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FOIA EXEMPT

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July 24, 2010

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U.S. Department of Justice

Office of the General Counsel
U.S. Department of Homeland Security

Washington, DC 20530-0001

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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.
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ATTACHMENT A

1. Submit to Appropriate Federal Agency

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Office of the General Counsel
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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

R.Z.G. and his daughter, B.Z.E., then nine years old, were forcibly separated by agents of the U.S. Department of Homeland Security ("DHS") on or about Wednesday, November 15, 2017. B.Z.E. was placed in the custody of the U.S. Department of Health and Human Services ("HHS"), Office for Refugee Resettlement ("ORR"), while R.Z.G. remained in DHS custody. R.Z.G. and B.Z.E. were not reunited until Thursday, July 26, 2018, when B.Z.E. returned to Guatemala.

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

R.Z.G. believes he was separated from his daughter in the evening.

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

asylum. B.Z.E. is R.Z.G.'s "shadow;" she tags along wherever R.Z.G. goes, and he could not imagine leaving her behind. R.Z.G. and B.Z.E. left their community around the end of October 2017 and set off for the United States.

R.Z.G. and B.Z.E. presented themselves to immigration officials at the Nogales Port of Entry on November 13, 2017. R.Z.G. was met by an official who asked him for his documents. After R.Z.G. showed the official their birth certificates and his Guatemalan identification card, he and B.Z.E. were taken to a room. Officials interviewed R.Z.G. and B.Z.E. and asked why they had come to the United States. R.Z.G. told the officials about his fear of returning to Guatemala, including the violence in his community.

R.Z.G. and B.Z.E. were forced to remove their shoe laces and belts and hand over their backpacks with their personal belongings. Officials even confiscated the elastic band that held back B.Z.E.'s hair. R.Z.G. and B.Z.E. were kept in a room along with about 20 other fathers and children at the Nogales facility and waited anxiously to find out what would happen next. There were no windows or fresh air in the overcrowded room, which alternated between being too hot and too cold. The room was made almost entirely of cement and contained a cement bench that

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

2. The U.S. Government Forcibly Separates R.Z.G. and B.Z.E. Without Any Information or Explanation.

The morning after arriving at the facility, R.Z.G. was again interviewed by immigration officials. The officials took R.Z.G. out into the hallway outside of the small room where he and B.Z.E. were being kept and asked about his reasons for coming to the United States and how he arrived at the border. R.Z.G. a

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

3. After a Week Without Any Information, R.Z.G. and B.Z.E. Speak By Phone and R.Z.G. Discovers She is in New York City.

The next evening, R.Z.G. was taken by bus to another detention center. During transit, R.Z.G. was shackled at the hands, waist, and feet. After he arrived at the new detention center, R.Z.G. was told to shower and was issued a yellow detainee uniform. R.Z.G. was placed in a small prison-like cell made entirely of cement which he shared with another person. The cell had only two beds, a toilet, and a small window. R.Z.G. was constantly freezing.

R.Z.G. continued to ask officials about B.Z.E., but was told that they didn't know anything about his daughter. Each day, R.Z.G. desperately sought information about B.Z.E., giving the officials B.Z.E.'s name and asking over and over how

4. R.Z.G. Finds Out that B.Z.E. Has Been Beaten and Abused in Custody.

In total, R.Z.G. spoke with B.Z.E. about three times while he was in detention in Arizona. Using the phone number that M.R. had given him during the first call, every two or three days R.Z.G. tried to call the facility that was caring for B.Z.E. More often than not, no one would answer the phone at the facility when R.Z.G. called. About a week after his first call with B.Z.E., R.Z.G. asked one of the officials for another call and he got through to B.Z.E. R.Z.G. spoke with both M.R. and B.Z.E., and for the first time learned that B.Z.E. had been physically abused by an immigration official after he and B.Z.E. were separated.

R.Z.G. listened as his nine-year-old child recounted her distress on the night they were separated, which left her inconsolable. B.Z.E. had watched through the glass window in the door as her father was handcuffed, shackled and taken away from her. All of a sudden, she was alone and terrified. She had no idea what would happen next, and she screamed and cried uncontrollably to be able to go with her father. B.Z.E. told R.Z.G. that an immigration official wearing a uniform threatened he

Attachment A to Standard Form 95

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

would happen to B.Z.E. after he left the United States. R.Z.G. felt hopeless. He wondered what

Attachment A to Standard Form 95

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

that B.Z.E. was worried about her ill mother. In late May, B.Z.E. told her clinician that she was very sad and missed her family back home. B.Z.E. was so overwhelmed with constant sadness that on May 23, 2018, her foster mother called the Cayuga clinician to report that B.Z.E. had been crying due to missing her family.

8. B.Z.E. is Reunited with Her Family After More Than Eight Months Apart.

In June and early July 2018, R.Z.G. and C.E.C. awaited news about plans for B.Z.E.'s return to Guatemala and stayed in touch with B.Z.E. through calls and texts from M.R. On occasion, B.Z.E. would cry on the phone and tell R.Z.G. and C.E.C. that she missed them and wanted to come home. B.Z.E. was also very worried about her mom, who she knew was sick and not doing well. C.E.C.'s condition became worse as the months dragged on. When B.Z.E. would call, C.E.C. cried inconsolably and could not get out of bed.

In June, R.Z.G. received a call from M.R., who notified him that B.Z.E. would be returning to Guatemala on July 9, 2018. R.Z.G. later spoke with an individual who worked at the *Casa del Migrante* in Guatemala City. She gave R.Z.G. the address where he should arrive to pick up B.Z.E. in the capital. R.Z.G. was elated that finally B.Z.E. would be coming home. R.Z.G. and C.E.C. arranged to travel with another family from their village in the Western Highlands by car to the capital. The other family was also going to meet their child who had been taken from his father in the United States. R.Z.G. and C.E.C. left their village and after an overnight journey of around seven or eight hours, arrived at the address in Guatemala City that had been provided to them. R.Z.G. and C.E.C. waited for several hours inside the *Casa del Migrante* office before they were notified that B.Z.E.'s flight had been canceled and that B.Z.E. would not be returning to Guatemala that day. R.Z.G. contacted M.R., who confirmed that the flight had been canceled. M.R. told R.Z.G. that she did not know when B.Z.E.'s flight would be rescheduled. R.Z.G. and C.E.C. had borrowed money to make the trip to the capital and did not have enough money to pay for an extended stay. R.Z.G. began to worry that B.Z.E. was never coming home, and for the second time he returned to his village without his daughter.

When he arrived back in the village, R.Z.G. was met with more questions and comments from neighbors and community members about his daughter. Stories circulated about the United States government not returning children to their parents, and several people commented to R.Z.G. that B.Z.E. might not be returned until she was 18, or that perhaps he might not ever see her again. R.Z.G. began to feel even more desperate, and wondered if what people were saying was true.

About a week later, M.R. called R.Z.G. and told him that B.Z.E. would be scheduled for
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Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

arrived at the same address in the capital, and anxiously waited with other parents desperate to see their children again—children they had not seen since they had been forcibly separated at the U.S. border months earlier.

That afternoon, R.Z.G., C.E.C., and B.Z.E.'s youngest brother S. were taken to the room where the children were arriving. B.Z.E. entered the building, and along with the other children who had been separated from their parents in the United States and finally returned to Guatemala, was led down the hallway, past the room where the parents were waiting, to the dining room. R.Z.G. and C.E.C. made eye contact with B.Z.E. as she passed by the room where they were waiting, but they were not yet allowed to greet their daughter until after she had eaten. Both R.Z.G. and C.E.C. were overwhelmed with joy and relief and cried uncontrollably. B.Z.E. looked older and bigger than what R.Z.G. remembered when he had last seen her over eight months before. After the meal, B.Z.E. returned to where her family was waiting for her and was finally allowed to hug R.Z.G. and C.E.C. R.Z.G. and B.Z.E. cried as they hugged and B.Z.E. quietly whispered, "I love you a lot, *Papá*." R.Z.G. saw the look of relief on B.Z.E.'s face, but he also noticed that she was not able to say much.

On their journey back to their village, B.Z.E. did not want to eat anything and commented that she had a bad headache. R.Z.G. bought medicine for B.Z.E. and tried to encourage her to eat something. B.Z.E. simply commented that she wanted to go home and see her younger brothers.

10. R.Z.G. and B.Z.E. Continue to Suffer After Being Reunited.

B.Z.E. was separated from R.Z.G. for 253 days—over 8 months. In the months since their separation, R.Z.G. has noticed many changes in B.Z.E.'s emotional and physical health. Since her return, B.Z.E. does not eat well and has lost weight. A month after her return, R.Z.G. was so concerned about B.Z.E. not eating that he decided to take her to a doctor. The doctor told R.Z.G. that B.Z.E. was still very frightened and prescribed some medicine for her to take.

Since the separation, B.Z.E. is easily startled and upset, and R.Z.G. believes "the fear has stayed with her." B.Z.E., once a well-adjusted young girl with many friends, now prefers to stay at home with her mother and her brothers. B.Z.E. does not socialize with other children at school, and it has taken constant encouragement for her to play with her cousins like she did before her separation from her father. B.Z.E. is very bright and does well with her school work, but is often bothered and becomes tearful when other children ask her questions or when someone raises their voice.

B.Z.E. is terrified of traveling and being separated from her father again, and does not want to let him out of her sight. Several months after B.Z.E. returned to Guatemala, officials from a Guatemalan governmental agency called R.Z.G. and asked him to return to the capital with B.Z.E. for an interview. R.Z.G. and C.E.C. made plans to return to the capital and told

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

B.Z.E. that she had to go as well. B.Z.E., who remains fearful of leaving her community, told R.Z.G. that she was afraid that they would take her away again. R.Z.G. comforted B.Z.E. and promised that they would not be separated again.

The prolonged separation has also deeply impacted R.Z.G. and his wife. C.E.C.'s headaches are less frequent than when her daughter was separated from her family, but continues to struggle with anxiety and depression. R.Z.G. is easily startled and suffers from anxiety, constantly worrying that something bad could happen. Similar to B.Z.E., R.Z.G. has also lost weight and does not have a strong appetite. R.Z.G. does not know how his family will get through this difficult time, but says, "I ask God to carry my family forward."

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 R.Z.G. and B.Z.E., 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 R.Z.G. and B.Z.E. 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 R.Z.G. and B.Z.E. Administration officials have yet to acknowledge or accept any responsibility for the harms they caused. For all of these reasons, R.Z.G. and B.Z.E. 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 R.Z.G. and B.Z.E., 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

Attachment A to Standard Form 95

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

can neither supply nor hinder.”¹ These constitutional protections extend to citizens and non-citizens alike, even when confined by the government.²

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 a

unexpected, abrupt, or in a frightening context.”⁹ 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.”¹⁰

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.”¹¹ Children who experience trauma like forced separation from a parent “are at a much greater risk

the “extensive evidence,” the irreparable harm caused by forcibly separating parents and children is indisputable.¹³

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 R.Z.G. and B.Z.E. 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, 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.”¹⁴
- 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.¹⁵ 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.’”¹⁶
- 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,¹⁷ the announcement was met with an immediate wave of warnings from the medical community. The AAP, among others, warned that such a policy

¹³ 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)).

¹⁴ 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>.

¹⁵ *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>.

¹⁶ Colleen Long,

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

number could have reached into the thousands.²¹ As R.Z.G. and B.Z.E.'s experience illustrates, the practice of separating families was not limited to individuals who were found crossing the border without authorization, but rather included families who lawfully presented at a port of entry seeking asylum.²² Like many families fleeing to the United States from Central America, R.Z.G. and B.Z.E. arrived here seeking asylum and lawfully presented themselves at an official port of entry. R.Z.G. was not referred for any criminal proceeding. Yet R.Z.G. and B.Z.E. were cruelly and without any justification forced apart and made to endure eight months of separation, with minimal phone contact and no assurance of ever being reunited. Indeed, R.Z.G. and B.Z.E. are not alone in this experience; many other families who lawfully presented at a port of entry in 2017 and 2018 were nonetheless separated.²³

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.²⁴ 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

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>.

²¹ *See Child Separations by The Trump Administration, Staff Report, Committee on Oversight and Reform*, U.S. House of Representatives (July 2019) at 1, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf>.

²² *See, e.g.,* Paloma Esquivel & Brittny Mejia, *The Trump Administration Says It's a 'Myth' that Families that Ask for Asylum at Ports of Entry are Separated. It Happens Frequently, Records Show*, L. A. Times (Jul. 1, 2018), <https://www.latimes.com/local/lanow/la-me-ln-port-of-entry-separations-20180701-story.html>.

²³ *See, e.g.,* Katie Shepherd, *Border Patrol Agents May Have Separated Families at Legal Ports of Entry Despite Promises Not To*, WILLAMETTE WEEK (Jun. 19, 2018), <https://www.wweek.com/news/courts/2018/06/19/border-patrol-agents-may-have-separated-families-at-legal-ports-of-entry-despite-promises-not-to/>; Colleen Long, *Figures Show About 2,000 Minors Separated From Families*, AP NEWS (Jun. 16, 2018) (citing DHS figures and noting, "[t]here were an additional 38 minors separated at ports of entry in May through June 6. There were more than 55 in April and a high of 64 in March, according to the figures."), <https://apnews.com/227a90dbf32a46bf9545b4524aa7af64>.

²⁴ *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].

actions) were viewed as differing pathways to deterring future migration.²⁵ Similarly, the fact that many families lawfully presented themselves for asylum at ports of entry yet were separated nonetheless²⁶ further illustrates that the primary purpose of family separation was deterrence, and not concern for the enforcement of immigration laws.²⁷

All of this evidence shows that the government intentionally inflicted the severe harm caused by forcible separation on families, like R.Z.G. and B.Z.E., who crossed the U.S. border.

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

The Administration multiplied the harm it intended to cause by the shocking carelessness with which it implemented its policy and practice of separating families. Among 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,²⁸ 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 2018.²⁹ 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,³⁰ even when ordered to do so by a U.S. District

²⁵ Policy Options to Respond to Border Surge of Illegal Immigration, <https://assets.documentcloud.org/documents/5688664/Merkleydocs2.pdf>; see Anne Flaherty & Quinn Owen, *Leaked 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>.

²⁶ 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.").

²⁷ Philip Bump,

Attachment A to Standard Form 95

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.

Attachment A to Standard Form 95

Claimant: R.Z.G., on behalf of himself and his minor daughter, B.Z.E.