

6. Basis of Claim

This claim concerns an unprecedented policy issued at the highest levels of the federal government to separate parents from their children. The extraordinary trauma inflicted on parents and children alike was no incidental byproduct of the policy—it was the very point. The federal government sought to inflict so much distress on parents and children seeking asylum that other families would be deterred from trying to seek refuge in this country. Indeed, while serving as Secretary of the Department of Homeland Security (“DHS”), John Kelly stated that he “would do almost anything to deter people from Central America” from migrating to the United States, including separating children from their parents.¹ After the forced separations began, former Attorney General Jeff Sessions confirmed that the goal was deterrence.² In May 2018, Kelly, who had since become President Trump’s Chief of Staff, callously dismissed any concern about the government’s forced separation of children from their parents, remarking: “[t]he children will be taken care of—put into foster care *or whatever*.”³ Despite widespread condemnation and legal challenges, President Trump continued to defend the policy as a deterrent to migration from Central America when he tweeted, “[I]f you don’t separate, FAR more people will come.”⁴

In total, the U.S. government has admitted to separating more than 2,700 children from their parents or guardians after they crossed the Southwestern U.S. border.⁵ And recent reports indicate that the number of families separated may have been much higher.⁶ The victims of this cruel and unconstitutional policy include M.Z. and his then 14-year-old son M.C. (“Claimants”), whose forced separation lasted for over five-and-a-half months.

A. **The Forced Separation of M.Z. from His Son Caused Claimants to Suffer Severe Physical and Emotional Distress**

1. *M.Z. and His Son Were Forcibly Separated by U.S. Customs and Border Protection in McAllen, Texas*

On June 1, 2018, M.Z., a citizen of Honduras, and his then-14-year-old son, M.C., entered the United States after fleeing Honduras in fear for their safety due to drug and gang-

¹ Philip Bump, *Here Are the Administration Officials who Have Said that Family Separation Is Meant as a Deterrent*, WASH. POST, June 19, 2018, https://www.washingtonpost.com/news/politics/wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-deterrent/?utm_term=.367acbb619d7.

² *Id.*

³ *Transcript: White House Chief of Staff John Kelly’s Interview with NPR*, NPR, May 11, 2018, <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr> (emphasis added).

⁴ Donald Trump (@realDonaldTrump), TWITTER (Dec. 16, 2018, 8:25 AM), <https://twitter.com/realDonaldTrump/status/1074339834351759363> (emphasis in original).

⁵ Joint Status Report at 9, *Ms. L. v. Immigration and Customs Enforcement*, No. 18-cv-428 DMS MDD (S.D. Cal. Dec. 12, 2018); *see also* OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF HEALTH & HUMAN SERVS., OEI-BL-18-00511, SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE at 11 (Jan. 17, 2019) [hereinafter HHS OIG REPORT].

⁶ *See* HHS OIG REPORT, *supra* note 5, at 1, 6, 13 (reporting that “thousands of children may have been separated during an influx that began in 2017, before the accounting required by [the court in *Ms. L. v. Immigration and Customs Enforcement*], and HHS has faced challenges in identifying separated children.”).

related violence and threats aimed at M.C. Upon crossing the border at or near McAllen, Texas, M.Z. and M.C. were apprehended by U.S. Customs and Border Protection (“CBP”) agents, who took them into immigration custody. On information and belief, Claimants were held at the CBP processing center in McAllen, Texas—a facility so notorious for its cold temperature and caged rooms that it is known as *la hielera* in Spanish, or “the icebox.” Upon arrival, immigration officers confiscated what few belongings they brought with them, including extra articles of clothing, which could have helped them stay warm in the freezing *hielera*.

At the CBP immigration processing center, M.Z. advised the officer who interviewed him that he feared for his life and safety in Honduras. The officer did not ask M.Z. any follow-up questions concerning the reasons for his fears. Rather, M.Z. was informed that he fell into a zero tolerance period and that the law governing asylum had been modified or revoked.

At the CBP facility, M.Z. and his son were kept locked in *la hielera* with approximately 25 other people. After spending approximately thirty minutes together, a CBP officer informed M.C. that he would be separated from his father. M.Z. was allowed to speak to his son for no more than two minutes before the immigration officials took M.C. away. M.Z. and M.C. were not told how long they would be separated or when they would see each other again, if ever. In fact, an immigration officer told M.Z. that he should spend the two minutes speaking to M.C. because he might never see his son again. M.C. had tears streaming down his face, but could not bring himself to utter a single word. M.Z. experienced unimaginable pain that he had never felt before in his life. Both M.C. and M.Z. were terrified. That was the last time that M.Z. and M.C. saw each other until they were reunited almost six months later, on November 19, 2018.

2. *M.Z. Experienced Severe Physical and Emotional Distress Due to the Separation from His Son*

Without his son, M.Z. remained in *la hielera* over the next 10 to 12 days. During this time, M.Z. asked numerous officers for information concerning his son’s whereabouts and asked them to help him communicate with his son. The officers told M.Z. that they could not help him because they did not know where M.C. was. For more than two months, M.Z. was given *no information* about his son’s whereabouts or wellbeing, or when or whether they would be reunited. It was an agonizing five and a half months before M.Z. saw M.C. again.

At the McAllen facility, while forced to cope with being separated from his son, M.Z. was not given adequate food to eat and he remained hungry and sleep-deprived throughout his time at the facility. There were no beds on which to sleep. The room in which they were kept was so crowded that people sat and lay down on the ground and even in the bathroom. M.Z. slept for a couple of hours at a time while sitting down on a metal bench. Despite the cold temperatures, M.Z. and the other detainees were given only aluminum foil to use as blankets, and they were given only a sandwich to eat three times a day.

On or about June 4, 2018, M.Z. was brought to court and sentenced to time served. Six to seven days later, upon information and belief, he was moved to the Port Isabel Service Detention Center in Los Fresnos, Texas (“Port Isabel”). During his detention at Port Isabel, M.Z. received no information about M.C. and was not able to communicate with him, despite his repeated requests to the immigration officers to do so.

On or about June 13, 2018, M.Z. was transported to California, not knowing whether M.C. would also be sent to California, or when or whether he would see him again. Upon information and belief, M.Z. was first taken to the Federal Correctional Institution in Victorville, California (“FCI Victorville”). Upon arrival, M.Z. was forced to strip naked and subjected to an invasive bodily search by immigration officers. At FCI Victorville, immigration officers also handcuffed him and shackled him around his waist, feet and wrists. Throughout his detention at FCI Victorville, M.Z. did not know where M.C. was being held, whether he was dead or alive, or anything about his physical, mental, and/or emotional condition. After spending approximately 12 days at FCI Victorville, M.Z. was sent to the Adelanto ICE Processing Center in Adelanto, California (“Adelanto”) without his son, who remained detained in Texas.

At Adelanto, M.Z. slept on a two-inch mattress on a metal plank bed in a room shared by six or eight other people in unsanitary conditions. M.Z. and other detainees were subjected to verbal abuse and punishment by the immigration officers. Detainees were not allowed to use the restroom according to their physical needs, but rather at times designated by the immigration officers. In addition, M.Z. was charged one dollar per minute to make phone calls to his wife in Honduras. In order to pay for these phone calls, he cleaned the bathrooms at Adelanto, for which he was paid approximately one dollar per day.

Indeed, it was only by speaking to his wife in Honduras that M.Z. was able to discover his son’s location in the United States—over two months after he and his son were separated. Once M.Z.’s wife informed her husband where their son was located, M.Z. was able to contact M.C. Starting in early August 2018, M.Z. was allowed to speak to his son at most once per week, for roughly 20 minutes—and even these limited calls were sometimes arbitrarily terminated by the immigration officers. Some of the time the immigration officer would direct M.Z. to end the call; other times, the immigration officer would hang up the call without telling M.Z., and he would find himself speaking to no one on the other end.

M.Z. for several months was under the impression that family members in the United States would be able to retrieve his son from the government shelter. M.Z. sought the assistance of an attorney with the Texas Civil Rights Project in getting his son released to family members in the United States, but M.Z.’s family members did not have the necessary identity documents to satisfy the requirements for sponsorship. Despondent, M.Z. feared that his imminent deportation would result in his son being orphaned in the United States.

M.Z. suffered severe emotional distress following his separation from M.C., and he continues to experience symptoms of his distress today. Throughout his detention, he worried about his child constantly. He was unable to sleep, he experienced symptoms of anxiety and depression, and he suffered from regular headaches. The separation was torture. When he left the detention center, M.Z. felt physically ill, with severe back, waist, and kidney pain. Moreover, M.Z. currently suffers severe stomach pain and developed symptoms of gastritis following his detention.

3. *M.C. Experienced Severe Physical and Emotional Distress Due to the Separation from His Father*

M.C. experienced similar severe emotional distress when he was separated from his father, and that distress continues today. After M.C. was separated from M.Z., he was taken to another very cold room within the CBP facility in McAllen. At the McAllen facility, M.C. was given no sheets or blankets. Despite the cold temperatures, the children were provided only aluminum foil to use as blankets, they were kept indoors all day, and they were given a sandwich to eat three times a day.

M.C. stayed at the McAllen facility for six days and was then transferred to Casa Padre. At Casa Padre, M.C. slept on a two-inch-thick mattress. He and other children were not allowed to use the restroom when they needed to do so, but rather the staff waited for several children to request to use the bathroom before allowing the group to do so.

M.C. was unable to speak to his father for over sixty days after their separation. During this period, M.C. repeatedly asked about his father but he was given no information regarding his father's whereabouts or wellbeing. Throughout M.C.'s detention at Casa Padre, he was not told how long he would be separated from his father or whether he would ever see his father again. M.C. remained at Casa Padre until he was reunited with his father on November 19, 2018.

Upon his separation from his father, M.C. became extremely anxious and sad because he did not know if or when he would see his father again. M.C. experienced symptoms of depression throughout his detention in Casa Padre. He experienced headaches and suffered from anxiety. His repeated requests for medical attention—to address his headaches, feelings of desperation and pain in his teeth—went ignored. Similarly, his repeated requests to call his mother were ignored for approximately two months. During his detention, he felt as if he were going crazy, and there were times he did not recognize himself. M.C. continues to suffer from severe anxiety and sadness today as a result of his separation from his father. He finds it difficult to accept the trauma that he experienced.

B. The Trump Administration's Family Separation Policy

1. *The Purpose of the Policy*

Curbing asylum has been a central focus of the Trump Administration's immigration policy.⁷ On April 6, 2018, President Trump issued a memo entitled "Ending 'Catch and Release'"

⁷ See, e.g., *US Judge Bars Trump Administration From Enforcing Asylum Ban*, CNBC, Nov. 20, 2018, <https://www.cnbc.com/2018/11/20/immigration-policy-judge-bars-us-from-enforcing-trump-asylum-ban.html>; Shaw Drake & Edgar Saldivar, *Trump Administration Is Illegally Turning Away Asylum Seekers*, ACLU, Oct. 30, 2018, <https://www.aclu.org/blog/immigrants-rights/trump-administration-illegally-turning-away-asylum-seekers>; Emma Platoff, Alexa Ura, Jolie McCullough & Darla Cameron, *While Migrant Families Seek Shelter From Violence, Trump Administration Narrows Path to Asylum*, TEXAS TRIBUNE, July 10, 2018, <https://www.texastribune.org/2018/07/10/migrant-families-separated-border-crisis-asylum-seekers-donald-trump/>; Glenn Thrush, *U.S. to Begin Blocking Asylum Seekers From Entering Over Mexican Border*, N.Y. TIMES, Jan. 24, 2010, <https://www.nytimes.com/2019/01/24/us/politics/migrants-blocked-asylum-trump.html?action=click&module=Top%20Stories&pgtype=Homepage>; Yeganeh Torbati & Kristina Cooke, *Trump Administration Moves to Curb Migrants' Asylum Claims*, REUTERS, Nov. 8, 2018,

at the Border of the United States and Directing Other Enhancements to Immigration Enforcement.”⁸ The memo, among other things, directs the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, and the Secretary of Health and Human Services to submit a report to the President that details all of the measures their respective departments have pursued or are pursuing to end “‘catch and release’ practices.”⁹ “Catch and Release” refers to a federal policy that allows people who are seeking asylum to wait for their hearings in the community, not in government custody.¹⁰

On the same day that President Trump issued his directive, then-Attorney General Jeff Sessions announced that the government would institute a “Zero Tolerance” policy, mandating the prosecution of all persons who cross the United States border between ports of entry. The purpose of the “Zero Tolerance” policy was to deter Central Americans from seeking asylum or otherwise coming to the United States.¹¹ Through this policy, the United States intentionally inflicted trauma on immigrant parents and their children who crossed the border, by separating the children from their parents in violation of the United States Constitution.¹² The U.S. government has admitted to forcibly separating more than 2,700 children from their parents and placing them in government custody.¹³ A recent U.S. Department of Health and Human Services (“HHS”) Office of Inspector General (“HHS OIG”) report, however, indicates that the actual number is “thousands” higher.¹⁴

Administration officials at the highest levels knew well before implementing the policy that it would harm the people it affected.¹⁵ Yet, once the separations began to generate public outrage and condemnation, administration officials changed their tune. They insisted that their hardline stance on prosecuting border crossings was not intended to discourage immigration,

<https://www.reuters.com/article/us-usa-immigration-asylum/trump-administration-moves-to-curb-migrants-asylum-claims-idUSKCN1ND35K>.

⁸ 83 Fed. Reg. 16,179 (Apr. 6, 2018).

⁹ *Id.*

¹⁰ Stacy Sullivan, *We Shouldn't Take the Bait on 'Catch and Release'*, ACLU, July 20, 2018, <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/we-shouldnt-take-bait-catch-and-release>.

¹¹ *60 Minutes, Chaos on the Border, Robots to the Rescue, To Kill a Mockingbird* (CBS Television Broadcast Nov. 25, 2018) (revealing an un-redacted copy of the memo implementing the “Zero Tolerance” policy that stated that the policy’s purpose was deterrence).

¹² See *Ms. L. v. U.S. Immigration and Customs Enforcement*, 302 F. Supp. 3d 1149, 1162-67 (S.D. Cal. 2018); *Ms. L. v. U.S. Immigration and Customs Enforcement*, 310 F. Supp. 3d 1133, 1142-46 (S.D. Cal. 2018).

¹³ Joint Status Report, *supra* note 5, at 9; HHS OIG REPORT, *supra* note 5, at 11.

¹⁴ The HHS OIG Report notes that the figure reported in the *Ms. L* litigation does *not* include children whom, beginning in mid-2017, DHS forcibly separated from their parents but were released from HHS custody prior to the June 26, 2018 order in *Ms. L* enjoining the practice of child separation. HHS estimates that there are “thousands of children whom DHS separated during an influx that began in 2017 and whom ORR released prior to *Ms. L. v. ICE*.” HHS OIG REPORT, *supra* note 5, at 13. The figure is understated because it also does *not* include children who were apprehended with and separated from a family member other than a parent, such as a grandparent or older sibling. *Id.* at 7.

¹⁵ Jeremy Stahl, *The Trump Administration Was Warned Separation Would Be Horrific for Children, Did It Anyway*, SLATE, July 31, 2018, <https://slate.com/news-and-politics/2018/07/the-trump-administration-was-warned-separation-would-be-horrific-for-children.html>. Commander White, a former HHS senior official, testified before Congress that he had warned the administration that implementing a family separation policy would involve a significant risk of harm to children. The policy was launched a few weeks after he raised his concerns. *Id.*

and, shockingly, even denied the existence of a family separation policy.¹⁶ The administration, however, could not expunge the numerous statements made by high-level officials confirming that family separation was the express policy and that its purpose was deterrence.

In a December 16, 2017 memorandum exchanged between senior officials at the U.S. Department of Justice and DHS, the officials proposed a “Policy Option” of “Increased Prosecution of Family Unit Parents.”¹⁷ Under the proposal, “parents would be prosecuted for illegal entry . . . and the minors present with them would be placed in HHS custody as [unaccompanied alien children].” The memorandum asserted that “the increase in prosecutions would be reported by media and it would have substantial deterrent effect.”¹⁸

When asked about the policy by NPR on May 11, 2018, John Kelly, President Trump’s Chief of Staff, responded that “a big name of the game is deterrence. . . . It could be a tough deterrent—would be a tough deterrent.” As for the children affected, he said: “[t]he children will be taken care of—put into foster care *or whatever*.”¹⁹

On Fox News’ “The Ingraham Angle,” host Laura Ingraham asked then-Attorney General Jeff Sessions, “is this policy in part used as a deterrent? Are you trying to deter people from bringing children or minors across this dangerous journey? Is that part of what the separation is about?” Sessions replied, “I see that the fact that no one was being prosecuted for this was a factor in a fivefold increase in four years in this kind of illegal immigration. So yes, hopefully people will get the message and come through the border at the port of entry and not break across the border unlawfully.”²⁰

Steven Wagner, Assistant Secretary of HHS, told reporters that “[w]e expect that the new policy will result in a deterrence effect, we certainly hope that parents stop bringing their kids on this dangerous journey and entering the country illegally.”²¹

And President Trump himself has indicated that deterrence was the motivation behind his Justice Department’s “Zero Tolerance” policy. When speaking with reporters at the White House on October 13, 2018, he said “If they feel there will be separation, they don’t come.”²² On December 16, 2018, the President tweeted, “[I]f you don’t separate, FAR more people will come.”²³

¹⁶ Christina Wilkie, *White House Denies Separating Families Is “Policy,” but Insists it Is Needed “to Protect Children,”* CNBC, Jun. 18, 2018, <https://www.cnbc.com/2018/06/18/white-house-denies-separating-families-is-policy.html>.

¹⁷ *Policy Options to Respond to Border Surge of Illegal Immigration*, (Dec. 16, 2017), <https://www.documentcloud.org/documents/5688664-Merkleydocs2.html>.

¹⁸ *Id.* at 1.

¹⁹ *Transcript of White House Chief of Staff John Kelly’s Interview with NPR*, *supra* note 3 (emphasis added).

²⁰ Bump, *supra* note 1.

²¹ *Id.*

²² David Shepardson, *Trump Says Family Separations Deter Illegal Immigration*, REUTERS, Oct. 13, 2018, <https://www.reuters.com/article/us-usa-immigration-trump/trump-says-family-separations-deter-illegal-immigration-idUSKCN1MO00C>.

²³ Donald Trump, *supra* note 4 (emphasis in original).

Thus, the trauma inflicted by the family separation policy was entirely intentional and premediated. This point cannot be overstated: the most senior members of the U.S. government intentionally chose to cause parents and *small children* extraordinary pain and suffering in order to accomplish their policy objectives. The unspeakable pain and suffering experienced by parents and small children was seen as a useful device by the most senior members of the government to accomplish their policy objective of deterring Central Americans from seeking asylum in the United States.

2. *The Implementation of the Policy*

Once the policy was implemented and immigration officers separated children from their parents, DHS deemed separated children to be unaccompanied and transferred them to the HHS Office of Refugee Resettlement (“ORR”), which is responsible for the long-term custodial care and placement of “unaccompanied [noncitizen] children.”²⁴ But DHS failed to take even the most basic steps to record which children belonged to which parents, highlighting the government’s utter indifference to the dire consequences of the policy on the separated families. The DHS Office of Inspector General (“DHS OIG”) noted that the “lack of integration between [CBP]’s, [U.S. Immigration and Customs Enforcement (“ICE”)]’s and HHS’s respective information technology systems hindered efforts to identify, track, and reunify parents and children separated under the Zero Tolerance policy” and that “[a]s a result, DHS has struggled to provide accurate, complete, reliable data in family separations and reunifications, raising concerns about the accuracy of its reporting.”²⁵

Generally, CBP officers—usually the first to encounter individuals entering the United States—were the officers who separated parents and children. Following the separation, CBP transferred many of the parents into ICE custody.²⁶ When the “Zero Tolerance” policy went into effect, ICE’s system “did not display data from CBP’s systems that would have indicated whether a detainee had been separated from a child.”²⁷ As a result, when ICE was processing detained individuals for removal, its system did not indicate whether those individuals had been separated from their children, and “no additional effort was made to identify and reunite families prior to removal.”²⁸ Even more alarming, ICE’s system for keeping track of the children who had been separated from their parents involved ICE officers manually entering a child’s identifying information into a Microsoft Word document and e-mailing that document to HHS, a process described by the DHS OIG as particularly “vulnerable to human error,” and one which “increas[ed] the risk that a child could become lost in the system.”²⁹

²⁴ OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF HOMELAND SECURITY, OIG-18-84, SPECIAL REVIEW - INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY 3 (Sept. 27, 2018) [hereinafter DHS OIG REPORT].

²⁵ See *id.* at 9-10 (noting, among other things, that agencies’ incompatible computer systems erased data that connected children with their families); see also HHS OIG REPORT, *supra* note 5, at 2, 13 (reporting that the lack of an integrated data system to track separated families across HHS and DHS added to the difficulty in HHS’s identification of separated children).

²⁶ DHS OIG REPORT, *supra* note 24, at 2.

²⁷ *Id.* at 9-10.

²⁸ *Id.* at 10.

²⁹ *Id.*

As emphasized by Judge Sabraw in *Ms. L. v. Immigration and Customs Enforcement*, the agencies' failure to coordinate tracking of separated families was a "startling reality" given that:

[t]he government readily keeps track of personal property of detainees in criminal and immigration proceedings. Money, important documents, and automobiles, to name a few, are routinely catalogued, stored, tracked and produced upon a detainee's release, at all levels—state and federal, citizen and alien. Yet, the government has no system in place to keep track of, provide effective communication with, and promptly produce alien children. The unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as *property*. Certainly, that cannot satisfy the requirements of due process.³⁰

The government's inhumane treatment of separated families described by Judge Sabraw was not merely the result of indifference or incompetence. Commander Jonathan White, a former senior HHS official, testified before Congress that he repeatedly warned those devising the policy that separating children from their parents would have harmful effects on the children, including "significant potential for traumatic psychological injury to the child."³¹ But those in charge willfully disregarded Commander White's warnings. Imposing trauma on these parents and children was their very goal.

Only after the family separation policy garnered widespread condemnation and became bad politics did President Trump, on June 20, 2018, sign an executive order ("EO") purporting to end it. The EO states that it is the "policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources."³² The EO, however, did not explain whether or how the federal government would reunify children who had been previously separated. In fact, on June 22, 2018, the government admitted that it had no reunification procedure in place.³³

It was not until a federal judge ordered the government on June 26, 2018 to reunify families that the government began taking steps to do so.³⁴ What followed was chaos. DHS claimed that DHS and HHS had created a centralized database containing all relevant information regarding parents separated from their children; however, the DHS OIG found "no

³⁰ *Ms. L.*, 310 F. Supp. 3d at 1144 (emphasis in original).

³¹ Stahl, *supra* note 15.

³² Affording Congress an Opportunity to Address Family Separation, Exec. Order No. 13,841, 83 Fed. Reg. 29,435 § 1 (June 20, 2018).

³³ See *Ms. L.*, 310 F. Supp. 3d at 1140–41; see also U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-163, UNACCOMPANIED CHILDREN: AGENCY EFFORTS TO REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER 21 (Oct. 2018) [hereinafter GAO REPORT] ("HHS officials told [the GAO] that there were no specific procedures to reunite children with parents from whom they were separated at the border prior to the June 2018 court order."). The only procedure in place capable of reuniting children with their parents was the procedure developed to place unaccompanied children with sponsors in compliance with the Trafficking Victims Protection Reauthorization Act. Under this procedure, however, a parent could only be reunited with his or her child if the government deemed them eligible to be a sponsor. *Id.* Judge Sabraw noted that this procedure was inadequate because it was created to address "a different situation, namely what to do with alien children who were apprehended without their parents at the border or otherwise," and further, that the procedure was not developed to address situations such as this one where family units were separated by government officials after they crossed the border together. *Id.* at 27 (quoting Order Following Status Conference, *Ms. L.*, No. 18-0428 DMS MDD (S.D. Cal. July 10, 2018)).

³⁴ *Ms. L.*, 310 F. Supp. 3d at 1149-50.

evidence that such a database exists.”³⁵ According to the DHS OIG, whatever data was collected was incomplete, contradictory, and unreliable.³⁶ Because no single database with reliable information existed, the Government Accountability Office found that agencies were left to resort to a variety of inefficient and ineffective methods to determine which children were subject to Judge Sabraw’s injunction.³⁷ These methods included officers hand sifting through agency data looking for any indication that a child in HHS custody had been separated from his or her parent³⁸ and calling in the Office of the Assistant Secretary for Preparedness and Responses, an HHS agency whose normal prerogative involves response to hurricanes and other disasters, to review data provided by CBP, ICE, and ORR.³⁹ The method for determining which family units required reunification changed frequently, sometimes more than once a day, with staff at one ORR shelter reporting that “there were times when [they] would be following one process in the morning but a different one in the afternoon.”⁴⁰ Judge Sabraw harangued the agencies for their lack of preparation and coordination at a status conference proceeding on July 27, 2018: “What was lost in the process was the family. The parents didn’t know where the children were, and the children didn’t know where the parents were. And the government didn’t know either.”⁴¹

The government’s cruel policy of separating children from their parents, and its failure to track the children once they were separated, violated the Claimants’ Constitutional right to family integrity.⁴² The government instituted and implemented this policy to intentionally inflict emotional distress on the parents and children who were separated. It succeeded, with devastating consequences for parents and children like M.Z. and M.C.

³⁵ DHS OIG REPORT, *supra* note 24, at 10.

³⁶ *Id.* at 11-12.

³⁷ GAO REPORT, *supra* note 33, at 23-25.

³⁸ *Id.* at 24.

³⁹ *Id.* at 23.

⁴⁰ *Id.* at 27.

⁴¹ Transcript of Joint Status Report at 58, *Ms. L.*, No. 18-cv-00428 DMS MDD (S.D. Cal. July 27, 2018).

⁴² *See Ms. L.*, 302 F. Supp. 3d at 1161-67 (finding that plaintiffs had stated a legally cognizable claim for a violation of their substantive due process rights to family integrity under the Fifth Amendment to the United States Constitution based on their allegations that the Government had separated them from their minor children while they were held in immigration detention and without a showing that they were unfit parents or otherwise presented a danger to their children); *Ms. L.*, 310 F. Supp. 3d at 1142-46 (finding that plaintiffs were likely to succeed on their substantive due process claim when assessing their motion for a preliminary injunction); *see also Smith v. Organization of Foster Families*, 431 U.S. 816, 845 (1977) (liberty interest in family relationships has its source in “intrinsic human rights”). DHS employees are responsible for supervising and managing detainees at CBP and ICE facilities, including those located in Texas and California. And HHS employees are responsible for supervising and managing the detention of unaccompanied children, including at facilities in Texas. DHS and HHS employees are federal employees for the purposes of the Federal Tort Claims Act.