

November 27, 2018

VIA CERTIFIED MAIL AND E-MAIL

Office of the General Counsel (ogc@hq.dhs.gov)
U.S. Department of Homeland Security
Washington, DC 20528

Office of the Principal Legal Advisor (original)
Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20024

U.S. Customs and Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue NW
Washington, DC 20229

U.S. Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue SW
Washington, DC 20201

Re: Notice of Claim for Damages under the Federal Tort Claims Act —
Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

Dear Sir or Madam:

Enclosed please find an administrative claim under the Federal Tort Claims Act against the United States government, for the extreme suffering and wrongful death of a 19-month-old child, and the severe mental pain, distress, loss of love and companionship, and other harms inflicted on the child's mother, as a result of their time in "family detention" in the custody of United States Immigration and Customs Enforcement.

This firm represents Yazmin Juárez [REDACTED], and we serve this administrative claim on her behalf. Ms. Juárez is the mother of Mariee Camyl Newberry Juárez, a baby girl who died on May 10, 2018, after six agonizing weeks of hospitalization and

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extensive medical interventions. Mariee would have turned two years old in August 2018. Ms. Juárez is Mariee's wrongful death beneficiary and the legal representative of her estate. Ms. Juárez seeks an award of damages to compensate for the harms she and Mariee sustained in connection with the events that led to Mariee's wrongful death.

Mariee was a happy, healthy little girl when she and her mother arrived in the United States on March 1, 2018, and likewise when they were transported to ICE's South Texas Family Residential Center in Dilley, Texas, several days later. Mariee got sick because of the conditions at Dilley which are unsafe, unsanitary, and inappropriate for small children. And Mariee died because the medical care she received at the Dilley detention facility was woefully inadequate, neglectful, and substandard.

Mariee's death was altogether foreseeable. People who have spent time at Dilley have long believed that the death of a child was inevitable, just a mere matter of time. Members of Congress have expressed grave concerns about the conditions and care provided to women and children detained there. Some of those women have provided deeply troubling testimonials about the unsafe, unsanitary conditions and the lack of adequate medical care, especially for children. Immigrant-rights organizations have been sounding the alarm since Dilley opened in 2014. Ms. Juárez hopes that Mariee's death will finally spur the United States government to take action to ensure that such a devastating and needless tragedy does not happen again.

"After reviewing the medical records from Mariee's treatment at the Dilley detention facility, it is clear that ICE medical staff failed to meet the most basic standard of care and engaged in some troubling practices such as providing pediatric care over a long period of time by non-physicians without supervision," said Dr. Benard Dreyer, a past president of the American Academy of Pediatrics, director of pediatrics at Bellevue Hospital, and professor of pediatrics at NYU School of Medicine. "If signs of persistent and severe illness are present in a young child, the standard of care is to seek emergency care. ICE staff did not seek emergency care for Mariee, nor did they arrange for intravenous antibiotics when Mariee was unable to keep oral antibiotics down. These are just a few of the alarming examples of how ICE medical staff failed to provide proper medical treatment to this little girl." Dr. Dreyer continued, "This is way out of the norm of how we would treat a child." He further explained, "Kids do die of pneumonia, but it's very rare, especially if they're hospitalized reasonably early." Because of ICE, Mariee was hospitalized too late.

I look forward to hearing from the responsible government attorneys about an early resolution of Ms. Juárez's claims. Upon request, we will provide medical records from Mariee's care at Dilley and at several private medical facilities after her release from ICE detention. Absent a consensual resolution of Ms. Juárez's claims, we will

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pursue litigation against both the United States government and other parties liable for Mariee's tragic and wrongful death.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Stanton Jones', with a long horizontal flourish extending to the right.

R. Stanton Jones

Counsel for Yazmin Juárez

Enclosures (Claim Authorization Form, FTCA Form 95 Complaint, Attachment)


cc: Steve Ohrvall, ICE Associate Legal Advisor
7701 N. Stemmons Freeway, Dallas, TX 75247

Arnold & Porter

CLAIM AUTHORIZATION FORM

I, Yazmin Juárez [REDACTED], hereby authorize R. Stanton Jones of Arnold & Porter to submit a claim under the Federal Tort Claims Act on behalf of myself and my deceased minor child, Mariee Camyl Newberry Juárez, to the U.S. Department of Homeland Security, including U.S. Immigration and Customs Enforcement, and any other government agency, seeking compensation for the unlawful actions of their employees or agents against me and Mariee.

11-26-2018
Dated


Yazmin Juárez [REDACTED]

**CLAIM FOR DAMAGE,
INJURY, OR DEATH**

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED
OMB NO. 1105-0008

1. Submit to Appropriate Federal Agency:

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
U.S. Customs and Border Protection
U.S. Department of Health and Human Services

2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.

Yazmin Juárez [REDACTED], o/b/o herself and Mariee Camyl Newberry Juárez, c/o R. Stanton Jones, Arnold & Porter, 601 Massachusetts Ave. NW, Washington, DC 20001

3. TYPE OF EMPLOYMENT

MILITARY CIVILIAN

4. DATE OF BIRTH

11/05/97

5. MARITAL STATUS

unmarried

6. DATE AND DAY OF ACCIDENT

See attachment.

7. TIME (A.M. OR P.M.)

See attachment.

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

See attachment.

9. **PROPERTY DAMAGE**

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

Not applicable.

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).

Not applicable.

10. **PERSONAL INJURY/WRONGFUL DEATH**

STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.

See attachment.

11. **WITNESSES**

NAME

ADDRESS (Number, Street, City, State, and Zip Code)

See attachment.

12. (See instructions on reverse). **AMOUNT OF CLAIM** (In dollars)

12a. PROPERTY DAMAGE

12b. PERSONAL INJURY

12c. WRONGFUL DEATH

12d. TOTAL (Failure to specify may cause forfeiture of your rights).

\$60,000,000.00

\$60,000,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).

[Signature] (by her attorney, see attached)

13b. PHONE NUMBER OF PERSON SIGNING FORM

See attachment.

14. DATE OF SIGNATURE

11/27/18

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).

Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No

17. If deductible, state amount.

Not applicable.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).
Not applicable.

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in Item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

FTCA Standard Form 95 — Attachment

Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

6. Date and Day of Accident

The tragic death of claimant Yazmin Juárez [REDACTED] daughter, Mariee Camyl Newberry Juárez, resulted from mother and daughter's time in the federal government's custody, including the unsafe and unsanitary conditions in immigration detention at the South Texas Family Residential Center in Dilley, Texas, and the inadequate, substandard medical care Mariee received there. After being detained at a temporary CBP immigration processing center for several days, Ms. Juárez and Mariee were detained at Dilley from on or about Monday, March 5, 2018, to Sunday, March 25, 2018. Mariee died on Thursday, May 10, 2018.

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

Not applicable.

8. Basis of Claim

I. Factual Basis for Claims

On March 1, 2018, Ms. Juárez, a citizen of Guatemala, and her then-19-month-old daughter, Mariee, crossed the Rio Grande into southern Texas. Ms. Juárez feared for her and Mariee's life and safety in Guatemala, and they had fled to seek asylum in the United States. On their apprehension near the border, mother and daughter were temporarily detained at a U.S. Customs and Border Patrol (CBP) immigration processing center. On information and belief, they were held at the CBP detention facility in McAllen, Texas—a place known as the “ice box” and the “dog pound” because of its frigid temperatures and chain-link cages housing migrant adults and children.

At the CBP facility, Mariee and Ms. Juárez were forced to sleep on the floor in a locked cage with as many as 30 other people—none of whom, on information and belief, underwent a medical exam before their detention in such crowded quarters. Ms. Juárez and Mariee were detained at the CBP facility for three or four days before they were transferred together to Dilley.

Mariee was a normal, healthy, happy child when she arrived in the United States. She had never had any significant medical problems or chronic medical conditions. The medical personnel who processed Mariee for intake at Dilley on March 5, 2018, also noted no current illnesses or health problems before clearing her for custody.

At Dilley, Ms. Juárez and Mariee were assigned to a single room with five other mothers, each with a child. Several children were ill. One boy, who was around Mariee's age, had a constant cough and runny nose, and was very lethargic. Ms. Juárez learned from the boy's mother that he had fallen ill at Dilley. His mother had sought

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Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

medical attention for her son, taking him to the clinic very early in the morning, but the two were sent back to the housing area without being seen at that time. The single room housing 12 people had no separate area to isolate sick children (or adults) from healthy ones, nor were protective masks provided to guard against contagion.

Within a week, Mariee began to exhibit upper respiratory symptoms, including congestion and a productive cough. On March 11, 2018, a physician assistant performed a physical exam of Mariee, noting “no [history] of acute or chronic medical illnesses” and describing Mariee’s general appearance as “well developed” and “well nourished.” But Mariee had a cough, congestion, runny nose, and “red and swollen turbinates” (soft tissue on the side walls of the nasal cavity). The physician assistant diagnosed Mariee with an acute upper respiratory infection and prescribed Tylenol for comfort. The medical record also indicates that the physician assistant prescribed honey for cough and directed a follow-up in “6 months.”

The next day, March 12, 2018, Ms. Juárez again sought medical attention for Mariee, who was then running a fever of 104.2 degrees and suffering from cough, congestion, diarrhea, and vomiting. Mariee also had not been eating that day. Another physician assistant diagnosed an ear infection—for which he prescribed Augmentin, an antibiotic—as well as acute bronchiolitis—for which he prescribed fever reducers and oral hydration. Ms. Juárez was concerned about Mariee’s respiratory symptoms and asked the physician assistant to conduct more examinations. But the physician assistant instead instructed Ms. Juárez to return to the clinic if Mariee’s symptoms worsened, scheduled a follow-up in 2 days, and returned mother and daughter to the housing area.

In the subsequent days, Mariee’s fever decreased somewhat, but she was unable to hold down the antibiotic prescribed for her ear infection, her breathing problems significantly worsened, and she continued to suffer diarrhea and vomiting. Ms. Juárez sought medical attention for Mariee multiple times but was often left waiting for many hours, including at least two instances where she was turned away and told to wait for an appointment on a later day. The clinic waiting area, resembling a gymnasium, was filled with dozens of mothers and children waiting in line to be seen. There was no separate area to isolate sick children (or adults) from healthy ones, nor were protective masks provided to guard against contagion. And when Ms. Juárez and Mariee were seen, the medical appointments often lasted just minutes, and Ms. Juárez believed that medical staff were not addressing her concerns about Mariee’s deteriorating condition.

On March 14, 2018, Yazmin had her “credible fear” interview with an immigration officer as part of the asylum process. She brought Mariee with her because the child was so ill. At the interview, the immigration officer commented to Yazmin that Mariee looked very sick.

FTCA Form 95 Complaint — Attachment

Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

By March 15, 2018, when Mariee was next seen by a third physician assistant, the little girl had lost 2 full pounds—nearly 8 percent of her body weight—in just 10 days since arriving at Dilley. She continued to suffer from fever, congestion, cough, diarrhea, vomiting, and very poor appetite. The physician assistant noted an “upper respiratory infection” and directed Ms. Juárez to continue with Tylenol and Pedialyte, and to follow up in one week.

Mariee’s fever worsened. On March 21, 2018, she presented with a 103.3 degree temperature, an elevated respiratory rate, and a rapid heart rate, as well as a cough, congestion, sneezing, and runny nose. She was also continuing to suffer diarrhea and vomiting. Mariee was seen that day by a physician—her only visit with a physician at Dilley. The physician stated that Mariee had “no tachypnea,” despite the respiratory rate on the same form showing otherwise, and diagnosed acute viral bronchiolitis. The physician prescribed Pedialyte, Ibuprofen for fever, Zyrtec for runny nose, and Vicks VapoRub for congestion. As any pediatrician should know—and as the product’s label and website clearly state—Vicks VapoRub should not be used with children under 2 years old because it contains camphor, which can cause respiratory distress, particularly if the child’s airways are already inflamed. After ordering the use of a medicine that was in fact contraindicated for a patient so young, the physician directed Ms. Juárez to follow up in one week or to return if Mariee demonstrated signs of respiratory worsening.

Two days later, on March 23, 2018, Ms. Juárez once again brought Mariee to the clinic, reporting that Mariee had been coughing and vomiting clear liquid. The child was also suffering congestion, nasal discharge, an elevated heart rate, and a temperature of 99.2 degrees. She was also continuing to suffer diarrhea. Mariee was examined by a registered nurse, at least the fifth different medical staff member to see Mariee in as many visits. According to the record of this visit, Mariee’s examination revealed “red sclera,” which should have been indicative of adenovirus, though the registered nurse made no note of it. By this time, Mariee had been ill with a cough and other serious symptoms for nearly two weeks and had barely regained any weight. Ms. Juárez asked the nurse to conduct a more detailed examination, particularly of Mariee’s lungs. After listening to Mariee’s lungs, the nurse returned mother and daughter to the housing area, noting that “a referral would be made for [Mariee] to see a provider.” But Mariee never saw another medical provider of any kind before being discharged from Dilley two days later.

Over the following two days, Mariee’s condition deteriorated rapidly. Mariee had constant diarrhea and a fever, vomited frequently, and had difficulty sleeping or eating. On March 24, 2018, Ms. Juárez was notified of an appointment for Mariee to be seen at 8:00 a.m. the next morning. But that appointment never happened. Instead, at 5:00 a.m. on March 25, 2018, Dilley staff took Ms. Juárez and Mariee to a staging area to be processed for transfer out of family detention and a flight to New Jersey. Ms. Juárez and Mariee (who was still feverish, vomiting, and suffering diarrhea) waited there until about

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Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

noon, when they were taken to another location at Dilley, fed lunch, and put in a van to San Antonio International Airport. No medical personnel examined Mariee to clear her for travel or otherwise.

Ms. Juárez and Mariee boarded a late afternoon flight with a connection to New Jersey. Mariee slept for most of the flights but vomited in the last hour. A fellow passenger commented to Ms. Juárez that Mariee looked very unwell and needed to see a doctor.

Although no medical personnel saw Mariee on the day of their departure from Dilley, an ICE medical record states that, on March 25, 2018, a “licensed vocational nurse” conducted a “Transfer Summary” before mother and daughter were released. The record states that the licensed vocational nurse “medically cleared” Mariee for release from Dilley. The licensed vocational nurse was not qualified to make such a determination, and doing so exceeded the scope of her license. Under Texas law, licensed vocational nurses are not authorized to perform comprehensive patient assessments, to initiate any nursing care plan, or to implement or evaluate patient care. Regardless, neither the licensed vocational nurse nor anyone else actually examined Mariee that day.

The record from Mariee’s March 23 appointment—just two days earlier—indicated that Mariee was acutely ill and that the ICE medical staff would refer her to a physician. But under the heading “History of Present Illness,” the licensed vocational nurse’s March 25 “Transfer Summary” contains no information about Mariee’s condition at that time, no indication that she was coughing and wheezing, that she had lost a substantial percentage of her body weight, or that she had suffered intermittent high fevers as well as diarrhea and vomiting over a prolonged period of time. Instead, without even seeing Mariee, the licensed vocational nurse noted these questions and answers:

- “Is there any medical / dental / or mental health reasons for restricting the length of time the alien can be on travel status? *No*”
- “Are there any restriction [sic] or special equipment required for travel? *No*”
- “Is a medical escort required? *No*”
- “Are any transmission-based precautions required during transport? *No*”
- “Additional comments? *None*”

Given that the licensed vocational nurse never examined Mariee, it is unclear on what basis she purported to answer these questions.

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Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

By the time mother and daughter arrived in New Jersey after midnight, early in the morning of March 26, 2018, Mariee's condition was dire. Hours later, after sunrise on March 26, Ms. Juárez took Mariee to a pediatrician, who said that Mariee's lungs had stiffened and that she was having difficulty breathing. After several hours of trying various treatments to improve Mariee's condition, Ms. Juárez and Mariee were sent home with additional medications and instructions to seek emergency medical attention if the girl deteriorated further.

But by then it was too late. Hours later, on the evening of March 26, Mariee was admitted to the emergency room, where she presented in acute respiratory distress with a critically low blood oxygen level of 85%, requiring continuous supplemental oxygen. Shortly after admission, Mariee was moved to the Special Care Unit with a diagnosis of viral bronchiolitis versus pneumonia. She tested positive for adenovirus and parainfluenza 3. Over the next six weeks, Mariee was transferred to two different hospitals for increasingly specialized care due to her progressive respiratory failure, requiring a ventilator and later an advanced life support device (ECMO) used in dire situations.

Mariee's condition steadily worsened, and she died on May 10, 2018, following a catastrophic intrathoracic hemorrhage that resulted in irreversible brain and organ damage with no hope of survival. The cause of death was identified as bronchiectasis, pulmonitis, and pneumothorax (collapsed lung).

In the final six weeks of Mariee's life, Ms. Juárez watched in agony as her daughter suffered extreme physical and emotional pain. Mariee was hospitalized continuously, surrounded by multiple medical personnel performing painful tests and examinations. She was often chemically paralyzed and sedated. She had multiple intravenous (IV) lines that needed to be replaced frequently, an arterial IV line for monitoring her blood gases, a naso-gastric for tube feedings, intravenous nutritional supplementation, and a urinary catheter. While ventilated, she could not speak. While sedated and on paralytic drugs, along with all the IV lines, she could not hug her mother or be held. Despite all the medical measures, Mariee continued to deteriorate and lung transplant evaluation was considered. In the last few hours of her life, following the catastrophic hemorrhage, Mariee experienced a chest tube insertion, replacement of the advanced life support device, massive blood transfusions, and CPR on her tiny body.

On the day of her daughter's death, Ms. Juárez left the hospital with only an ink print of Mariee's right hand, made the previous day as a Mother's Day gift.

* * *

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Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

In 2014, in response to a wave of families and unaccompanied children from Central America entering the United States via the southwest border, the United States government adopted and implemented a new policy of “family detention.” Under this policy, the government detains children of all ages, with a parent, to try to deter other adults from crossing the border unlawfully with their children.

The South Texas Family Residential Center in Dilley—a 2,400-bed detention center for immigrant families—was opened hastily in 2014 to accommodate the federal government’s new family detention policy. U.S. Immigration and Customs Enforcement (ICE) established Dilley through makeshift contractual arrangements—later deemed improper and unlawful, and recently abandoned—with the City of Eloy, Arizona, which in turn contracted with one of the nation’s largest private prison companies, CoreCivic, then known as Corrections Corporation of America or “CCA.”

On October 27, 2014, more than 30 members of Congress wrote a letter expressing “concerns” about the conditions in which ICE was detaining families and children. The letter expressed particular concern that ICE had selected CCA to operate the new Dilley family detention facility, given CCA’s inability to “operate the much smaller [T. Don Hutto Family Residential Center] safely and in accordance with legal standards.” The T. Don Hutto Family Residential Center was closed in 2009 following a federal district court’s decision that the conditions under which ICE and CCA were detaining children likely failed to meet the standard of care, including medical care, required by law. The members’ letter expressed further alarm that ICE’s agreement with the City of Eloy did not “require child care experts be hired by the [Dilley] facility” despite ICE’s plans to detain up to 2,400 women and children there.

Over the four years that Dilley has been in operation, immigrant-rights advocates have repeatedly raised serious concerns about the unsafe and unsanitary conditions there and at other family detention facilities. In 2015, a group of immigrant-rights organizations lodged a series of formal complaints about the inadequate medical care provided at Dilley. The organizations noted that mothers and children often enter the detention centers with injuries or illnesses that go untreated throughout the duration of their confinement. Others contract illnesses during their stay in detention, for which they likewise receive inadequate medical care. Among many troubling reports, the complaints noted that “women and children reported wait times of three to fourteen hours to receive medical care,” including for serious and urgent conditions. In addition, “medical professionals provide insufficient information about medical care to mothers and disregard their concerns, the information they provide, and their complaints,” and routinely fail to provide appropriate follow-up treatment. ICE was or should have been aware of these and similar complaints, and of the conditions that formed the basis of the complaints, but failed to take measures to remedy the problems.

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Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

A volunteer who worked at Dilley in late 2017 likewise reported that the center was filled with young children who were coughing, sneezing, and lethargic; many children also had high fevers, conjunctivitis, and were vomiting and experiencing diarrhea multiple times per day. Other children had rashes as a result of drinking contaminated tap water. This volunteer noted that the children's "obvious medical problems" did not appear to be receiving adequate medical attention. Among other things, mothers reported the failure to conduct physical examinations, lack of communication about symptoms and diagnoses, illogical and incorrect diagnoses of patients, and prescribing water instead of medicine. Many mothers were reluctant to complain about the inadequate care for fear their complaints would adversely affect their immigration cases. Another volunteer who worked at Dilley in August 2018 similarly reported that nearly every child she saw there was sick with a cold, runny nose, coughing, and sneezing. Toddlers who should have been full of energy were listless and routinely asleep in the middle of the day.

In a July 17, 2018 letter to Congress, two physicians serving as medical and psychiatric subject matter experts for the Department of Homeland Security's Office of Civil Rights and Civil Liberties underscored the inadequate, neglectful, substandard medical care provided to women and children detained at Dilley and other ICE family detention facilities. Based on their four-year investigation, these medical experts catalogued extensive problems with the care provided specifically at Dilley, including a "lack[] of sufficient medical space resulting in the use of a gymnasium for medical overflow" and "difficulty sufficiently staffing enough pediatricians." Among a litany of specific instances of substandard care, the experts noted one particularly troubling incident at Dilley in which hundreds of children were vaccinated with adult doses of a vaccine "as a result of poor interagency coordination" and "the unfamiliarity of the providers with pediatric dosing." The experts warned that the many severe problems they observed at Dilley and other ICE family detention facilities "will directly result in harm to children."

ICE's employees are responsible for the conditions at the Dilley detention facility. Under those employees' watch, families and children at Dilley have been housed in close quarters, and many suffer from untreated illnesses and other medical conditions. These conditions are inherently unsafe and endanger the health and lives of all those who are detained there, especially small children like Mariee.

The medical personnel at Dilley are also employees of the United States for purposes of the Federal Tort Claims Act. According to ICE's website, the ICE Health Services Corps "provides direct care to approximately 13,500 detainees housed at 21 designated facilities throughout the Nation to include medical, dental and mental health care, and public health services." Dilley is one such detention facility.

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Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

In addition to providing direct care to detained women and children at Dilley, the ICE Health Services Corps “oversees the financial authorization and payment for off-site specialty and emergency care services for detainees in ICE custody.” Despite her grave condition, Mariee received no “off-site specialty and emergency care services.” Instead, after 20 days in detention at Dilley (which followed several days of detention at a CBP facility), mother and daughter were released from ICE family detention and cleared to fly across the country on a commercial airline without any medical personnel examining the girl.

II. Legal Basis for Claims

Negligence, Gross Negligence, and Recklessness (Wrongful Death and Survival Claim)

ICE had a duty to maintain safe and sanitary conditions at Dilley, including a duty to ensure safe and sanitary conditions appropriate for small children detained at the facility. ICE also had a duty to ensure that those detained at Dilley, including small children, received adequate medical care that adhered to standards of pediatric medical care. ICE breached its duties by failing to ensure safe, sanitary, humane conditions at Dilley, including safe and sanitary conditions appropriate for small children, by failing to ensure adequate medical staffing, and by failing to address repeated reports of inadequate medical care at Dilley.

As a direct and proximate result of ICE’s negligent, grossly negligent, and reckless acts, omissions, and conduct, Mariee Camyl Newberry Juárez suffered avoidable complications of a treatable upper respiratory illness that were allowed to progress until they were irreversible and ultimately fatal. ICE’s negligence, gross negligence, and recklessness caused Mariee to suffer extreme and extended physical, mental, and emotional pain and distress, and death.

As a direct and proximate result of ICE’s negligent, grossly negligent, and reckless acts, omissions, and conduct that caused her daughter’s death, Yazmin Juárez suffered extreme mental and emotional pain and distress, as well as loss of love and companionship, medical expenses, and other harms.

Medical Negligence (Wrongful Death and Survival Claim)

ICE had a duty to ensure that those detained at Dilley, including small children, received adequate medical care that adhered to standards of pediatric medical care. As a direct and proximate result of the inadequate, substandard medical care provided by physicians and other health care providers employed by and/or agents of ICE, Mariee

FTCA Form 95 Complaint — Attachment

Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

Camyl Newberry Juárez suffered avoidable complications of a treatable upper respiratory illness that were allowed to progress until they were irreversible and ultimately fatal. The negligence of ICE's employees and/or agents caused Mariee to suffer extreme and extended physical, mental, and emotional pain and distress, and death.

As a direct and proximate result of the negligence of ICE's employees and/or agents that caused her daughter's death, Yazmin Juárez suffered extreme mental and emotional pain and distress, as well as loss of love and companionship, medical expenses, and other harms.

Negligence Per Se (Wrongful Death and Survival Claim)

ICE had a duty to ensure that those detained at Dilley, including small children, received adequate medical care that adhered to standards of pediatric medical care. ICE breached its duties by allowing a licensed vocational nurse to exceed the scope of her license. Under Texas law, licensed vocational nurses are not authorized to perform comprehensive patient assessments, to initiate any nursing care plan, or to implement or evaluate patient care. But according to ICE's own medical record, a licensed vocational nurse alone "medically cleared" Mariee Camyl Newberry Juárez for release from Dilley and fly to New Jersey, without any medical restriction. As a patient in the care of a licensed vocational nurse, Mariee is within the class of persons the licensing standards are designed to protect. As a direct and proximate result of the licensed vocational nurse exceeding the scope of her license in violation of Texas law, Mariee suffered extreme and extended physical, mental, and emotional pain and distress, and death.

As a direct and proximate result of the licensed vocational nurse's exceeding the scope of her license in violation of Texas law, which caused her daughter's death, Yazmin Juárez suffered extreme mental and emotional pain and distress, as well as loss of love and companionship, medical expenses, and other harms.

Negligent Supervision (Wrongful Death and Survival Claim)

ICE had a duty to prevent its employees or agents from causing physical harm to a third party. ICE breached its duty by failing to ensure safe, sanitary, humane conditions at Dilley, including by failing to carry out adequate management oversight of the provision of medical care at the detention facility.

As a direct and proximate result of ICE's acts, omissions, and conduct, Mariee Camyl Newberry Juárez suffered avoidable complications of a treatable upper respiratory illness, that were allowed to progress until they were irreversible and ultimately fatal.

FTCA Form 95 Complaint — Attachment

Claimant: Yazmin Juárez [REDACTED] (on behalf of herself and her deceased daughter)

ICE's negligence and gross negligence caused Mariee to suffer extreme and extended physical, mental, and emotional pain and distress, and death.

As a direct and proximate result of ICE's negligent acts, omissions, and conduct that caused her daughter's death, Yazmin Juárez suffered extreme mental and emotional pain and distress, as well as loss of love and companionship, medical expenses, and other harms.

This is not intended to be an exhaustive list of possible causes of action.

11. Witnesses

Possible witnesses include the following: [REDACTED]

This is not intended to be an exhaustive list of possible witnesses.

13b. Phone Number of Person Signing Form

R. Stanton Jones, Arnold & Porter — (202) 942-5563