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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 Ms. J.P., Ms. J.O., Ms. R.M., on behalf of
24 themselves and all other similarly situated,

25 Plaintiffs,

26 v.

Case No. 2:18-cv-06081

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 JEFFERSON B. SESSIONS III,
2 ATTORNEY GENERAL OF THE
3 UNITED STATES; KIRSTJEN
4 NIELSEN, SECRETARY OF
5 HOMELAND SECURITY; U.S.
6 DEPARTMENT OF HOMELAND
7 SECURITY, AND ITS SUBORDINATE
8 ENTITIES; U.S. IMMIGRATION AND
9 CUSTOMS ENFORCEMENT; U.S.
10 CUSTOMS AND BORDER
11 PROTECTION; ALEX M. AZAR II,
12 SECRETARY OF HEALTH AND
13 HUMAN SERVICES; U.S.
14 DEPARTMENT OF HEALTH AND
15 HUMAN SERVICES; SCOTT LLOYD,
16 DIRECTOR OF THE OFFICE OF
17 REFUGEE RESETTLEMENT; OFFICE
18 OF REFUGEE RESETTLEMENT;
19 DAVID MARIN, LOS ANGELES FIELD
20 OFFICE DIRECTOR, U.S.
21 IMMIGRATION AND CUSTOMS
22 ENFORCEMENT; LISA VON
23 NORDHEIM, WARDEN, JAMES A.
24 MUSICK FACILITY; MARC J. MOORE,
25 SEATTLE FIELD OFFICE DIRECTOR,
26 U.S. IMMIGRATION AND CUSTOMS
27 ENFORCEMENT; LOWELL CLARK,
28 WARDEN, TACOMA NORTHWEST
DETENTION CENTER,

Defendants.

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**Application for admission pro hac vice to be submitted*

*** Institution listed for identification purposes only*

1 **INTRODUCTION**

2 1. This complaint challenges the federal government’s infliction of
3 enormous emotional trauma on immigrant families through its extraordinary,
4 deliberate, and needless policy of separating parents from their children without a
5 showing of that the parents are unfit, and then holding the parents and children each in
6 separate detention with no access to one another. This family separation policy
7 inflicts severe harm on Plaintiffs and their children and violates their Fifth
8 Amendment rights to due process and equal protection. To remedy these
9 constitutional violations and address the severe harm from trauma the government has
10 inflicted, Plaintiffs and their children are entitled to appropriate screening and trauma-
11 informed and family-centered mental-health services under conditions conducive to
12 effective treatment.

13 2. Leading trauma experts agree that forcible separation of children from
14 their parents is a traumatic event that can have both immediate and long-term
15 psychological consequences if left unaddressed by professional care. As one expert
16 explains, “[s]eparation of a child from his/her mother would be a traumatic event for
17 both the child/adolescent and for the mother and father, causing ... [p]anic and terror,
18 frightening dreams, flashbacks, dissociation (blinking out and lack of awareness),
19 depersonalization (sense of unreality and separation from oneself), withdrawal into
20 intense grief and depression, an ongoing sense of fear and terror.”¹ Acute
21 psychological distress from separation not only produces mental symptoms such as
22 anxiety and depression but also has serious consequences for the physical health of
23 parent and child as well as for child development.

24 3. The circumstances of separation under the government’s policy—
25 including the lack of information on the children’s whereabouts, the inability of
26 parents and children to communicate with each other, their detention in crowded
27 facilities with poor food and round-the-clock lighting, the extended nature of the

28 ¹ Declaration of Marti Loring, ¶ 8.

1 separation, and the lack of procedures for and information about reunification, all
2 coupled with the stressors and trauma that initially led the families to flee their homes
3 and that they may have experienced on their journey—further exacerbates the trauma
4 and distress inflicted on the families. According to trauma experts, “[w]hen the
5 separation is sudden and frightening, when it is initiated by adults unknown to the
6 child, when the parent has no opportunity to prepare the child, when it is done
7 forcefully, and when there is no or minimal contact between the child and parent after
8 and during the separation, then the distress will be greater and the effects significantly
9 more damaging to the child.”²

10 4. Plaintiffs in this case are three mothers who have been separated from
11 their minor children under the family separation policy and have been held in
12 detention by the federal government. Each Plaintiff came to the United States with a
13 child under the age of 18, fleeing from persecution in her native country, and seeking
14 asylum here as permitted under the laws of the United States. They have been
15 detained separately from their children. Plaintiffs bring this action on behalf of all
16 similarly situated parents.

17 5. Defendants are each charged with faithfully executing the laws of the
18 United States. Nonetheless, Defendants have adopted their family separation policy
19 with the deliberate objective of defying these laws and deterring families from Central
20 America from seeking asylum. The policy is a component of Defendants’ racially-
21 motivated effort to stem immigration from non-European countries.

22 6. Defendants implemented their cruel policy in a chaotic manner. They
23 subjected parents already fleeing violence and persecution in their home countries to
24 one of the most brutal traumas: forced separation from their children. Parents and
25 children were torn away from each other with little explanation. Guards mocked
26 children and parents for their tears. Parents received little or no information about

27 _____
28 ² Declaration of Kenneth Berrick, John Sprinson & Kevin Campbell, ¶ 16 (hereinafter
“Berrick Decl.”).

1 their children’s whereabouts or well-being, and no explanation as to when or whether
2 they would ever see their children again.

3 7. The harms inflicted by the family separation policy were avoidable. In
4 the past, the federal government found alternatives to family separation, including the
5 release of parents and children. In those rare cases where release on recognizance is
6 insufficient, there are a variety of effective programs to ensure attendance at court
7 hearings and other proceedings. For instance, under the Family Case Management
8 Program, the government released asylum-seeking parents and children together. In
9 this program, which costs far less than detention, immigrants appeared for their
10 removal hearings over 99% of the time.

11 8. Defendants’ policy of family separation during detention was thus a new
12 and gratuitous injury inflicted solely to terrify immigrant parents and children, deter
13 other refugees from seeking asylum, and extract political concessions. Executive
14 Order No. 13841, which summarily and prospectively terminates the family separation
15 policy, confirms that the policy of separating parents and children was never required
16 by law.

17 9. Indeed, on June 26, 2018, the United States District Court for the
18 Southern District of California enjoined the federal government’s unjustifiable policy,
19 finding a likelihood that the policy violates the Constitution. *See Ms. L v. U.S.*
20 *Immigration & Customs Enf’t*, 18-cv-0428, 2018 WL 3129486 (S.D. Cal. June 26,
21 2018). The court recognized that the putative class of migrant parents was likely to
22 succeed on the due process challenge because the federal government was separating
23 children from their parents without any finding that the parents were unfit or presented
24 a danger to their children. *Id.* at *7. Additionally, the court found that the
25 government’s policy “was implemented without any effective system or procedure for
26 (1) tracking the children after they were separated from their parents, (2) enabling
27 communication between the parents and their children after separation, and (3)
28 reuniting the parents and children after the parents are returned to immigration

1 custody following completion of their criminal sentence.” *Id.* As a result, the court
2 ordered the government to reunify all class member parents with their children under
3 five years old by July 10, 2018, and with all their children by July 26, 2018. *Id.* at
4 *12.

5 10. Despite indicating on July 5, 2018 that it would comply with the court-
6 imposed deadlines,³ the federal government sought clarification and/or relief from
7 these deadlines later the same day. *See Ms. L v. U.S. Immigration & Customs Enf’t*,
8 No. 18-cv-428, ECF No. 86 (S.D. Cal. July 5, 2018). As of July 9, 2018, Defendants
9 had reunited only four of the approximately 100 children under the age of five who
10 have been separated from their parents.⁴ On July 10, 2018, the district court issued a
11 number of rulings related to the reunification process and stated that “[w]ith these
12 rulings, the Court anticipates the Government will be reuniting fifty-nine (59) Class
13 Members with their children by the end of the day today,” *i.e.*, July 10, 2018, in
14 addition to the four parents and children already reunited.⁵

15 11. Defendants have also contended that they require relief from the *Flores*
16 Settlement sufficient to detain asylum-seeking parents and children indefinitely in
17 substandard unlicensed detention centers. On July 9, 2018, the District Court for the
18 Central District of California rejected this argument entirely. *See Flores v. Sessions*,
19 No. CV 85-4544-DMG, ECF No. 455 (C.D. Cal. July 9, 2018). The Court found that
20 Defendants’ arguments turned on “a tortured interpretation of the *Flores* Agreement”
21 that would render key provisions “meaningless,” and that “[a]bsolutely nothing [in the
22 *Ms. L* order or the *Flores* Settlement] prevents Defendants from reconsidering their
23 current blanket policy of family detention and reinstating prosecutorial discretion.”

24 ³ *See* Merrit Kennedy, *Trump Administration Says It Will Comply with Family*
25 *Reunification Deadlines*, NPR (July 5, 2018) (reporting statements of Defendant Alex
26 M. Azar II), <https://www.npr.org/2018/07/05/626216102/trump-administration-says-it-will-comply-with-family-reunification-deadlines>.

27 ⁴ *See Ms. L v. U.S. Immigration & Customs Enf’t*, No. 18-cv-428, ECF No. 101 (S.D.
28 Cal. July 10, 2018).

⁵ *Id.*

1 *Id.* at 5. Indeed, the Court concluded that “it is apparent that Defendants’ Application
2 is a cynical attempt ... to shift responsibility to the Judiciary for over 20 years of
3 Congressional inaction and ill-considered Executive action that have led to the current
4 stalemate.” *Id.* at 7. As a result, the Court denied the application as “procedurally
5 improper and wholly without merit.” *Id.*

6 12. These decisions make clear that Defendants’ efforts to avoid their legal
7 responsibilities are unacceptable. Plaintiffs have been harmed by Defendants’
8 unconstitutional family separation policy and have further suffered from Defendants’
9 failure to prepare for that policy shift. Defendants must remedy this crisis of their
10 own making. What is needed is for the government to act promptly and to remedy the
11 significant harms that it has caused by reunifying the separated families and providing
12 immediate and appropriate mental-health services under conditions conducive to
13 effective treatment as required under the Constitution and the *Flores* Settlement.

14 13. Plaintiffs and their children are entitled to these services for three
15 separate reasons. First, under the Due Process Clause, the government has an
16 obligation to provide adequate medical care, including mental-health services, to
17 individuals that it detains against their will. *See, e.g., Wakefield v. Thompson*, 177
18 F.3d 1160, 1164 (9th Cir. 1999); *Gibson v. Cty. of Washoe, Nev.*, 290 F.3d 1175, 1188
19 (9th Cir. 2002), *overruled on other grounds by Castro v. Cty. of Los Angeles*, 833 F.3d
20 1060 (en banc) (9th Cir. 2016).

21 14. Second, the egregious and gratuitous family separation policy has
22 directly caused Plaintiffs’ injuries that only appropriate mental-health services can
23 remedy, and thus, Defendants have an obligation to provide those services. *See, e.g.,*
24 *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006) (citing, *inter alia*,
25 *DeShaney v. Winnebago Cty. Dep’t of Soc. Serv.*, 489 U.S. 189, 197 (1989)).

26 15. Third, under the *Flores* Settlement, the government must provide
27 noncitizen children detained in immigration custody with “[a]ppropriate routine
28 medical and dental care” and “appropriate mental health interventions when

1 necessary.” *Flores* Settlement, Ex. 1, ¶ 2. In these circumstances, where the
2 government has inflicted trauma through family separation, those services must
3 include appropriate mental-health screenings and any services deemed necessary by
4 medical professionals, including family counseling, under conditions conducive to
5 effective treatment.

6 **Plaintiff Ms. J.P.⁶**

7 16. Plaintiff Ms. J. P. (“Ms. P”) is the 37-year-old mother of 16-year-old L.P.
8 Ms. P is currently being detained in the custody of U.S. Immigration and Customs
9 Enforcement (“ICE”) at the James A. Musick Facility in Irvine, California. Her
10 daughter, L.P., is currently being held at Casa Phoenix, a Southwest Key Programs,
11 Inc., facility in Phoenix, Arizona.

12 17. Ms. P entered the United States with her daughter near San Luis,
13 Arizona, on or around May 17, 2018, after having fled Guatemala in fear for her life.
14 Ms. P sought to escape death threats from a former partner who had sexually abused
15 and beaten Ms. P. Ms. P and L.P. were detained by U.S. Customs and Border
16 Protection (“CBP”) officers shortly after crossing the border. Ms. P’s native
17 language, Q’eqchi’, is a Mayan dialect that is rarely spoken in the United States. She
18 cannot speak or understand English, and understands very little Spanish. As a result,
19 Ms. P was not able communicate with the CBP officers who detained her and L.P.

20 18. Upon their detention, CBP officials placed Ms. P and L.P. in a cold,
21 windowless room alongside approximately 150 other detainees. There were no beds,
22 showers, or private toilets, and the lights were on 24 hours a day. The room was too
23 crowded to allow them to lie down, and they were provided only nylon blankets. Ms.
24 P and L.P. were fed nothing but lukewarm soup for days, and the only water available
25 was from the bathroom tap. L.P. recalls witnessing other children forcibly taken from
26

27 ⁶ See Declaration of J.P. (“J.P. Decl.”); Declaration of Alejandra Acuña (“Acuña
28 Decl.”); Declaration of Chandra Allen (“Allen Decl.”); Declaration of Lucero Chavez
re. L.P. (“Chavez L.P. Decl.”).

1 their parents' arms, and seeing a mother being physically restrained by guards as her
2 son was taken away. Guards at the facility taunted mothers, saying: "If you're such a
3 good mother why would you bring your child here."

4 19. Ms. P and L.P. were not told if or when they would be released. L.P. was
5 questioned without her mother and given papers to sign in English, which she does not
6 speak or read. On or around May 20, 2018, officers came in and took L.P. away from
7 Ms. P. L.P. fainted in terror when she realized what was happening, causing injury to
8 her mouth that left her face swollen for several days. This cut was not treated until
9 L.P. was moved to Southwest Key Programs. Ms. P was not told or able to
10 understand why her daughter was being taken, where she was going, or when—or if—
11 she would see her daughter again.

12 20. On June 1, 2018, with the assistance of a fellow detainee, Ms. P
13 submitted a request to ICE seeking information on her daughter's whereabouts. Ms. P
14 can neither read nor write, and was not able to understand the written response that
15 she received several days later, which, in any event, contained only her daughter's
16 location and not a telephone number or other way to reach her daughter. Ms. P had no
17 contact with her daughter until June 22, 2018, when, after 30 hours of advocacy by her
18 attorney, she was allowed to speak with L.P. by phone. Until then, Ms. P feared that
19 she would never see or speak to her daughter again. She still fears that she faces
20 certain death if she is forced to return to Guatemala, and remains worried that she will
21 be deported and separated from her daughter. Ms. P believes that she has been to
22 court, but does not understand the purpose or substance of the court hearings that she
23 attended.

24 21. L.P. says that she has felt isolated during this period. She has been kept
25 hundreds of miles from her mother, and her only regular contact is with a counselor
26 whom she sees once a week but who tells her not to cry even though L.P. feels crying
27 helps her cope with the situation. She feels depressed, hopeless, and confused by her
28 detention and separation. She cannot speak about her mother or the experience of

1 separation without crying. She dreams of her mother and prays to be reunited with
2 her. According to according to a family member, L.P. “[i]s suffering without her
3 mother.” Declaration of C.I., ¶ 3.

4 22. Based on the preliminary evaluation of a licensed clinical social worker,
5 Chandra Allen, L.P shows signs of depression, anxiety, adjustment to trauma, and
6 traumatic grief. L.P.’s constant uncertainty as to her situation and whether she will be
7 reunited with her mother could lead to dissociative detachment and anxiety.

8 23. Ms. P reports almost always having upsetting thoughts about being
9 separated from her daughter, and repeatedly experiences bad dreams or nightmares.
10 She has significant difficulty sleeping and concentrating since L.P. was taken from
11 her, and reports crying four times a day. Based on the preliminary evaluation of a
12 licensed clinical social worker, Alejandra Acuña, Ms. P is displaying symptoms of
13 post-traumatic stress disorder (“PTSD”), depression, and anxiety as a result of being
14 separated from L.P. Ms. P has not reported having access to mental-health treatment.

15 **Plaintiff Ms. J.O.⁷**

16 24. Plaintiff Ms. J.O. (“Ms. O”) is the mother of 16-year-old T.B. Ms. O and
17 her daughter fled their native Honduras in fear for their lives after gangs killed her
18 husband in 2015 and beat her teenage son. Ms. O and T.B. entered the United States
19 near Granjeno, Texas, on or around May 17, 2018. Rather than continuing into the
20 interior, Ms. O and her daughter waited along a dirt road for a patrol car to arrive and
21 flagged one down the next day. They claimed fear of returning to Honduras and
22 hoped to live with her sister in the United States.

23 25. Ms. O and T.B. were processed separately and kept apart at the detention
24 center that Ms. O called “La Hielera”—the icebox—because of the cold temperature
25 inside. While there, Ms. O was moved to “La Perrera,” the doghouse, section of the
26 facility where the holding cells resemble dog kennels. During this transfer, Ms. O saw

27 ⁷ See Declaration of J.O. (“J.O. Decl.”); Declaration of Lucero Chavez re. T.B.
28 (“Chavez T.B. Decl.”).

1 a young child taken from his mother, and the guards told the parents that a new law
2 permitted them to take away their children permanently. This statement terrified the
3 parents, including Ms. O who feared she would be separated from T.B. forever.

4 26. Ms. O was kept in a holding cell with over 50 other women. There were
5 no beds or pillows, and the lights were kept on 24 hours per day. Ms. O was provided
6 a piece of bread and a juice box for food. From her cell, she could see T.B. in a
7 similar chain-link cell with other children, some no more than five years old. Because
8 there were no adults in the cell, the older children were forced to care for the younger
9 ones. T.B., for instance, braided the younger girls' hair to provide them with some
10 comfort. During her time at La Hielera, Ms. O was moved from cell to cell. But each
11 cell was overcrowded, and at no time was she placed with her daughter. Ms. O was
12 not provided clean clothes or permitted to shower for the five days that she was in the
13 facility. She slept little, if at all, due to the cold temperature, 24-hour-a-day lighting,
14 and her and others' constant crying.

15 27. Ms. O spoke to T.B. once more in the facility, when they passed each
16 other on the way to the restroom. T.B. urged Ms. O not to sign deportation papers,
17 fearing that Ms. O would be returned to Honduras without her.

18 28. Ms. O's time in La Hielera separated from T.B. was traumatizing. She
19 lost track of which day it was, and the constant exposure to crying parents and
20 children left her shaken.

21 29. On or about May 21, 2018, Ms. O was taken with more than 50 other
22 detainees to court for criminal proceedings. Ms. O was told that she was to be
23 charged with illegal entry in violation of 8 U.S.C. § 1325(a)(1). Like the 35 people
24 before her, she pleaded guilty, though she was not able to meet with an attorney
25 before the proceedings and she did not understand the consequences of her plea.

26 30. After these proceedings, CBP explained that Ms. O would be transferred
27 to another facility without her daughter. On or about May 21, 2018, Ms. O was
28 moved to the SeaTac Federal Prison in SeaTac, Washington, and subsequently

1 transferred to the Northwest Detention Center in Tacoma, Washington. On July 12,
2 2018, Ms. O was released on bond.

3 31. Ms. O has not seen her daughter since approximately May 21, 2018 when
4 Ms. O was moved to SeaTac. For nine days thereafter, Ms. O was unable to obtain
5 any information regarding her daughter, despite multiple pleas to immigration
6 officials. Ms. O did not learn of T.B.'s whereabouts until May 30, 2018. She learned
7 from her sister that T.B. is currently being detained in Southwest Key Programs,
8 Inc.—Casa Antigua in San Benito, Texas. Ms. O has since spoken with her daughter
9 only three times for less than five minutes per call. Ms. O has attempted to call a
10 social worker to set up further calls, but the social worker has not answered the phone.

11 32. To date, Ms. O has not received any mental-health or counseling services
12 from the government to address the trauma she has experienced due to the separation
13 from her daughter.

14 **Plaintiff Ms. R.M.⁸**

15 33. Plaintiff Ms. R. M. (“Ms. M”) and her 15-year-old daughter, S.Q., fled El
16 Salvador to get away from Ms. M’s husband, a former military officer, who had
17 severely beaten her and threatened her life, and in fear of gangs who have threatened
18 S.Q. On or around May 18, 2018, Ms. M and S.Q. entered the United States near
19 Hidalgo, Texas. Ms. M and her daughter waited under a tree and flagged down a
20 patrol car. They claimed fear of returning to their country of origin.

21 34. Ms. M and her daughter were immediately taken to a facility and
22 separated for questioning. Ms. M was unable to concentrate on the officials’
23 questions until she saw where her daughter was taken. Once she located her daughter
24 and turned her attention to the officials, they began yelling at her that she would be
25 deported without her daughter and punished for bringing S.Q. from El Salvador. Ms.
26 M. started crying, and one official told her: “You can thank Trump.” The officials

27 ⁸ See Declaration of R.M. (“R.M. Decl.”); Declaration of Lucero Chavez re. S.Q.
28 (“Chavez S.Q.. Decl.”).

1 pressured her to sign deportation papers by threatening that she would go to jail if she
2 did not sign them. Ms. M refused for fear of being deported without her daughter.
3 The officials laughed at her. The questioning ended only when Ms. M reiterated that
4 she feared returning to El Salvador.

5 35. After this questioning, Ms. M was taken to La Perrera and placed into a
6 cage with 40 or 50 other women. They sat shoulder to shoulder on the floor. They
7 were not provided beds, mats, pillows, or blankets. There was only one toilet in the
8 cell, and it was in the open without walls or a door. Women would stand to create a
9 human wall to provide the person using the toilet a small measure of privacy.

10 36. Ms. M and the women in her cell were provided a soggy piece of bread, a
11 frozen piece of ham, and a juice box for sustenance twice a day. The guards would
12 also open the cell door and throw crackers on the floor. When the hungry women
13 scrambled to pick them up, the guards would laugh. One time when Ms. M was
14 standing close to the door, she reached out her hand for a cracker. Instead of handing
15 her the cracker, the guard asked, “do you want five-star treatment,” and then threw the
16 cracker on the floor, saying “there is your room service.”

17 37. Ms. M was also not permitted to brush her teeth for four days, and she
18 was not given a change of clothes.

19 38. From her cage, Ms. M could see her daughter in a different cage with
20 other children. She was not permitted to speak with her, but she could see her
21 continuously crying.

22 39. On or about May 21, 2018, Ms. M was taken with over 50 detainees
23 before a judge for criminal proceedings. Ms. M was told that she was being charged
24 with illegal entry into the United States pursuant to 8 U.S.C. § 1325(a)(1). She was
25 placed in shackles and handcuffs, and before the proceedings began, a man stood up
26 and advised the detainees to plead guilty in order to receive a lower sentence. Ms. M
27 and the 25 people before her pleaded guilty because she thought that she had to do so.
28 She did not understand the consequences of her plea.

1 40. Following these proceedings, Ms. M was placed on a bus and transferred
2 to Laredo, Texas. Ms. M and the other women cried out, asking for their children.
3 One guard yelled, “stop asking about your kids!” Ms. M began crying uncontrollably
4 once she realized that she was going to be separated from her daughter. For three
5 days, she slept no more than one hour per night. She could not eat and she could not
6 talk to anyone. No official told her where her daughter was or even whether she was
7 safe, though she learned from her mother on May 25, 2018, that her daughter was in
8 San Benito, Texas at Southwest Key Programs, Inc.—Casa Antigua.

9 41. Eventually, Ms. M was transferred to the SeaTac Federal Prison in
10 SeaTac, Washington. She was later moved to the Northwest Detention Center in
11 Tacoma, Washington. On July 12, 2018, Ms. M was released on bond.

12 42. On or about June 22, 2018, Ms. M was finally able to speak with her
13 daughter for about one minute. S.Q. was crying uncontrollably and could not speak.
14 Ms. M has tried to set up additional calls through S.Q.’s social worker, but the social
15 worker does not answer the phone.

16 43. Ms. M believes that her daughter has suffered significantly due to their
17 separation and detention and that she will need trauma-based counseling as a result.
18 To date, Ms. M has not received any mental-health services from the government to
19 address the trauma she has experienced due to the separation from her daughter.

20 44. Ms. M’s mother—S.T.—is a permanent legal resident in the United
21 States and has lived here since 1989. *See* Declaration of S.T. Based on her
22 conversations with her daughter and granddaughter, she believes that their separation
23 has been traumatic for them. Additionally, she is “ready, willing, and able to take care
24 of, and provide a home for[,] both R.M. and S.Q. at any time, and [is] committed to
25 doing what [she] can to have R.M. released and to support her while she is in the
26 United States.” *Id.* ¶ 15.

1 **Defendants**

2 45. Defendant Jefferson B. Sessions is the Attorney General of the United
3 States. In this capacity, Defendant Sessions is responsible for setting policy related to
4 the enforcement of immigration laws in the United States, including the policy of
5 family separation.

6 46. Defendant Kirstjen Nielsen is the Secretary of the Department of
7 Homeland Security. In this capacity, Defendant Nielsen is responsible for the
8 administration of immigration laws in the United States. Defendant Nielsen has
9 ultimate responsibility for each of the agencies within DHS, and for all DHS policies
10 and procedures.

11 47. Defendant U.S. Department of Homeland Security (“DHS”) is
12 responsible for enforcing the immigration laws of the United States.

13 48. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is the
14 agency of DHS responsible for administering immigration laws in the United States,
15 including overseeing immigration detention.

16 49. Defendant U.S. Customs and Border Protection (“CBP”) is an agency of
17 DHS responsible for the processing and detaining of noncitizens who are apprehended
18 near the United States border.

19 50. Defendant Alex M. Azar II is the Secretary of Health and Human
20 Services. In this capacity, Defendant Azar is responsible for the detention of
21 unaccompanied non-citizen children. Defendant Azar has ultimate responsibility for
22 each of the agencies within HHS, and for all HHS policies and procedures.

23 51. Defendant U.S. Department of Health and Human Services (“HHS”) is
24 responsible for the detention of unaccompanied non-citizen children.

25 52. Defendant Scott Lloyd is the Director of the Office of Refugee
26 Resettlement. In this capacity, Defendant Lloyd is responsible for the detention of
27 unaccompanied non-citizen children, and has ultimate responsibility for all ORR
28 policies and procedures.

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STATUTORY AND LEGAL FRAMEWORK

U.S. Law Permits Families to Seek Asylum upon Arrival

62. The laws of the United States permit non-citizens on American soil to seek asylum regardless of how, or where, or with whom they arrive at the border. Specifically, these laws establish that “[a]ny alien” who arrives in the United States, “whether or not at a designated port of arrival” may apply for asylum “irrespective of such alien’s status.” 8 U.S.C. § 1158.

63. Statutes that govern the process for seeking asylum in the United States have their roots in the refugee crisis that followed World War II. They incorporate concepts from international law (*see, e.g.*, 8 U.S.C. § 101(a)(42) (incorporating the definition of “refugee” from the United Nations Convention Relating to the Status of Refugees)), and provide a process for individuals who fear persecution in their native countries to seek protection in the United States (*see, e.g.*, Refugee Act of 1980, Pub. L. No. 96-212 § 201(b), 94 Stat. 102 (1980)).

64. The United States does not limit the right to seek asylum to those who cross into the country at a port of entry. Those apprehended for the first time crossing into the United States outside a port of entry may be subject to expedited removal, a process under which an individual may be removed from the United States without a full hearing before an immigration judge. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But there are safeguards to protect those seeking asylum in that context. If an individual “indicates either an intention to apply for asylum . . . or a fear of persecution,” immigration officers must refer the individual “for an interview by an asylum officer” to evaluate whether the individual has a credible fear of persecution if returned to their country. 8 U.S.C. § 1225(b)(1)(A)(ii).

65. If an asylum officer concludes that there is a “significant possibility” the individual can prove eligibility for asylum, the asylum seeker receives a positive credible fear determination and is placed into regular removal proceedings. During those regular removal proceedings, the putative refugee may submit an asylum

1 application, obtain a hearing before an immigration judge, and appeal an adverse
2 decision through the Board of Immigration Appeals and the federal courts. 8 U.S.C.
3 § 1225 (b)(1)(B)(ii); 8 C.F.R. § 235.6(a)(1)(ii), (iii).

4 66. An asylum seeker may also be placed directly into regular removal
5 proceedings with issuance of a Notice to Appear for a future hearing date. *See* 8
6 U.S.C. §§ 1225(b)(2), 1229(a)(1), 1229a.

7 67. No law requires the detention of asylum seekers throughout this process,
8 and no law requires the prolonged separation of families either.

9 **The *Flores* Settlement Sets Standards for Housing and Providing Services to**
10 **Detained Children**

11 68. When the government detains children, it must comply with the *Flores*
12 Settlement, regardless of whether the children arrive unaccompanied or with their
13 families. *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).

14 69. The *Flores* Settlement requires the government to “place each detained
15 minor in the least restrictive setting appropriate to the minor’s age and special needs.”
16 Settlement ¶ 11. Children should generally be released within five days to one of the
17 following recipients, in order of preference: a parent, a legal guardian, an adult
18 relative, an adult designated by a parent or legal guardian, or, if no such individuals
19 are available, a licensed program willing to accept legal custody. *Id.* ¶¶ 12, 14. In the
20 event of an “emergency” or an “influx” of minors into the country, the government is
21 required to place minors “as expeditiously as possible.” *Id.* ¶ 12.C. The *Flores* court
22 found that up to 20 days may be as expeditious as possible for the government under
23 extenuating circumstances, a time frame that has been widely reported in the press.

24 70. The government must “make and record the prompt and continuous
25 efforts on its part toward family reunification and the release of the minor,” and
26 “[s]uch efforts at family reunification shall continue so long as the minor is in [the
27 government’s] custody.” Settlement ¶ 18.

1 71. When the government transfers a detained minor to any person or entity
2 other than a parent, guardian, adult relative, or a parent or guardian’s designee, such
3 person or entity is required to be “licensed by an appropriate State agency to provide
4 residential, group, or foster care services for dependent children.” Settlement ¶ 6.
5 Any such licensed person or entity to which the government transfers a minor is
6 required to meet certain additional standards, as described in Exhibit 1 of the *Flores*
7 Settlement.

8 72. Among other services, licensed programs must provide “appropriate
9 mental health interventions when necessary,” “identification of the minor’s special
10 needs including any specific problem(s) which require immediate intervention,” “[a]t
11 least one (1) individual counseling session per week conducted by trained social work
12 staff,” “[g]roup counseling,” and “[v]isitation and contact with family members
13 (regardless of their immigration status).” Settlement, Exhibit 1.

14 73. The government is required by the *Flores* Settlement to “treat minors
15 with dignity, respect, and special concern for their particular vulnerability.”
16 Settlement, Exhibit 2. The government is further required to “hold minors in a facility
17 that is safe and sanitary and that is consistent with . . . the particular vulnerability of
18 minors.” *Id.* Any such facility in which minors are held by the government following
19 arrest must provide for “contact with family members who were arrested with the
20 minor.” *Id.*⁹

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26 ⁹ On June 21, 2018, the government requested relief from the *Flores* Settlement so as
27 to permit it to detain minors who are arrested with their parents indefinitely through
28 the pendency of their immigration proceedings, in facilities unlicensed by any state
authority. *Flores v. Sessions*, No. 85-cv-04544, Dkt. 435 (C.D. Cal. Jun. 21, 2018).
The Court rejected this request as “procedurally improper and wholly without merit.”
Flores v. Sessions, No. CV 85-4544, ECF No. 455, at 7 (C.D. Cal. July 9, 2018).

1 **THE NEEDLESS AND INHERENTLY CRUEL POLICY OF**
2 **FAMILY SEPARATION INFLICTED IRREPARABLE HARM**

3 **The Family Separation Policy Was Unnecessary**

4 74. Defendants have falsely claimed that the family separation policy was
5 required by existing law.¹⁰ Their position is belied by the June 20, 2018 Executive
6 Order ending the policy on a prospective basis. It is also belied by the practice of
7 prior administrations¹¹ and the undeniable existence of effective alternatives.

8 75. Several alternatives to detention would allow asylum seekers and their
9 families to remain together. For example, in recent years community supported
10 models have proven particularly effective and economical. For many migrants,
11 release on recognizance is sufficient to ensure that they attend court hearings and
12 other proceedings.¹²

13 76. In other cases, case management programs have proven effective. Indeed,
14 the American Academy of Pediatrics (“AAP”) endorses community-based case
15 management as an alternative solution to detention.¹³ Beginning on January 21, 2016,
16 the Family Case Management Program (“FCMP”) was offered as an “alternative to
17 detention . . . that use[d] qualified case managers to promote participant compliance
18 with their immigration obligations.”¹⁴ The program used a wrap-around services

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20 ¹⁰ Linda Qiu, *Fact-Checking the Trump Administration’s Case for Child Separation at*
the Border, N.Y. TIMES (June 19, 2018),
<https://www.nytimes.com/2018/06/19/us/fact-check-trump-child-separation.html>.

21 ¹¹ *Id.*

22 ¹² *See, e.g., Report of the DHS Advisory Committee on Family Residential Centers*,
DHS (Sept. 30, 2016), [https://www.ice.gov/sites/default/files/documents](https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf)
23 [/Report/2016/ACFRC-sc-16093.pdf](https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf) (“For many families, release on recognizance
24 with information about rights and responsibilities and referrals to legal services and
psycho-social supports is sufficient to ensure compliance with immigration
proceedings.”).

25 ¹³ Julie M. Linton et al., *Detention of Immigrant Children*, THE AMERICAN ACADEMY
26 OF PEDIATRICS (March 2017), [http://pediatrics.aappublications.org/content/early/](http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483)
[2017/03/09/peds.2017-0483](http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483).

27 ¹⁴ *Fact Sheet: Stakeholder Referrals to the ICE/ERO Family Case Management*
28 *Program*, U.S. I.C.E., available at [http://www.ilw.com/immigrationdaily/](http://www.ilw.com/immigrationdaily/news/2016,0111-ICE.pdf)
[news/2016,0111-ICE.pdf](http://www.ilw.com/immigrationdaily/news/2016,0111-ICE.pdf).

1 model for immigrant families whom ICE recommended for placement after
 2 determining they were “non-dangerous” and “low-flight-risk families.”¹⁵ The cost
 3 was reported to be \$36 per family each day compared to \$319 per bed per day in a
 4 family detention center.¹⁶

5 77. The FCMP was designed, but not limited, to serve victims of domestic
 6 violence or sexual abuse, pregnant women, nursing mothers, and families with
 7 physical and/or mental illness. The FCMP operated in five cities across the United
 8 States: Baltimore, Chicago, Los Angeles, Miami, and New York. The program
 9 allowed families for whom detention in ICE centers or more traditional alternative
 10 programs would exacerbate their trauma or illness to exit detention into the
 11 community while they moved through their immigration proceedings. The program
 12 facilitated access to holistic community-based services tailored to each family’s needs,
 13 including:¹⁷

- 14 • Orientation and education for participants about their legal rights and
- 15 responsibilities;
- 16 • Individualized family service plans;
- 17 • Assistance in accessing low-cost or pro bono legal assistance for housing,
- 18 education, and—as most relevant here—mental health providers (if
- 19 needed);
- 20 • Assistance with transportation logistics;

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 22 ¹⁵ *Id.*; see also Loiselle, Mary F., *GEO Care’s New Family Case Management*
 23 *Program*,” GEO World, at 3 (2016), available at
<https://www.geogroup.com/userfiles/1de79aa6-2ff2-4615-a997-7869142237bd.pdf>.

24 ¹⁶ Elise Foley & Jennifer Bendery, *This Alternative to Detaining Immigrant Families*
 25 *Works. Trump Just Won’t Use It.*, HUFFINGTON POST (June 22, 2018), available at
https://www.huffingtonpost.com/entry/trump-family-detention-alternative_us_5b2d4731e4b0321a01d1002e.

26 ¹⁷ *Fact Sheet: Stakeholder Referrals to the ICE/ERO Family Case Management*
 27 *Program*, U.S. I.C.E., available at <http://www.ilw.com/immigrationdaily/news/2016,0111-ICE.pdf>; Loiselle, Mary F., *GEO Care’s New Family Case*
 28 *Management Program*,” GEO World, at 3 (2016), available at
<https://www.geogroup.com/userfiles/1de79aa6-2ff2-4615-a997-7869142237bd.pdf>.

- 1 • Tracking and monitoring of immigration obligations; and
- 2 • Safe repatriation and reintegration planning (where applicable).

3 The FCMP was launched on January 21, 2016, and proved within its first year of
 4 operation to be a more effective alternative to other more restrictive alternatives
 5 traditionally utilized. It was a step forward in procuring dignity for immigrant
 6 families, and it satisfied ICE’s primary goal of ensuring compliance with participants’
 7 immigration obligations—99% for ICE check-ins and appointments, and 100% for
 8 attendance at court hearings.¹⁸

9 78. Despite its success in terms of the government’s stated compliance
 10 priorities, the program was closed in June 2017.

11 **“Zero Tolerance” Family Separation Policy Rationalized as Deterrent**

12 79. On May 7, 2018, Attorney General Jeff Sessions announced a “zero-
 13 tolerance” policy of forced family separation to deter migrants from crossing the
 14 southern border of the United States. Sessions said, “If you cross this border
 15 unlawfully, then we will prosecute you. It’s that simple. . . . If you are smuggling a
 16 child, then we will prosecute you and that child will be separated from you. . . .”¹⁹

17 80. The family separation policy was by no means limited to “smugglers.”
 18 In the first month of the policy, nearly 3,000 children were separated from their
 19 parents while crossing the border.²⁰ Some children were as young as 18 months old,

22 ¹⁸ *U.S. Immigration and Customs Enforcement’s Award of the Family Case*
 23 *Management Program Contract (Redacted)*. DHS Office of Inspector General, at 5
 (OIG-18-22) (Nov. 30, 2017).

24 ¹⁹ *Attorney General Sessions Delivers Remarks Discussing the Immigration*
 25 *Enforcement Actions of the Trump Administration*, DOJ Justice News (May 7, 2018),
<https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

26 ²⁰ Caitlin Dickerson, *Trump Administration in Chaotic Scramble to Reunify Migrant*
 27 *Families*, N.Y. TIMES (July 5, 2018),
<https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html>.

1 and more than 100 children were younger than four years old.²¹ These children have
 2 been sent to shelters and other temporary housing, overseen by the U.S. Department of
 3 Health and Human Services (“HHS”), across the United States. The children are often
 4 housed hundreds of miles away from their parents. There are an estimated 100
 5 shelters in 17 states, including Arizona, California, Connecticut, Florida, Illinois,
 6 Kansas, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon,
 7 Pennsylvania, South Carolina, Texas, Virginia, and Washington.²² Of course,
 8 separation of a mere mile between a child and parent is a terrifying situation for both
 9 when there is no certainty of where the parent or child is being kept and no guarantee
 10 that the two ever will be reunited.

11 81. Defendants have mischaracterized family separation as necessary to
 12 enforce the law. But DHS expressly contemplated using family separation to deter
 13 migration from Central America into the United States at least a year before the “zero
 14 tolerance” policy was adopted.²³ In March 2017, then-DHS Secretary John Kelly
 15 confirmed that family separation was under consideration as a means to deter
 16 migration across the southern border. After experts and members of Congress
 17 strongly opposed the idea, DHS Secretary Kelly testified in April 2017 that DHS
 18 would not “routinely” separate children from their families at the border, except under
 19 extenuating circumstances.²⁴ Nevertheless, non-profit organizations observed a trend

20 ²¹ Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From*
 21 *Parents at U.S. Border*, N.Y. TIMES (Apr. 20, 2018),
<https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

22 ²² Sarah Almukhtar et al., *Where Migrant Children Are Being Held Across the U.S.*,
 23 N.Y. TIMES (June 21, 2018), [https://www.nytimes.com/interactive/2018/06/21/
 us/where-are-the-border-children.html](https://www.nytimes.com/interactive/2018/06/21/us/where-are-the-border-children.html).

24 ²³ Daniella Diaz, *Kelly: DHS is considering separating undocumented children from*
 25 *their parents at the border*, CNN (March 6, 2017),
[https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-
 parents-immigration-border/index.html](https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html).

26 ²⁴ *See e.g.* Stein Fernando et al. *AAP Statement Opposing Separation of Mothers*
 27 *and Children at the Border* AMERICAN ACADEMY OF PEDIATRICS (March 4, 2017),
 available at [https://www.aap.org/en-us/about-the-aap/aap-press-
 room/Pages/immigrantmotherschildrenseparation.aspx](https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx); *Letter to Secretary Kelly*
 28 *Opposing Plan to Separate Migrant Families at the Border*, ALIANZA AMERICAS ET

1 of family separation at the border with Mexico and complained to DHS and urged it to
2 clarify its policies.

3 82. On May 11, 2018, now-White House Chief of Staff Kelly confirmed that
4 the policy was put in place to deter other migrants, specifically Central Americans,
5 from coming to the United States. In his words, “a big name of the game is
6 deterrence.”²⁵

7 **Separated Families Held Hostage to Exact Political Concessions**

8 83. As the horrors of family separation reached the media, President Trump
9 insisted that he would not change the policy unless lawmakers agreed to his
10 immigration reform demands.²⁶ He asserted that if lawmakers had passed the
11 aggressive anti-immigration legislation he wanted, the policy would be unnecessary.²⁷
12 He urged Congress to crack down on asylum seekers, reduce visas, and spend \$25
13 billion on a border wall.²⁸

14 84. President Trump also contended that the solution to the emerging
15 humanitarian crisis that he had created was for Democrats to give in to his political
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17 *AL* (March 22, 2017) available at <https://www.womensrefugeecommission.org/rights/ohv/resources/1460-family-separation-sign-on-letter>; Testimony before
18 Congress in the Senate Homeland Security and Governmental Affairs Committee
19 hearing titled “Improving Border Security and Public Safety” (April 5, 2017); *Kelly*
20 *says DHS won’t separate families at the border* CNN (March 29, 2017)
<http://www.cnn.com/2017/03/29/politics/border-families-separation-kelly/index.html>.

21 ²⁵ *Transcript: White House Chief of Staff John Kelly’s Interview with NPR* NPR (May
22 11, 2018) [https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-](https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr)
23 [of-staff-john-kellys-interview-with-npr](https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr).

24 ²⁶ Michael Scherer & Josh Dawsey, *Trump cites as a negotiating tool his policy of*
25 *separating immigrant children from their parents*, WASH. POST (June 15, 2018),
[https://www.washingtonpost.com/amhtml/politics/trump-cites-as-a-negotiating-tool-](https://www.washingtonpost.com/amhtml/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html?utm_term=.8d0d24db87ef&__twitter_impression=true&no-redirect=on)
26 [his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-](https://www.washingtonpost.com/amhtml/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html?utm_term=.8d0d24db87ef&__twitter_impression=true&no-redirect=on)
27 [70b3-11e8-bf86-](https://www.washingtonpost.com/amhtml/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html?utm_term=.8d0d24db87ef&__twitter_impression=true&no-redirect=on)
28 [a2351b5ece99_story.html?utm_term=.8d0d24db87ef&__twitter_impression=true&no-](https://www.washingtonpost.com/amhtml/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html?utm_term=.8d0d24db87ef&__twitter_impression=true&no-redirect=on)
29 [redirect=on](https://www.washingtonpost.com/amhtml/politics/trump-cites-as-a-negotiating-tool-his-policy-of-separating-immigrant-children-from-their-parents/2018/06/15/ade82b80-70b3-11e8-bf86-a2351b5ece99_story.html?utm_term=.8d0d24db87ef&__twitter_impression=true&no-redirect=on).

30 ²⁷ Michael D. Shear et al., *G.O.P. Moves to End Trump’s Family Separation Policy,*
31 *but Can’t Agree How*, N.Y. TIMES (June 19, 2018), [https://www.nytimes.com/](https://www.nytimes.com/2018/06/19/us/politics/trump-immigration-children-separated-families.html)
32 [2018/06/19/us/politics/trump-immigration-children-separated-families.html](https://www.nytimes.com/2018/06/19/us/politics/trump-immigration-children-separated-families.html).

33 ²⁸ *Id.*

1 demands.²⁹ On June 15, 2018, he tweeted, “The Democrats are forcing the breakup of
 2 families at the Border with their horrible and cruel legislative agenda. Any
 3 Immigration Bill MUST HAVE full funding for the Wall, end Catch & Release, Visa
 4 Lottery and Chain, and go to Merit Based Immigration. Go for it! WIN!”³⁰

5 85. Despite his administration’s previous characterization of the family
 6 separation policy as a means to deter future immigration, President Trump also
 7 advanced the fiction that existing federal law already compelled family separation.
 8 On June 19, 2018, he said, “[W]e have to get the Democrats to go ahead and work
 9 with us. Because as a result of Democrat-supported loopholes in our federal laws,
 10 most illegal immigrant families and minors from Central America who arrive
 11 unlawfully at the border cannot be detained together or removed together, only
 12 released. These are crippling loopholes that cause family separation, which we don’t
 13 want.”³¹

14 86. As children and parents suffered the consequences of being torn apart
 15 with no certainty that they would ever see each other again, President Trump used
 16 their suffering as a bargaining chip in his political negotiations to advance his broader
 17 anti-immigrant agenda.

18 **Family Separation is Motivated by Racial Animus**

19 87. The family separation policy was adopted as part of an anti-immigration
 20 agenda that is motivated by racial animus. On the first day of his presidential
 21 campaign, then-Candidate Trump categorically labeled Mexican immigrants as
 22 criminals and rapists: “When Mexico sends its people, they’re not sending their

23 ²⁹ Linda Qiu, *Fact-Checking the Trump Administration’s Case for Child Separation at*
 24 *the Border*, N.Y. TIMES (June 19, 2018),
<https://www.nytimes.com/2018/06/19/us/fact-check-trump-child-separation.html>.

25 ³⁰ Donald J. Trump (@realDonaldTrump), TWITTER (June 15, 2018),
 26 <https://twitter.com/realDonaldTrump/status/1007671131841671169>.

27 ³¹ *Remarks by President Trump at the National Federation of Independent Businesses*
 28 *75th Anniversary Celebration*, WHITE HOUSE (June 19, 2018),
<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-federation-independent-businesses-75th-anniversary-celebration/>.

1 best. ... They're sending people that have lots of problems, and they're bringing those
2 problems with [them]. They're bringing drugs. They're bringing crime. They're
3 rapists. And some, I assume, are good people.”³²

4 88. Three years later, when Chief of Staff Kelly discussed the family
5 separation policy, he echoed similar sentiments about the categorical undesirability of
6 migrants from Central America. “[T]hey’re also not people that would easily
7 assimilate into the United States into our modern society. They’re overwhelmingly
8 rural people in the countries they come from—fourth, fifth, sixth grade educations are
9 kind of the norm. They don’t speak English, obviously that’s a big thing. They don’t
10 speak English. They don’t integrate well, they don’t have skills.”³³

11 89. The Trump Administration has consistently demonstrated a pattern of
12 pursuing immigration policies motivated by racial animus toward non-European
13 immigrants. For example, in or around June 2017, in a meeting with Secretary of
14 State Rex Tillerson and then-DHS Secretary Kelly, President Trump reportedly said of
15 the 15,000 Haitians admitted to the United States, they “all have AIDS.”³⁴ At this
16 same meeting, the President, after learning that 40,000 people had entered the United
17 States from Nigeria, reportedly stated that they would never “go back to their huts” in
18 Africa.³⁵

19 90. On or about January 11, 2018, several lawmakers gathered with the
20 President in the Oval Office of the White House to discuss a bipartisan immigration
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22 ³² *Donald Trump Announces a Presidential Bid*, WASH. POST (June 16, 2015),
23 https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.0b727c71c4c8.

24 ³³ *Transcript: White House Chief of Staff John Kelly’s Interview with NPR*, NPR (May
25 11, 2018), <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>.

26 ³⁴ Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied*
27 *Bureaucracy to Advance Immigration Agenda*, N.Y. TIMES (Dec. 23, 2017),
<https://nyti.ms/2DEQLyv>.

28 ³⁵ *Id.*

1 proposal. President Trump grew frustrated when the conversation turned to
2 protections for foreign nationals from certain Central American and African countries.
3 “Why,” the President asked, “are we having all these people from shithole countries
4 come here?”³⁶ President Trump asked, “Why do we need more Haitians?” He
5 insisted that lawmakers “[t]ake them out” of any potential immigration deal.³⁷
6 Instead, he expressed a preference for immigrants from countries like Norway, which
7 is overwhelmingly white, or from Asian countries, which he felt would help the
8 United States economically.³⁸

9 91. Senator Dick Durbin, who was present at the January 11, 2018, meeting
10 in the Oval Office, characterized the President’s “shithole” comments as “clearly
11 racial,” “hate-filled,” and “vile.”³⁹ Senator Durbin reportedly warned the President
12 that exclusion of immigrants based on those grounds would be “an obvious racial
13 decision.”⁴⁰

14 92. Similarly vile sentiments motivate the Trump Administration’s policies
15 on family separation. Not only are these policies being used to attempt to deter
16 asylum seekers and other migrants from certain countries, they are also dehumanizing
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20 ³⁶ Josh Dawsey, *Trump Derides Protections for Immigrants from “Shithole”*
21 *Countries*, WASH. POST (Jan 12, 2018),
22 https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.06cbc70bfaec.

23 ³⁷ *Id.*

24 ³⁸ *Id.* Despite the President’s openness to the financial benefits of Asian immigrants,
25 his Administration has targeted Asian refugees for deportation. Agnes Constante, *As*
26 *Cambodian deportations resume, community looks for ways to cope*, NBC NEWS
(April 20, 2018), <https://www.nbcnews.com/news/asian-america/deportation-cambodian-refugees-u-s-devastates-community-n867096>.

27 ³⁹ Carl Hulse, *Inside the Oval Office Immigration Meeting that Left a Senator*
28 *Stunned*, N.Y. TIMES (Jan. 19, 2018), <https://nyti.ms/2DiqhlM>.

⁴⁰ *Id.*

1 and inhumane. In fact, President Trump explicitly stated on May 16, 2018, “These
2 aren’t people. These are animals.”⁴¹

3 93. On June 18, 2018, he again asserted that migrant parents crossing the
4 border with their children “could be murderers and thieves and so much else.”⁴² He
5 also argued that his political opponents “don’t care about crime and want illegal
6 immigrants, no matter how bad they may be, to pour into and infest our Country, like
7 MS-13.”⁴³ He refers to migrants, including asylum seekers, as people who “invade
8 our Country” and who should not receive the process due to them under United States
9 and international law: “When somebody comes in, we must immediately, with no
10 Judges or Court Cases, bring them back from where they came.”⁴⁴

11 94. These categorical insults expose the racial animus motivating recent
12 policies. Other explanations have proven false and pretextual. DHS Secretary
13 Nielsen argued that the policy was necessary due to a marked increase in the number
14 of adults arriving at the border with children and fraudulently claiming to be a family
15 unit. In the last five months, however, less than one percent of families apprehended
16 at the border fraudulently claimed to be a family unit.⁴⁵ President Trump has also
17 claimed that 80 percent of migrants who are released never show up for their

18
19 ⁴¹ Julie H. Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*,
20 N.Y. TIMES (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

21 ⁴² Philip Rucker et al., *Trump defiant as crisis grows over family separation at the*
22 *border*, WASH. POST (June 19, 2018),
23 https://www.washingtonpost.com/politics/trump-defiant-as-crisis-grows-over-family-separation-at-the-border/2018/06/18/210c78ca-730f-11e8-805c-4b67019fcfe4_story.html?utm_term=.1d4d5ae8f8b7.

24 ⁴³ Donald Trump (@realDonaldTrump), TWITTER (June 18, 2018),
25 <https://twitter.com/realdonaldtrump/status/1009071403918864385> (emphasis added).

26 ⁴⁴ John Bacon, *Trump wants to send undocumented immigrants back without*
27 *hearings: What we know now*, USA TODAY (June 24, 2018),
28 <https://www.usatoday.com/story/news/nation/2018/06/24/immigrant-children-trump-warns-undocumented-immigrants-invade-us/728949002/>.

⁴⁵ Linda Qiu, *Fact-Checking the Trump Administration’s Case for Child Separation at*
the Border, N.Y. TIMES (June 19, 2018),
<https://www.nytimes.com/2018/06/19/us/fact-check-trump-child-separation.html>.

1 immigration hearings and disappear into the country. Federal data, however, reveals
2 that most do appear at their court hearings.⁴⁶

3 95. Research also suggests that deterrence policies have little effect on
4 reducing illegal immigration.⁴⁷ Indeed, even a forced-separation policy would not
5 deter many Central American migrants from traveling to the United States because
6 they are asylum seekers whose lives are in danger; the alternative of staying in their
7 own countries is even worse.⁴⁸ Many migrants simply have no choice but to escape
8 the violence of their home countries.

9 **Family Separation Is Exposed As Needless Cruelty**

10 96. As news about the family separation policy spread, it shocked the public
11 conscience. Thousands of people across the country protested the cruel and inhumane
12 policy of forcible separation.⁴⁹ Major health organizations, political figures, and the
13 business community voiced their outrage and opposition.

14 97. America's medical and public health communities broadly decried the
15 practice of separating families.⁵⁰ The American Academy of Pediatrics said that the
16 "[s]eparation of a parent or primary caregiver from his or her children should never
17

18 ⁴⁶ Noah Bierman, et al., *Trump orders end to his family separation policy at the*
19 *border, but relief could be temporary*, N.Y. TIMES (June 20, 2018),
20 <http://www.latimes.com/politics/la-na-pol-trump-immigration-20180620-story.html>.

21 ⁴⁷ Anna Oltman, *Does separating families at the border discourage immigration?*
22 *Here's what the research says*, WASH. POST (May 31, 2018),
https://www.washingtonpost.com/news/monkey-cage/wp/2018/05/31/does-separating-families-at-the-border-discourage-immigration-heres-what-the-research-says/?utm_term=.58063f1056b9.

23 ⁴⁸ Julie Turkewitz & Jose A. Del Real, *Why Are Parents Bringing Their Children on*
24 *Treacherous Treks to the U.S. Border?*, N.Y. TIMES (June 22, 2018),
<https://www.nytimes.com/2018/06/22/us/immigration-border-children.html>.

25 ⁴⁹ Tim Argango & Kalya Cockrel, *Marches Across the U.S. Protest Separation of*
26 *Migrant Families*, N.Y. TIMES (June 14, 2018),
<https://www.nytimes.com/2018/06/14/us/protest-marches-family-separation.html>.

27 ⁵⁰ Melissa Healy, *'Children must not be abused for political purposes': What health*
28 *groups say about family separation*, L.A. TIMES (June 20, 2018),
<http://www.latimes.com/science/sciencenow/la-sci-sn-family-separation-medical-groups-20180620-story.html>.

1 occur, unless there are concerns for safety of the child at the hand of parent.”⁵¹ The
 2 American Academy of Child and Adolescent Psychiatry stated that “[s]eparating these
 3 children from their families in times of stress creates unnecessary and high-risk
 4 trauma at the very time they need care and support the most.”⁵² The National
 5 Academies of Sciences, Engineering and Medicine said that “[p]arents’ impact on
 6 their children’s well-being may never be greater than during the earliest years of life,
 7 when a child’s brain is developing rapidly and when nearly all of her or his
 8 experiences are shaped by parents and the family environment.”⁵³

9 98. In an open letter to Attorney General Sessions and Secretary Nielsen, the
 10 Attorneys General in 21 states called for the Trump Administration to end the zero-
 11 tolerance policy.⁵⁴ The Attorneys General called the policy “inhumane” and “contrary
 12 to American values,” and characterized the policy as raising serious due process and
 13 equal protection concerns. The letter concluded, “Put simply, the deliberate
 14 separation of children and their parents who seek lawful asylum in America is wrong.”
 15
 16

17 ⁵¹ Julie M. Linton et al., *Detention of Immigrant Children*, THE AMERICAN ACADEMY
 18 OF PEDIATRICS (March 2017), [http://pediatrics.aappublications.org/content/early/](http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483)
 19 [2017/03/09/peds.2017-0483](http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483); *U.S. Rights Chief: Migrant Family Separations*
 20 *“Unconscionable”* CRS NEWS (June 18, 2018) (Dr. Colleen A. Kraft, President of the
 21 American Academy of Pediatrics, says that separating children from their parents by
 22 force is a “form of child abuse.”) [https://www.cbsnews.com/news/trump-policy-](https://www.cbsnews.com/news/trump-policy-migrant-family-separation-parents-children-unconscionable-un-says/)
 23 [migrant-family-separation-parents-children-unconscionable-un-says/](https://www.cbsnews.com/news/trump-policy-migrant-family-separation-parents-children-unconscionable-un-says/).

24 ⁵² Karen Wagner, *President’s Statement on Separating Children from Families*,
 25 American Academy of Child & Adolescent Psychiatry (May 11, 2018),
 26 [https://www.aacap.org/AACAP/Press/Press_Releases/2018/Statement-on-Separating-](https://www.aacap.org/AACAP/Press/Press_Releases/2018/Statement-on-Separating-Children-from-Families.aspx)
 27 [Children-from-Families.aspx](https://www.aacap.org/AACAP/Press/Press_Releases/2018/Statement-on-Separating-Children-from-Families.aspx).

28 ⁵³ *Statement on Harmful Consequences of Separating Families at the U.S. Border*,
 The National Academies of Sciences, Engineering, Medicine (June 20, 2018),
<http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=06202018>.

⁵⁴ Hector H. Balderas, *Open Letter to the Honorable Jeff Sessions and the Honorable*
Kirstjen Nielsen, STATE OF NEW MEXICO OFFICE OF THE ATTORNEY GENERAL (June
 19, 2018), [https://ag.ny.gov/sites/default/files/ag_ltr_to_ag_sessions_sec_nielsen](https://ag.ny.gov/sites/default/files/ag_ltr_to_ag_sessions_sec_nielsen_re_family_separation_6.19.181.pdf)
[_re_family_separation_6.19.181.pdf](https://ag.ny.gov/sites/default/files/ag_ltr_to_ag_sessions_sec_nielsen_re_family_separation_6.19.181.pdf) (joined by the Attorneys Generals of California,
 Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine,
 Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina,
 Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington).

1 99. All four living former first ladies also joined the chorus of critics.⁵⁵
 2 Laura Bush compared the situation to Japanese Internment.⁵⁶ She called the policy
 3 “cruel” and “immoral,” and noted that such treatment inflicts serious trauma.⁵⁷
 4 Michelle Obama and Hillary Clinton both supported Mrs. Bush’s article; Secretary
 5 Clinton called the situation a “humanitarian crisis” and noted that “every human being
 6 with a sense of compassion and decency, should be outraged.”⁵⁸ Rosalynn Carter
 7 called the policy “disgraceful and a shame to our country.”⁵⁹

8 100. Several airlines also condemned the separation policy and said that they
 9 would not allow the federal government to use their flights to transport separated
 10 children. American Airlines said that it has “no desire to be associated with
 11 separating families, or worse, to profit from it.”⁶⁰ Southwest Airlines asked that
 12 “anyone” involved with the separation policy not fly with them.⁶¹

13 101. The U.S. Chamber of Commerce and the Business Roundtable also
 14 condemned forcibly separating children from their parents. The Business Roundtable
 15 called it “cruel and contrary to American values,” and the U.S. Chamber of
 16 Commerce’s top official said that “this is not who we are, and it must end now.”⁶²

17 _____
 18 ⁵⁵ Stephanie Ebbs, *All 5 first ladies speak out against family-separation immigration*
 19 *policy*, ABC NEWS (June 18, 2018), [https://abcnews.go.com/Politics/ladies-speak-](https://abcnews.go.com/Politics/ladies-speak-family-separation-immigration-policy/story?id=55986862)
 20 [family-separation-immigration-policy/story?id=55986862](https://abcnews.go.com/Politics/ladies-speak-family-separation-immigration-policy/story?id=55986862).

21 ⁵⁶ Laura Bush, *Laura Bush: Separating children from their parents at the border*
 22 *‘breaks my heart’*, WASH. POST (June 17, 2018),
 23 [https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-](https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?noredirect=on&utm_term=.d43b5a479ab6)
 24 [parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-](https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?noredirect=on&utm_term=.d43b5a479ab6)
 25 [b1dd6a09b549_story.html?noredirect=on&utm_term=.d43b5a479ab6](https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?noredirect=on&utm_term=.d43b5a479ab6).

26 ⁵⁷ *Id.*

27 ⁵⁸ Stephanie Ebbs, *All 5 first ladies speak out against family-separation immigration*
 28 *policy*, ABC NEWS (June 18, 2018), [https://abcnews.go.com/Politics/ladies-speak-](https://abcnews.go.com/Politics/ladies-speak-family-separation-immigration-policy/story?id=55986862)
 29 [family-separation-immigration-policy/story?id=55986862](https://abcnews.go.com/Politics/ladies-speak-family-separation-immigration-policy/story?id=55986862).

30 ⁵⁹ *Id.*

31 ⁶⁰ Richard Fausset, *Airlines Ask Government Not to Use Their Flights to Carry*
 32 *Children Separated at the Border*, N.Y. TIMES (June 20, 2018),
 33 <https://www.nytimes.com/2018/06/20/us/airlines-transport-immigrant-children.html>.

34 ⁶¹ *Id.*

35 ⁶² Michael D. Shear et al., *G.O.P. Moves to End Trump’s Family Separation Policy,*
 36 *but Can’t Agree How*, N.Y. TIMES (June 19, 2018),

1 reportedly more than 100 children under age five were separated from their parents at
2 the border.⁶⁹ Homeland Security officials were unable to “provide information about
3 the age cutoff below which they would decline to take a child.”⁷⁰

4 106. These “tender age” children are being sent to their own shelters, three of
5 which were family detention centers that were hurriedly updated to care for younger
6 children who were separated from their parents.⁷¹ A fourth facility is planned for
7 Houston to “house up to 240 children in a warehouse previously used for people
8 displaced by Hurricane Harvey.”⁷²

9 107. Lawyers and health care professionals who have visited the “tender age”
10 shelters “described play rooms of crying preschool-age children in crisis.”⁷³ Elizabeth
11 Frankel, associate director of the Young Center for Immigrant Children’s Rights, said
12 that her colleagues have been given the responsibility for caring for a number of
13 infants.⁷⁴ She described children in crisis, crying uncontrollably, having panic attacks,
14 not sleeping, wetting the bed, and regressing to the point that they can no longer talk.⁷⁵

15
16
17 ⁶⁹ Caitlin Dickerson, *Trump Administration in Chaotic Scramble to Reunify Migrant Families*, N.Y. TIMES (July 5, 2018), <https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html>.

18 ⁷⁰ Julie Hirschfeld Davis, *Separated at the Border From Their Parents: In Six Weeks, 1,995 Children*, N.Y. TIMES (June 15, 2018), <https://www.nytimes.com/2018/06/15/us/politics/trump-immigration-separation-border.html>.

19 ⁷¹ Caitlin Dickerson and Manny Fernandez, *What’s Behind the ‘Tender Age’ Shelters Opening for Young Migrants*, N.Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/us/tender-age-shelters-family-separation-immigration.html>.

20 ⁷² Garance Burke and Martha Mendoza, *Toddlers Separated from Parents at the Border Are Being Detained in ‘Tender Age’ Shelters*, TIME (June 20, 2018), <http://time.com/5316764/toddler-immigrants-tender-age-shelters/>.

21 ⁷³ *Id.*

22 ⁷⁴ Caitlin Dickerson and Manny Fernandez, *What’s Behind the ‘Tender Age’ Shelters Opening for Young Migrants*, N.Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/us/tender-age-shelters-family-separation-immigration.html>.

23 ⁷⁵ *Id.*

1 Other children are too young to speak, and therefore staff members have been unable
2 to determine where or who their parents are.⁷⁶

3 108. The government has not provided for a comprehensive and independent
4 investigation by qualified mental-health professionals into the circumstances under
5 which Plaintiffs and other asylum-seeking parents were separated from their children
6 or into the effects of that separation on the families. Absent relief from this Court,
7 Plaintiffs, even if eventually reunited with their children, will have no way adequately
8 to determine and respond to the harms inflicted by the separation policy.

9 **President Trump Issues An Executive Order To Halt Prospective Application Of**
10 **Family Separation Policy**

11 109. Faced with national revulsion at family separation and legislative refusal
12 to accede to his political demands as the price of ending the policy, President Trump
13 abruptly changed course.

14 110. On June 20, 2018, President Trump issued an executive order entitled
15 “Affording Congress an Opportunity to Address Family Separation” (“Executive
16 Order”).⁷⁷ The Executive Order continued the policy of initiating criminal
17 proceedings for all who cross the border illegally and called for indefinite detention of
18 families, including children covered by the *Flores* Settlement, in camps and makeshift
19 detention centers.⁷⁸

20 111. President Trump’s Executive Order did not and could not end the trauma
21 of family separation. Most families still have not been reunited. Parents still do not
22 know where their children are and, like Plaintiffs, are not able to care for them or even
23 speak with them. Traumatized children remain in deplorable detention conditions.
24 Some may be lost in the system. Detention centers “are often unable to locate the

25 ⁷⁶ *Id.*

26 ⁷⁷ Executive Order, *Affording Congress an Opportunity to Address Family Separation*,
27 WHITE HOUSE (June 20, 2018), [https://www.whitehouse.gov/presidential-
actions/affording-congress-opportunity-address-family-separation/](https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/).

28 ⁷⁸ *Id.*

1 parent of separated children because the children arrive without proper records.”⁷⁹
 2 Once a child arrives at a detention center, “there is no firm process in place to
 3 determine whether they have been separated from someone who was legitimately their
 4 parent, or for reuniting parents and children who had been mistakenly separated.”⁸⁰

5 112. Critically, the Executive Order failed to provide any remediation for the
 6 trauma and devastation unnecessarily inflicted by the government on the children and
 7 parents whom it separated. To mitigate the negative effects of the trauma suffered,
 8 separated families must be immediately reunited and provided with access to mental
 9 health screenings, and to appropriate and effective intensive trauma treatment services
 10 outside of the traumatizing environment of the current detention environment.⁸¹
 11 Without these remedies, the deleterious impact of forcible separation is debilitating
 12 and causes life-long harm.⁸²

13 **A System in Utter Chaos and Confusion: Difficulties in Reunification**

14 113. Because the Executive Order was a surprise to many, further chaos
 15 ensued. Agencies carrying out the policy received no advanced notice about the major
 16 changes. And one official who works for ICE said that an internal email about the
 17 Executive Order arrived “literally at the same time that it was breaking on CNN.”⁸³

18
 19 ⁷⁹ Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From*
 20 *Parents at U.S. Border*, N.Y. TIMES (Apr. 20, 2018),
<https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

21 ⁸⁰ *Id.*

22 ⁸¹ Declaration of Dylan Gee (“Gee Decl.”), ¶ 17 (“Following reunification, children
 23 and parents require immediate, intensive clinical intervention to support healing
 24 following trauma exposure.”); Declaration of Luis H. Zayas (“Zayas Decl.”), ¶ 12
 25 (“The psychological wounds of detention and family separation will last a lifetime. It
 will take social work, psychiatric, psychological and counseling services to start and
 see through the repairs.”).

26 ⁸² Declaration of Marleen Wong (“Wong Decl.”), ¶ 25 (“Without such trauma
 27 treatment programs, the effect of the forcible separation on these children will be
 debilitating and will cause them life-long harm.”).

28 ⁸³ Caitlin Dickerson, *On Family Separation, Federal Workers Often Agonized Over*
Enforcement, N.Y. TIMES (June 23, 2018),

1 Such an abrupt change of course has left federal agencies scrambling with little
2 guidance on how to proceed.⁸⁴

3 114. Notably, the Executive Order failed to mention what would happen to the
4 nearly 3,000 children who had been separated from their parents. There is no reliable
5 plan in place yet to reunite families. On the day the Executive Order was issued, a
6 spokesman for HHS initially said that the government would not try to reunite
7 separated families, but later backtracked, saying that “it is still very early, and we are
8 awaiting further guidance on the matter.”⁸⁵ Anthony Enriquez, director of the
9 unaccompanied minors program for Catholic Charities, explained, “There is no system
10 whatsoever to track these family separations, no efforts systemically to reunite these
11 families. There is no supervisor, there is no database saying, ‘child here, parent
12 there,’ so they can come back together.”⁸⁶ While HHS insists that it “is working with
13 relevant agency partners to foster communications and work towards reuniting every
14 minor and every parent or guardian via well-established reunification processes,” very
15 few details have been released about how HHS will go about reuniting families and
16 what the timeline is for reunification.⁸⁷

17 115. Indeed, even after the Executive Order was signed, many parents had still
18 not spoken with their children and did not know where they were being held. Parents
19 report repeatedly calling the government-established hotline number, but nobody

20 [https://www.nytimes.com/2018/06/23/us/migrant-children-federal-agency-](https://www.nytimes.com/2018/06/23/us/migrant-children-federal-agency-border.html)
21 [border.html](https://www.nytimes.com/2018/06/23/us/migrant-children-federal-agency-border.html).

22 ⁸⁴ Michelle Goldberg, *They Really Don’t Care About Migrant Families*, N.Y. TIMES
(June 21, 2018), [https://www.nytimes.com/2018/06/21/opinion/trump-family-](https://www.nytimes.com/2018/06/21/opinion/trump-family-separation-melania-jacket.html)
23 [separation-melania-jacket.html](https://www.nytimes.com/2018/06/21/opinion/trump-family-separation-melania-jacket.html).

24 ⁸⁵ Charlie Savage, *Explaining Trump’s Executive Order on Family Separation*, N.Y.
TIMES (June 20, 2018), [https://www.nytimes.com/2018/06/20/us/politics/family-](https://www.nytimes.com/2018/06/20/us/politics/family-separation-executive-order.html)
25 [separation-executive-order.html](https://www.nytimes.com/2018/06/20/us/politics/family-separation-executive-order.html).

26 ⁸⁶ Liz Robbins, *Hundreds of Separated Children Have Quietly Been Sent to New York*,
N.Y. TIMES (June 20, 2018), [https://www.nytimes.com/2018/06/20/nyregion/children-](https://www.nytimes.com/2018/06/20/nyregion/children-separated-border-new-york.html)
27 [separated-border-new-york.html](https://www.nytimes.com/2018/06/20/nyregion/children-separated-border-new-york.html).

28 ⁸⁷ *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification*, DEPT. OF
HOMELAND SECURITY (June 23, 2018), [https://www.dhs.gov/news/2018/06/23/fact-](https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification)
[sheet-zero-tolerance-prosecution-and-family-reunification](https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification).

1 answers or no information is provided. Compounding the difficulties, detained
 2 parents do not have a phone number where agencies may call them back.⁸⁸ As a
 3 result, parents and children have no idea if and when they will see each other again.
 4 One separated parent said, “I feel like I am going to die. I feel powerless.”⁸⁹

5 116. Out of pure desperation, some parents have agreed to give up their
 6 asylum claims in the hopes of seeing their children again. Knowing how desperate
 7 separated parents are, the government has taken advantage of their fears and
 8 vulnerability by encouraging parents to sign voluntary deportation orders in exchange
 9 for the return of their children. One Honduran detainee agreed to abandon his asylum
 10 case and signed voluntary deportation forms in the hopes of seeing his 6-year-old
 11 daughter again.⁹⁰

12 **THE FEDERAL COURTS ENJOIN SIGNIFICANT ASPECTS OF THE**
 13 **FAMILY SEPARATION POLICY AND REJECT ATTEMPTS TO ALTER**
 14 **THE FLORES SETTLEMENT**

15 117. Faced with the government’s inhumane and cruel policy, migrant parents
 16 separated from their children have turned to the federal courts. In a number of these
 17 cases, the courts have already acted by requiring the government to conform its
 18 actions to the Constitution, statutes passed by Congress, and its own policies.

19 ***Ms. L v. U.S. Immigration & Customs Enforcement (S.D. Cal.)***

20 118. For example, on June 26, 2018, the District Court for the Southern
 21 District of California in a nationwide class action granted a preliminary injunction,

22 ⁸⁸ Jennifer Jett & Mihir Zaveri, *More Than 500 Migrant Children Reunited with*
 23 *Adults, Government Says*, N.Y. TIMES (June 24, 2018),
<https://www.nytimes.com/2018/06/24/us/migrant-children-reunited.html>.

24 ⁸⁹ Jack Healy, *Migrant Parents Wait and Hope for Their Children: ‘I Feel Like I’m*
 25 *Going to Die’*, N.Y. TIMES (June 21, 2018),
<https://www.nytimes.com/2018/06/21/us/immigrant-children-separating-families.html>.

26 ⁹⁰ Jay Root & Shannon Najmabadi, *Kids in exchange for deportation: Detained*
 27 *migrants say they were told they could get kids back on way out of U.S.*, TEXAS
 28 TRIBUNE (June 24, 2018), <https://www.texastribune.org/2018/06/24/kids-exchange-deportation-migrants-claim-they-were-promised-they-could/>.

1 prohibiting the government from (1) separately detaining migrant parents and their
2 children, (2) detaining minor children if their parents are released from custody, and
3 (3) removing any migrant parent from the United States without their child—absent
4 voluntary waiver by the parents or a finding of unfitness. *See Ms. L*, 2018 WL
5 3129486, at *11-12. Additionally, the Court ordered the government to reunite
6 detained parents with the children under the age of five by July 10, 2018, and to
7 reunite detained parents with their other children by July 26, 2018. *Id.* at *12; *see also*
8 *Souza v. Sessions*, No. 18-cv-4412, ECF No. 23 (N.D. Ill. June 28, 2018) (ordering
9 government to release child to custody of parent).

10 119. In providing this relief, the Court had to find first that the parents were
11 likely to succeed on their Fifth Amendment challenge to the family separation policy.
12 The parents argued that “the Government’s practice of separating class members from
13 their children, and failing to reunite those parents who have been separated, without a
14 determination that the parent is unfit or presents a danger to the child violates the
15 parents’ substantive due process rights to family integrity.” *Ms. L*, 2018 WL 3129486,
16 at *6.

17 120. The Court agreed with the parents for several reasons. First, the Court
18 found that, even when the Executive Branch “is acting within its powers to detain
19 individuals lawfully entering the United States and to apprehend individuals illegally
20 entering the country,” “the right to family integrity still applies.” *Id.* at *7. Second, it
21 recognized that “asylum seekers [like the plaintiffs] may be fleeing persecution and are
22 entitled to careful consideration by government officials. Particularly so if they have a
23 credible fear of persecution.” *Id.* To that end, Congress has “plainly stated [the nation’s]
24 intent to treat refugees with an ordered process, and benevolence, by codifying
25 principles of asylum.” *Id.* But, in its view, “[t]he Government’s treatment of [migrant
26 parents] does not meet this standard, and it is unlikely to pass constitutional muster.”
27 *Id.* Third, the Court highlighted that “the practice of separating these families was
28 implemented without any effective system or procedure for (1) tracking the children

1 after they were separated from their parents, (2) enabling communication between the
2 parents and their children after separation, and (3) reuniting the parents and children
3 after the parents are returned to immigration custody following completion of their
4 criminal sentence.” *Id.* In the Court’s words, “[t]his is a startling reality,” particularly
5 given that the government routinely tracks detained individuals’ personal *property* with
6 efficiency and accuracy. *Id.* The Court concluded these practices, taken together,
7 “shock the conscience” and are likely inconsistent with due process.

8 121. The Court also found that “the Ninth Circuit has repeatedly found” that
9 “separation of a parent from his or her child” “constitutes irreparable harm.” *Id.* at *9
10 (citing *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011); *Washington v.*
11 *Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017)). The Court also determined that the
12 injuries inflicted by the family separation policy “deserve[] special mention,” noting
13 that “the separations at issue have been agonizing for parents who have endured them.”
14 *Id.* In particular, the Court noted that declarations submitted by class representatives in
15 the case and press reports of the trauma caused by the policy, including reports that
16 government officials ripped one mother’s crying 18-month-old son from her and that
17 one parent committed suicide as a result of being separated from his three-year-old son.
18 The Court further noted that press reports and declarations submitted by class
19 representatives demonstrate that these separations have inflicted a “highly destabilizing,
20 traumatic experience that has long term consequences on child well-being, safety, and
21 development.” *Id.* at *9-10.

22 122. Finally, the Court concluded that the balance of equities and the public
23 interest favored injunctive relief. Specifically, the Court found that stopping the
24 needless separation of parents from children would not “have a negative impact on the[]
25 [government’s] ability to enforce the criminal and immigration laws.” *Id.* at *10. It
26 also found that “[t]he public interest in upholding and protecting th[e] [right to family
27 integrity and association] would be served by issuance of the requested injunction.” *Id.*
28 at *11.

Damus v. Nielsen (D.D.C.)

1
2 123. On July 2, 2018, the District Court for the District of Columbia entered a
3 preliminary injunction requiring the government to follow its 2009 Directive, “Parole
4 of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture,” issued by
5 Immigration and Customs Enforcement. *See Damus v. Nielsen*, 2018 WL 3232515, at
6 *2 (D.D.C. July 2, 2018). This ICE Directive mandates that “[e]ach alien’s eligibility
7 for parole should be considered and analyzed on its own merits and based on the facts
8 of the individual alien’s case,’ and that if an asylum-seeker establishes his identity and
9 that he presents neither a flight risk nor a danger to the public, ‘[ICE] should, absent
10 additional factors ... parole the alien on the basis that his or her continued detention is
11 not in the public interest.’” *Id.* The plaintiffs in *Damus*—a provisional class covering
12 asylum seekers in five ICE Field Offices who have been found to have a credible fear
13 of persecution or torture and who are being detained by ICE after having been denied
14 parole—showed that when the ICE Directive was in force, more than 90 percent of
15 asylum seekers were *granted* parole, while 92 to 100 percent of similar individuals were
16 *denied* parole between February and September 2017. *Id.* at *15.

17 124. The Court concluded that, on the basis of these statistics and declarations
18 from class members, the plaintiffs were likely to succeed on their Administrative
19 Procedure Act claim because it appears that the government is no longer following its
20 own directives. *Id.* at *16-17. The Court also found that plaintiffs sufficiently showed
21 they would suffer irreparable harm absent an injunction given that “detention pursuant
22 to an unlawful departure from agency procedure cannot be remediated after the fact.”
23 *Id.* at *17. Finally, the Court determined that the balance of harms and the public
24 interest would be served by the injunction because the plaintiffs were asking only for
25 the government to follow its own procedures.

Flores v. Sessions (C.D. Cal.)

26
27 125. On July 9, 2018, the District Court for the Central District of California
28 denied the government’s efforts to modify the *Flores* Settlement. *Flores v. Sessions*,

1 No. CV 85-4544, ECF No. 455 (C.D. Cal. July 9, 2018). The *Flores* Settlement is a
2 consent agreement between a class including all immigrant children held by the
3 government and the government, which “sets out nationwide policy for the detention,
4 release, and treatment of minors in the custody of [the federal government].” *Flores v.*
5 *Lynch*, 828 F.3d 898, 901 (9th Cir. 2016). The government asked for two specific
6 exemptions: (1) permission to detain children indefinitely with their parents in ICE
7 custody, and (2) permission to detain children in facilities that do not meet the
8 agreement’s state licensure requirement. *Flores*, ECF No. 455, at 1.

9 126. The Court first found that Defendants’ *ex parte* application was
10 procedurally improper because it was a “thinly veiled motion for reconsideration” of
11 previous motion asking for similar relief. *Id.* Second, the Court concluded that the
12 government failed to satisfy Rule 60’s requirements for altering a settlement agreement,
13 given that the current so-called difficulties, to the extent they exist, were foreseeable.
14 *Id.* at 2. To that end, the Court also determined that Defendants had not shown that the
15 *Flores* Settlement bore any responsibility for the uptick in family border crossings, that
16 families routinely fail to appear at required proceedings, or that the *Ms. L* injunction
17 prevents the government from meeting its obligations. Rather, in the Court’s view, “[i]t
18 is apparent that Defendants’ Application [was] a cynical attempt ... to shift
19 responsibility to the Judiciary for over 20 years of Congressional inaction and ill-
20 considered Executive action that have led to the current stalemate.” *Id.* at 7. The Court
21 therefore denied the application as “procedurally improper and wholly without merit.”
22 *Id.*

23 **THE FAMILY SEPARATION POLICY HAS INFLICTED SIGNIFICANT**
24 **TRAUMA ON MIGRANT PARENTS AND THEIR CHILDREN**

25 127. The family separation policy has caused traumatic harm to separated
26 families. The consensus among leading experts on trauma is that tearing children
27 from their parents inflicts severe complex trauma on both parents and children alike
28

1 that might never be fully remedied.⁹¹ As Senior Vice Dean and Professor of Mental
 2 Health at University of Southern California Dr. Marleen Wong explains, trauma is the
 3 body's neurobiological stress response to experiencing or witnessing an event
 4 involving life-threatening circumstances or threat of serious injury that causes him or
 5 her to feel intense fear, helplessness, or horror.⁹² Complex trauma describes multiple,
 6 repeated, persistent, or prolonged exposure to trauma such that the body's stress
 7 response impacts the development and functioning of the brain.⁹³ Left untreated, such
 8 trauma causes immediate and long-lasting physical and psychological harm, especially
 9 in children, whose still-developing bodies and brains are ill-equipped to cope with
 10 traumatic stress.⁹⁴

11 **Trauma Experienced by Parents**

12 128. Parents experience trauma due to forcible separation from their
 13 children.⁹⁵ Psychologists and other mental-health professionals, including Drs. Gee,
 14 Hidalgo, Sprinson, Loring, and Zayas, Messrs. Berrick and Campbell, and Professor
 15 Wong, expect that parents who experience their children being taken away from them
 16 will likely suffer acute psychological distress that manifests in physical and mental
 17 symptoms of anxiety, depression, suicidal ideation, loss of appetite, and/or loss of
 18 sleep.⁹⁶ After all, "[s]eparation of a child from his/her mother would be a traumatic

19 _____
 20 ⁹¹ Declaration of Kenneth Berrick, John Sprinson & Kevin Campbell ("Berrick
 21 Decl."), ¶¶ 10, 12; Gee Decl. ¶ 5; Declaration of Jose Hidalgo ("Hidalgo Decl."),
 22 ¶¶ 12, 13; Declaration of Bruce Perry ("Perry Decl."), ¶ 21; Declaration of Marleen
 23 Wong ("Wong Decl."), ¶ 23; Declaration of Luis Zayas ("Zayas Decl."), ¶¶ 12, 14.

24 ⁹² Wong Decl. ¶ 12.

25 ⁹³ *Id.*

26 ⁹⁴ Berrick Decl. ¶ 15; Gee Decl. ¶¶ 5, 8, 9; Hidalgo Decl. ¶ 12; Perry Decl. ¶ 21;
 27 Wong Decl. ¶ 24 ("Prolonged exposure to such stress has a debilitating effect on
 28 children even after the particular traumatic event is over.").

⁹⁵ *See, e.g.*, Hidalgo Decl. ¶ 14; Gee Decl. ¶ 6; Berrick Decl. ¶¶ 17, 19; Declaration of
 Marti T. Loring ("Loring Decl."), ¶ 8; Wong Decl. ¶ 23; Zayas Decl. ¶ 8.

⁹⁶ Gee Decl. ¶ 6 ("Forcible family separation can also have devastating psychological
 and neurobiological consequences for parents, [which are] likely to be exacerbated
 when parents are not provided with information about their child's location or
 condition, or when parents do not have access to information in their native
 language."); Hidalgo Decl. ¶ 14 ("This level of stress related to the separation can take

1 event for both the child/adolescent and for the mother and father, causing ... [p]anic
2 and terror, frightening dreams, flashbacks, dissociation (blinking out and lack of
3 awareness), depersonalization (sense of unreality and separation from oneself),
4 withdrawal into intense grief and depression, an ongoing sense of fear and terror.”⁹⁷

5 129. “The traumatic nature of separation from the child is likely to be
6 exacerbated when parents are not provided with information about their child’s
7 location or condition, or when parents do not have access to information in their
8 native language”⁹⁸

9 130. Indeed, there has been at least one credible report that a parent forcibly
10 separated from his child under the zero-tolerance policy was driven to suicide.⁹⁹
11 According to press reports, Marco Antonio Muñoz and his family were taken into
12 custody and sought asylum. His child was forcibly taken from his arms, and then Mr.
13 Muñoz was placed in a chain-link detention cell. After he struggled to break free of
14 his cage, the Border Patrol transported him to a local jail and placed in a padded cell.
15 The next morning, he was found dead at his own hand.

16 a toll on parents and may cause physical and mental health symptoms such as loss of
17 sleep, loss of appetite, headaches, anxiety, depression, and suicidal ideation.”);
18 Berrick Decl. ¶¶ 17, 19 (“Parents also experience psychological distress and trauma
19 due to separation and detention [and] may includ[e] anxiety, depression, suicidal
20 ideations, and loss of appetite.”); Loring Decl. ¶ 8 (“Separation of a child from his/her
21 mother would be a traumatic event for both the child/adolescent and for the mother
22 and father, causing ... [p]anic and terror, frightening dreams, flashbacks, dissociation
23 (blinking out and lack of awareness), depersonalization (sense of unreality and
24 separation from oneself), withdrawal into intense grief and depression, an ongoing
25 sense of fear and terror.”); Wong Decl. ¶ 23 (“Forcible separation of families inflicts
26 severe trauma on children and parents.”); Zayas Decl. ¶ 8 (“The separation of parents
27 from their children—the very children they sought to protect and save by requesting
28 asylum in the United States—creates emotional stresses on parents beyond that which
they have already suffered.”).

⁹⁷ Loring Decl. ¶ 8.

⁹⁸ Gee Decl. ¶ 6; *see also* Hidalgo Decl. ¶ 26 (“Ongoing separation and the uncertainty
of not knowing where separated loved ones are is likely to be re-traumatizing for
separated children and parents.”).

⁹⁹ *See* Nick Miroff, *A Family Was Separated At the Border, and This Distraught
Father Took His Own Life*, WASH. POST (June 9, 2018),
https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?utm_term=.f3c12fb7157d.

1 131. Parents, like their children, must also cope with the events that prompted
 2 their migration in the first place, as well as the stressors and trauma experienced on
 3 the way.¹⁰⁰ As with their children, such experiences are only compounded by
 4 subsequent detention and separation from their families.¹⁰¹

5 **Trauma Experienced by Children**

6 132. Recent media reports offer but a hint at the on-going suffering caused by
 7 forced family separation on children. Recently, an audio recording from inside a CBP
 8 facility captured the voices of ten Central American children separated from their
 9 parents. The children, as young as four, can be heard crying out desperately for their
 10 parents. They repeatedly scream “Mami” and “Papa,” many crying so hard it sounds
 11 like they can barely breathe. Above the heart wrenching weeping and crying is the
 12 voice of a Border Patrol agent who jokes: “Well, we have an orchestra here. What’s
 13 missing is a conductor.”¹⁰²

14 133. A pediatrician visiting the Texas detention facility known as “the Ursula”
 15 reported seeing somewhere between 20 and 30 ten-year-old boys caged in by a chain
 16 link fence crying and sobbing for their mothers—some of them reaching out through
 17 the fence as they screamed. Their mothers, who were in identical cages about 50 feet
 18 away, could only look on, unable to help or console them.¹⁰³

19 134. Upon separation, children experience acute psychological distress.¹⁰⁴
 20 Indeed, “[f]or children younger than seven or eight years of age, separation from
 21 parents is even worse than the concept of death, as at young ages children see death as

22 ¹⁰⁰ See, e.g., Gee Decl. ¶ 7; Zayas Decl. ¶ 8.

23 ¹⁰¹ See, e.g., Gee Decl. ¶ 7; Zayas Decl. ¶ 8.

24 ¹⁰² Ginger Thompson, *Listen to Children Who’ve Just Been Separated From Their*
 25 *Parents at the Border*, PROPUBLICA (June 18, 2018),
<https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy>.

26 ¹⁰³ Sady Doyle, *Child Trauma Can’t Be Undone With an Executive Order*, ELLE
 27 *MAGAZINE* (June 21, 2018), <https://www.elle.com/culture/career-politics/a21748590/child-trauma-cant-be-undone-with-an-executive-order/>.

28 ¹⁰⁴ Hidalgo Decl. ¶ 9.

1 something that can be reversible and is not universal.”¹⁰⁵ According to founder and
 2 Chief Executive Office of Seneca Family of Agencies Kenneth Berrick, founder of the
 3 Center for Family Finding and Youth Connectedness Kevin Campbell, and Clinical
 4 Director of Seneca Family of Agencies Dr. John Sprinson, such trauma may be
 5 particularly severe when the separation is sudden or forcible.¹⁰⁶ During the moment
 6 of separation, a child can experience “severe neurobiological stress causing the child
 7 to feel intense fear, helplessness, or horror.”¹⁰⁷ “Immediate reactions include obvious
 8 emotional suffering in the form of inconsolable crying, desperate efforts to pursue or
 9 search for the parent and anger.”¹⁰⁸ Instructor of Psychiatry at the Harvard Medical
 10 School and Massachusetts General Hospital Dr. Jose Hidalgo notes these effects may
 11 be exacerbated by the additional trauma caused when witnessing a parent’s reaction to
 12 separation.¹⁰⁹

13 135. In the immediate aftermath of separation, children are likely to continue
 14 to suffer from “extraordinary stress and pain.”¹¹⁰ They may show signs of regression,
 15 reverting to crying and bed-wetting, or suffer the loss of other important
 16 developmental milestones.¹¹¹ Separated children are also likely to exhibit a variety of
 17 negative behaviors from aggressiveness to withdrawal.¹¹²

20 ¹⁰⁵ Declaration of Victor Carrion (“Carrion Decl.”) ¶ 5.

21 ¹⁰⁶ Berrick Decl. ¶ 9 (“When the separation is sudden, unpredictable, or in a strange
 22 environment with no other familiar adult figures present then the response is likely to
 be extreme.”); *see* Hidalgo Decl. ¶ 9; Wong Decl. ¶ 22.

23 ¹⁰⁷ Wong Decl. ¶ 23.

24 ¹⁰⁸ Berrick Decl. ¶ 10.

25 ¹⁰⁹ Hidalgo Decl. ¶ 9.

26 ¹¹⁰ Zayas Decl. ¶ 11; *see also* Gee Decl. ¶ 5 (“The immediate psychological
 consequences of exposure to traumatic events involving caregivers include, but are not
 limited to, anxiety, distress, despair, and terror for both the child and the parent.”);
 Perry Decl. ¶ 21; Wong Decl. ¶ 22.

27 ¹¹¹ Doyle, *supra* note 103; *see also* Berrick Decl. ¶ 10.

28 ¹¹² Berrick Decl. ¶ 10; Wong Decl. ¶¶ 18, 22.

1 136. The longer the parent and child are separated, the greater the harms the
 2 child experiences.¹¹³ Decades of public health research demonstrate that the child-
 3 parent bond is a crucial factor in healthy child development.¹¹⁴ The absence of
 4 interaction between parent and child “acts as a ‘double whammy’ for healthy
 5 development: not only does the brain not receive the positive stimulation it needs, but
 6 the body’s stress response is activated, flooding the developing brain with potentially
 7 harmful stress hormones.”¹¹⁵ Moreover, separation disrupts and severely damages the
 8 relationship between a child and their parent.¹¹⁶

9 137. Assistant Professor of Psychology at Yale University Dr. Dylan Gee
 10 writes that “For a child who has been separated from their parent at the border, their
 11 body and brain are being shaped to anticipate danger and prepare for the worst.”¹¹⁷ As
 12 detailed by substantial research conducted by Adjunct Professor in the Department of
 13 Psychiatry and Behavioral Sciences at the Feinberg School of Medicine at
 14 Northwestern University Dr. Bruce Perry, stress hormones induce a state of

15 _____
 16 ¹¹³ Hidalgo Decl. ¶ 12; Jessica Henderson Daniel, PhD, *Statement of APA President*
 17 *Regarding Executive Order Rescinding Immigrant Family Separation Policy*, AM.
 18 PSYCHOLOGICAL ASS’N (June 20, 2018), <http://www.apa.org/news/press/releases/2018/06/family-separation-policy.aspx>.

19 ¹¹⁴ Karen Dineed Wagner, MD, PhD, *President’s Statement on Separating Children*
 20 *From Families*, AMER. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY,
 21 https://www.aacap.org/AACAP/Press/Press_Releases/2018/Statement-on-Separating-Children-from-Families.aspx (“Parental support is an essential and proven protective
 22 factor that substantially reduces risk for adverse health and developmental outcomes
 23 for children.”); “Separating Parents and Children at US Border is Inhumane and Sets
 24 the Stage for a Public Health Crisis,” AM. PUBLIC HEALTH ASS’N (June 15, 2018),
 25 <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/parent-child-separation> (“Decades of public health research have shown
 26 that family structure, stability and environment are key social determinants of a
 27 child’s and a community’s health.”).

28 ¹¹⁵ *Serve and Return*, HARVARD UNIVERSITY CENTER ON THE DEVELOPING CHILD,
<https://developingchild.harvard.edu/science/key-concepts/serve-and-return/> (last
 visited June 24, 2018); *see also* Berrick Decl. ¶ 15

¹¹⁶ Berrick Decl. ¶¶ 11, 12.

¹¹⁷ Dylan Gee, *I study kids who were separated from their parents. The trauma could change their brains forever*, VOX (June 20, 2018), <https://www.vox.com/first-person/2018/6/20/17482698/tender-age-family-separation-border-immigrants-children>.

1 hypervigilance that alters a child’s cognition and emotion and causes chronic
 2 problems with how that child responds to stress over a lifetime.¹¹⁸ Such alterations
 3 increase the risk of “psychological and physical health problems,” including
 4 “fundamental changes in brain function,” which may “manifest[] as a loss of capacity
 5 to regulate intense emotions, to cope with future stress and to regulate fear reactions to
 6 reminders of traumatic events,” and may in turn cause “other effects such as
 7 depression, substance abuse, problems forming relationships, and other behavioral
 8 problems.”¹¹⁹

9 138. Separation is not the only source of trauma migrant children will face
 10 upon arrival at the border. After separation, children are likely to be held in detention
 11 centers, where even a short length of stay is known to cause traumatic effects.¹²⁰

12 According to Dr. Luis Zayas, Dean of Steve Hicks School of Social Work and
 13 Professor of Psychiatry at Dell Medical School at the University of Texas, Austin,
 14
 15

16 ¹¹⁸ *Id.*; see also Perry Decl. ¶ 13 (“[T]rauma, neglect, and maltreatment during
 17 childhood have profound effects on physical, social, emotional, behavioral, and
 18 cognitive development. Some of the most important consequences of developmental
 19 adversity are the result of abnormal development and functioning of the brain’s stress
 20 response systems.”); ¶ 21 (“[T]raumatic stress alters the developing brain. It can
 increase risk for a host of emotional and behavioral problems, including antisocial
 behavior, attention problems, acting out, aggressive or violent behaviors, lack of trust,
 and other counterproductive coping mechanisms.”); Berrick Decl. ¶¶ 13, 16; Gee
 Decl. ¶¶ 5, 8.

21 ¹¹⁹ Hidalgo Decl. ¶ 13; Gee, *supra* note 117 (“A child whose brain is constantly
 22 scanning the environment for danger will undoubtedly have difficulty paying attention
 in class or interacting with peers on the playground. Some children will internalize
 their feelings and appear numb; others will respond by acting out. In the long run, the
 23 cascade of consequences places individuals who have experienced early trauma at risk
 for academic or occupational failure, substance abuse, and health problems such as
 heart disease and diabetes.”); Doyle, *supra* note 103, (“‘Long-term, these individuals
 24 who have traumatic reactions are at heightened risk of virtually every medical
 problem,’ says Dr. Judith Cohen, Medical Director of the Center for Traumatic Stress.
 25 ‘Neurologic to cardiac to pulmonary to reproductive problems . . . just go down the
 body and virtually every part is affected.’”).

26 ¹²⁰ Council on Community Pediatrics, *Policy Statement—Detention of Immigrant*
 27 *Children*, AMERICAN ACADEMY OF PEDIATRICS (March 2017),
<http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>; see
 28 also Zayas Decl. ¶¶ 11, 15.

1 both “[s]cience and clinical practice show that [] children being held in detention with
2 or without their parents are undergoing extraordinary stress and pain.”¹²¹

3 139. Reports concerning unaccompanied immigrant children detained in the
4 United States found high rates of mental health disorders like anxiety, depression,
5 posttraumatic stress disorder, and suicidal ideation, as well other behavioral problems
6 that do not necessarily disappear upon release.¹²² Experts concur that any period of
7 detention, even if brief, can cause psychological trauma and induce long term mental
8 and medical health risks in children.¹²³ According to the American Academy of
9 Pediatrics, “there is no evidence indicating that any time in detention is safe for
10 children.”¹²⁴

11 140. Indeed, separation and detention are likely to be only some of many
12 traumatic experiences already suffered by a migrant child. The families arriving daily
13 at this nation’s borders are likely to be fleeing endemic levels of crime, violence, and
14 victimization in their home countries.¹²⁵ They are likely to have been victims of
15 violence, both in their homes and communities.¹²⁶ On top of that, migrant children
16 and their families are likely to have endured a harrowing journey across thousands of
17 miles without adequate food, water, or protection.¹²⁷ To be suddenly separated from
18

19 ¹²¹ Zayas Decl. ¶ 11.

20 ¹²² Council on Community Pediatrics, *supra* note 120.

21 ¹²³ Zayas Decl. ¶¶ 11, 15-19.

22 ¹²⁴ Council on Community Pediatrics, *supra* note 120.

23 ¹²⁵ Adriana Beltrán, *Fleeing Violence in Central America*, WOLA: COMMENTARY
24 (Feb. 21, 2017), <https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle/> (“In [] Guatemala and Honduras, homicide levels have decreased
25 overall, but both remain among the world’s most violent countries not at war.”);
26 (“Extortion is widespread, with small businesses, the public transportation sector, and
27 poor neighborhoods being the most heavily hit. . . . Failure to pay can result in
28 harassment, violence, or death.”); *id.* (“Honduras and Guatemala are some of the most
dangerous countries to be a woman, with female homicide rates among the highest in
the world.”).

¹²⁶ *Id.*

¹²⁷ *NAPNAP Statement Opposing the Border Separation of Children and Parents*,
NAT’L ASS’N OF PEDIATRIC NURSE PRACTITIONERS (June 11, 2018),

1 one or both parents compounds trauma upon trauma.¹²⁸ Exposure to multiple
 2 traumatic events results in even higher risks for the multitude of mental and medical
 3 problems described above.¹²⁹

4 **Plaintiffs and Their Children Forcibly Separated By the Government Are**
 5 **Subject to Severe, Ongoing Trauma**

6 141. Plaintiffs and their children have experienced and continue to experience
 7 severe, complex trauma as a result of their forced separation. This trauma is evident
 8 in the emotional response to this separation that each has displayed.

9 142. Ms. P, Ms. O, and Ms. M have exhibited symptoms of trauma. “For
 10 example, both J.O. and R.M. cried unconsolably after they realized that their children
 11 were being taken away.”¹³⁰ “Both R.M. and J.O. reported feeling a sense of anguish
 12 and fear that they would not see [their] daughter[s] again.”¹³¹ According to Dr.
 13 Hidalgo, the “level of stress related to the separation can take a toll on parents and
 14 may cause physical and mental health symptoms such as loss of sleep, loss of appetite,
 15 headaches, anxiety, depression, and suicidal ideation.”¹³² Ms. O and Ms. M have
 16 experienced distress and symptoms such as losing sense of time, inability to eat, and
 17 sleeplessness.¹³³

18 143. Likewise, Ms. P “reports that she was terrified by the fact of separation
 19 and thought that she would never see her daughter again.”¹³⁴ As a result, she has

20 <https://www.napnap.org/napnap-statement-opposing-border-separation-children-and-parents>.

21 ¹²⁸ Tammy Bean, PhD, et al., *Comparing Psychological Distress, Traumatic Stress*
 22 *Reactions, and Experiences of Unaccompanied Refugee Minors with Experiences of*
 23 *Adolescents Accompanied by Parents*, 195 J. NERVOUS MENTAL DISEASE, 288, 288
 (2007); *see also* Hidalgo Decl. ¶ 9; Zayas Decl. ¶ 8; Declaration of Carolyn Murphy
 (“Murphy Decl.”), ¶ 5.

24 ¹²⁹ Gee, *supra* note 117.

25 ¹³⁰ Hidalgo Decl. ¶ 14.

26 ¹³¹ *Id.*

27 ¹³² *Id.*

28 ¹³³ *See generally* J.O. Decl.; R.M. Decl.

¹³⁴ Acuña Decl. ¶ 6.

1 “upsetting thoughts or images about being separated from her daughter ‘almost
2 always,’” “feel[s] upset when she thinks or hears about events that have transpired
3 ‘almost always,’” “and reports crying four times a day.”¹³⁵ Ms. P has difficulty
4 sleeping, and has “trouble concentrating ‘almost always.’”¹³⁶

5 144. These symptoms due to family separation are compounded by the
6 presence of other traumatized parents in confinement and by the traumatic events that
7 caused them to migrate in the first place. For instance, R.M. has reported that “she
8 saw other parents ‘wailing and crying until they could cry no more.’”¹³⁷ J.P. has
9 similarly reported that “[s]he worries what will happen to her next,” in part, because
10 “when she sees women leave the detention center, she does not know where they go
11 and what happens to them.”¹³⁸ Further, Dr. Hidalgo notes that “[m]any of the
12 parents”—including the Plaintiffs—“have previously experienced other traumas and
13 have fled their home countries seeking sanctuary from violence,” and that for “parents
14 who have a prior history of trauma and losses, the forcible separation from their
15 children can lead to higher rates of posttraumatic stress disorders, depression, anxiety,
16 suicidal behavior, among other impacts.”¹³⁹

17 145. Plaintiffs’ children have also experienced identifiable trauma. For
18 instance, L.P. recalls having “a hard time thinking of anything but her mother” and
19 “spen[t] most of the time crying” until she could speak with her mother.¹⁴⁰ When she
20 attempts not to cry, she experiences nosebleeds and headaches.¹⁴¹ The harm is made
21 worse because other children in the facility are also distressed. As she has “tearfully
22 reported,” “it can sometime be hard to fall asleep as she can hear the younger children

23 ¹³⁵ *Id.* ¶ 7.

24 ¹³⁶ *Id.*

25 ¹³⁷ Hidalgo Decl. ¶ 14.

26 ¹³⁸ Acuña Decl. ¶ 8.

27 ¹³⁹ Hidalgo Decl. ¶ 15.

28 ¹⁴⁰ Allen Decl. ¶ 12.

¹⁴¹ *Id.*

1 [as young as two years old] crying for their mothers.”¹⁴² “S.Q. and T.B. each [have]
 2 reported symptoms including excessive worry, dysphoric mood, crying spells, sleep
 3 and appetite disturbances, and fear of the unknown” “stemming from family
 4 separation.”¹⁴³ Other children who have been separated from their parents “ha[ve]
 5 significantly regressed to the point that [they] are now non-verbal, soil themselves,
 6 and have communication and socializing problems.”¹⁴⁴

7 146. Further, in what appears to be a willful disregard for the trauma they have
 8 and continue to endure, immigration officers responsible for carrying out the
 9 detentions have treated each of the Plaintiffs with remarkable cruelty. Ms. P and her
 10 daughter were held in deplorable conditions for three days before their forced
 11 separation.¹⁴⁵ Officers made no efforts to help Ms. P communicate with her daughter
 12 until counsel became involved, despite her obvious distress.¹⁴⁶ In an act particularly
 13 symbolic of the subhuman way that detainees are treated, a CBP officer threw
 14 crackers on the floor to force Ms. M pick them up, rather than simply handing them to
 15 her.¹⁴⁷ These actions inevitably and purposely exacerbate the trauma for the Plaintiffs.

16 147. To date, Plaintiffs have not received trauma-informed mental-health
 17 screenings or services to address the harms suffered.

18 **TO REMEDY TRAUMA INFLICTED BY ITS CRUEL POLICY, THE**
 19 **GOVERNMENT MUST OFFER SEPARATED FAMILIES**
 20 **COMPREHENSIVE MENTAL-HEALTH SERVICES PROVIDED UNDER**
 21 **APPROPRIATE CONDITIONS**

22 148. Defendants have an obligation to provide adequate medical care,
 23 including mental-health services, to individuals that they detain against their will and

24 ¹⁴² *Id.* ¶ 14.

25 ¹⁴³ Declaration of Alfonso Mercado (“Mercado Decl.”) ¶ 7.

26 ¹⁴⁴ *Id.* ¶ 8.

27 ¹⁴⁵ Chavez L.P. Decl. ¶¶ 10-12.

28 ¹⁴⁶ J.P. Decl. ¶ 21.

¹⁴⁷ R.M. Decl. ¶ 11.

1 to remedy the harms caused by their unconstitutional actions. If the separated families
 2 are to recover from the trauma imposed by Defendants' actions, these mental-health
 3 services cannot be provided in the same slipshod manner as the government
 4 implemented its initial trauma-inducing policy. Instead, they must be provided under
 5 conditions conducive to effective treatment.

6 149. Most importantly, the treatment must be evidence-based and trauma-
 7 informed, meaning that it must be designed especially to alleviate the psychological
 8 and neurobiological consequences of forcible separation.¹⁴⁸ Such treatments exist and
 9 have been shown to be effective across cultural backgrounds.¹⁴⁹ Some have been
 10 successfully adapted for immigrant populations.¹⁵⁰ These mental-health services often
 11 take the form of trauma-focused cognitive behavioral therapy.¹⁵¹

12 150. For these services to be effective, several conditions must be met.

13 151. First, the families must be reunified in short order consistent with the *Ms.*
 14 *L* injunction. The longer the separation, the more pervasive and intense the trauma
 15 becomes.¹⁵² “The effects of trauma on separated children are [already] significant,
 16 long-lasting, and difficult to mitigate.”¹⁵³ Prolonging the separation understandably
 17 increases the trauma and thus requires more intense mental-health services.

18 152. Second, all parents and children must be immediately screened “to
 19 identify those whose anxiety is toxic and detrimental to themselves and their families,
 20 as well as those whose anxiety has grown into trauma with its accompanying
 21

22 ¹⁴⁸ See, e.g., Perry Decl. ¶ 22; Hidalgo Decl. ¶ 21; Gee Decl. ¶ 10.

23 ¹⁴⁹ See Gee Decl. ¶ 10; Hidalgo Decl. ¶ 18.

24 ¹⁵⁰ See Gee Decl. ¶ 10.

25 ¹⁵¹ See, e.g., *id.*

26 ¹⁵² See *id.* (“Longer durations of trauma exposure are consistently associated with
 27 poorer outcomes.”); Hidalgo Decl. ¶ 12; Carrion Decl. ¶ 13 ([reuniting the families] is
 necessary to prevent further damage as it will restore the children’s primary support
 system and prevent the accretion of yet more stress from the continuation of the
 traumatic separation to their allostatic loads”).

28 ¹⁵³ Hidalgo Decl. ¶ 13.

1 symptoms,”¹⁵⁴ so that treatment plans can be developed for them. “Screening is a
 2 ‘wide-net’ process, the first step in the assessment and treatment process,”¹⁵⁵ and it is
 3 essential because “[t]he longer [appropriate] interventions are delayed, the greater the
 4 negative cumulative effect the acute neurophysiological, neuroendocrine, and
 5 neuropsychological response will have on these children and their parents.”¹⁵⁶ Such
 6 screenings must also be repeated following family reunification to determine whether
 7 the process of reunification revealed trauma not previously evident. For these
 8 screenings to be effective given the special trauma inflicted upon the families, they
 9 must be conducted according to trauma-informed procedures and by appropriately
 10 trained trauma-informed professionals.¹⁵⁷ Specifically, they must meet several
 11 conditions: to start, a tool must show “*efficacy* (*i.e.*, reliability, validity, and accuracy
 12 in identifying individuals with trauma) and *effectiveness* (*i.e.*, generalizability to the
 13 real-world that adults and children inhabit).”¹⁵⁸ A tool must also show “*sensitivity*
 14 (*i.e.*, number of individuals correctly identified, that is true positives) and *specificity*
 15 (*i.e.*, eliminating those who do not demonstrate a problem, that is true negatives).”¹⁵⁹

16 153. Third, to the extent that professionals conducting the screening find that
 17 the families are experiencing or have experienced trauma due to Defendants’ policy,
 18 appropriate mental-health services must be offered in an appropriate environment.
 19 While each family’s ultimate treatment must be tailored to its particular

22 ¹⁵⁴ Loring Decl. ¶ 11; *see* Hidalgo Decl. ¶ 16; Zayas Decl. ¶¶ 20-21; Mercado Decl.
 23 ¶ 9.

24 ¹⁵⁵ Zayas Decl. ¶ 21.

25 ¹⁵⁶ Perry Decl. ¶ 22.

26 ¹⁵⁷ *See* Gee Decl. ¶ 18 (“All mental health assessment and treatment provided to
 27 plaintiffs and all similarly situated parents and children be delivered in a culturally
 28 competent and linguistically sensitive manner and by mental health clinicians trained
 in evidence-based trauma-informed interventions.”); Zayas Decl. ¶ 28.

¹⁵⁸ Zayas Decl. ¶ 21.

¹⁵⁹ *Id.*

1 circumstances, extensive research suggests that several baseline factors will be
2 common for all affected families.

3 154. One, counseling services are most effective in such situations when
4 provided at the family level, meaning that “the adult caregivers must be a part of the
5 trauma intervention provided to these children.”¹⁶⁰ “Appropriate treatment for trauma
6 caused by separation should consist of family therapy” because the trauma touched
7 “all family members” and their relationships with each other, and thus family therapy
8 “is necessary to address family pain.”¹⁶¹ Put another way, this approach is necessary
9 not only to assist the child in “reestablishing [his or her] ability to effectively regulate
10 himself [or herself],” but also “to treat [the parent’s] own primary trauma and to
11 effectively support their traumatized child.”¹⁶² Indeed, “[d]ecades of research
12 demonstrates that the most significant protective factor for vulnerable children facing
13 adversity are bonds to those that love them.”¹⁶³

14 155. Two, these services must “be delivered in a culturally competent and
15 linguistically sensitive manner and by mental health clinicians trained in evidence-
16 based trauma-informed interventions.”¹⁶⁴ The trauma caused by family separation is
17 acute, and the migrant families are diverse. For the trauma to be appropriately
18
19
20

21 ¹⁶⁰ Perry Decl. ¶ 23; *see* Allen Decl. ¶ 22.

22 ¹⁶¹ Acuña Decl. ¶ 12.

23 ¹⁶² Perry Decl. ¶¶ 23-24; *see also* Hidalgo Decl. ¶ 25; Murphy Decl. ¶ 9 (“family or
24 parental involvement is often critical in providing treatment to children and young
25 people, both to obtain collateral historical information and because the entire family
‘system’ may have been traumatized and need treatment both in support of the minor
child and to prevent a re-traumatization effect when the child is reunited with family
members whose own trauma has not been addressed.”).

26 ¹⁶³ Hidalgo Decl. ¶ 31.

27 ¹⁶⁴ Gee Decl. ¶ 31; *see* Allen Decl. ¶ 22; Zayas Decl. ¶ 28 (“all screenings,
28 assessments, and treatments [must] be culturally, linguistically, and developmentally
appropriate, and scientifically tested”); Hidalgo Decl. ¶ 18 (“[s]creenings and
evaluations should be conducted by culturally and linguistic competent providers”).

1 mitigated, the mental-health services must be tailored to address the specific
2 individuals harmed and their symptoms.

3 156. Three, these services must be provided in an environment that does not
4 continue or prolong the trauma. “[T]herapeutic work while in a setting or
5 circumstance where there is continuing distress, threat, uncertainty and
6 unpredictability can undermine, or even make impossible, meaningful therapeutic
7 progress.”¹⁶⁵ In addition, “[f]or a child and an adult to remain in a setting he/she
8 associates with the traumatic separation (even after reunification with the mother or
9 father), ... will cause additional and profound anticipation of further traumatic events:
10 The mother and father who also experienced traumatic separation from their child
11 would need to be placed in a safe family setting with their child(ren) to avoid an
12 increase in such trauma symptoms as persistent negative thoughts and expectations
13 about oneself, one’s world, and others.”¹⁶⁶

14 157. An environment like the detention centers where class members are
15 currently housed can prevent and even undermine trauma intervention.¹⁶⁷ AAP has
16 stated that “continuing to maintain the ‘zero tolerance’ policy will put more children
17 in detention facilities, an environment [that] is no place for a child, even if they are
18 accompanied by their families.”¹⁶⁸ AAP explained, “Studies of detained immigrants
19 have shown that children and parents may suffer negative physical and emotional
20 symptoms from detention, including anxiety, depression and posttraumatic stress
21 disorder. Conditions in U.S. detention facilities, which include forcing children to
22 sleep on cement floors, open toilets, constant light exposure, insufficient food and

23 _____
24 ¹⁶⁵ Perry Decl. ¶ 22.

¹⁶⁶ Loring Decl. ¶ 10.

25 ¹⁶⁷ Hidalgo Decl. ¶ 24 (“Facilities with a law enforcement orientation do not have the
26 training or expertise to manage the complex needs of trauma survivors.”).

27 ¹⁶⁸ Colleen Kraft, *AAP Statement on Executive Order of Family Separation*,
28 AMERICAN ACADEMY OF PEDIATRICS (June 20, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/AAP-Statement-on-Executive-Order-on-Family-Separation.aspx>.

1 water, no bathing facilities, and extremely cold temperatures, are traumatizing for
2 children. No child should ever have to endure these conditions.”¹⁶⁹

3 158. Data from Texas Health and Human Services Commission and the
4 Department of Family and Protective Services shows that numerous of the centers
5 where children are being sent pursuant to this policy “have been cited by state child
6 care facility regulators for dozens of violations in recent years,” some of which have
7 been for serious issues.¹⁷⁰

8 159. Such centers have also been the subject of “fire-code violations, lawsuits
9 claiming abuse, and complaints from employees alleging wrongful termination and
10 unpaid wages.”¹⁷¹

11 160. At family detention centers, former detainees have reported a dozen or
12 more people sharing a single cell, guards ordering that toddlers not be allowed to
13 crawl, and toys barred from living quarters.¹⁷² A 2014 evaluation of children at family
14 detention centers found that “children regressed to bed wetting. A 9-year-old-girl
15 sought to return to breast feeding. Children clung to their mothers legs, fearful of
16 letting them out of sight. Many had night terrors, were depressed or acted out.”¹⁷³

17
18
19 ¹⁶⁹ *Id.*

20 ¹⁷⁰ Manny Fernandez, *Inside the Former Walmart That Is Now A Shelter for Almost*
21 *1,500 Migrant Children*, N.Y. TIMES (June 14, 2018),
22 [https://www.nytimes.com/2018/06/14/us/family-separation-migrant-children-](https://www.nytimes.com/2018/06/14/us/family-separation-migrant-children-detention.html)
[detention.html](https://www.nytimes.com/2018/06/14/us/family-separation-migrant-children-detention.html).

23 ¹⁷¹ Manny Fernandez and Katie Benner, *The Billion-Dollar Business of Operating*
24 *Shelters for Migrant Children*, N.Y. TIMES (June 21, 2018),
25 <https://www.nytimes.com/2018/06/21/us/migrant-shelters-border-crossing.html>.

26 ¹⁷² Sonia Nazario, *There’s a Better, Cheaper Way to Handle Immigration*, N.Y. TIMES
27 (June 22, 2018), [https://www.nytimes.com/2018/06/22/opinion/children-detention-](https://www.nytimes.com/2018/06/22/opinion/children-detention-trump-executive-order.html)
[trump-executive-order.html](https://www.nytimes.com/2018/06/22/opinion/children-detention-trump-executive-order.html).

28 ¹⁷³ *Id.*

1 161. Guards at family detention centers have been accused of sexual assault,
2 abusive treatment, and neglect.¹⁷⁴

3 162. In any event, the government has an obligation to provide the families it
4 has traumatized access to conditions that will not exacerbate the trauma already
5 inflicted and that will allow for effective treatment.

6 163. Finally, given that Defendants' actions have caused this trauma, mental-
7 health services must be provided for a sufficient period of time, including after
8 release.

9 **CLASS ALLEGATIONS**

10 164. Plaintiffs bring this action under Federal Rule of Civil Procedure
11 23(b)(2) on behalf of themselves and a nationwide class of all other persons similarly
12 situated.

13 165. Plaintiffs seek to represent the following nationwide class:

14 All adult parents nationwide who (1) were, are, or will be detained in
15 immigration custody by the Department of Homeland Security, (2) have
16 a minor child who has been, is, or will be separated from them by DHS
17 and detained in DHS or ORR custody or foster care, absent a
18 demonstration in a hearing that the parent is unfit or presents a danger to
19 the child.

20 166. The proposed class is so numerous that joinder of all members is
21 impractical, satisfying Federal Rule of Civil Procedure 23(a)(1). According to
22 Defendants, nearly 3,000 children have been separated from their parents under the
23 Trump Administration's immigration policy. Nearly all of these children's parents
24 remain in DHS's custody.

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27 ¹⁷⁴ *Id.*; Manny Fernandez and Katie Benner, *The Billion-Dollar Business of Operating*
28 *Shelters for Migrant Children*, N.Y. TIMES (June 21, 2018),
<https://www.nytimes.com/2018/06/21/us/migrant-shelters-border-crossing.html>.

1 167. The proposed class meets the commonality requirements of Federal Rule
2 of Civil Procedure 23(a)(2) for several reasons. First, the proposed class members
3 have all been subject to the government's family separation policy and, as a result,
4 have had their children forcibly taken from their care, triggering the harms alleged.
5 Second, other factual questions are common to the proposed class, including whether
6 and to what extent the government has developed an appropriate policy for mitigating
7 the harms inflicted by the family separation policy. Third, multiple questions of law
8 are common to the proposed class, namely whether Defendants' actions have violated
9 their substantive due process rights and their rights to equal protection of the law.

10 168. The proposed class meets the typicality requirements of Federal Rule of
11 Civil Procedure 23(a)(3). Ms. P, Ms. O, and Ms. M have all have been forcibly
12 separated from their children without a finding of unfitness or that they present a
13 danger to their children, and they have not been provided with appropriate mental-
14 health screening or offered appropriate trauma-informed intervention. Additionally,
15 Plaintiffs assert the same rights under the Fifth Amendment.

16 169. The proposed class meets the adequacy requirements of Federal Rule of
17 Civil Procedure 23(a)(4). Ms. P, Ms. O, and Ms. M assert the same claims and seek
18 the same relief as the other members of the class, namely an order that they be
19 provided appropriate mental-health screening and any appropriate trauma-informed
20 intervention in an appropriate environment. The named plaintiffs will defend the
21 rights of all proposed class members fairly and adequately. Further, the proposed class
22 is represented by Sidley Austin LLP and Public Counsel. Counsel have extensive
23 experience litigating class action suits and other complex cases in federal court,
24 including civil rights suits on behalf of noncitizens.

25 170. The members of the proposed class are readily ascertainable through
26 Defendants' records.

27 171. Finally, the proposed class satisfies Federal Rule of Civil Procedure
28 23(b)(2). Defendants have acted or refused to act on grounds that apply generally to

1 the class by forcibly separating the migrant parents from their children under a
2 common policy and failing to provide adequate medical care for detained individuals
3 and to remedy the harms inflicted. As a result, the declaratory and injunctive relief
4 sought by the proposed class will be appropriate with respect to the class as a whole.

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM**

7 **Violation of Substantive Due Process**

8 172. Plaintiffs reallege and incorporate by reference each and every allegation
9 contained in the preceding paragraphs.

10 173. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
11 provides that “[n]o person shall be . . . deprived of life, liberty, or property, without
12 due process of law.” U.S. Const. amend. V.

13 174. The Due Process Clause applies to all persons on United States soil and
14 thus applies to Plaintiffs and their children. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

15 175. The guarantee against the deprivation of liberty without due process bars
16 the government from infringing on certain fundamental liberty interests. The
17 continued separation and confinement of Plaintiffs and their children violates those
18 rights in several respects.

19 176. Plaintiffs and their children have a liberty interest under the Due Process
20 Clause in remaining together as a family and a right to be protected against the
21 government’s arbitrary destruction of the integrity of their families. *See, e.g.*,
22 *Santosky v. Kramer*, 455 U.S. 745 (1982); *Moore v. E. Cleveland*, 431 U.S. 494
23 (1977); *Meyer v. Nebraska*, 262 U.S. 390 (1923). Under the Fifth Amendment,
24 Plaintiffs also have “the right . . . to make decisions concerning the care, custody, and
25 control of their children.” *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1204 (9th
26 Cir. 2005) (citing *Troxel v. Granville*, 430 U.S. 57, 66 (2000) (plurality op.)). The
27 continued separation of Plaintiffs from their children, without any determination that
28 Plaintiffs were unfit or present a danger to their children, plainly violates these rights.

1 177. Plaintiffs' separation and the resulting trauma occurred while Plaintiffs
2 and their children were in the custody of the United States Department of Homeland
3 Security and the Department of Health and Human Services. Once Defendants
4 detained Plaintiffs and their children, the Defendants incurred a duty not to
5 gratuitously inflict emotional and psychological harm and a duty to provide for their
6 safety and general well-being. *See DeShaney v. Winnebago Cty. Dept. of Soc. Servs.*,
7 489 U.S. 189 (1989).

8 178. By forcibly separating Plaintiffs from their children and keeping them
9 apart, Defendants have inflicted and will continue to inflict upon Plaintiffs
10 extraordinary harm that they would not have otherwise have faced. During Plaintiffs'
11 confinement and since the time Defendants arbitrarily separated Plaintiffs from their
12 children, Plaintiffs have not received the intensive family mental-health screenings
13 and services that they need on an ongoing basis—including for a period following
14 their release from detention—as a result of Defendants' intentional infliction of
15 emotional and psychological harm.

16 179. The separation of Plaintiffs from their children and their continued
17 detention is arbitrary and shocks the conscience. Defendants forcibly separated
18 Plaintiffs from their children without explanation or basis in fact, which deliberately
19 induced severe trauma to both parent and child. Defendants did so despite clear
20 warnings, including from numerous professionals and organizations such as the
21 American Academy of Pediatrics, that their actions were tantamount to child abuse
22 and could result in long-term adverse mental health consequences.

23 180. Defendants intentionally took these actions pursuant to a policy of
24 detention and family separation that lacked any legitimate basis. Subjecting parents
25 and their minor children to the cruel practice of separating families for the purposes of
26 deterring other legitimate asylum seekers, and to use their profound suffering as a
27 political bargaining chip, clearly violates due process.

28

1 181. Plaintiffs and their children have suffered and will continue to suffer
2 irreparable injury from the arbitrary and cruel separation of their families and their
3 unnecessary continued detention.

4 **SECOND CLAIM**

5 **Violation of the Equal Protection Guarantee of the Due Process Clause**
6 **of the Fifth Amendment**

7 182. Plaintiffs reallege and incorporate by reference each and every allegation
8 contained in the preceding paragraphs.

9 183. The Fifth Amendment contains an implicit guarantee of equal protection
10 that invalidates any official action that in part reflects a racially discriminatory intent
11 or purpose. Classifications based on race or national origin receive exacting scrutiny,
12 and even facially neutral policies and practices will be held unconstitutional when
13 they reflect a pattern unexplainable on grounds other than race. *Bolling v. Sharpe*, 347
14 U.S. 497, 499 (1954); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S.
15 252, 265-66 (1977).

16 184. Defendants' decisions to forcibly separate families and to isolate children
17 in detention facilities separate from their parents, are unconstitutional because they
18 were motivated, at least in part, by intentional discrimination based on race, ethnicity,
19 and/or national origin and, in particular, reflect bias against immigrants perceived to
20 come from non-white, non-European countries.

21 185. Plaintiffs have suffered and continue to suffer irreparable injury resulting
22 from the separation and continued detention of asylum-seeking parents and children,
23 and the denial of adequate, remedial, family medical and mental-health services in a
24 setting conducive to effective treatment.

25 **PRAYER FOR RELIEF**

26 Plaintiffs ask this Court to grant the following relief:

27 1. Certify a class of all adult parents nationwide who (1) were, are, or will
28 be detained in immigration custody by the Department of Homeland Security, and (2)

1 have a minor child who has been, is, or will be separated from them by DHS and
2 detained in DHS or ORR custody or foster care, absent a demonstration in a hearing
3 that the parent is unfit or presents a danger to the child;

4 2. Name Ms. O, Ms. P., and Ms. M. as representatives of the class, and
5 appoint Plaintiffs' counsel as class counsel;

6 3. Order Defendants to provide mental-health screenings of Plaintiffs and
7 their children immediately as well as after reunification in order to assess their need
8 for subsequent trauma-informed remedial medical and mental-health services to
9 address the trauma of separation and child detention;

10 4. Order Defendants to offer appropriate trauma-informed remedial medical
11 and mental-health services appropriate to address the trauma of separation and
12 detention to Plaintiffs and to Plaintiffs' children and under conditions conducive to
13 effective treatment;

14 5. Order Defendants to permit class counsel or their agents entry into
15 government facilities in which class members are detained to evaluate whether the
16 mental-health screenings and services are being provided and whether they are
17 appropriate;

18 6. Require Defendants to pay reasonable attorneys' fees and costs pursuant
19 to 28 U.S.C. § 2412, and on any other basis justified under law; and

20 7. Grant any other and further relief that this Court may deem fit and
21 proper.

22 Dated: July 12, 2018

Respectfully Submitted,

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22 **Application for admission pro hac vice to be submitted*

23 *** Institution listed for identification purposes only*
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