8. 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 a child from her mother, 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 Victoria and her then-six-year-old son, G.A., whose forced separation lasted for approximately two and a half months.

A. The Forced Separation of Victoria from Her Six Year-Old Son

On or around May 8, 2018, Victoria, a twenty-three-year-old Guatemalan national, entered the United States with her then-six-year-old son, G.A., after fleeing

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[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.").

horrific violence and threats of violence in Guatemala.[7] When Victoria and G.A. crossed the border from Mexicali into California, immigration officials apprehended them and brought them to a short-term detention center—a place so cold it is called "*la hielera*" or icebox.

Shortly after Victoria and G.A. arrived at the *hielera*, immigration officers told Victoria that because she did not enter through an official port of entry, the U.S. government would detain her for years, take G.A. away from her, and send him to a shelter.[8] The immigration officers put Victoria in a cell with other women, and put G.A. in a different cell with other children, many of them only six or seven-years-old. Victoria was terrified. She could not see or hear G.A. from her cell. At night, the immigration officers brought the parents to the children's cell. Victoria and G.A. spent two days and nights like this—apart during the day and together only at night. During those two nights, Victoria tried to explain to G.A. that immigration officers would take him to a shelter for a while, and that she would see him again soon. G.A. cried at the news.

On their second morning in the *hielera*, on or around May 10, at approximately 10:00 in the morning, an immigration officer told Victoria and the other mothers to get up because they were sending their children to a shelter that day. Immigration officers took parents and children in groups of approximately 10 parents and 10 children to another room. When an immigration officer called their names, Victoria and G.A. joined a small group of other mothers, fathers and children. The immigration officer took them to a room with a shower and told the parents to line up to bathe their children.

As they waited in line to use the shower, all of the parents and children cried. The immigration officer said laughingly: "Don't cry today, today is a happy day. It's Mother's Day." Victoria knew the officer was taunting the parents about seizing and sending their children away. The officer's mockery left her angry and traumatized.

After bathing G.A., Victoria dressed him and waited for the other parents to do the same. The immigration officer then led the parents and children back to the children's cell. The immigration officer told the parents to say good-bye. He then started calling the children's names one by one, and told them to line up against the wall of the cell. The parents were told to remain in a line against the other wall. Victoria and G.A. clung to each other and cried. Victoria watched as an officer forcibly ripped a child from his mother's arms. Victoria tried to comfort G.A. but she was sobbing so much she could barely speak. A woman who identified herself as a social worker told Victoria not to worry too much, that her son was going to a shelter in New York and that she should get a lawyer and fight her case in order to stay in the country with her son. This was little comfort to Victoria She could not afford a lawyer, and had no idea how long it would be before she saw her six-year-old son again.

[7] Victoria is now twenty-four years old and G.A. is seven.

[8] Victoria and G.A. do not speak English. All referenced conversation took place in Spanish unless otherwise noted, except that conversations between Victoria and G.A. took place either in their native language, Q'eqchi' or in Spanish.

G.A. did not want to leave his mother. The immigration officer called his name and, sobbing, he got into line with the other children. Without any words of comfort and without the slightest show of compassion, the immigration officer led G.A. and the other children out of the room and closed the door.

After taking their children, the immigration officer did not give Victoria and the other parents any further information about where their children were going or when they would speak to them again. Instead, he took the parents back to the holding cells as if nothing had happened. Victoria remained in the holding cell with 77 other women, for approximately four more days.[9] The cell was over-crowded. It had no beds and the women slept on the floor with only sheets of aluminum for warmth. And there was only one toilet and one sink for all 78 women.

On or around May 14, immigration officers put Victoria and the other seventy-seven women in handcuffs and shackles and took them on a bus to another processing center in Santa Cruz, Arizona. At the processing center, officers forced Victoria and the other women to strip naked and submit to a search. While naked, a female officer at the center told Victoria to bend over and cough three times. Victoria did as she was told but felt distraught and humiliated.

Approximately four days later, immigration officers again put Victoria and the other women in shackles, and made them board another bus. The officers told the women that they were going to an airport to be deported. Everyone began crying. Victoria was terrified that she was being sent back to Guatemala without G.A. When the women protested, an officer said callously "So, why did you come into this country?" At the airport, Victoria and the other women, still in shackles, boarded the plane, along with the immigration officers. During the flight, a flight attendant told the women not to cry, that the plane was going to Las Vegas, not Guatemala. She told the women that she understood their fear, that she was a mother herself. While Victoria wanted to believe the flight attendant, she thought the flight attendant was just trying to make them feel better. It was not until the plane was landing and she saw a sign on the ground with the words "Las Vegas" that Victoria realized they were still in the United States.

In Las Vegas, the immigration officers loaded the women, still in handcuffs and shackles, onto another bus and took them to the Nevada Southern Detention Center. When Victoria arrived there, she and the other women were told that they would go before a judge and that if they won their cases, they could remain in the United States, but if they lost, they would be deported. Victoria remained in the detention center for approximately two months. She cried every day. She barely ate or slept. She had headaches and toothaches. She was terrified that she would be deported without her son.

On or about June 5, immigration officers took Victoria to a room in the detention center where she spoke to a judge via videoconference. During this hearing, the judge told her that he was ordering her to be deported. When Victoria left the room, she was

[9] Immigration officials told Victoria and the other women in the cell that there were seventy-eight of them in the cell.

sure that immigration officers would send her back to Guatemala without G.A., and that she would never see her son again.

During her two months in Nevada, Victoria repeatedly asked for information about G.A. A case worker in the detention center spoke Spanish, and she helped Victoria and other women draft a petition asking the immigration officers to let them speak to their children. The petition seemed to have no impact.

G.A. turned seven while Victoria was in Nevada. He spent his seventh birthday separated from his mother. On his birthday, Victoria was beside herself. She spent the day crying and thinking that her little boy was somewhere turning seven, all by himself.

Finally, on or around June 25, a month and a half after immigration officers took G.A., they finally allowed Victoria to speak to him. An immigration officer called her name and took her to a telephone. As soon as G.A. heard his mother's voice, he started to cry. He cried throughout the phone call, which lasted about ten minutes. During the call, Victoria also spoke to the social worker at the center where G.A. was being held. The social worker said that G.A. was not eating and would not get out of bed. He spent all his time crying. This report made Victoria more distressed. About a week later, immigration officers allowed Victoria to call G.A. a second time. Again, he cried for the duration of the call.

On July 17, immigration officers took Victoria from the detention center in Nevada and sent her to the Port Isabel Detention Center in Texas. Again, they handcuffed and shackled her during the transfer. In Port Isabel, immigration officers told Victoria that she would be reunited with her son. A week later, on July 25, after two and half months of separation, G.A. finally walked through the door. Victoria was so happy to be reunited, she cried. G.A. cried as well. Victoria and G.A. were then transferred to the South Texas Family Residential Center in Dilley, Texas (Dilley), by bus. During their time at Dilley, G.A. passed a credible fear interview and Victoria and G.A. were finally released from detention at the end of November.

Victoria suffered severe emotional distress because of her separation from her son, and continues to experience symptoms of her distress even after their reunification. Immigration officers failed to provide Victoria with information regarding her son's well-being or whereabouts for months, which caused her acute anxiety and distress. She worried about her child constantly. She cried all the time. She was so overwhelmed by feelings of loss, despair, fear and grief that she was unable to sleep, had no appetite, and suffered from chronic headaches. Victoria even lost her ability to recall words and speak normally, which increased her feelings of helplessness. At Dilley, she continued to experience headaches and just wanted to sleep all day. She did not have energy to do anything else.

Victoria's emotional distress was all the more severe because she thought the separation inflicted long-term harm on her son and their relationship. During their time at Dilley, G.A. told Victoria on two separate occasions that she was not his mother

anymore because she allowed him to be taken away from her. Victoria was heartbroken when she heard this; she did not believe that she would ever be happy again, or that her son would ever again feel safe.

Victoria was seen by medical personnel at Dilley and was prescribed medication.[10] Eventually, the medication helped lessen the severity of Victoria's headaches and lack of energy; however, she still has headaches from the stress she experienced in immigration detention. A psychological evaluation confirms that Victoria suffered trauma as a result of the separation from G.A., and the accompanying misinformation and lack of information concerning his safety, well-being, and whereabouts after he was taken from her. The clinical social worker in Dilley who evaluated Victoria found that she exhibits symptoms consistent with Post Traumatic Stress Disorder (PTSD).

Medical personnel at Dilley also examined G.A. because he appeared angry and easily frustrated. They told Victoria that G.A. was acting out because he was traumatized by their separation. Prescription medications eventually made G.A. calmer.[11] Victoria continues to be concerned about her son's well-being, and worries that their relationship may never recover. Since being reunited, G.A. is angrier than he was before immigration officers took him away from his mother, and he continues to blame Victoria for the separation. G.A. does not want to go to school. He is constantly nervous and cries whenever Victoria takes him to school. Victoria believes that her son is afraid to be away from her and that he lives in fear of someone taking him away again.

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.[12] On April 6, 2018, President Trump issued a memo entitled "Ending 'Catch and Release' at the Border of the United States and Directing Other

[10] Victoria was not told the name of the medication.
[11] Victoria was not told what medication G.A. was prescribed.
[12] *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, https://www.reuters.com/article/us-usa-immigration-asylum/trump-administration-moves-to-curb-migrants-asylum-claims-idUSKCN1ND35K.

Enhancements to Immigration Enforcement."[13] 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."[14] "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.[15]

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.[16] 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.[17] The U.S. Government has admitted to forcibly separating more than 2,700 children from their parents and placing them in government custody.[18] A recent HHS OIG report, however, indicates that the actual number is "thousands" higher.[19]

Administration officials at the highest levels knew well before implementing the policy that it would harm the people it affected.[20] 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, and, shockingly, even denied the existence of a family

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[13] 83 Fed. Reg. 16,179 (Apr. 13, 2018).
[14] *Id*.
[15] 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.
[16] *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).
[17] *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).
[18] Joint Status Report, *supra* note 5, at 9; HHS OIG REPORT, *supra* note 5, at 11.
[19] 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.
[20] 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.*

separation policy.[21] 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 DOJ and DHS, the officials proposed a "Policy Option" of "Increased Prosecution of Family Unit Parents." 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."[22]

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."[23] As for the children affected, he said: "[t]he children will be taken care of—put into foster care *or whatever*."[24]

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."[25]

Steven Wagner, Assistant Secretary of the U.S. Department of Health and Human Services ("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."[26]

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."[27] On December 16, 2018, the President tweeted, "[I]f you don't separate, FAR more people will come."[28]

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[21] 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.
[22] *Policy Options to Responder to Border Surge of Illegal Immigration*, (Dec. 16, 2017), https://www.documentcloud.org/documents/5688664-Merkleydocs2.html.
[23] *Id*.
[24] *Transcript of White House Chief of Staff John Kelly's Interview with NPR*, *supra* note 3 (emphasis added).
[25] Bump, *supra* note 1.
[26] *Id*.
[27] 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.
[28] 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 U.S. 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."[29] 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 [U.S. Customs and Border Protection] CBP's, [U.S. Immigration and Customs Enforcement] ICE's and HHS' 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."[30]

Generally, CBP officers—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.[31] 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."[32] As a result, when ICE was processing detained individuals for removal, "no additional effort was made to identify and reunite families prior to removal."[33] Even more alarming, in order to keep track of the children, ICE manually entered the child's identifying information into a Microsoft Word document, which was then e-mailed as an attachment to HHS, a process described by the DHS OIG as particularly "vulnerable to human error," and one which "increase[ed] the risk that a child could become lost in the system."[34]

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[29] 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].

[30] *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).

[31] DHS OIG REPORT, *supra* note 29, at 2.

[32] *Id.* at 9-10.

[33] *Id.* at 10.

[34] *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.[35]

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."[36] 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."[37] 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.[38]

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[35] *Ms. L.*, 310 F. Supp. 3d at 1144 (emphasis in original).
[36] Stahl, *supra* note 20.
[37] Affording Congress an Opportunity to Address Family Separation, Exec. Order No. 13,841, 83 Fed. Reg. 29,435 § 1 (June 20, 2018).
[38] *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

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.[39] 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 evidence that such a database exists."[40] According to the DHS OIG, whatever data was collected was incomplete, contradictory, and unreliable.[41] 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.[42] 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 parent[43] 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.[44] 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."[45] 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."[46]

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.[47] The government instituted and implemented

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Following Status Conference, Ms. L. v. Immigration and Customs Enforcement, No. 18-0428 DMS MDD (S.D. Cal. July 10, 2018)).

[39] *Ms. L.*, 310 F. Supp. 3d at 1149-50.

[40] DHS OIG REPORT, *supra* note 29, at 10.

[41] *Id*. at 11-12.

[42] GAO REPORT, *supra* note 38, at 23-25.

[43] *Id*. at 24.

[44] *Id*. at 23.

[45] *Id*. at 27.

[46] Transcript of Joint Status Report at 58, Ms. L. v. Immigration and Customs Enforcement, No. 18-cv-00428 DMS MDD (S.D. Cal. July 27, 2018).

[47] *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 California, Arizona, Nevada and Texas. And HHS employees are responsible for supervising and managing the detention of unaccompanied children, including at facilities in New York. DHS and HHS employees are federal employees for the purposes of the Federal Tort Claims Act.

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 Victoria and G.A.