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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

J.P. and L.C.,

Plaintiffs,

vs.

United States of America,

Defendant.

No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

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## INTRODUCTION

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2           1.       This action seeks damages for the trauma suffered by a mother and child who  
3 fled to the United States seeking asylum, and became victims of the United States Federal  
4 Government’s (“U.S. Government”) unlawful and cruel Family Separation Policy. At the  
5 time of the separation, the child was 16 years old and had never spent a single night away  
6 from her mother.

7           2.       Plaintiffs J.P. and L.C.<sup>1</sup> are a mother and daughter who are indigenous  
8 women of Mayan descent and citizens of Guatemala. Before fleeing their home country,  
9 neither had ever traveled outside their Mayan village. J.P. spoke only a Mayan language  
10 called Q’eqchi’ and could not read or write in any language. Her daughter, L.C.,  
11 communicates in Spanish and Q’eqchi’. Once they left their village, J.P. was entirely  
12 dependent on her daughter for communication.

13           3.       J.P. and L.C. fled Guatemala to escape severe violence. When they left their  
14 country in early May of 2018 to seek safety in to the United States, J.P. and L.C. knew  
15 their journey to reach the U.S. border would be dangerous, but they had no idea that the  
16 greatest peril would be found once they were apprehended by U.S. immigration officers.  
17 Their entry to the United States came just as the U.S. Government expanded a brutal policy  
18 to separate families seeking asylum, without making any plan to reunite these families, or  
19 even tell the family members what had become of one another.

20           4.       Shortly after J.P. and L.C. crossed into the United States from Mexico, U.S.  
21 Customs and Border Patrol (“CBP”) officers detained the pair in Arizona. About three  
22 days later, CBP officers came to separate J.P. from her child. The officers did not  
23 communicate in a language that J.P. could understand, so she had no idea why she was  
24 being separated from her daughter or if she would ever see her daughter again. L.C. was  
25 terrified and clung to her mother when the officers came to separate the pair. L.C. screamed  
26 as agents took her from her mother and, soon after, fainted, injuring her face as she fell  
27 onto a concrete floor. J.P. saw blood on her daughter’s mouth as L.C. was taken away.

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<sup>1</sup> Plaintiff will file a separate motion to proceed with pseudonyms.

1           5.       L.C.’s forcible separation from her mother was part of a cruel and inhumane  
2 policy instituted by the U.S. Government that was intended to deter Central American  
3 families from seeking asylum in the United States, depriving them of their rights to seek  
4 protection under the Immigration and Nationality Act. *See* 8 U.S.C. § 1158.

5           6.       Starting in 2017, the U.S. Government forcibly separated thousands of  
6 children from their parents, including Plaintiffs. This unlawful policy was implemented  
7 without any effective procedure for tracking children after they were separated from their  
8 parents, enabling communication between parents and their children after separation, or  
9 reuniting separated parents and children. *See L. v. U.S. Immigr. & Customs Enf’t*, 310 F.  
10 Supp. 3d 1133, 1144 (S.D. Cal. 2018), *modified on other grounds*, 330 F.R.D. 284 (S.C.  
11 Cal. 2019).

12           7.       In total, the U.S. Government has acknowledged that it has separated at least  
13 3,800 children from their parents or guardians after they crossed the southwestern U.S.  
14 border.<sup>2</sup> Additional U.S. Government reporting indicates that the number of families  
15 separated likely is much higher.<sup>3</sup>

16           8.       J.P. and L.C. remained forcibly separated for nearly two months. For over a  
17 month, J.P. had no idea where her daughter had been taken or if she would ever see her  
18 again. Officers failed to provide J.P. with any information about her own status or her  
19 daughter’s whereabouts. J.P. experienced extreme terror and feared for her daughter’s  
20 safety. Similarly, L.C. did not know if she would ever reconnect with her mother. Officers  
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22 <sup>2</sup> Joint Status Report at 1, 10, *L. v. U.S. Immigr. & Customs Enf’t*, No. 18-cv-00428 DMS  
23 MDD (S.D. Cal. Sept. 11, 2019), ECF No. 465 (the U.S. Government acknowledged that,  
24 for the original class, as many as 2,814 children were separated from their parents and has  
25 so far acknowledged an additional 986 children as part of the expanded class); *see also*  
26 OFFICE OF INSPECTOR GEN., U.S. DEP’T OF HEALTH & HUMAN SERVS., OEI-BL-18-00511,  
SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE 11 (Jan. 17,  
2019), <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf> [hereinafter HHS  
OIG REPORT I].

27 <sup>3</sup> *See* HHS OIG REPORT I, *supra* note 2, at 1, 6, 13 (reporting that “thousands of children  
28 may have been separated . . . before the accounting required by the Court [in *L.*, 310 F.  
Supp. 1133]”).

1 informed L.C. that she had no right to be in the U.S. and that her mother would be deported.  
2 L.C. became terrified J.P. would be sent away before they were reunited.

3 9. It was only after J.P. retained pro bono counsel, more than a month after  
4 being separated from her daughter, that she learned what had become of L.C.

5 10. On July 16, 2018, J.P. and L.C. were finally reunited after extensive  
6 advocacy by their legal team.

7 11. As a result of being forcibly separated for two months, L.C. suffered physical  
8 injury and both J.P. and L.C. suffered, and continue to suffer, extreme emotional distress.  
9 Plaintiffs bring this action under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b)(1),  
10 2671, *et seq.* (“FTCA”), seeking compensation for the extraordinary harms they suffered  
11 due to the U.S. Government’s tortious conduct.

### 12 JURISDICTION AND VENUE

13 12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,  
14 1346(b)(1), and the FTCA, 28 U.S.C. §§ 2671-2680.

15 13. On May 14, 2020, J.P. and L.C. submitted administrative claims to CBP, the  
16 U.S. Department of Homeland Security (“DHS”), U.S. Immigration and Customs  
17 Enforcement (“ICE”), and the U.S. Department of Health and Human Services (“HHS”).  
18 None of the agencies has made a final disposition on either J.P. or L.C.’s administrative  
19 claim. Because six months have passed since the submission of those claims, they are  
20 deemed finally denied. 28 U.S.C. § 2675(a). J.P. and L.C. have therefore exhausted all  
21 potential administrative remedies.

22 14. Venue is proper in this District under 28 U.S.C. § 1402(b) because the acts  
23 and omissions that give rise to this action took place in this judicial district. J.P. and L.C.  
24 were separated in San Luis, Arizona.

### 25 PARTIES

26 15. J.P. and L.C. are Guatemalan nationals who currently reside in the United  
27 States. In 2018, they fled together to the United States seeking asylum.  
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1           16. J.P. and L.C. were forcibly separated while detained at a CBP facility in  
2 Arizona. At the time, L.C. was 16-years-old. Today, she is 20-years-old. After the  
3 separation, federal agents moved J.P. to an ICE detention facility in Irvine, California, and  
4 moved L.C. to an Office of Refugee Resettlement (“ORR”) facility in Phoenix, Arizona.  
5 The pair were separated from approximately May 20, 2018 through July 16, 2018, a total  
6 of eight weeks.

7           17. Defendant the United States of America is the appropriate defendant under  
8 the FTCA. 28 U.S.C. §§ 1346(b), 2671, *et seq.*

9           18. Defendant acted through DHS and HHS, which are “federal agencies” of the  
10 United States under 28 U.S.C. § 2671, and their employees, officers, and agents, including  
11 but not limited to CBP and ICE, subcomponent agencies of DHS that are under the  
12 direction, authority, and control of the Secretary of Homeland Security; and the ORR, a  
13 subcomponent agency of HHS that is under the direction, authority, and control of the  
14 Secretary of Health and Human Services.

15           19. The federal officers referenced in this Complaint were at all relevant times  
16 employees of the United States, working within the scope and course of their employment  
17 with the federal agencies listed above.

18           20. DHS employees were responsible for separating J.P. and L.C. DHS  
19 employees were also responsible for supervising and managing detained individuals at  
20 CBP and ICE facilities, including those located in Arizona—where J.P. and L.C. were  
21 detained and separated—and California, where J.P. was detained after being separated  
22 from her daughter.

23           21. HHS employees were responsible for supervising and managing the  
24 detention of children classified by the U.S. Government as unaccompanied, including those  
25 children at the Arizona facility where L.C. was detained after she was separated from  
26 her mother.

27           22. High-ranking officials from DHS and HHS worked together to design and  
28 promulgate the unlawful Family Separation Policy that caused J.P. and L.C. extreme harm.



1 proceedings and can then file an asylum application. 8 U.S.C. § 1225 (b)(1)(B)(ii); 8  
2 C.F.R. § 235.6(a)(1)(ii), (iii).

3 27. Alternatively, the U.S. Government can place an asylum seeker directly into  
4 removal proceedings through the issuance of a Notice to Appear for a future hearing date.  
5 *See* 8 U.S.C. §§ 1225(b)(2), 1229(a). There is no law requiring the detention of asylum  
6 seekers or the prolonged separation of families.

7 28. If the U.S. Government chooses to detain children, it must comply with the  
8 *Flores* Settlement regardless of whether the children arrive unaccompanied or with their  
9 families. *Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016). Under the *Flores* Settlement,  
10 the U.S. Government is required to treat “minors in its custody with dignity, respect and  
11 special concern for their particular vulnerability.”<sup>6</sup> Further, the U.S. Government must  
12 “hold minors in facilities that are safe and sanitary and . . . consistent with . . . the particular  
13 vulnerability of minors.”<sup>7</sup> Any such facility in which minors are held by the U.S.  
14 Government following arrest must provide for “contact with family members who were  
15 arrested with the minor.”<sup>8</sup>

16 29. Defendant sought to prevent asylum seekers from coming to the United  
17 States by implementing what is now known as the Family Separation Policy. The Family  
18 Separation Policy was developed and implemented to intentionally separate immigrant  
19 families arriving at the southern border for the express purpose of causing those families  
20 emotional harm.

21 30. Defendant developed and implemented the Family and Separation Policy  
22 knowing it would cause extreme trauma to vulnerable families who had fled to the United  
23 States seeking refuge. Prior to its enactment, high-level U.S. Government officials had  
24 warned of the severe harm which would be caused by immigration policies that separated  
25 children from their parents. A 2016 DHS Advisory Committee flatly concluded that “the

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27 <sup>6</sup> Stipulated Settlement Agreement ¶ 11, *Flores v. Reno*, No. 85-CV-4544 (C.D. Cal. Jan.  
17, 1997).

28 <sup>7</sup> *Id.* ¶ 12.

<sup>8</sup> *Id.*

1 separation of families for purposes of immigration enforcement or management, or  
2 detention is never in the best interest of children” and that “[f]amily separation in these  
3 circumstances raises serious concerns and violates the best interests of the child—which  
4 requires prioritizing family integrity and the maintenance of emotional ties and  
5 relationships among family members.”<sup>9</sup>

6 31. Notwithstanding this knowledge, high-ranking federal officials from ORR,  
7 the Department of Justice (“DOJ”), CBP, and ICE met at the office of the CBP  
8 Commissioner in February of 2017 to consider a policy of separating asylum-seeking  
9 parents from their children.<sup>10</sup> Commander Jonathan White, a high ranking HHS official  
10 and then Deputy Director of ORR’s Unaccompanied Children program, attended the  
11 meeting and warned policy-makers that the proposed plan to separate families seeking  
12 asylum would likely harm the children of those families. In 2018, he testified before the  
13 Senate Judiciary Committee and confirmed that he had raised concerns about the impact  
14 of the then-proposed Family Separation Policy on children. He acknowledged “[t]here’s  
15 no question that separation of children from parents entails significant potential for  
16 traumatic psychological injury to the child.”<sup>11</sup>

17 32. News that DHS was considering using family separation as a deterrence  
18 policy was met with instant backlash from the medical community. The American  
19 Academy of Pediatrics (“AAP”), one of many respected organizations to oppose the Family  
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21 <sup>9</sup> U.S. IMMIGR. & CUSTOMS ENF’T, DEP’T OF HOMELAND SEC., REP. OF THE DHS  
22 ADVISORY COMMITTEE ON FAMILY RESIDENTIAL CENTERS 2, 10 (2016),  
23 <https://perma.cc/TZ9C-CUMC>.

24 <sup>10</sup> *Examining the Failures of the Trump Administration’s Inhuman Family Separation*  
25 *Policy: Hearing Before H. Comm. on Energy & Com., Subcomm. on Oversight &*  
26 *Investigations* 1006-1024; 1131-1138 (Feb. 7, 2019) (testimony of Commander Jonathan  
White, U.S. Public Health Service Commissioned Corps, U.S. Dep’t of Health & Human  
Servs.), <https://perma.cc/F2EV-ZS9W> (“Subcomm. on Oversight & Investigation  
Hearing”).

27 <sup>11</sup> *Id.*; see also Jeremy Stahl, *The Trump Administration Was Warned Separation Would be*  
28 *Horrific for Children, Did It Anyway*, SLATE (July 31, 2018, 5:05 PM),  
[https://slate.com/news-and-politics/2018/07/the-trump-administration-was-warned-](https://slate.com/news-and-politics/2018/07/the-trump-administration-was-warned-separation-would-be-horrific-for-children.html)  
[separation-would-be-horrific-for-children.html](https://slate.com/news-and-politics/2018/07/the-trump-administration-was-warned-separation-would-be-horrific-for-children.html).

1 Separation Policy, warned of the damage to “vulnerable, scared children” and therefore  
2 urged policymakers to “exercise caution to ensure that the emotional and physical stress  
3 children experience as they seek refuge in the United States is not exacerbated by the  
4 additional trauma of being separated from their siblings, parents or other relatives and  
5 caregivers.”<sup>12</sup>

6 33. The concerns of Commander White and medical experts were met by  
7 repeated assurances by the then-Director of ORR that “there was no policy that would  
8 result in the separation of children and parent” and that, accordingly, the U.S.  
9 Government’s unaccompanied children program need not plan for a continued increase in  
10 the number of children separated from their parents.<sup>13</sup>

11 **2. After Piloting Family Separation in 2017, the United States**  
12 **Launched a Full-Scale Policy of Separating Parents from Their**  
13 **Minor Children in April 2018.**

14 34. Despite assurances from Secretary of Homeland Security John Kelly to  
15 Congress in April 2017 that families crossing the border would only be separated in  
16 specific circumstances and for the welfare of the child, by March of that year the U.S.  
17 Government had already begun seriously considering its Family Separation Policy.<sup>14</sup>

18 35. Between July and November 2017, the U.S. Government operated a pilot  
19 version of the Family Separation Policy in CBP’s El Paso sector (“Pilot Program”).<sup>15</sup> The

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20 <sup>12</sup> Fernando Stein & Karen Remley, *AAP Statement Opposing Separation of Mothers and*  
21 *Children at the Border*, AMERICAN ACADEMY OF PEDIATRICS (Mar. 4, 2017),  
22 <https://perma.cc/AZ5Q-TN38>.

23 <sup>13</sup> Subcomm. on Oversight & Investigation Hearing, *supra* note 10, 1012-1024; 1131-1138;  
24 2058-2064.

25 <sup>14</sup> U.S. H. COMM. ON THE JUDICIARY, MAJORITY STAFF REP., *THE TRUMP*  
26 *ADMINISTRATION’S FAMILY SEPARATION POLICY: TRAUMA, DESTRUCTION, AND CHAOS* 6  
27 (Oct. 2020), <https://perma.cc/4RY5-RN2B> (hereinafter “House Report”) (Secretary Kelly  
28 stated “Yes, I’m considering [that], in order to deter more movement along this terribly  
dangerous network. I am considering exactly that. [Children] will be well cared for as we  
deal with their parents.”).

<sup>15</sup> HHS OIG REPORT I at 3, *supra* note 2, (“From July through November 2017, the El  
Paso sector of Customs and Border Protection (CBP), an agency within DHS, implemented  
new policies that resulted in 281 individuals in families being separated.”).

1 U.S. Government used the pretext of criminal prosecution to facilitate its Family  
2 Separation Policy. Under its Pilot Program, the U.S. Government prioritized the criminal  
3 prosecution of asylum seekers for improper entry into the United States. The U.S.  
4 Government detained migrating parents under the custody of the U.S. Marshals Service  
5 based on criminal charges for unlawful entry and then forcibly took away their children.  
6 DHS then re-classified the children as unaccompanied minors and placed them in ORR  
7 custody.<sup>16</sup> The U.S. Government separated approximately 280 families through the Pilot  
8 Program.<sup>17</sup> The program did not contemplate or provide for the reunification of separated  
9 families at any stage.<sup>18</sup> The U.S. Government not only failed to provide a mechanism to  
10 allow separated parents to find their children, it failed to even inform ORR of its new  
11 policy, or that the children sent to ORR shelters had been separated from the parents with  
12 whom they had arrived in the United States.<sup>19</sup>

13 36. Stakeholders quickly denounced the U.S. Government’s Pilot Program.  
14 DHS received numerous complaints through its Office of Civil Rights and Civil Liberties  
15 (“CRCL”) which described the severe trauma caused by the separation of children from  
16 their parents and denounced the “needless cruelty” of these separations.<sup>20</sup>

17 37. Officials inside and outside of the U.S. Government continued to voice  
18 concerns about the harmful effects of the Pilot Program even after it was terminated in  
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20 <sup>16</sup> See, e.g., *United States v. Dominguez-Portillo*, No. 17-MJ-4409, 2018 WL 315759, at  
21 \*1 (W.D. Tex. Jan. 5), *aff’d sub nom. United States v. Vasquez-Hernandez*, 314 F. Supp.  
22 3d 744 (W.D. Tex. 2018), *aff’d*, 924 F.3d 164 (5th Cir. 2019).

23 <sup>17</sup> See DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., REVIEW OF THE DEPARTMENT OF  
24 JUSTICE’S PLANNING AND IMPLEMENTATION OF ITS ZERO TOLERANCE POLICY AND ITS  
25 COORDINATION WITH THE DEPARTMENTS OF HOMELAND SECURITY AND HEALTH AND  
26 HUMAN SERVICES 15 (Jan. 2021), <http://perma.cc/2JBA-59Q8> (hereinafter “DOJ OIG  
27 Report”).

28 <sup>18</sup> *Id.* at 16.

<sup>19</sup> House Report at 7; see also *id.* app. C (emails from HHS inquiring why children arriving  
in their custody were claiming to have been separated from parents).

<sup>20</sup> House Report at 10; see also *id.* app. A (chart of 850 CRCL complaints, including over  
200 that preceded the May 2018 implementation of the Family –Separation Policy across  
the Southern border).

1 2018. Following the Pilot Program’s termination, some U.S. Government officials  
2 publicly disavowed it because of the chaos and suffering it caused. For example, following  
3 the briefing that he provided to DOJ policymakers about the Pilot Program, Acting U.S.  
4 Attorney John Bash thought “the idea [had been] abandoned” and would not be  
5 implemented nationwide.<sup>21</sup>

6 38. On December 16, 2017, senior DOJ and DHS officials jointly prepared and  
7 reviewed a memorandum entitled, “Policy Options to Respond to Border Surge of Illegal  
8 Immigration.” The first section of the memorandum, called “Increase Prosecution of  
9 Family Unit Parents,” recommended that CBP and ICE “work with DOJ to significantly  
10 increase the prosecution of family unit parents when they are encountered at the border,”  
11 further noting “[t]he parents would be prosecuted for illegal entry (misdemeanor) or illegal  
12 reentry (felony) and the minors present with them would be placed in HHS custody.”<sup>22</sup>  
13 The second section of the memo, titled “Separate Family Units,” suggested  
14 “[a]nnounc[ing] that DHS is considering separating family units, placing the adults in adult  
15 detention, and placing the minors under the age of 18 in the custody of HHS as  
16 unaccompanied alien children (UACs),” and ordered “[o]nce legal coordination between  
17 DHS, HHS, and DOJ is complete, begin separating family units as stated above.”<sup>23</sup>

18 39. On April 6, 2018, the U.S. Attorney General announced a “Zero Tolerance  
19 Policy” that formally extended the practice of criminal prosecution and family separation  
20 first tested in the El Paso program to the entirety of the southern border. In reviewing the  
21 program, the Office of the Inspector General for DHS concluded that the Zero Tolerance  
22 Policy “fundamentally changed DHS’[s] approach to immigration enforcement,” which  
23 had previously not separated a child from an accompanying adult except in very limited

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24 <sup>21</sup> DOJ OIG Report at 19.

25 <sup>22</sup> *Policy Options to Respond to Border Surge of Illegal Immigration* (Dec. 16, 2017),  
26 <https://perma.cc/7KRZ-PXW7>; see Anne Flaherty & Quinn Owen, *Leaked Memo Shows*  
27 *Trump Administration Weighed Separating Families at Border, Sen. Merkley Wants*  
28 *Nielsen Investigated for Perjury*, ABC NEWS (Jan. 18, 2019, 1:18 PM),  
<https://perma.cc/6SVC-9Q3D>.

<sup>23</sup> *Id.*

1 circumstances, such as where CBP determined that the adult was not the child’s parent or  
2 guardian or posed a danger to the child.<sup>24</sup>

3 40. In early May 2018, CBP told the Office of Management and Budget  
4 (“OMB”) that the Zero Tolerance Policy would lead to the separation of more than 26,000  
5 children from their parents between May and September 2018 alone.<sup>25</sup>

6 41. Public comments by Trump administration officials show that they intended  
7 forcible separation of families under the Zero Tolerance Policy to terrify immigrant parents  
8 and children and thus deter future Central Americans from seeking asylum in the United  
9 States.

10 42. For example, a December 16, 2017 DOJ and DHS memo stated that  
11 “prosecution of family unit parents” and “separat[ion] [of] family units . . . would be  
12 reported by the media and . . . have substantial deterrent effect[s]” on future migration.<sup>26</sup>  
13 On May 11, 2018, John Kelly, President Trump’s then-Chief of Staff, stated that “a big  
14 name of the game is deterrence . . . It could be a tough deterrent—would be a tough  
15 deterrent,” before adding that “[t]he children will be taken care of—put into foster care or  
16 whatever.”<sup>27</sup> And Steve Wagner, Assistant Secretary of HHS, stated on June 19, 2018 that  
17 “[w]e expect that the new policy will result in a deterrence effect . . . .”<sup>28</sup> As the horrors of  
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19 <sup>24</sup> See, e.g., OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OIG-18-84,  
20 SPECIAL REVIEW – INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES  
UNDER THE ZERO TOLERANCE POLICY 2 (Sept. 27, 2018), <https://perma.cc/4E35-DQR5>.

21 <sup>25</sup> OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OEI-20-06, DHS LACKED  
22 TECHNOLOGY NEEDED TO SUCCESSFULLY ACCOUNT FOR SEPARATED MIGRANT FAMILIES  
17-18 (Nov. 25, 2019), <https://perma.cc/GY3G-F8TG> (“DHS OIG REPORT I”).

23 <sup>26</sup> *Policy Options to Respond to Border Surge of Illegal Immigration* (Dec. 16, 2017),  
24 <https://perma.cc/7KRZ-PXW7>; see Anne Flaherty & Quinn Owen, *Leaked Memo Shows*  
25 *Trump Administration Weighed Separating Families at Border, Sen. Merkley Wants*  
*Nielsen Investigated for Perjury*, ABC NEWS (Jan. 18, 2019, 1:18 PM),  
<https://perma.cc/6SVC-9Q3D>.

26 <sup>27</sup> *Transcript: White House Chief of Staff John Kelly’s Interview with NPR*, NPR (May 11,  
2018, 11:36 AM), <https://perma.cc/ZN5N-VN5R>.

27 <sup>28</sup> Philip Bump, *Here Are the Administration Officials Who Have Said that Family*  
28 *Separation Is Meant as a Deterrent*, WASH. POST (June 19, 2018, 12:14 PM),  
<https://perma.cc/LTB8-878Y>.

1 family separation reached the public, President Trump insisted that he would not stop  
2 separating families unless lawmakers agreed to his immigration reform demands.<sup>29</sup>

3 43. Despite the U.S. Government's claim that it would only separate families  
4 when parents were referred for prosecution for improper entry, in reality it separated many  
5 families who presented at official ports of entry seeking asylum (and thus were not subject  
6 to prosecution<sup>30</sup>), as well as families like Plaintiffs who crossed the border between ports  
7 of entry but were never criminally charged.<sup>31</sup>

8 44. Contrary to its assertions, the U.S. Government did not apply its Zero  
9 Tolerance Policy evenhandedly but rather in a way that would cause the greatest trauma.  
10 CBP specifically targeted parents arriving with children over single adults when making  
11 criminal referrals to the DOJ.<sup>32</sup>

12 45. During a six-week period between May 5, 2018 and June 20, 2018, at the  
13 height of the Zero Tolerance Policy, the U.S. Government separated at least 3,000 children  
14 from their parents.<sup>33</sup>

15 46. In response to intense public criticism, President Trump issued an executive  
16 order on June 20, 2018 purporting to end the Family Separation Policy.<sup>34</sup>

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19 <sup>29</sup> Michael Scherer & Josh Dawsey, *Trump cites as a negotiating tool his policy of*  
20 *separating immigrant children from their parents*, WASH. POST (June 5, 2018),  
21 [https://www.washingtonpost.com/politics/trump-cites-as-a-negotiating-tool-his-policy-of-](https://www.washingtonpost.com/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html)  
[separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-](https://www.washingtonpost.com/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html)  
[a2351b5ece99\\_story.html](https://www.washingtonpost.com/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html).

22 <sup>30</sup> *See L.*, 310 F. Supp. 3d at 1143 (“[T]he practice of family separation was occurring  
23 before the zero tolerance policy was announced, and that practice has resulted in the casual,  
24 if not deliberate, separation of families that lawfully present at the port of entry, not just  
those who cross into the country illegally.”).

25 <sup>31</sup> DHS OIG Report I at 33.

26 <sup>32</sup> *See “Zero Tolerance” at the Border: Rhetoric vs. Reality*, TRAC IMMIGRATION (July  
24, 2018), <https://perma.cc/EK2Q-CJ7G>.

27 <sup>33</sup> DOJ OIG Report at 43, <https://perma.cc/2JBA-59Q8>.

28 <sup>34</sup> Exec. Order No. 13841, *Affording Congress an Opportunity to Address Family*  
*Separations*, 83 Fed. Reg. 29,435 (June 25, 2018), *revoked*, Exec. Order No. 14011, 86  
Fed. Reg. 8273 (Feb. 2, 2021).

1           47. On June 26, 2018, Hon. Judge Sabraw of the U.S. District Court of the  
 2 Southern District of California issued a preliminary injunction prohibiting the U.S.  
 3 Government from separating parents from their children absent a finding of parental  
 4 unfitness or danger to the child.<sup>35</sup> The order required the U.S. Government to reunify  
 5 children under age five with their parents within 14 days and children aged five and older  
 6 within 30 days.<sup>36</sup> Judge Sabraw held that the record reflected that the family separations  
 7 at issue “have been agonizing for the parents who have endured them,” and that when  
 8 separating children from their parents, migrant children were “not accounted for with the  
 9 same efficiency and accuracy as *property*.”<sup>37</sup>

10           48. Despite his executive order, President Trump continued to openly discuss the  
 11 deterrence rationale for pursuing the Family Separation Policy even after the Zero  
 12 Tolerance Policy had been formally ended, stating in December 2018 that “if you don’t  
 13 separate, FAR more people will come.”<sup>38</sup>

14           **B. The United States Forcibly Separated J.P. and L.C.**

15           **1. J.P. and L.C. Seek Asylum in the United States**

16           49. J.P. and L.C. fled to the U.S. just as the U.S. expanded its Family Separation  
 17 Policy and were among its early victims.

18           50. J.P. suffered severe domestic violence in Guatemala perpetrated by her  
 19 husband. She feared if she remained in her country, her husband would continue to harm  
 20 or even kill her and that the U.S. Government of Guatemala would be both unwilling and  
 21

22 <sup>35</sup> *L.*, 310 F. Supp. 3d at 1149-50 (preliminary injunction).

23 <sup>36</sup> *Id.* at 1149.

24 <sup>37</sup> *Id.* at 1144, 1146 (emphasis in original).

25 <sup>38</sup> 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*, YOUTUBE (Apr. 28, 2019),  
 28 <https://www.youtube.com/watch?v=hvUc7ONNTp4> at 1:32-2:21; Kimberly Kindy et al.,  
*Trump says ending family separation practice was a ‘disaster’ that led to surge in border*  
*crossings*, WASH. POST (Apr. 28, 2019), [https://www.washingtonpost.com/politics/trump-](https://www.washingtonpost.com/politics/trump-says-ending-family-separation-practice-was-a-disaster-that-led-to-surge-in-border-crossings/2019/04/28/73e9da14-69c8-11e9-a66d-a82d3f3d96d5_story.html)

1 unable to protect her. L.C. also feared violence in Guatemala and chose to accompany her  
2 mother to the United States.

3 51. J.P. and then sixteen-year-old L.C. fled Guatemala on or around May 7,  
4 2018. It was the first time either J.P. or L.C. had left their small Mayan village. J.P. spoke  
5 only Q'eqchi', a Mayan language rarely spoken outside of Guatemala, and could not read  
6 or write in any language. Once she left her village, she was entirely dependent on her  
7 daughter to communicate and to understand what was happening around her, as L.C.,  
8 though she couldn't speak English, was able to speak in and understand Spanish.

9 52. J.P. and L.C. endured an arduous nine-day journey to the United States. They  
10 lacked adequate access to food and water, and once they reached the U.S.-Mexico border,  
11 men robbed them, taking what little money and possessions they carried. J.P. and her  
12 daughter entered the United States near Sans Luis, Arizona, on or around May 16, 2018.

## 13 **2. J.P. and L.C. Are Taken into Custody by CBP**

14 53. Shortly after crossing the border at San Luis, Arizona, J.P. and L.C. were  
15 apprehended by CBP officers and transported to a Border Patrol station in Yuma, Arizona.

16 54. After arriving late at night at the Yuma Border Patrol Station, CBP officers  
17 placed J.P. and L.C. in a cold, windowless cell alongside about 100 other detainees. There  
18 were no beds, showers, or private toilets in the cell, and the lights were kept on 24 hours a  
19 day. Because there were no windows, J.P. and L.C. lost track of whether it was day or  
20 night. They received nothing to eat except lukewarm soup, and the only water available  
21 was from the bathroom tap. The cell was too crowded to allow J.P. or L.C. to lie down,  
22 and they received only nylon blankets. No one told J.P. nor L.C. when or if they would  
23 be released.

24 55. On May 17, 2018, CBP officers pulled J.P. aside to speak with her and  
25 motioned to her to sign papers written in English. The officer documented that J.P.'s native  
26 language was Q'eqchi' and that she spoke little Spanish. Unable to speak, read, or write  
27 the English language, J.P. did not understand the papers she was given. She wrote an "X"  
28 on the signature line.

1           56. L.C. was also interviewed by a CBP officer. He questioned her without her  
2 mother's consent and outside of her mother's presence.

3           57. While detained, J.P. and L.C. were stunned to witness CBP officers  
4 separating many children from their parents by force. In one instance, they watched as two  
5 CBP officers grabbed and held a mother on either side as her son was forcibly taken from  
6 her by a third officer. L.C. heard a CBP officer tell the woman in Spanish, "If you're such  
7 a good mother, why would you bring your child here?"<sup>39</sup>

8           58. J.P. and L.C. had no idea where the separated children were being taken.  
9 They became terrified that they would also be separated.

10                           **3. The U.S. Government Forcibly Separates J.P. and L.C.**

11           59. Around May 20, 2018, a CBP officer told L.C. she would be taken to a shelter  
12 for children that day. L.C. became visibly upset, and after explaining to her mother what  
13 the CBP officer said, J.P. began to cry.

14           60. When a CBP officer arrived to separate L.C. from her mother, L.C. became  
15 extremely distressed. L.C. pleaded with the officer not to separate her from her mother,  
16 but the officer did not relent.

17           61. While being pulled from her mother, L.C. fainted and fell face-first onto the  
18 concrete floor. J.P. saw her daughter's face bleeding but was unable to come to her aid.  
19 This was the last contact J.P. had with her daughter.

20           62. CBP officers did not assist J.P. in contacting her daughter. J.P. had no way  
21 of knowing L.C.'s whereabouts or if she was seriously injured.

22           63. J.P. was not able to make contact with her daughter until June 22, 2018, when  
23 she had retained counsel.

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<sup>39</sup> This and all other verbal exchanges alleged in the complaint were in the Spanish language, unless otherwise noted.

1                   **4. L.C. Is Placed In ORR Custody More Than 300 Miles Away**  
2                   **From J.P.**

3           64. Due to her fall, L.C. suffered a painful gash to her lip that limited her ability  
4 to eat and speak over the following weeks. She was taken to the emergency room at a  
5 nearby hospital while in immigration custody. At the hospital, L.C. was given fluids and  
6 was told she would receive medication. L.C. never received any such treatment.

7           65. L.C. was then taken to Southwest Key Casa Phoenix, an immigrant  
8 children's shelter in Arizona, on May 20, 2018. Five days after L.C. sustained the injury,  
9 L.C. reported continued swelling, bleeding, redness and scabbing.

10          66. On or about May 25, 2018, L.C. was seen by a doctor to continue treatment  
11 for her lip injury. The doctor noted L.C. had developed a runny nose, nasal congestion, and  
12 a cough while in custody. The doctor diagnosed L.C. with an acute upper respiratory  
13 infection, in addition to a bacterial skin infection, as a result of her lip injury.

14          67. During the following eight weeks, L.C. cried daily over the separation from  
15 her mother, was unable to sleep, and prayed at night that she would see her mother again.  
16 She thought her mother had been taken away permanently and was worried that CBP  
17 officers did not know or care about J.P.'s language barriers.

18          68. L.C. repeatedly asked for information about her mother's whereabouts. An  
19 ORR official eventually informed L.C. that J.P. was somewhere in California, but no ORR  
20 shelter staff or DHS staff ever facilitated a phone call between L.C. and her mother. The  
21 inability of L.C. to speak to her mother or hear her voice left her feeling abandoned.

22                   **5. J.P. is Detained After Separation, is Linguistically Isolated, and**  
23                   **Has No Information About L.C.'s Welfare.**

24          69. After CBP officers forcibly separated J.P. and L.C., J.P. spent approximately  
25 five more days<sup>40</sup> at the Border Patrol station, sleeping on the floor in a windowless room.

26  
27 <sup>40</sup> J.P. lost track of the days during this period due to the lack of windows in the facility,  
28 her inability to communicate with those around her, and her distress after L.C. was  
separated from her.

1           70.     Without her child, J.P. fell apart. She was heartbroken and cried constantly.  
2 She could not sleep because of the horrendous conditions of the facility and because she  
3 was so distraught. CBP officials did not provide J.P. with any information about L.C. J.P.  
4 was unable to ask anyone what had happened to her daughter, as none of the CBP officers  
5 spoke Q’eqchi’, and she understood little of what she heard around her.

6           71.     After taking L.C. away, CBP officers transported J.P. to other facilities  
7 before finally transferring her to ICE custody at the Musick Detention Facility in Irvine,  
8 California.

9           72.     J.P. was never charged with any criminal offense. She was placed in removal  
10 proceedings, but had no attorney at her initial court hearings and did not understand the  
11 immigration court process.

12           73.     During her time in Musick, J.P. constantly feared for L.C.’s safety and well-  
13 being. J.P. suffered nightmares, woke up throughout the night, felt exhausted and hopeless,  
14 and felt sadness in her whole body. Because of language barriers, she had no way to  
15 understand what might happen to her. She saw women leave the detention center, but had  
16 no idea where they were being taken, or if she would be next. She feared she would be  
17 deported, losing any chance to learn what became of L.C.

18           74.     With the assistance of a fellow detainee, J.P. submitted a request to ICE  
19 seeking information on her daughter’s whereabouts. J.P. received a written response  
20 several days later from ICE. Lacking sufficient words in Spanish, and overwhelmed by  
21 her trauma, J.P. did not know how to find someone who could read and explain the response  
22 to her. In any event, the written response only indicated where her daughter was detained  
23 and did not provide a telephone number or any other means to reach her daughter. Nor did  
24 it indicate whether J.P. would be reunited with L.C.

25           75.     J.P. never received any verbal information in any language explaining where  
26 her daughter was detained or how she could reach her until she retained counsel around  
27 June 21, 2018. Neither CBP, ICE officers, nor the Musick detention staff had ever  
28 facilitated interpretation to allow J.P. to her to communicate with her daughter. To the

1 contrary, officers at the ICE facility yelled orders to J.P. in Spanish. She seldom  
2 understood what was being said, and was terrified she would be punished for not doing  
3 as ordered.

4 76. Once J.P. was represented by *pro bono* counsel on June 21, 2018, she finally  
5 learned that her daughter was in an ORR shelter in Arizona. She was desperate to call her  
6 daughter—to hear her voice and confirm for herself that L.C. was safe. But the Musick  
7 and ICE policies caused J.P. yet more agony as detention officers refused to connect her  
8 by phone with her daughter. Ultimately, ICE staff provided a phone number for L.C., but  
9 required J.P. to put money into a telephonic account to make a call. Until she had counsel,  
10 J.P. could not possibly have learned of the phone policies on her own, given her lack of  
11 literacy and the detention staff’s failure to explain the phone policies or provide any other  
12 information to J.P. in her language.

13 77. After extensive advocacy by her counsel, a detention officer finally  
14 facilitated a phone call between J.P. and L.C. on June 22, 2018. The call was limited to  
15 fifteen minutes. When J.P. and L.C. finally connected by telephone and heard each other’s  
16 voice, they were overcome with emotion. Once she could talk, L.C. asked when she would  
17 be reunited with her mother. J.P. could not answer this question.

18 78. During the next three weeks of their separation, J.P. and L.C. were only able  
19 to engage in minimal communication. J.P. remained terrified she would be deported at her  
20 next immigration court hearing and forever lose track of L.C.

21 79. On June 26, 2018, Judge Sabraw issued the preliminary injunction in the *L.*  
22 case and ordered the U.S. Government reunite families like J.P. and L.C. within  
23 thirty days.<sup>41</sup>

#### 24 **6. After Nearly Two Months, J.P. and L.C. Are Reunited**

25 80. On July 13, 2018, Immigration Judge Carlos Maury ordered J.P. released on  
26 \$1,500.00 bond. Only after J.P. won her bond hearing, DHS released J.P. from Musick on  
27

28 <sup>41</sup> *L.*, 310 F. Supp. 3d at 1149.

1 July 16, 2018, approximately eight weeks after J.P. and L.C. had arrived in the United  
2 States and been separated. That same day, ORR released L.C. from Casa Phoenix and  
3 facilitated her flight to Burbank, California, where her mother awaited her.

4 81. Approximately fifty-seven days after the U.S. Government forcibly  
5 separated them, J.P. and L.C. were finally reunited late in the afternoon on July 16, 2018.  
6 Mother and daughter both were visibly emotional upon seeing one another and embraced.

7 82. Shortly after reuniting, J.P. and L.C. moved to Florida where a sponsor  
8 supported them as they began to establish themselves in the United States and pursue their  
9 asylum claims.

10 83. J.P. and L.C. were never charged with a crime, nor was J.P. found to be unfit  
11 to retain custody of L.C.

## 12 7. J.P. and L.C. Face the Effects of Separation

13 84. J.P. has suffered severe emotional distress as a result of her forcible  
14 separation from her daughter by the U.S. Government. From the moment of separation,  
15 J.P. has felt the ongoing and lasting effects of extraordinary trauma.

16 85. The clinical social worker who evaluated J.P. during her detention in Musick  
17 found that she exhibits symptoms consistent with Post-Traumatic Stress Disorder  
18 (“PTSD”), depression, and anxiety.

19 86. J.P. continues to suffer as a result of the separation from her daughter. J.P.  
20 has vivid memories of her time in custody and the pain and suffering she experienced after  
21 being separated from her daughter. She has had difficulty concentrating on tasks and has  
22 been left with an enduring sadness. J.P. is constantly nervous and cries frequently. Even  
23 now, she has nightmares about the forced separation and her detention that make it difficult  
24 to sleep.

25 87. L.C. experienced physical harm when she was taken from her mother, as well  
26 as fear and mental anguish. After DHS separated L.C. and J.P., L.C. fainted, her face  
27 striking the floor. The injury caused L.C. great pain, making it difficult for her to eat or  
28

1 speak. During her time at Casa Phoenix, L.C. was diagnosed with a bacterial skin infection  
2 and an acute upper respiratory infection.

3 88. After J.P. and L.C. were forcibly separated, L.C. was detained in an  
4 unfamiliar place, far from her mother. She did not know what was happening or when she  
5 would see her mother again. During this time, L.C. was extremely sad. She has tried to  
6 forget everything that happened, but cannot.

7 89. L.C. continues to often feel fear and worry, which is a source of ongoing  
8 stress and anxiety. L.C. has vivid memories of her time in custody and the pain and  
9 suffering she experienced after being separated from her mother. These memories and  
10 stress cause L.C. to experience regular headaches, which can lead to periods of extremely  
11 low energy and depression.

## 12 **CLAIMS FOR RELIEF**

### 13 **COUNT I**

#### 14 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

15 90. By engaging in the acts described in this Complaint, the federal officers and  
16 officials referenced above engaged in extreme and outrageous conduct with an intent to  
17 cause, or a reckless disregard of the probability of causing, Plaintiffs to suffer severe  
18 emotional distress.

19 91. As a direct and proximate result of that conduct, Plaintiffs suffered severe  
20 emotional distress.

21 92. Under the FTCA, the United States is liable to Plaintiffs for intentional  
22 infliction of emotional distress.

### 23 **COUNT II**

#### 24 **NEGLIGENCE**

25 93. The federal officers and officials referenced above had a duty to Plaintiffs  
26 to act with ordinary care and prudence so as not to cause harm or injury to Plaintiffs.

27 94. By engaging in the acts alleged, the federal officers referenced above failed  
28 to act with ordinary care and breached their duty of care owed to Plaintiffs.



1 could not because the U.S. Government confined J.P. and L.C. in different facilities from  
2 each other.

3 102. The U.S. Government’s negligence, which prevented families from  
4 communicating and slowed their reunification, also deprived Plaintiffs of the ability to seek  
5 comfort in each other.

6 103. Even after reunification, the severe emotional trauma Plaintiff L.C., who was  
7 a child at the time, has suffered as a result of Defendant’s actions has continued to impact  
8 her development and changed her profoundly, causing her to be withdrawn, fearful, and  
9 often crippled by anxiety. The effect of the separation continues to deprive Plaintiff J.P.  
10 of society, companionship, care, support, and affection of her child, L.C.

11 104. Similarly, Plaintiff J.P. has suffered symptoms of PTSD, depression and  
12 other emotional trauma as a result of the Defendant’s actions. The psychological harm J.P.  
13 suffered deprives Plaintiff L.C. of society, companionship, care, support, and affection of  
14 her parent where J.P.’s emotional distress has changed her profoundly.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiffs respectfully request:

- 17 A. Compensatory damages;
- 18 B. Attorneys’ fees and costs pursuant to, among other provisions, the Equal  
19 Access to Justice Act, 28 U.S.C. § 2412; and
- 20 C. Such other and further relief as the Court deems just and appropriate.

21 **JURY TRIAL DEMAND**

22 Plaintiffs hereby demand a jury trial.

23 DATED this 25th day of April, 2022.

24  
25 */s/ Daniel B. Pasternak*  
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