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18 [*Pro hac vice application forthcoming]

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20 **UNITED STATES DISTRICT COURT**
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1 8. The government did not allow children and their parents to communicate in
2 any way for weeks or months. Parents did not know where their children were, or even if
3 they were safe—and had no way to comfort or protect them. Children were terrified and
4 could not understand what had happened to them or why it happened. Why had their
5 parents abandoned them to strangers?

6 9. The government’s policy of forcibly taking children from their parents
7 caused extraordinary trauma to thousands of families, including Plaintiffs—a father and
8 his child who were separated for months after being detained at the U.S.-Mexico border
9 in Arizona in May 2018.

10 10. After Héctor was taken away from his father, they remained separated, with
11 Héctor in the custody of strangers, for approximately two months.

12 11. Despite Eliot’s desperate pleas for information, the government did n3 (,)TJhg(au

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1 unreasonable force and cruelty to separate Eliot and his son and failed to reunify them for
2 months.

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

8 15. As a result of the separation, Héctor has been diagnosed with Post-
9 Traumatic Stress Disorder, with dissociative subtype. He has flashbacks and nightmares
10 related to the separation and lives in fear that he could be separated from his father again.

11 16. Eliot also suffered emotional trauma as a result of the separation—as would
12 any parent who is deprived of any ability to protect his child, and later learns that his
13 child has suffered and lives with continued pain. Eliot has been diagnosed with Post-
14 Traumatic Stress Disorder and mild depression. Due to the separation, he feels down,
15 depressed, and hopeless, and has experienced intrusive memories related to the
16 separation.

17 17. As a result of Defendant’s actions, the Plaintiffs now face an increased risk
18 of developing additional mental health disorders, including severe anxiety, severe
19 depression and suicidal ideation.

20 18. A report by the U.S. Department of Health and Human Services (“HHS”)
21 Office of the Inspector General (“OIG”) issued in September 2019 found that “intense
22 trauma” was “common” among children who entered the Office of Refugee Resettlement
23 (“ORR”) facilities in 2018, with children who had been “unexpectedly separated from a
24 parent” facing additional trauma.² According to this report, “separated children exhibited

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26 ² Off. of Inspector Gen., U.S. Dep’t Of Health & Human Servs., OEI-09-18-00431, *Care*
27 *Provider Facilities Described Challenges Addressing Mental Health Needs of Children*
28 *in HHS Custody*, at 9 (Sept. 2019), <https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf>
[\[https://perma.cc/2RPJ-WM5H\]](https://perma.cc/2RPJ-WM5H) [hereinafter HHS OIG Report II].

THE PARTIES

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2 24. Plaintiffs Héctor and Eliot are Guatemalan nationals who currently reside in
3 New York. Eliot brings this action on behalf of himself and his minor child, Héctor, age
4 fourteen. In 2018, Eliot fled to the United States with Héctor, seeking asylum. Upon
5 arrival in the United States, Eliot and Héctor, then eleven years old, were forcibly
6 separated for two months by government officers. Héctor was placed in ORR custody at
7 a facility in Mesa, Arizona, while Eliot was detained by ICE in Arizona, Georgia and
8 Texas. Eliot and Héctor are currently seeking asylum in the United States.

9 25. Defendant is the United States of America, acting through individuals in the
10 White House, the White House Office, DHS, HHS, and DOJ—“federal agencies” of the
11 United States under 28 U.S.C. § 2671—and their employees, officers, and agents,
12 including but not limited to CBP and ICE, subcomponent agencies of DHS that are under
13 the direction, authority, and control of the Secretary of Homeland Security; ORR, a
14 subcomponent agency of HHS that is under the direction, authority, and control of the
15 Secretary of Health and Human Services; and the Office of the Attorney General within
16 the DOJ.

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

20 27. DHS employees were responsible for separating Eliot from his son,
21 including failing to reunify them after Eliot’s brief court appearance. DHS employees
22 were also responsible for supervising and managing detained individuals at CBP and ICE
23 facilities, including those located in Arizona, Georgia and Texas where Eliot was detained
24 during the course of his separation from Héctor.

25 28. HHS employees are responsible for supervising and managing the detention
26 of children the government classifies as unaccompanied, including at the facility in
27 Arizona where Héctor was detained while separated from his father.

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37. When confronted by the growing

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

40. Despite Secretary Kelly’s public assurance to Congress in April 2017 that families crossing the border would be separated only in specific circumstances for the welfare of the child, the government covertly began instituting a policy of routine separation of families who crossed the southern border. It did so knowing the separations would cause harm and intending to leverage that harm to deter future immigrants from seeking to enter the United States.

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1 42. In describing the El Paso Initiative, a Border Patrol official explained:
2 “Although it is always a difficult decision to separate these families, it is the hope that
3 this separation will act as a deterrent to parents bringing their children into the harsh
4 circumstances that are present when trying to enter the United States illegally.”¹⁸

5 43. During the El Paso Initiative, judges, prosecutors, and advocates expressed
6 concern that young children were being separated from their parents, and that separated
7 parents and children were given no information about each other’s whereabouts and well-
8 being.¹⁹

9 44. Because the unaccompanied minors who typically arrived at ORR prior to
10 2017 had arrived at the border genuinely unaccompanied by a parent or guardian, ORR
11 did not have any formal means of noting that children artificially classified as
12 unaccompanied by CBP in fact had parents in

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1 coordination between DHS, HHS, and DOJ is complete, begin separating family units, as
2 stated above.”²⁴

3 48. Despite the concerns raised by prosecutors, judges and other stakeholders
4 about the implementation of the El Paso Initiative, on April 6, 2018, the U.S. Attorney
5 General announced a “Zero Tolerance Policy,” “referencing the [El Paso] Initiative as a
6 basis for expanding referrals of family unit adults throughout the Southwest border,”
7 while turning a blind eye to “the challenges encountered during the El Paso Initiative,
8 including the government’s inability to reunify separated families.”²⁵

9 49. On May 4, 2018, citing “recent presidential direction and guidance from the
10 Attorney General,” the DHS Secretary signed a memorandum directing Border Patrol
11 sectors to “refer for prosecution all adults apprehended for crossing the border illegally,”
12 expressly including parents who entered the United States with their children.²⁶

13 50. In early May 2018, CBP estimated to the Office of Management and
14 Budget (“OMB”) that it would separate more than 26,000 children from May through
15 September 2018 because of the Zero Tolerance Policy.²⁷

16 51. Intending the separations to inflict harm and serve a deterrent effect, the
17 United States government put no mechanism in place to reunify separated families
18 following completion of the parent’s criminal sentence.²⁸

19 52. On or around May 11, 2018, the acting U.S. Attorney for the District of
20 Arizona, Elizabeth Strange, expressed concern that family members prosecuted in her
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24 ²⁴ *Id.*

25 ²⁵ DOJ OIG Report, *supra* note 18, at 22, 31–32.

26 ²⁶ *Id.* at 32.

27 ²⁷ DHS OIG Report II, *supra* note 17, at 17–18.

28 ²⁸ *See id.* at 14 n.30; *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1140–41 (S.D. Cal. 2018)
 (“[T]here was no procedure in place for the reunification of these families.”).

1 district were not being reunited with their children immediately after the parents received
2 time-served sentences.²⁹

3 53. In May and June 2018, federal judges, advocates, and other stakeholders
4 along the U.S.-Mexico border expressed concerns about the government’s failure to track
5 and reunify children and parents whom they had separated, or to keep separated parents
6 and children informed of each other’s whereabouts and wellbeing.³⁰ These concerns
7 were elevated to the White House and headquarters of DOJ, DHS, and HHS.³¹
8 Nevertheless, the failures to track and reunify families continued.

9 54. Several aspects of the Zero Tolerance Policy and officials’ comments on it
10 confirm that the policy’s goal was to harm families through forcible and prolonged
11 separation in an effort to deter future immigrants from seeking entry to the United States,
12 and that prosecution of underlying criminal offenses of improper entry was pretextual.

13 55. For example, the December 2017 joint DOJ and DHS memorandum noted
14 that the “[p]rosecution of [f]amily [u]]0 12.96 8s /ln.852 Tei.7 (nd0o th78nd head)-9on 9.7 (y h)-
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1 children.” He stated that if migrants cared about their children, then migrants should not
2 bring their children to the United States. ^{230 May 1 342323}

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1 at official ports of entry seeking asylum and were not subject to prosecution.³⁹ The
2 government also separated families who crossed the border between ports of entry when
3 the parents were not criminally charged. These practices were consistent with talking
4 points drafted for Attorney General Jeff Sessions for use at a White House meeting on
5 May 3, 2018, which explained that “DHS should consider . . . *administrative* separation
6 of family units,” even where the parent is not referred for prosecution.⁴⁰

7 61. When the government prosecuted parents for misdemeanor improper entry,
8 most parents received minimal or no jail time.⁴¹ The government could have reunified
9 parents with their children following the completion of the parent’s misdemeanor
10 sentence.⁴²

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1 sometimes thousands of miles away, and needlessly prolonged separations, usually for
2 months and sometimes even for years.⁴³

3 62. Although the government claimed that it applied the “Zero Tolerance”
4 prosecutions evenhandedly, CBP targeted parents arriving with their children over single
5 adults when making criminal referrals to DOJ.⁴⁴

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1 children, and only “for the purposes of removal.”⁴⁶ This directive imposed an impossible
2 choice on parents: They had to choose between seeing their children again or continuing
3 to seek asylum in the United States. The Trump Administration would not allow them to
4 do both.

5 66. On June 26, 2018, Judge Sabraw of the U.S. District Court for the Southern
6 District of California issued a preliminary injunction prohibiting the government from
7 separating parents from their children absent a finding of parental unfitness or danger to
8 the child. He ordered the government to reunify children under age five within

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1 **B. The United States Forcibly Separated Eliot and Héctor**

2 **1. Eliot and Héctor Seek Asylum in the United States and Are**
3 **Taken into CBP Custody**

4 68. In early May 2018, Eliot and Héctor fled their home in Guatemala, where
5 Eliot and his family had received death threats, to seek refuge in the United States. They
6 reached the U.S. border near Lukeville, Arizona on May 19, 2018.

7 69. On May 19, 2018, immigration officers apprehended Eliot and Héctor and
8 transported them to a CBP facility about two hours away. Upon information and belief,
9 that facility was the Ajo Border Patrol Station.

10 70. Eliot and Héctor were detained in a cell known as a hielera (“icebox”) due
11 to its frigid temperatures. The cell was approximately 15 feet by 20 feet and was
12 crowded with approximately 30 adults and children. The cell contained cement benches,
13 but no beds. Héctor’s warm outerwear was taken from him. They were given thin foil
14 sheets, which were inadequate to shield them from the bitter cold. Eliot and Héctor slept
15 on the floor of the cell, which was packed with other people. The lights were always on.

16 71. The bathrooms accessible to Eliot, Héctor, and the other detainees did not
17 have doors. No shower rooms were available, and the people detained in the hielera had
18 not bathed for days. Eliot and Héctor were given no hygiene products.

19 72. The only source of drinking water was the sink used for washing hands.
20 The water smelled like chlorine. Officers gave Eliot and Héctor only cold burritos to eat.
21 Héctor was very hungry.

22 **2. The United States Takes Héctor from Eliot**

23 73. In the CBP facility, an officer questioned Eliot. Eliot showed the officer his
24 identification and Héctor’s birth certificate.

25 74. At approximately 2 p.m. on the second day of Eliot and Héctor’s detention,
26 May 20, 2018, officers announced to the people detained in their cell—including Eliot
27 and Héctor—that the children were going to be taken to a different location away from
28 their parents.

1 75. Rumors swept through the room that the children were being taken away
2 forever. Eliot felt scared that he could be deported without Héctor. Other families in the
3 cell began to cry and panic.

4 76. Héctor, who was then 11 years-old, told his father that he did not want to be
5 separated from him. Eliot and Héctor began to cry. Eliot tried to comfort his son by
6 telling him that the separation would only be for a short time.

7 77. The officers instructed Eliot and the other parents to pack up their
8 children’s belongings. In that moment, Eliot realized that the officers were going to
9 separate him from his son. He began panicking. He felt his heart rate increase with fear.
10 Héctor began crying even harder.

11 78. An officer returned Eliot’s backpack that had been taken when he was
12 apprehended, which contained Héctor’s belongings—mostly clothes and shoes. The
13 officer instructed Eliot to transfer Héctor’s belongings into a plastic bag. Other parents
14 also gathered their children’s belongings and said goodbye. Children and adults cried,
15 and children were apprehended (ort tneprehendv9.3)JT (hil)-9.unkand chdgan Td.

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1 83. Upon information and belief, Eliot and Héctor were separated without any
2 intention to reunify them or any plan for their reunification, even though government
3 officials knew that most people like Eliot who were convicted of misdemeanor improper
4 entry were sentenced to time served.

5 **3. Eliot Is Kept in Detention While Separated from Héctor and Has**
6 **Limited Contact with His Son**

7 84. Eliot and the other parents were taken back to the cells, where no children
8 remained. Eliot

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1 88. Rather than being reunited with Héctor who was still in DHS custody and
2 had not yet been transferred to an ORR facility,⁴⁹ Eliot was instead taken from the court
3 to another DHS-run hielera several hours away. Approximately 24 hours had passed
4 since Héctor had been separated from Eliot. Nonetheless, Héctor was transferred from
5 DHS custody to ORR custody the next day, on May 22, 2018—just 48 hours after he had
6 been separated from his father.

7 89. Eliot was in DHS custody throughout the duration of his separation from
8 Héctor, with the possible exception of his brief appearance in federal court. When served
9 with requests under the Freedom of Information Act, the U.S. Marshals Service and
10 Bureau of Prisons found no records reflecting that Eliot was ever in the custody of either
11 of these agencies.

12 90. Upon information and belief, the government attorney who prosecuted Eliot
13 was an attorney for DHS—not DOJ—who had been deputized to carry out the
14 prosecution.⁵⁰

15 91. Government officials never made a determination that Eliot was unfit or
16 presented a danger to

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1 115. After his arrival at the Port Isabel Detention Center on or about Tuesday,
2 July 17, 2018, Eliot was told that he would be reunited with Héctor, and that it would
3 happen that Thursday. But Thursday came and went, and still Eliot had not seen his son.

4 116. On or around Friday, July 20, 2018, Eliot waited for Héctor as the other
5 separated parents were called out one by one to be reunified with their children. Eliot
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1 Eliot, or at hearing about separation in the news. He has experienced flashbacks 1-2
2 times per week and has nightmares or bad dreams 1-2 times per week related to the
3 separation. Due to the separation, Héctor has behaved in a withdrawn and sometimes
4 detached manner. He often becomes fearful and preoccupied with getting back to his
5 father any time they are separated for even a brief period of time, and he lives in fear that
6 the separation from his father could happen again at any time. When asked about the
7 separation, Héctor becomes painfully overwhelmed; he sobs and is unable to continue
8 speaking.

9 123. Eliot feels that he has been psychologically damaged by his forced
10 separation from Héctor and that it has left him traumatized. During the time he was apart
11 from Héctor, he constantly worried about what was happening to his son. Not being with
12 Héctor—and not knowing what he was going through—was very difficult for Eliot, and
13 his head was constantly filled with anxiety about what could possibly be happening to his
14 son.

15 124. As a result of the separation, Eliot has been diagnosed with Post-Traumatic
16 Stress Disorder and mild depression. He has experienced appetite disturbance and feels
17 tired and has low energy. Due to the separation, he has felt down, depressed, and
18 hopeless. He feels as though he has let Héctor down, has difficulty concentrating, and
19 has a decreased ability to experience joy. Eliot has also experienced intrusive memories
20 related to having to pack Héctor’s bag of clothes when they were forcibly separated and
21 related to his first call with Héctor following their separation. Eliot struggles with the
22 fear that his son will be taken from him again.

23 **C. The Government’s Forcible Separation of Parents and Children**
24 **Caused Irreparable Harm**

25 125. Forcible parent-child separations have long been known to cause significant
26 short- and long-term damage to mental, physical, and emotional health.

27 126. Keeping parents separated from their children with “little or no direct
28 access to basic information about their health or general well-being, *plainly causes*

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1 talk with each other, and failed to have any system for tracking the children or ensuring
2 that families could be reunited.

3 132. As Judge Sabraw concluded in *Ms. L. v. U.S. Immigration and Customs*
4 *Enforcement*, the government’s actions “shock[] the conscience.”⁶⁰ “[N]othing in federal
5 law suggests that deterring immigration by indefinitely separating families once the
6 parents have been transferred to immigration custody is a compelling or legitimate
7 government objective.”⁶¹

8 133. The United States’ family separation policy was also motivated by
9 discriminatory animus against arriving Latino immigrants of Central American origin,
10 such as the Plaintiffs, who were targeted for deprivation of their fundamental right to
11 family integrity.

12 134. The United States’ discriminatory purpose is evidenced by the pretextual
13 nature of the stated justification for separating only those families (the vast majority of
14 whom are Latino and Central American) arriving at the southern United States border, the
15 unusual sequence of events leading to the promulgation of the policy, and
16 contemporaneous statements by policymakers showing a marked animus toward Latino
17 immigrants from Central America.⁶²

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19 ⁶⁰ *Ms. L.*, 310 F. Supp. 3d at 1144 (“[T]he practice of separating these families was
20 implemented without any effective system or procedure for (1) tracking the children after
21 they were separated from their parents, (2) enabling communication between the parents
22 and their children after separation, and (3) reuniting the parents and children after the
23 parents are returned to immigration custody following completion of their criminal
24 sentence Certainly, that cannot satisfy the requirements of due process.”); *Ms. L. v.*
U.S. Immigr. & Customs Enf’t, 302 F. Supp. 3d 1149, 1164 (S.D. Cal. 2018) (holding that
25 plaintiff stated a due process claim based on the continued separation from her child after
26 she served a sentence for misdemeanor violation of 8 U.S.C. § 1325 and was returned to
27 DHS custody).

25 ⁶¹ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502.

26 ⁶² *See, e.g.,* Josh aeparas2is2iur.]TJ6J[3 (an)]Tm((())Tj.n 1.194 0 Td(cinto)Tjm.48 Tmnon)-9.3 (c

1 135. The family separation policy disproportionately impacted individuals from
2 Central America: more than 95 percent of the members in the *Ms. L.* certified class are
3 from Central American countries.

4 136. As with the fundamental right to family integrity, the constitutional right to
5 equal protection under the law, and to freedom from invidious discrimination by the
6 government on the basis of race or national origin has also long been recognized as
7 “extend[ing] to anyone, citizen or stranger, who is subject to the laws of a State,” even
8 those not lawfully present.⁶³

9 **E. The United States Applied the Already Cruel Separation Policy in a**
10 **Deliberately Inhumane Manner to Further Harm Families**

11 137. Defendant multiplied the harm it intended to cause Plaintiffs and others
12 subject to its family separation policy by implementing the policy with intentional
13 carelessness and callous disregard for their physical safety and emotional well-being.

14 138. The Attorney General announced the Zero Tolerance Policy without any
15 prior notice to certain DHS and HHS (including ORR) officials,⁶⁴ purposely giving those

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19 [meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html](https://www.washingtonpost.com/news/immigration/wp/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html)
20 [<https://perma.cc/2HP4-PFYK>] (including El Salvador as a “shithole” country from
21 which immigration to the United States should not be welcomed, and expressing a
22 preference for immigrants “from countries such as Norway”); Donald J. Trump
23 (@realDonaldTrump), Twitter (Jun. 19, 2018, 6:52 AM),
24 <https://twitter.com/realdonaldtrump/status/1009071403918864385>
25 [<https://perma.cc/MLC6-8VX5>] (characterizing “illegal immigrants” as “pour[ing] into
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1 employees no time to plan for or coordinate implementation.⁶⁵ The Attorney General also
2 failed to coordinate with or seek input from the Southwest border U.S. Attorneys, the
3 U.S. Marshals Service, or the federal courts prior to implementation of the Zero
4 Tolerance Policy.⁶⁶

5 139. ORR was aware as of at least November 2017 of an increase in the number
6 of children in ORR custody separated from their parents, many of whom were very
7 young children.⁶⁷ Yet the government failed to adequately prepare for the increased
8 number of children separated from parents in its custody.

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1 policy of mass family separation despite these identified defects and without making any
2 improvements to its IT

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1 153. After separation, parents and children often did not know each other's
2 whereabouts for weeks or months, as was the case with Plaintiffs. When the children
3 were taken, "officers often failed to fully explain to parents what was happening and how
4 the adults could get in touch with their kids."⁷⁸

5 154. The government failed to provide parents with any "paperwork"
6 documenting the location or well-being of their children, or to enable communication
7 between parents and their separated children.⁷⁹ One Texas federal district court
8 magistrate judge observed in January 2018, when addressing the government's failure to
9 track families separated during the 2017 pilot of the family separation policy, that "[t]he
10 practical effect" of this failure was "to create a 'blackout' period where parent and child
11 are wholly incommunicado from each other."⁸⁰

12 155. Plaintiffs here experienced the devastating effects of the government's
13 failure to link parents' cases with those of their children and the government's failure to
14 provide information to the parents about the children's whereabouts.

15 156. The anguish of Eliot's two-months-long separation from his child was
16 exacerbated by the government's failure to provide information about his child's
17 whereabouts, well-being, and plan for custody. Eliot had heard of parents who had been
18 separated from their children for six months to a year. He was afraid he would be
19 separated from Héctor for that long, or worse, that he would never be reunited with his
20 son.

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23 efficiency and accuracy as *property*." *Ms. L.*, 310 F. Supp. 3d at 1144; Joint Status
24 Report at 7, *Ms. L. v. U.S. Immigr. and Customs Enf't*, No. 18-cv-00428 DMS MDD
25 (S.D. Cal. Oct. 20, 2020), ECF No. 556 (noting that the parents of approximately 545
children who had been separated from their parents prior to June 26, 2018 still could not
be located as of October 2020).

26 ⁷⁸ Halper, *supra* note 77.

27 ⁷⁹ See *United States v. Dominguez-Portillo*, No. EP-17-MJ-4409-MAT, 2018 WL
315759, at *1 (W.D. Tex. Jan. 5, 2018); see also *id.* at *2, *9.

28 ⁸⁰ *Id.* at *9.

1 157. Héctor suffered further harm from not knowing where his father was or
2 whether he would ever see him again. Héctor was never provided an explanation for why
3 he was at the shelter and separated from his father. He thought he was going to be
4 separated for a long time, because he knew of other children who had been separated for
5 a very long time.

6 158. Even after Eliot was finally able to obtain contact information for his child
7 *as the result of his own effort*, phone calls were logistically difficult and expensive to
8 make, severely limiting their communication.⁸¹

9 159. With respect to the Plaintiffs, Defendant violated federal law and policy
10 requiring children held in ORR custody be provided with “contact with family
11 members.”⁸²

12 **CONSEQUENCES OF DEFENDANT’S WRONGFUL ACTS**

13 160. The federal government deliberately violated Plaintiffs’ constitutional
14 rights, including their right to family integrity, and failed in its basic duties to not harm
15 those in its custody.

16 161. The government’s actions and failures were designed to and did cause
17 Plaintiffs severe trauma and emotional distress.

18 162. The government knew that subjecting Plaintiffs to prolonged separation
19 would fill them with terror, desperation, and anguish.

20 163. The government purposefully inflicted that trauma on Plaintiffs to instill
21 fear in others. The government then compounded that trauma by keeping Plaintiffs apart
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23 ⁸¹ See Halper, *supra* note 77; Jordan, *supra* note 76; Jack Herrera, *A New Report Reveals*
24 *How Family Separation Led Border Officials to Break the Law*, Pacific Standard (Oct. 4,
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1 for two months, without telling them anything about the other's whereabouts or well-
2 being, without allowing them even to speak to one another for two weeks following their
3 separation, and without any plan for reuniting them.

4 164.

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177. Defendant, federal officials, and federal employees referenced above

