UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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| **Perla Karlili Alemengor Miranda De Velasquez**, on behalf of herself and as "next friend" on behalf of her child, "**D.**", ****Address Redacted**** Los Angeles, CA<br><br>Petitioner-Plaintiff,<br><br>v.<br><br>**Jefferson Beauregard Sessions III**, in his individual capacity and in his official capacity as Attorney General of the United States<br>950 Pennsylvania Ave, NW<br>Washington, C.C. 20530;<br><br>**Kirstjen Nielsen**, in her official capacity as Secretary of U.S. Department of Homeland Security ("DHS")<br>245 Murray Lane, SW<br>Washington, D.C. 20528;<br><br>**Kevin K. McAleenan**, in his official capacity as Acting Commissioner of U.S. Customs and Border Protection ("CBP")<br>1300 Pennsylvania Ave., NW<br>Washington, D.C. 20229;<br><br>**Alex Azar**, in his official capacity as Secretary of U.S. Department of Health and Human Services ("HHS")<br>200 Independence Ave, SW<br>Washington, D.C. 20201; | ) | Case No. _____ |

**Scott Lloyd**, in his individual capacity and his official capacity as Director of Office of Refugee Resettlement ("ORR") 330 C. Street, SW Washington, D.C. 20201

**John Doe 1**, in his official capacity as ORR Federal Field Specialist for Bodencamp Children's Shelter operated by Upbring/Lutheran Social Services of the South, Inc. located at 5517 S Alameda St, Corpus Christi, TX 78412,

Respondents-Defendants.

JURY TRIAL DEMANDED

**PETITION FOR HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND MONETARY RELIEF**

Perla Karlili Alemengor Miranda De Velasquez, ("Ms. V") on both her on behalf and as "next friend" on the behalf of her child, "D.," by and through counsel, files this petition for habeas corpus and complaint for declaratory relief and damages against Defendants (Trump Administration), to vindicate her substantive and procedural due process rights and equal protection rights under the Fifth Amendment of the U.S. Constitution, her rights to be free from arbitrary and capricious agency action under the Administrative Procedure Act, and her rights under the International Convention on Civil and Political Rights, the United Nations Convention Relating to Status of Refugees, and 8 U.S.C. § 1158. In support, Plaintiff states as follows:

## INTRODUCTION

1.

Jeff Sessions, the Attorney General of this country, has admitted to discriminating against persons based on their national origin; in fact, Sessions has unabashedly targeted asylum seekers who originate from Central America. Specifically, as recent as April 11, 2018, Defendant Sessions delivered public remarks on immigration enforcement announcing the "zero-tolerance" policy:

- "The lack of a wall on the **southern border** is an open invitation to illegal border crossings."
- "But the increased crossings are also happening because of the loopholes in our laws being exploited by illegal aliens and open border radicals every day… **Unsurprisingly, the exploitation of this 'credible fear' loophole exploded**."
- "We can return UACs [Unaccompanied Alien Children] from Canada and Mexico relatively quickly—but because of loopholes in our laws, **the large numbers of UACs from Central America are not able to be returned quickly**. Instead they are released into the interior of the United States."

2.

Following these statements, in the same public remarks, Sessions made the following announcement:

> I have ordered each United States Attorney's Office along the **southwest border to have a zero tolerance policy toward illegal entry**. Our goal is to prosecute every case that is brought to us. There must be consequences for illegal actions, and I am confident in the ability of our federal prosecutors to carry out this new mission.

(Exhibit 10.)

3.

Sessions' discrimination based on people originating from Central America becomes even more clear when you juxtapose (1) his focus on "loopholes" based on the assertion of a credible fear with (2) the fact that nearly 90% of individuals in family facilities from Central American countries of El Salvador, Guatemala, and Honduras pass their credible or reasonable fear interviews, something Sessions views as "exploitation of this 'credible fear' loophole." See (Exhibit 9 at p. 10). Sessions has targeted Central America. Simply put, Session's zero-tolerance policy is racist and discriminatory in a manner not permitted by the Constitution, and this is not the first time Sessions has been accused of abusing his authority to discriminate against people of color. See (Exhibit 12, Letters from Coretta Scott King, imploring officials not to elevate Sessions to a Federal Judgeship.)

4.

Even current Chief of Staff John Kelly has echoed Sessions' intent to discriminate upon people who originate from Central American countries to

cross the U.S. southern border. In March 2017, when Kelly was still Secretary of Homeland Security, Kelly made the case that separating children from their families could deter immigrants from illegally seeking entry to the United States. In an interview with CNN's Wolf Blitzer, Blitzer asked Kelly if he was considering separating children from their parents:

> "Let me start by saying I would do almost anything to deter the people from Central America to getting on this very, very dangerous network that brings them up through Mexico to the United States," Kelly said.
>
> Blitzer pressed him on the point: Is the Department of Homeland Security going to separate children from their parents?
>
> "Yes, I am considering, in order to deter more movement along this terribly dangerous network, I am considering exactly that," Kelly said. "They will be well cared for as we deal with their parents."

(**Exhibit 2**, Published Video of John Kelly interview with CNN's Wolf Blitzer, March 2017 at minute mark 7:00.)

5.

On top of discriminating based on national origin/race to effectively separate children from their parents as a means of deterring Central Americans from crossing the Southwest border, contrary to Defendant ORR's stance that it is looking out for the best interest of the child during this entire inhumane atrocity—just two years ago (in October 2016) the Immigration and Customs Enforcement (ICE) Advisory Committee on Family Residential Centers (ACFRC)

made recommendations which demonstrate that these Defendants are far from operating in the best interest of separated children. Those recommendations include:

(1) ICE should "operationalize the presumption that . . . **detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children**."

(2) **"Children should not be separated from their parents in order to continue to detain the adults, or to continue to hold the children by placing them in ORR care."**

(3) "bona fide asylum seekers in general should not be needlessly detained, [and] **this is particularly true for children, whose best interests must be paramount in all enforcement decisions pertaining to them. The harmful effects of detention on children are well established**."

(4) "DHS should not use detention for the purpose of deterring future family migration or punishing families seeking asylum in the U.S. Any contrary policy is unlawful and ineffective."

(5) "DHS should place families in regular proceedings . . . and **in all but the most unusual situations release them promptly as a family."**

(6) "DHS should generally exercise its authority to release family members, **together as a family**, **as soon as possible**. . . . When DHS concludes that it should, or must, release a child from family detention **it should release the child with her parent and siblings absent extraordinary circumstances**, **given the traumatic and detrimental impact of that separation** . . ."

(Exhibit 9, ICE Advisory Committee on Family Residential Centers, October 7, 2016, pp. 5-18) (hereafter referred to as the "ACFRC Report") (emphasis added).

6.

The Trump Administration may be unusual for modern democracies, but it's not unique. The Administration's concentration of children in camp facilities, separate from their parents, has been seen before: in Nazi Germany, and in slavery times. The Administration's doubled-down stance on this horrific policy, and attempts to silence bi-partisan opposition, has also been seen before, for example: Francoist Spain. Simply, the Administration has embarrassed the very country, the United States, who led the development of the most significant Human Rights Treaties in the world, Human Rights treaties designed to respect the rights and dignity of all people, not trample them.

7.

That said, Ms. V. has been released by the federal government, and with her release, there is zero basis for ORR to continue imprisoning her 12-year-old daughter as one of the thousands of children concentrated in ORR's camps across the country. In a crude attempt to justify holding Ms. V.'s child, ORR continues to wrongly characterize D. as an "unaccompanied" child, while knowing that Ms. V. came to the United States with D., along with her government I.D. and D.'s birth certificate showing that Ms. V. is D.'s parent, and while knowing Ms. V. is free and has demanded her child be released from ORR's concentration camp of children. By mischaracterizing the child as "unaccompanied," ORR

applies its procedures pursuant to the Trafficking Victims Protection Reauthorization Act (TVPRA), an act of congress designed to ensure *actual* unaccompanied alien minors are "protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." But doing so wrongly puts the burden on the parents to prove that they are not traffickers or doing something wrong to endanger or victimize the child. *This is absolutely wrong because once an asylum-seeking parent shows the birth certificate and valid ID, upon the asylum seeker's release the child should be released with the asylum seeker, or within 24 hours.* Furthermore, it is a violation of due process to take a designated asylum-seeker's child—period. Regardless, upon release of the parent (Asylum seeking or otherwise), the parent's child should be returned within 24 hours.

8.

That said, Defendant's conduct of separating children from their parents at the border—as a means of deterring prospective border crossers—is unconstitutional. Three years ago, a similar presidentially sanctioned policy—the "no release" policy—was deemed unconstitutional by our nation's district court in Washington D.C. See (**Exhibit 1,** for case law.) This new policy that faces our country is just as despicable, because it discriminates based on national origin while acting as an unconstitutional deterrent. On top of Sessions blatantly

discriminating upon Plaintiff based upon her national origin, key government officials, including White House officials, have provided us with rock-solid proof of this unconstitutional deterrence program. For example, President Donald Trump's Chief of Staff, John Kelly, when he was Secretary of Homeland Security, stated that separating children from families crossing the U.S. border would be an effective "deterrent" to those considering coming to the United States. At present, this "deterrent"—ripping, literally, children from the arms of their mothers and fathers—is being used against all families, *including families seeking asylum*, despite the administration's denials, deflections, and semantics. This Court should take one more step to halting this blatantly unconstitutional practice by releasing Ms. V.'s daughter immediately, thereby respecting both our Constitution and the numerous Human Rights treaties that our country has signed—to prevent, and halt, situations just like this one.

9.

Ms. V. brings this action to have the government reunite her with her young child, D. from whom she has been separated now for over one month. Ms. V. was released on bond after seeking asylum, making a credible fear claim, and being adjudged as not posing a flight risk or a danger to the community. Nevertheless, Ms. V.'s daughter remains in federal custody.

10.

Coming to this country to seek Asylum is legally permitted by our Government. Consequently, forced separation of children from their parents, who are seeking Asylum, is patently unlawful, demonstrating an intentional, absolute disregard for the law to reach the unconstitutional result of deterring migrants. These Defendants know that separating children from their parents causes severe trauma to young children, especially those who are already traumatized and are fleeing persecution in their home countries. The resulting cognitive and emotional damage can be permanent. Simply put, the World Community frowns upon the Trump Administration's conduct, having long condemned this type of conduct as violating the rights and dignity of people worldwide.

11.

These Defendants also know full well that the Due Process Clause of the Fifth Amendment protects Ms. V.'s interest in the care, control and custody of her daughter, especially her interest in protecting her daughter from outrageous government conduct that shocks the conscience, while offending contemporary notion of decency and humanity. Likewise, the Fifth Amendment also protects D.'s familial right to be raised and nurtured by her parents. There can be no doubt that Defendant's conduct shocks the conscience, as evidenced by strong bi-

partisan congressional support and an executive order (by Trump himself) designed, purportedly, to halt this outrageous conduct.

**JURISDICTION**

12.

This case arises under the Fifth Amendment to the United States Constitution, the Administrative Procedures Act (APA), and the Declaratory Judgment Act, *inter alia*. The court has subject matter jurisdiction under 28 U.S.C. § 1331.

13.

The court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas jurisdiction); and Art. I., § 9, cl. 2 of the United States Constitution ("Suspension Clause").

14.

Plaintiff's child, D., is in custody for purposes of habeas jurisdiction.

15.

Plaintiff acknowledges that there is a circuit split on the interpretation of Rumsfeld v. Padilla, 542 U.S. 426 (2004), regarding who should be named in a habeas petition for the release of a child from ORR. Plaintiff asserts that Scott Lloyd, as the agency head of ORR, is the proper respondent for Habeas purposes. See e.g., Santos v. Smith, 260 F.Supp.3d 598, 607-609 (2017).

16.

Personal Jurisdiction is proper because Defendants transact business in this District and thus are subject to personal jurisdiction in this Court.

**IMMUNITY**

17.

Plaintiff's claims are not barred by Sovereign Immunity: "[Habeas Corpus] writs, directed against government custodians, have never been regarded as barred by sovereign immunity and play a major rule-of-law role in checking unlawful deprivations of liberty." Historically, habeas petitions have been regularly used to review the legality of executive detention, receiving their greatest protections in that context. Indeed, this protection is so great, it is not limited to only addressing constitutional errors. Indeed, "in case after case, courts answered questions of law in habeas corpus proceedings brought by aliens challenging Executive [actions]."

**VENUE**

18.

Venue is proper under 28 U.S.C. § 1391 because at least one of the Defendants is subject to personal jurisdiction in this district with regards to this action.

## PARTIES

19.

Plaintiff Ms. V. is a citizen of Guatemala and was born in 1988. She is the mother of 12-year-old "D."

20.

Defendant Kirstjen Nielsen is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"), the agency which has responsibility for enforcing the immigration laws of the United States. In this capacity, she directs each of the component agencies within DHS: ICE, USCIS, and CBP. As a result, Respondent Nielsen has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, is empowered to grant asylum or other relief, was a legal custodian of Plaintiff at the time of separation, and is a custodian of Plaintiff's child, D.

21.

Defendant Kevin K. McAleenan is sued in his official capacity as the Acting Commissioner of U.S. Customs and Border Protection ("CBP"), the sub-agency of DHS that is responsible for the initial processing and detention of noncitizens who are apprehended near the U.S. border.

22.

Defendant Alex Azar is sued in his official capacity as the Secretary of the U.S. Department of Health and Human Services (HHS), a department of the executive branch of the U.S. government which has been delegated with authority over "unaccompanied" noncitizen children.

23.

Defendant Scott Lloyd is sued in his individual capacity and his official capacity as the Director of the Office of Refugee Resettlement (ORR), the component of HHS which provides care of and placement for "unaccompanied" noncitizen children. As a matter of law, Lloyd has the authority to order the immediate release of D. to Ms. V. Lloyd condoned and ratified a policy that prohibited D. from being released to Ms. V., despite knowing and verifying the fact that Ms. V. is D.'s actual mother who came across the border with D. and sought asylum with her. By condoning and ratifying this policy, Lloyd directly participated in the action that has violated the rights of Ms. V. to the care, custody, and control of her daughter, as protected by the Due Process Clause of the U.S. Constitution.

24.

Defendant John Doe 1 is a Federal Field Specialist of the Office of Refugee Resettlement ("ORR"), the component of HHS which provides care of and

placement for "unaccompanied" noncitizen children. John Doe 1 is the ORR Federal Field Specialist responsible for the Bodencamp Children's Shelter operated by Upbring/LSS, located at 5517 S Alameda St, Corpus Christi, TX 78412, the facility where D. is being held. As a matter of law, Doe 1 has the authority to order the immediate release of D. to Ms. V. Despite reviewing the identification and birth certificate, and therefore knowing and understanding that Ms. V. is the rightful parent of D., Doe 1 has refused to order or otherwise permit the immediate release of D. to Ms. V. By doing so, Doe 1 has violated the substantive due process rights of Ms. V. Doe 1 is sued in his individual and official capacities.

## RELEVANT FACTS

### a. "Zero Tolerance" and the Trump Administration's separation of parents from their young children

25.

Over the past year, the federal government has separated hundreds of migrant families for no legitimate purpose.

26.

Numerous families are fleeing persecution and thus seeking asylum.

27.

Although there are no allegations that the parents are unfit or abusing their children in any way, the government has forcibly separated them from their

young children and detained the children, often far away, in facilities for "unaccompanied" minors.

28.

Children who enter this country with their parents do not meet the plain language definition of unaccompanied minors, a definition that states "the term unaccompanied alien child means a child who – (A) has no lawful immigration status in the United States; (B) has not attained the 18 years of age; and (C) with respect to whom – (i) there is no parent of legal guardian in the United states; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2). As an initial matter, the children that enter the United States with their parents naturally have that parent in the United States, and that parent is available to provide care and physical custody. Further, and significantly, both the Board of Immigration Appeals and Appellate Courts "repeatedly have held that a parent's status, intent, or state of mind is imputed to the parent's unemancipated minor child in many areas of immigration law, including asylum." As such, these children have the same status as lawful asylum seekers as their parents imputed to them, failing to meet the definition of unaccompanied minor for that reason as well.

29.

There is overwhelming medical evidence that the separation of a young child from his or her parent will have a devastating negative impact on the child's well-being, especially where there are other traumatic factors at work, and that this damage can be permanent.

30.

The American Association of Pediatrics has recently denounced the Administration's practice of separating migrant children from their parents, noting that: "The psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation—even after the eventual reunification with a parent or other family."

31.

Such a situation could have long-term, devastating effects on young children, who are likely to develop what is called toxic stress in their brain once separated from caregivers or parents they trusted. This disrupts a child's brain development and increases the levels of fight-or-flight hormones in their bodies; and this kind of emotional trauma could eventually lead to health problems, such as heart disease and substance abuse disorders.

32.

Furthermore, studies of detained immigrants have found negative physical and emotional symptoms among detained children including: developmental delay and poor psychological adjustment and high rates of posttraumatic stress disorder, anxiety, depression, **suicidal ideation**, and other behavioral problems. Expert consensus has concluded that **even brief detention** can cause psychological trauma and induce long-term mental health risks for children. Parents described "regressive behavioral changes in their children, including self-injurious behavior, and aggression. See (Exhibit 11, "Detention of Immigrant Children," Pediatrics: Official Journal of the American Academy of Pediatrics, March 13, 2017 (downloaded from www.aappublications.org/news on June 24, 2018.)

33.

As of the date of filing Ms. V.'s Complaint, over 13,000 mental health professionals and 229 organizations have signed a petition urging President Trump, Attorney General Jeff Sessions and several elected officials to stop the policy of separating children from their parents. The petition says:

> These children are thrust into detention centers often without an advocate or an attorney and possibly even without the presence of any adult who can speak their language. **We want you to imagine for a moment what this might be like for a child: to flee the place you have called your home because it is not safe to stay and then embark on a dangerous journey to an unknown destination, only to be**

> **ripped apart from your sole sense of security with no understanding of what just happened to you or if you will ever see your family again.** And that the only thing you have done to deserve this, is to do what children do: stay close to the adults in their lives for security.

34.

That petition further says:

> To pretend that separated children do not grow up with the shrapnel of this traumatic experience embedded in their minds is **to disregard everything we know about child development, the brain, and trauma**.

35.

Prior Administrations detained migrant families but did not have a practice of forcibly separating parents from their young children.

36.

According to reports, the government may soon adopt a formal national policy of separating migrant families and placing the children in government facilities for so-called unaccompanied minors.

37.

In effect, the Trump Administration adopted this child-separation policy in April 2018 when Sessions announced a "Zero Tolerance" policy for all families that cross the Southwest border, specifically directing U.S. Attorneys Offices of Southern District of California, District of Arizona, District of New Mexico, Western District of Texas, and the Southern District of Texas to criminally

prosecute all Department of Homeland Security referrals of section 1325(a) violations. As a result, when the parents are jailed for the formerly administrative—*now criminal*—offense of crossing the border outside an official port of entry, even when seeking asylum, the children—be they infants, toddlers, pre-teens, or young teenagers—are separated from the parents and placed in HHS custody.

38.

So, while the Trump Administration has used criminal law to justify separating children from their parents, what the Administration cannot even remotely explain or justify, rationally, is continuing the separation of children whose parents assert Asylum and make a credible fear claim. Nor can the Administration explain refusing to return children to their parents, who were released—regardless of whether they sought asylum or were detained for a misdemeanor offense.

39.

Over *2,300 immigrant children* were separated from parents since Sessions announced the "zero tolerance" policy in April, according to the Department of Homeland Security, and upon information and belief, the majority of these 2,300 immigrant children are from Central American Countries.

40.

On Monday, June 18, 2018, the United Nations' top human rights official entered the mounting furor over the Trump administration's policy of separating undocumented immigrant children from their parents, calling for an immediate halt to a practice he condemned as abuse. On that same day, the president of the American Academy of Pediatrics called the practice "child abuse."

41.

There are non-governmental shelters that specialize in housing and caring for families—including asylum seeking families—while their immigration applications are adjudicated. There are also government-operated family detention centers where parents can be housed together with their children, should the government decide not to release them.

42.

On information and belief, the intent of Attorney General Sessions, Homeland Security Secretary Nielsen, and White House Senior Advisor Stephen Miller was to use the de-facto child separation policy as a bargaining chip to get funding to build a "wall" on the southern border and overhaul immigration laws.

**b. The real reason for child separation policy is <u>deterrence</u>: to deter asylum-seeking families from immigrating to the United States** ***for fear that their children will be taken from them upon arrival without explanation***

43.

In March 2017, when Kelly was still Secretary of Homeland Security, Kelly made the case that separating children from their families could deter immigrants from illegally seeking entry to the United States. In an interview with CNN's Wolf Blitzer, Blitzer asked Kelly if he was considering separating children from their parents:

> "Let me start by saying I would do almost anything to deter the people from Central America to getting on this very, very dangerous network that brings them up through Mexico to the United States," Kelly said.
>
> Blitzer pressed him on the point: Is the Department of Homeland Security going to separate children from their parents?
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> "Yes, I am considering, in order to deter more movement along this terribly dangerous network, I am considering exactly that," Kelly said. "They will be well cared for as we deal with their parents."

(**Exhibit 2**, Published Video of John Kelly interview with CNN's Wolf Blitzer, March 2017 at minute mark 7:00.)

44.

In February 2017, two weeks after Trump was inaugurated, a DHS official named John Lafferty raised the idea of using family separation as a deterrent in a town hall meeting for Citizenship and Immigration Services officials, according

to documents obtained by NBC News. See (**Exhibit 3**, "Trump Administration Discussed Separating Moms and Kids to Deter Asylum Seekers," NBC News, March 2017); (**Exhibit 4**, "EXCLUSIVE: Trump Administration Plans Expanded Immigrant Detention," MSNBC, March 2017.)

45.

On May 11, 2018, White House Chief of Staff John Kelly was interviewed by NPR's John Burnett and was asked about the child separation policy as a deterrent:

> Burnett: "Are you in favor of this new move announced by the attorney general early this week that if you cross the border illegally even if you're a mother with your children [we're going] to arrest you? We're going to prosecute you, we're going to send your kids to a juvenile shelter?"
>
> Kelly: "The name of the game to a large degree. Let me step back and tell you that the vast majority of the people that move illegally into United States are not bad people. They're not criminals. They're not MS-13. Some of them are not. But they're also not people that would easily assimilate into the United States into our modern society. They're overwhelmingly rural people in the countries they come from – fourth, fifth, sixth grade educations are kind of the norm. They don't speak English, obviously that's a big thing. They don't speak English. They don't integrate well, they don't have skills. They're not bad people. They're coming here for a reason. And I sympathize with the reason. But the laws are the laws. But a big name of the game is deterrence."
>
> Burnett: "Family separation stands as a pretty tough deterrent."
>
> Kelly: "It could be a tough deterrent — would be a tough deterrent. A much faster turnaround on asylum seekers."
>
> Burnett: "Even though people say that's cruel and heartless to take a mother away from her children?"

> Kelly: "I wouldn't put it quite that way. The children will be taken care of — put into foster care or whatever. But the big point is they elected to come illegally into the United States and this is a technique that no one hopes will be used extensively or for very long."

(**Exhibit 5**, Transcript of White House Chief of Staff John Kelly's Interview with NPR, May 2018.)

46.

On June 18, 2018, on Fox News's "The Ingraham Angle," A.G. Jeff Sessions was asked by host Laura Ingraham if the policy of separating children from their parents was intended as a deterrent:

> Ingraham: "General Sessions, is this policy in part used as a deterrent? Are you trying to deter people from bringing children or minors across this dangerous journey? Is that part of what the separation is about?"
>
> Sessions: "Fundamentally, we are enforcing the law. If you break into the country …"
>
> Ingraham: "But is it a deterrent, sir? Are you considering it a deterrent?"
>
> Sessions: "I see that the fact that no one was being prosecuted for this was a factor in a fivefold increase in four years in this kind of illegal immigration. So, yes, hopefully people will get the message and come through the border at the port of entry and not break across the border unlawfully."

(**Exhibit 6**, "Here are the Administration Officials Who Have Said that Family Separation is Meant as a Deterrent," The Washington Post, June 2018.)

47.

On a conference call with reporters on Tuesday, June 19, 2018, HHS's acting assistant secretary, Steven Wagner, was explicit, according to a transcript provided to The Washington Post by CNBC's Christina Wilkie:

> "We are staying one step ahead of the need," Wagner said. "We expect that the new policy will result in a deterrence effect, we certainly hope that parents stop bringing their kids on this dangerous journey and entering the country illegally. So we are prepared to continue to expand capacity as needed. We hope that that will not be necessary in the future."

(**Exhibit 6**.)

48.

Regarding June 25, 2018 statement by Defendant McAleenan that he has temporarily suspended the prosecution of illegal border entry/attempt at illegal border entry, Sessions and Trump have said that they will continue to prosecute people for alleged criminal conduct of crossing the border, irrespective of if they are seeking asylum (prosecution that has proven undoubted to lead to the separation of families, which is known by Sessions and the President).

49.

In addition, White House press secretary Sarah Huckabee Sanders stressed that the administration's reversal was only temporary because the government is running out of resources. "We're going to run out of space," she said. "We're going to run out of resources to keep people together."

50.

Even further, in a tweet posted June 24, 2018, Trump said that undocumented immigrants caught crossing the border should be sent to their country of origin "immediately, with no Judges or Court Cases."

**c. Discrimination by National Origin and Race according to Sessions' own words**

51.

On April 11, 2018, Defendant Sessions delivered remarks on immigration enforcement announcing the "zero-tolerance" policy:

- "The lack of a wall on the **southern border** is an open invitation to illegal border crossings."
- "But the increased crossings are also happening because of the loopholes in our laws being exploited by illegal aliens and open border radicals every day. For example, the last Administration released large numbers of illegal aliens who illegally crossed our border, but who claimed that they were afraid to return home. Unsurprisingly, the exploitation of this 'credible fear' loophole exploded."
- "We can return UACs from Canada and Mexico relatively quickly—but because of loopholes in our laws, **the large numbers of UACs from Central America are not able to be returned quickly**. Instead they are released into the interior of the United States."

52.

Following these statements, in the same public remarks, Sessions made the following announcement:

> I have ordered each United States Attorney's Office along the **southwest border to have a zero tolerance policy toward illegal entry**. Our goal is to prosecute every case that is brought to us. There must be consequences for illegal actions, and I am confident in the ability of our federal prosecutors to carry out this new mission.

(Exhibit 10.)

53.

It is clear by the above four facts, that Sessions is discriminating based on national origin because he has targeted people because they originate from central American nations.

54.

Sessions' discrimination based on national origin becomes even more clear when you juxtapose his focus on "loopholes" based on the assertion of a credible fear with the fact that nearly 90% of individuals in family facilities from Central American countries of El Salvador, Guatemala, and Honduras pass their credible or reasonable fear interviews. See (Exhibit 9 at p. 10). Sessions has targeted Central America.

55.

Sessions has never directed U.S. Attorneys at any other border other than the southwest border to implement a zero-tolerance policy.

**d. Executive Order issued but the administration has no plan to reunite children and parents (including after their parent is *released*) and falsely classifies children they have forcibly separated from their now-released and U.S.-residing parent, as "unaccompanied"**

56.

On June 20, 2018, President Donald Trump signed an executive order purporting to end family separations, but this order is silent on the reunification of parents and children who have already been separated—be those parents still in detention or released and residing in the United States. See (**Exhibit 7**, Executive Order, June 20, 2018.) Nor is this Executive Order retroactive, meaning the Executive Order doesn't apply to Plaintiff or Plaintiff's daughter.

57.

On June 19, 2018, Beata Mejia-Mejia, a recently released asylum-seeking mother whose child was inexplicably taken from her two days after being detained, sued the federal government to get her son back and filed a motion for a Temporary Restraining Order to that end. The government filed a response in which it described Ms. Mejia-Mejia's son as an "unaccompanied alien child" and claimed that it was following procedures for releasing her son pursuant to the Trafficking Victims Protection Reauthorization Act of 2008, as amended, 8 U.S.C. § 1232 ("TVPRA"). See (**Exhibit 8**, Mejia-Mejia v. ICE et al, 1:18-cv-1445, U.S. District Court for the District of Columbia, ECF 11, p. 2.)

58.

The TVPRA states that the term "unaccompanied alien child" has the meaning given such term in section 279(g) of title 6.

59.

The Homeland Security Act of 2002, as amended, (section 279(g) of title 6) defines the term "unaccompanied alien child" as a child who

(A) has no lawful immigration status in the United States,

(B) has not attained 18 years of age, and

(C) **who has no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody**. 6 U.S.C. § 279(g)(2) (emphasis added).

**e. Ms. V. and her 12-year-old daughter D. are separated after seeking asylum**

60.

Ms. V. and her daughter, D., are from Central America (Guatemala).

61.

Ms. V. and her daughter D. are one of the many families that have recently been separated by the government.

62.

Ms. V. and her daughter are seeking asylum in the United States.

63.

Ms. V. and her daughter crossed the U.S. border near San Luis, Arizona on approximately May 19, 2018.

64.

They were immediately approached by border agents, and although their native language is Spanish, they were able to communicate to the border guards that they sought the storied protection of the U.S. government based on the severe violence occurring in Guatemala.

65.

Ms. V. and her daughter D. were placed in a holding cell by border agents. Approximately two days later, at 3:30 in the morning, immigration officials forcibly separated 12-year-old D. from her mother. Men dressed in green uniforms (border agents) told Ms. V. they needed to take her daughter and would not tell her why. She witnessed other officers take children away from their mothers and when those mothers asked why, the officers said, "because the government says we can."

66.

The border agents did not tell Ms. V. where they were taking her daughter or when she would see her again.

67.

Ms. V. had her ID, the ID of her daughter, and her daughter's birth certificate, and CBP officials saw this paperwork prior to and after taking Ms. V.'s daughter.

68.

When D. was taken away from her mother, that was the last time Ms. V. saw her daughter.

69.

Ms. V. was subsequently transferred to Florence Detention Center and then Eloy Detention Center. At Eloy, she spoke to an officer who was able to find out that her daughter was in San Antonio, TX, but could not give her any more information.

70.

On approximately June 4, Ms. V. was told that her daughter was purportedly located in San Antonio, TX and given a phone number. Ms. V. has not been given any paperwork to indicate the status or health condition of her daughter.

71.

On information and belief, D. was housed in a detention facility for "unaccompanied" minors run by the Office of Refugee Resettlement (ORR) in San Antonio, TX.

72.

On information and belief, D. is being held at Bodencamp Children's Shelter operated by Upbring/LSS, located at 5517 S Alameda St, Corpus Christi, TX 78412.

73.

Until June 22, 2018, Ms. V. remained detained in the Eloy Detention Center in the Phoenix, AZ area.

74.

On information and belief, Ms. V. asserted asylum after being detained by border patrol and made a credible fear claim, and she was never prosecuted for illegal entry into the U.S.

75.

Attempting to cross the border other than at a designated port of arrival does not preclude any migrant from asserting asylum:

> Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such

> alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. § 1158 (a)(1).

76.

Any immigrant present in the U.S., such as Ms. V. and her child,

irrespective of whether they immigrated through a designated port of arrival,

must be considered an applicant for admission into the country:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225 (a)(1).

77.

Immigrants who indicate an intention to apply for asylum or indicates a

fear of persecution must be referred for a "credible fear interview":

> If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

8 U.S.C. § 1225 (b)(1)(A)(ii).

78.

Following a credible fear interview, if an asylum officer determines that an asylum seeker has a "credible fear of persecution," then there is a significant possibility that the asylum seeker will be granted asylum:

> For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

8 U.S.C. § 1225 (b)(1)(B)(v).

79.

The Northern Triangle countries of Guatemala, Honduras, and El Salvador are undergoing a well-documented human rights crisis.[1]

80.

The ACFRC Report indicated that *nearly 90% of individuals in family facilities from these countries pass their credible or reasonable fear interviews.* (Exhibit 9 at p. 10).

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[1] See, e.g., Diego Zavala, Fleeing for Our Lives: Central American Migrant Crisis, AMNESTY USA (Apr. 1, 2016, 12:12 PM), http://blog.amnestyusa.org/americas/fleeing-for-our-lives-central-american-migrant-crisis/; Lily Folkerts, A Look at the Northern Triangle of Central America in 2016: Sustained Violence and Displacement, LATIN AMERICA WORKING GROUP (Aug. 15, 2016) http://www.lawg.org/action-center/lawg-blog/69-general/1709-a-look-at-thenorthern-triangle-of-central-america-in-2016-sustained-violence-and-displacement.

81.

On two occasions, Ms. V. was permitted to speak to her daughter on the phone (no video).

82.

Ms. V.'s father put money into her account so that Ms. V. could make phone calls to her daughter, while both were imprisoned. Ms. V. called multiple times but could not reach anyone. When she finally reached someone, the person told her to call back in ten minutes, and when she did she was able to speak to her daughter. During this call, the staff member of the facility holding D. remained on the line and would not let D. give Ms. V. too much information. D. was crying on the phone and wanted to be reunited with her mom.

83.

After trying to reach her daughter again, Ms. V. finally got through to someone, and this person claimed to be D.'s case manager. The case manager says she was not there all the time because she is busy, so to please call and leave a message with a call back number. Ms. V. explained that there was no way to receive calls at the Eloy Detention Center, and the case manager said in that case Ms. V. had to make an appointment to call back and try to reach her daughter.

84.

By continuing to call, Ms. V. was finally allowed to speak to her daughter a second time, where her daughter was crying again, asking to be with her mother, and that ***for most of the day she was kept in a small room, with terrible, cold food, that she needed more clothes, that the facility was extremely cold, and that she had to sleep with only an aluminum blanket and no pillow.***

85.

Ms. V. and her daughter have been separated now for approximately four weeks.

86.

For four weeks—so far—Ms. V. has been terrified that she would never see her daughter again.

87.

On information and belief, 12-year-old D. is alone in a facility in Corpus Christie, TX.

88.

D. is scared and misses her mother and wants to be reunited with her as soon as possible.

89.

Every day that D. is separated from her mother causes her greater emotional and psychological harm and could potentially lead to permanent emotional trauma.

90.

Ms. V. is distraught and depressed because of the separation from her daughter. In detention, she did not eat properly, lost weight, and was not sleeping due to worry and nightmares.

91.

The government has no legitimate interest in separating Ms. V. and her child.

92.

There has been no evidence, or even accusation, that D. was abused or neglected by Ms. V.

93.

There is no evidence that Ms. V. is an unfit parent or that she is not acting in the best interests of her child.

94.

Defendants released Ms. V. from custody on June 23, 2018 after posting bond with the help of Libre by Nexus.

95.

Despite being lawfully released on bond, Defendants have not reunited Ms. V. with her daughter, who remains detained at an ORR-overseen facility.

96.

Ms. V. is currently residing in the United States with the intent to remain here indefinitely as she and her daughter await the adjudication of their immigration proceedings.

97.

Ms. V. has demanded to be reunited with her daughter, and after being released, she has repeatedly tried calling the number that she was connected to the times she spoke to her daughter, but no one will answer the phone.

98.

Ms. V. fears direly for her daughter's safety and wellbeing every moment of every day that passes.

## CAUSES OF ACTION

### COUNT I
### Claim for Habeas due to violating Substantive Due Process Clause 5th Amendment of the U.S. Constitution

*(Claim for Habeas relief by Ms. V., as next friend of D., against Defendants Lloyd and Doe 1 in their official capacities)*

> **[The writ of habeas corpus shall not extend to a prisoner unless—
> (1) He is in custody under *or by color* of the authority of the United States or is committed for trial before some court thereof; or . . . (3) He is in custody *in violation of the Constitution* or laws or treaties of the United States… 28 U.S. Code § 2241(c) (emphasis added).]**

99.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

100.

Historically, habeas petitions have been regularly used to review the legality of executive detention, receiving their greatest protections in that context. I.N.S. v. St. Cyr, 533 U.S. 289, 301-02, 121 S.Ct. 2271, 150 L.E.2d 347 (2001). Indeed, this protection is so great, it is not limited to only addressing constitutional errors. Id.

101.

The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Ms. V. and her daughter.

102.

Ms. V. and her daughter have a liberty interest under the Due Process Clause in remaining together as a family. Just as parents possess a fundamental right with respect to the care, custody, and control of their children, children also enjoy a familial right to be raised and nurtured by their parents.

103.

Although the U.S. Supreme Court acknowledges the "broad" latitude due the Executive in the realm of immigration, Mathews v. Diaz, 426 U.S. 67, 79–80, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976), it cannot "abdicat[e]" its "legal responsibility to review the lawfulness" of detention. Zadvydas, 533 U.S. at 700, 121 S.Ct. 2491. The government's power over immigration, while considerable, "is subject to important constitutional limitations." Id. at 695, 121 S.Ct. 2491.

104.

Previous attempts by the federal government to use a policy of "no release" to deter asylum seekers have been found to violate due process. In R.I.L. v. Johnson, the federal government argued that "in determining whether an individual claiming asylum should be released, ICE can consider the effect of release on others not present in the United States. Put another way, it maintain[ed] that one particular individual may be civilly detained for the sake of sending a message of deterrence to other Central American individuals who

may be considering immigration." R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015). The Johnson court found that the government's consideration of the deterrence effect on whether to release asylum-seekers was "out of line with analogous Supreme Court decisions," noting that in discussing civil commitment more broadly, the Court has declared such "general deterrence" justifications impermissible. Id. (citing Kansas v. Crane, 534 U.S. 407, 412, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002) (warning that civil detention may not "become a 'mechanism for retribution or *general deterrence*'—functions properly those of criminal law, not civil commitment") (quoting Kansas v. Hendricks, 521 U.S. 346, 372–74, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) (Kennedy, J., concurring); see id. at 373, 117 S.Ct. 2072 ("[W]hile incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.")). The Johnson court further found that "a general-deterrence rationale seems less applicable where—unlike pedophiles, see Hendricks, 521 U.S. at 354–55, 362, 117 S.Ct. 2072, or other violent sexual offenders, see Crane, 534 U.S. at 409–11, 122 S.Ct. at 869—neither those being detained nor those being deterred are certain wrongdoers, *but rather individuals who may have legitimate claims to asylum in this country*." R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 189 (D.D.C. 2015) (emphasis added).

105.

The separation of the Ms. V. from her daughter violates substantive due process because it furthers no legitimate purpose, not to mention a compelling governmental interest, and is outrageous conduct that infringes on Ms. V's interest in the care, custody, and control of her daughter. This is particularly true because neither Ms. V. nor her daughter have been prosecuted for a crime.

106.

The separation of the Ms. V. from her daughter violates substantive due process because it shocks the conscience to use a policy of forcibly separating children from their parents—and without any explanation to the child or the parent—as a means to deter mass migration and to deter other asylum-seeking families from entering the U.S. It also shocks the conscience to implement a zero-tolerance policy that targets Central American migrants for discriminatory treatment.

**COUNT II**
**Claim for Habeas due to violating Procedural Due Process Clause**
**5th Amendment of the U.S. Constitution**
*(Claim for Habeas relief by Ms. V., as next friend of D., against Defendants Lloyd and Doe 1 in their official capacities)*

> **[The writ of habeas corpus shall not extend to a prisoner unless—**
> **(1) He is in custody under *or by color* of the authority of the United States or is committed for trial before some court thereof; or . . . (3) He is in custody *in violation of the Constitution* or laws or treaties of the United States… 28 U.S. Code § 2241(c) (emphasis added).]**

107.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

108.

Historically, habeas petitions have been regularly used to review the legality of executive detention, receiving their greatest protections in that context. I.N.S. v. St. Cyr, 533 U.S. at 301-02. Indeed, this protection is so great, it is not limited to only addressing constitutional errors. Id.

109.

The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Ms. V. and her daughter.

110.

Ms. V. and her daughter have a liberty interest under the Due Process Clause in remaining together as a family. Just as parents possess a fundamental

right with respect to the care, custody, and control of their children, children also enjoy a familial right to be raised and nurtured by their parents.

111.

The separation of Ms. V. from her daughter also violates procedural due process because it was undertaken without any hearing, and Ms. V. was not even given any effective paperwork to indicate where her daughter is located or how she can immediately contact her or retrieve her from detention.

**COUNT III**
**Claim for Habeas due to Violating the International Convention on Civil and Political Rights**
*(Claim for Habeas relief by Ms. V., as next friend of D., against Defendants Lloyd and Doe 1 in their official capacities)*

> **[The writ of habeas corpus shall not extend to a prisoner unless—**
> **(1) He is in custody under *or by color* of the authority of the United States or is committed for trial before some court thereof; or . . . (3) He is in custody in violation of the Constitution or laws *or treaties* of the United States… 28 U.S. Code § 2241(c) (emphasis added).]**

112.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

113.

Historically, habeas petitions have been regularly used to review the legality of executive detention, receiving their greatest protections in that

context. I.N.S. v. St. Cyr, 533 U.S. at 301-02. Indeed, this protection is so great, it is not limited to only addressing constitutional errors. Id.

114.

The ICCPR has been signed and ratified by the United States.

115.

Under Article 17 of the ICCPR "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." Article 23 states that "family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Article 2 prohibits discrimination based on language or national or social origin.

116.

By forcibly separating Ms. V. from her daughter, Plaintiff has been subjected to arbitrary, unlawful, and unjustified interference with her family in violation of the ICCPR.

**COUNT IV**
**Claim for Habeas due to Violating the United Nations Convention Relating to Status of Refugees and 8 U.S.C. § 1158**
*(Claim for Habeas relief by Ms. V., as next friend of D., against Defendants Lloyd and Doe 1 in their official capacities)*

> **[The writ of habeas corpus shall not extend to a prisoner unless—
> (1) He is in custody under *or by color* of the authority of the United States or is committed for trial before some court thereof; or . . . (3) He is in custody in violation of the Constitution or *laws or treaties* of the United States… 28 U.S. Code § 2241(c) (emphasis added).]**

117.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

118.

Historically, habeas petitions have been regularly used to review the legality of executive detention, receiving their greatest protections in that context. I.N.S. v. St. Cyr, 533 U.S. at 301-02. Indeed, this protection is so great, it is not limited to only addressing constitutional errors. Id.

119.

The U.S. is party to 1967 Protocol Relating to the Status of Refugees and key provisions have been incorporated into U.S. law giving individuals a cause for action for litigation. Under U.S. federal law "any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the

United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum…" 8 U.S.C. § 1158.

120.

Because the right to seek asylum and the definition of refugee, which stems from an international treaty, is directly incorporated into U.S. law, it creates a legal cause for action for Ms. V.

121.

By interfering with Ms. V.'s parental rights to be with her 12-year-old daughter, these Defendants have unlawfully interfered with her right to seek asylum with her daughter and punished her for doing so by ripping her daughter away from her after seeking asylum.

**COUNT V**
**Claim for Declaratory Relief**
**under the Declaratory Judgment Act, 28 U.S.C. § 2201**
**due to violating Due Process Clause**
**5th Amendment of the U.S. Constitution**
*(Claim for Declaratory relief by Ms. V. against all Defendants in their official capacities)*

122.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

123.

The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Ms. V.

124.

Ms. V. and her daughter have a liberty interest under the Due Process Clause in remaining together as a family, and Ms. V. possess a fundamental right with respect to the care, custody, and control of her child.

125.

Although the U.S. Supreme Court acknowledges the "broad" latitude due the Executive in the realm of immigration, Mathews v. Diaz, 426 U.S. 67, 79–80, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976), it cannot "abdicat[e]" its "legal responsibility to review the lawfulness" of detention. Zadvydas, 533 U.S. at 700, 121 S.Ct. 2491. The government's power over immigration, while considerable, "is subject to important constitutional limitations." Id. at 695, 121 S.Ct. 2491.

126.

Previous attempts by the federal government to use a policy of "no release" to deter asylum seekers have been found to violate due process. In R.I.L. v. Johnson, the federal government argued that "in determining whether an individual claiming asylum should be released, ICE can consider the effect of release on others not present in the United States. Put another way, it

maintain[ed] that one particular individual may be civilly detained for the sake of sending a message of deterrence to other Central American individuals who may be considering immigration." R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015). The Johnson court found that the government's consideration of the deterrence effect on whether to release asylum-seekers was "out of line with analogous Supreme Court decisions," noting that in discussing civil commitment more broadly, the Court has declared such "general deterrence" justifications impermissible. Id. (citing Kansas v. Crane, 534 U.S. 407, 412, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002) (warning that civil detention may not "become a 'mechanism for retribution or *general deterrence*'—functions properly those of criminal law, not civil commitment") (quoting Kansas v. Hendricks, 521 U.S. 346, 372–74, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) (Kennedy, J., concurring); see id. at 373, 117 S.Ct. 2072 ("[W]hile incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.")). The Johnson court further found that "a general-deterrence rationale seems less applicable where—unlike pedophiles, *see* Hendricks, 521 U.S. at 354–55, 362, 117 S.Ct. 2072, or other violent sexual offenders, see Crane, 534 U.S. at 409–11, 122 S.Ct. at 869—neither those being detained nor those being deterred are certain wrongdoers, ***but rather individuals***

***who may have legitimate claims to asylum in this country***." R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 189 (D.D.C. 2015) (emphasis added).

127.

The separation of the Ms. V. from her daughter violates substantive due process because it furthers no legitimate purpose, not to mention a compelling governmental interest. This is particularly true because neither Ms. V. nor her daughter have been charged with a crime.

128.

The separation of the Ms. V. from her daughter violates substantive due process because it shocks the conscience for all the reasons described above.

**COUNT VI**
**Claim for Declaratory Relief**
**under the Declaratory Judgment Act, 28 U.S.C. § 2201**
**for violation of Procedural Due Process Clause**
**5th Amendment of the U.S. Constitution**
*(Claim for Declaratory relief by Ms. V. against all Defendants in their official capacities)*

129.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

130.

The Due Process Clause of the Fifth Amendment applies to all "persons" on United States soil and thus applies to Ms. V. and her daughter.

131.

Ms. V. and her daughter have a liberty interest under the Due Process Clause in remaining together as a family. Just as parents possess a fundamental right with respect to the care, custody, and control of their children, children also enjoy a familial right to be raised and nurtured by their parents.

132.

The separation of Ms. V. from her daughter also violates procedural due process because it was undertaken without any hearing, and Ms. V. was not even given any effective paperwork to indicate where her daughter is located or how she can immediately contact her or retrieve her from detention.

**COUNT VII**
**Claim for Declaratory Relief**
**for violation of the Administrative Procedures Act ("APA"), 5 U.S.C. § 706(2)(C), by disregarding the requirements of, *inter alia*,**
**8 U.S.C. § 1232 (b),(c),(g);**
**6 U.S.C. § 279 (b),(g); and**
**8 U.S.C. § 1325(a)**
*(Claim for Declaratory relief by Ms. V. against Defendants Lloyd, Sessions, Nielsen, and McAleenan in their official capacities)*

133.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

134.

Based on all the incorporated facts, the final agency action to separate children from their parents, with respect to multiple statutes, to include 8 U.S.C. § 1232 (b),(c),(g); 6 U.S.C. § 279 (b),(g); 8 U.S.C. § 1325(a), and every other statute that is relied upon by the Defendants to separate children from their parents, was unlawful. All these statutes have permitted the Defendants to make a final decision related to separating children from their families and maintain the separation of Ms. V. from her child without consideration of the best interest of her child, and these Defendants have absolutely abused their discretion with regards to the implementation of these statutes. Furthermore, the manner in which these statutes have been interpreted and implemented is fundamentally unconstitutional. Therefore, Defendants have abused their discretion in an arbitrary and capricious manner that has deprived Ms. V. of her rights to the care, custody, and control of her child.

**COUNT VIII**
**<u>Bivens</u> Claim for violating Plaintiff's Equal Protection Rights Under the U.S. Constitution**
*(Claim for Damages against Sessions in his individual capacity)*

135.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

136.

Based on all the facts to support this Count, Sessions violated Plaintiff's right to be free from discrimination based on her national origin, as Plaintiff is from Guatemala, Central America, and Sessions personally instituted a discriminatory policy aimed at all persons from Guatemala, amongst other Central American Countries. Consequently, Plaintiff is entitled to all permissible damages under controlling law against Sessions in his individual capacity.

**COUNT IX**
**Bivens Claim for violating Plaintiff's Due Process Rights Under the U.S. Constitution**
*(Claim for Damages by Ms. V. against John Doe #1 and Scott Lloyd in their individual capacities)*

137.

All of the foregoing factual paragraphs are repeated and realleged as though fully set forth herein.

138.

Based on the incorporated facts to support this Count, Defendants John Doe 1 and Scott Lloyd violated Plaintiff's Due Process Rights (both procedural and substantive) by failing to release Ms. V's Daughter while knowing there is no lawful reason to continue holding her Daughter. Defendant Lloyd condoned and ratified a policy that prohibited D. from being released to Ms. V., despite knowing and verifying the fact that Ms. V. is D.'s actual mother who came across

the border with D. and sought asylum with her. By condoning and ratifying this policy, Lloyd directly participated in the action that has violated the rights of Ms. V. to the care, custody, and control of her daughter, as protected by the Due Process Clause of the U.S. Constitution. As for Defendant Doe 1, despite reviewing the identification and birth certificate, and therefore knowing and understanding that Ms. V. is the rightful parent of D., Doe 1 has refused to order or otherwise permit the immediate release of D. to Ms. V. By doing so, Doe 1 has violated the substantive due process rights of Ms. V. Thus, these Defendants know that Ms. V is the lawful parent of D., yet refuse to release D. to Ms. V. As a result, Plaintiff has suffered at the hands of these Defendants and is entitled to compensatory damages as well as costs and fees of this action.

**COUNT X**
**Punitive Damages**
*(Against Sessions and Doe 1 in their individual capacities)*

Based on the foregoing, including intentional discrimination against Plaintiff based on national origin, Defendants Sessions and Doe 1, must pay punitive damages in order to be deterred from future like conduct. These Defendants have intentionally violated the laws of this country and the laws of nations.

## PRAYER FOR RELIEF

Petitioner-Plaintiff requests that the Court enter a judgment against Respondents-Defendants and award the following relief:

A. Order Defendants to immediately release Ms. V.'s daughter into her mother's custody within 24 hours of the entry of said Order;

B. Enter judgment and declaratory judgment in favor of Plaintiff;

C. Award compensatory damages against Defendants Sessions and Doe 1 in their individual capacities;

D. Award punitive damages against Defendants Sessions and Doe 1 in their individual capacities;

E. Award costs and attorneys' fees to Plaintiff;

F. Order all other relief that is just and proper.

Respectfully submitted this 26th day of June 2018,

/s/John M. Shoreman
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