1(t)d1wokehey H.Y.

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J.V.S.'s detention in Stewart was deeply discouraging and degrading. He shared a small prison cell with a stranger. J.V.S. could only think about what was happening to H.Y. and cried every night. For a month, J.V.S. sat in his prison cell and wondered if he would ever see his daughter again.

Although J.V.S. wanted to pursue his immigration case in the United States, he was increasingly desperate to see H.Y. again. Seeing the other asylum

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3. H.Y. is Placed in ORR Custody More than 1,000 Miles Away.

After H.Y. was separated from her father, she spent a night or two at an unknown location¹ before being put on a flight across the country—her first time ever on an airplane, without any family by her side. She arrived in New York City on or about May 11, 2018. She

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4. J.V.S. and H.Y. are Reunited and Face the Effects of Separation.

Around July 16, 2018, ICE transferred J.V.S., shackled again by the wrists, waist, and feet, by plane to another detention center in Port Isabel, Texas. Before he left Folkston for Port Isabel, J.V.S. was given a DNA test. J.V.S. was unsure what would happen once he arrived in Port Isabel, but believed he was getting closer to finally reuniting with H.Y. At Port Isabel, officials told him that he was going to be reunited with his daughter and released on parole.

At approximately 2 a.m. on July 21, 2018, H.Y. left her foster home in New York and boarded a plane for Texas. That day, an official called J.V.S. to speak with his attorney on the phone. Before J.V.S. could take the call, another official told him to go back to his cell to gather his belongings. Although J.V.S. was never told that he was going to meet his daughter, he followed officers past other offices and looked into each one, hoping to see her. They then stopped and entered an office where J.V.S. saw H.Y. watching television. J.V.S. immediately

Through its family separation policy, 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."⁵ "[N]othing 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."⁶ 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 wellbeing, *plainly causes irreparable harm.*"⁷ Children attach to their caregiver from the time they are born, and the children's sense of safety "depends on that relationship."⁸ Disrupting that relationship causes "the parts of the brain that deal with attachment and fear" to "develop differently."⁹ It is not surprising, then, that "[s]eparation irreparably harms [families] every minute it persists."¹⁰

The findings of the *Jacinto-Castanon de Nolasco* court are 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.93 - Tf 2.78,f(o)-4(f)c

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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.”¹³ 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.”¹⁴ 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.¹⁵

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 instituted the family separation policy to which J.V.S. and H.Y. were subjected. 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:

- In 2016, the U.S. Department of Homeland Security’s (“DHS”) Advisory Committee on Family Residential Centers concluded that “the separation of

Evid., Jun. 20, 2018, <https://tinyurl.com/y3fkofpb>; *see also, e.g.*, Wan, *supra* note 8 (describing the psychological and physiological responses that “wreak[] dramatic and long-term damage” on children who are forcibly separated from their parents).

¹³ *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 (Apr. 15, 2017), <https://www.aap.org/press-releases/2017/04/15/aap-statement-opposing-separation-of-children-and-parents-at-the-border>).

families for purposes of immigration enforcement or management, or detention is *never* in the best interest of children.”¹⁶

- 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.¹⁷ 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.’”¹⁸
- 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,¹⁹ the announcement was met with an immediate wave of warnings from the medical community. The AAP, among others, warned that such a policy the med Siatessnoteo

Attachment A to Standard Form 95

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“official” 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,”²⁵ many families lawfully crossed the border and yet were separated anyway.²⁶

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.²⁷ This drove many families who had fled their home countries in fear “to take other routes into the country, at

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purposely giving those agencies no time to plan for or coordinate implementation.³² Among other things, this 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 basic 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,³³ 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 2018.³⁴ 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,³⁵ even when ordered to do so by a U.S. District Court.³⁶ The Administr

children.³⁹ 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 incommunicado from each other.”⁴⁰ 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.⁴¹ 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 a thousand staff members without conducting FBI background fingerprint checks and having a “dangerously low number of clinicians serving children” at that facility.⁴² A spokeswoman for the HHS’s Inspector General’s Office stated that these deficiencies posed “serious safety and health vulnerabilities.”⁴³ At some detention centers, staff members were drunk while they were supposed to be caring for separated children.⁴⁴ 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.⁴⁵ In addition to the pervasive sexual abuse of detained children, there are reports of widespread denial of medical care, including for burn injuries, broken bones, and sexually transmitted diseases.⁴⁶ In other reported cases, staff gave children medicine to which they were allergic despite warnings on th

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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.

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 J.V.S.'s and H.Y.'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 J.V.S. and H.Y. severe trauma and emotional distress.⁴⁸

The government knew that forcibly taking H.Y. from J.V.S. would fill them with terror, desperation, and anguish. It purposefully inflicted that trauma on J.V.S. and H.Y. to instill fear in others. It then compounded that trauma by keeping J.V.S. and H.Y. apart for more than 72 days, without telling them anything about the other's whereabouts or well-being, without allowing them even to speak to one another for twenty-two days, and without any plan for reuniting them. And, as a result of the government's actions and failures, H.Y. was exposed to abuse in a foster care system overburdened with unaccompanied children.

J.V.S. and H.Y. 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.

⁴⁸ Among other causes of action, the facts related herein support claims for infliction of emotional distress (whether