

October 9, 2019

Office of the General Counsel (original) U.S. Department of Homeland Security 245 Murray Lane SW Mailstop 0485 Washington, DC 20528

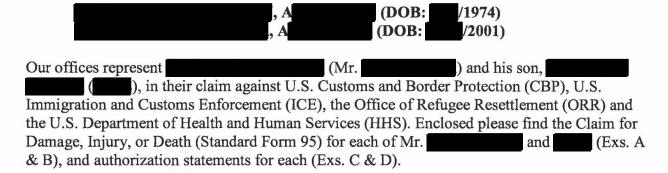
Scott K. Falk, Chief Counsel (copy) U.S. Customs and Border Protection 1300 Pennsylvania Avenue NW Washington, DC 20229

Office of the Principal Legal Advisor (copy) U.S. Immigration and Customs Enforcement U.S. Department of Homeland Security 500 12th Street SW Washington, DC 20536

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

Office of Refugee Resettlement Administration for Child and Families Mary E. Switzer Building, 330 C ST SW Room 5123 Washington, DC 20201

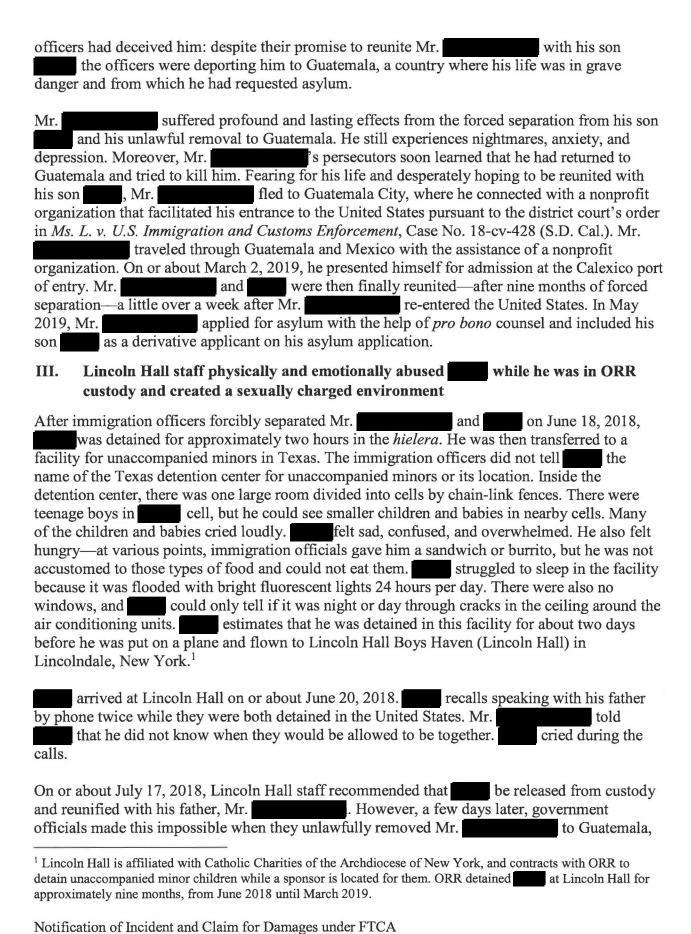
RE: Notification of Incident and Claim for Damages under the Federal Tort Claims Act



Pursuant to 28 U.S.C. § 2675(a) and 28 C.F.R. § 14.2(a), we hereby provide notification of incidents that occasion liability under the Federal Tort Claims Act (FTCA) and present a demand for monetary damages in the amount of \$3,000,000 each for both Mr. and and
Mr
I. Federal immigration officers forcibly separated Mr. and his minor son when they sought asylum in the United States
Mr. is a 45-year old political activist who fled Guatemala with his child who was 17 years old at the time. They are indigenous Guatemalans. Mr. had received death threats due to his advocacy for indigenous Ch'orti land rights and feared future persecution and torture.
Mr. and entered the United States on or about June 18, 2018, near McAllen, Texas. Shortly after they crossed the border, immigration officers approached Mr. and the group with which they were traveling, questioned them, and arrested them. Immigration officers confiscated their shoelaces and belts and loaded everyone into a van without offering them food or water.
After the arrest, immigration officers took Mr. as a "hielera," or ice box because of its cold temperatures. Immigration officers forcibly

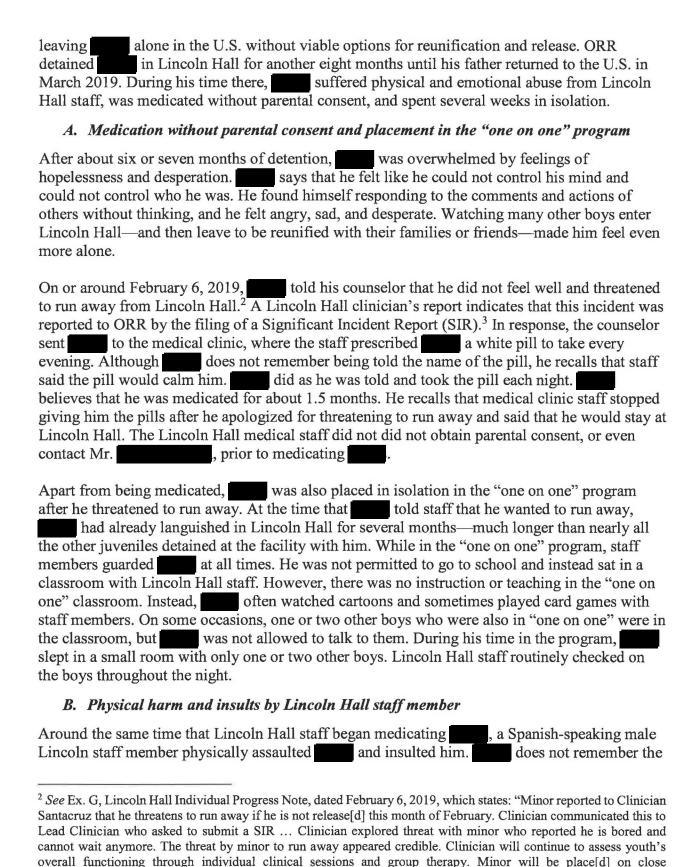
begged the officers not to take his son away from him, but they ignored him. He recalls the fe etched on face and the sound of his screams. Mr. describes this as the worst moment of his life.	ar
Mr. did not see again for nine months. Mr. cried many times after his son was taken away. The immigration officers had not given Mr. the chance to say goodbye, to hug, or to kiss his son. After they were separated, Mr. continuously questioned the immigration officers at the <i>hielera</i> about location and asked when he could see again, but the officers refused to answer his questions.	l.
II. Mr. was subjected to inhumane detention conditions and denied the right to seek asylum	he
Immigration officers detained Mr. in the <i>hielera</i> for approximately eight days. Immigration officials interviewed Mr. for about fifteen minutes while he was detained in the <i>hielera</i> . The officials took fingerprints and photos. Mr. gave the immigration officials his ID and birth certificate. He asked for asylum and said that he was afraid to return to Guatemala. The immigration officials in the <i>hielera</i> did <i>not</i> refer Mr. for a credible fear interview as required by law.	e
Mr. experienced temperatures in the <i>hielera</i> that he describes as similar to the bitter cold of Guatemala's mountains. Immigration officers increased the air conditioning to make the cells colder when Mr. or other fathers asked questions about their children's location. When the questions ceased, immigration officers decreased the air conditioning.	
Apart from the cold, the <i>hielera</i> was cramped, dirty, and uncomfortable. Immigration officials packed approximately 15 adult men into a small cell. The cell contained no beds or access to drinking water—just two benches, a table, and a bathroom area. Mr. ate, slept, and drank there. The single toilet was shared by all of the men, without any privacy. Mr. describes feeling humiliated by being forced to use a toilet in front of other adult men Immigration officials did not permit Mr. to brush his teeth, shower, or change clothes during the eight days that he was detained in the <i>hielera</i> , and instead he was forced to wear the dirty clothes that he had worn while crossing the border. Mr. reports the other men were not permitted to shower or brush their teeth either; as such, the smell in the <i>hielera</i> was horrible.	i.
The immigration officers at the <i>hielera</i> also did not provide Mr. with sufficient food or water. Mr. was not given any bottled water while detained in the <i>hielera</i> the only water available was in the bathroom area where the detainees washed their hands. Immigration officers did not give Mr. food until his second day in the <i>hielera</i> , when they gave him a sandwich and a juice box and taunted him, saying: "this is what you wanted when you came to the United States." In the days that followed, immigration officers gave Mr. one sandwich and a juice box in the morning and one sandwich and a juice box in the evening. The sandwich was only two slices of white bread with a thin slice of cheese and processed meat.	<i>ra</i> ;

Immigration officials locked Mr. in the cell 24 hours per day and denied him access to natural light or exercise. The cell was always flooded with bright fluorescent light, and Mr. was unable to tell if it was day or night. He estimates that he slept one or two hours per day, curled up on the concrete floor with only an aluminum foil blanket to serve as a cover. The immigration officials did not provide sleeping mats, blankets, or pillows. The cell was so cramped that Mr. could not straighten his legs. When Mr. did manage to sleep, CBP officers roused him frequently by conducting a roll call. The immigration officers conducted a roll call every few hours, 24 hours a day, and they required Mr. to respond when his name was called. Mr. describes the lack of sleep as psychological torture that only compounded the distress caused by his forced separation from
The mood in the cell was desperate and fearful. Mr. describes the constant sound of adult men sobbing and begging immigration officers to let them see their children. Fathers grabbed the metal bars of the cells and banged their heads against them, pleading for information about their children's location. Mr. asked immigration officers to tell him where was detained, but the officers ignored him or responded "no Spanish".
After approximately six days in the <i>hielera</i> , Mr. was taken by bus to a federal court. Mr. was in handcuffs, and his feet were chained together. Mr. pleaded guilty and was convicted of illegal entry under 8 U.S.C. § 1325. He recalls feeling humiliated by the experience because he did not believe that he was a criminal for seeking asylum under U.S. law.
A few days later, and after over a week in the <i>hielera</i> , immigration officers transferred Mr. to a detention center in Port Isabel, Texas. In Port Isabel, Mr. was detained in a cell with other fathers who had been separated from their children. When Mr. initially asked when he would be allowed to see his child, immigration officers told him to be quiet.
Mr. learned that was detained in New York a day or two after his arrival at the detention center in Port Isabel. At that point, he had not known his son's whereabouts for more than one week. Mr. and spoke briefly by phone two times while they were detained in Port Isabel and New York, respectively. Mr. was devastated that his son was so far away. Hope briefly returned to Mr. when on or about July 23, 2018—after being separated from for more than one month—immigration officers told Mr. that he was going to be reunited with son the following day. Mr. felt happy and hopeful.
However, instead of reuniting Mr. and I.



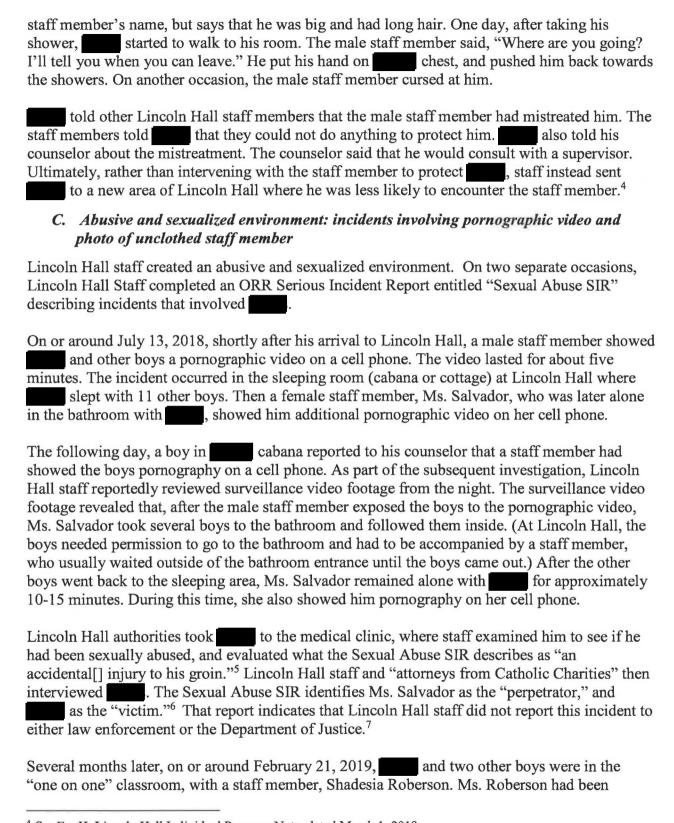
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³ *Id.*Notification of Incident and Claim for Damages under FTCA

supervision."



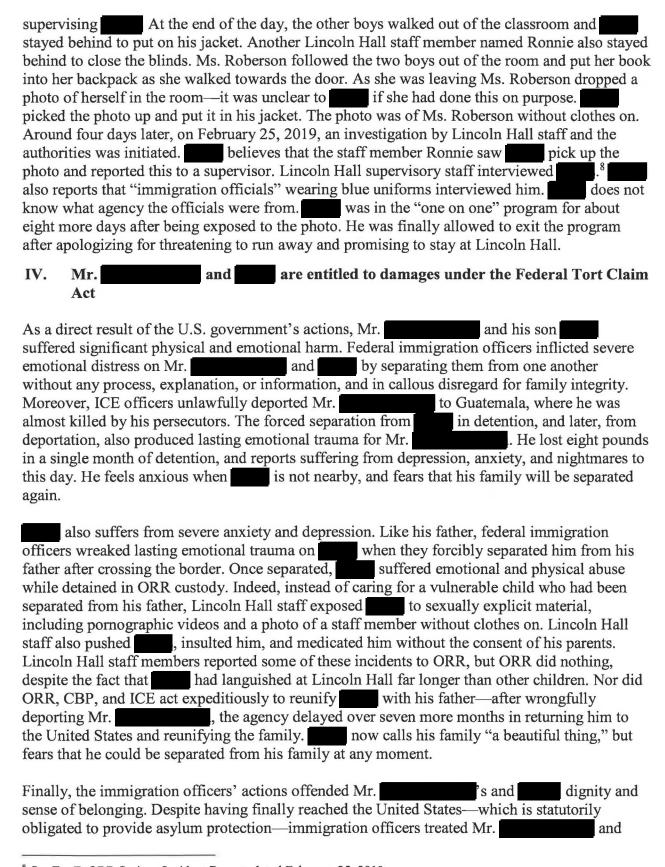
⁴ See Ex. H, Lincoln Hall Individual Progress Note, dated March 1, 2019.

Notification of Incident and Claim for Damages under FTCA

⁵ See Ex. E, Serious Incident Report, dated July 13, 2018.

⁶ Id.

⁷ *Id*.



⁸ See Ex. F, ORR Serious Incident Report, dated February 25, 2019.

Notification of Incident and Claim for Damages under FTCA &

as people without rights and without a voice. They disregarded their valid and well-supported fear of return to Guatemala, and—through forced separation and detention—punished them for seeking safety in the United States.

* * *

CBP, ICE, and ORR officers forcibly separated Mr. and as part of an unprecedented action of forced separation. They did so in utter disregard for their statutory and constitutional rights, their dignity as persons, and their love for one another as a family. That separation and the other wrongful acts that federal officers inflicted upon Mr. and results in liability under the Federal Tort Claims Act. Mr. and suffered significant emotional trauma as a consequence of their forced separation. For these reasons, Mr. and submit this claim under the FTCA for compensation in the amount of \$3,000,000 each.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Matt Adams Leila Kang Aaron Korthuis Audrey Gilliam

NORTHWEST IMMIGRANT RIGHTS PROJECT

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Houston, TX 77002 Tel: +1.713.890.5000

Fax: +1.713.890.5001

LIST OF EXHIBITS

- A. FTCA Claim Form, Standard Form 95, dated October 3, 2019 (
 B. FTCA Claim Form, Standard Form 95, dated October 3, 2019 (
 C. Claim Form Authorization Statement, dated October 3, 2019 (
 D. Claim Form Authorization Statement, dated October 3, 2019 (
- E. ORR Serious Incident Report, dated July 13, 2018
- F. ORR Serious Incident Report, dated February 25, 2019
- G. Lincoln Hall Individual Progress Note, dated February 6, 2019
- H. Lincoln Hall Individual Progress Note, dated March 1, 2019

EXHIBIT A

	AMAGE, DEATH	reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			OMB NO. 1105-0008			
Submit to Appropriate Federal Agency:					2. Name, address of claimant			
U.S. Customs and Border Protection U.S. Immigration and Customs Enforcement U.S. Office of Refugee Resettlement					(See instructions on reverse). Number, Street, City, State and Zip code. C/o Northwest Immigrant Rights Project 615 Second Avenue, Ste 400 Seattle WA 98104			
3. TYPE OF EMPLO	YMENT	4. DATE OF BIRTH	5. MARITAL STAT	US	6. DATE AND DAY OF ACCI	DENT	7. TIME (A.M. OR P.M.)	
MILITARY	X CIVILIAN	/1974	Married		06/18/2018	03/2019	PM	
Mr. extraordinary t	's and rauma inflicters force	ges if necessary).	s an unpreced hildren alike w	ented	action of separating persinction of separating pincidental byproduct of after they enters	arents from their	children. The	
9.			PROPE	RTY DA	MAGE			
	SS OF OWNER, IF	OTHER THAN CLAIMANT	(Number, Street, Ci	ty, State,	, and Zip Code).			
NI/A								
N/A BRIEFLY DESCRIBE	THE PROPERTY	NATURE AND EXTENT (DE THE DAMAGE AL	ND THE	LOCATION OF WHERE THE F	PROPERTY MAY BE IN	SPECTED	
(See instructions on		, NATONE AND EXTENT	THE BANKAGE A	NO THE	EGG/MON OF WHERE THE	NOTENT MATERIA	SI EGIED.	
N/A								
10.			PERSONAL INJU	JRY/WR	ONGFUL DEATH			
OF THE INJURED P	ERSON OR DECE	DENT.		CH FORI	MS THE BASIS OF THE CLAIN			
immigration off process, expla	ficers inflicted nation, or info		distress on Mr. lous disregard	for far		g him from his so er, ICE officers ur	notional harm. Federal on without any nlawfully deported Mr.	
11.			WI	TNESSE	S			
	NAME				ADDRESS (Number, Street,	City, State, and Zip Cod	e)	
					Please see	addendum		
12. (See instructions	on reverse).		AMOUNT OF	CLAIM	(in dollars)			
12a, PROPERTY DA	MAGE	12b, PERSONAL INJURY		12c, WR	RONGFUL DEATH	12d, TOTAL (Failure forfeiture of you	to specify may cause or rights).	
0.00		3,000,000		0.00		3,000,000		
				ES CAU	SED BY THE INCIDENT ABO		CEPT SAID AMOUNT IN	
13a. SIGNATURE OF QLAIMANT (See instructions on reverse side).			13b. PHONE NUMBER OF P	ERSON SIGNING FORM	1 14. DATE OF SIGNATURE			
							10/03/2019	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM					CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS			
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government (See 31 LLS C 3729)				Fine, imprisonment, or both. (See 18 U.S.C. 287, 100	l ₌)		

INSURANC	E COVERAGE
In order that subrogation claims may be adjudicated, it is essential that the claimant provid	
	rance company (Number, Street, City, State, and Zip Code) and policy number. X
16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full co	verage or deductible? Yes X No 17, If deductible, state amount.
18. If a claim has been filed with your carrier, what action has your insurer taken or propos N/A	ed to take with reference to your claim? (It is necessary that you ascertain these facts).
19. Do you carry public liability and property damage insurance? [Yes If yes, give n	ame and address of insurance carrier (Number, Street, City, State, and Zip Code). 💢 No
Claims presented under the Federal Tort Claims Act should be su employee(s) was involved in the incident. If the incident involves claim form.	
Complete all items - Insert the	e word NONE where applicable.
A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY	DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.
Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.	The amount claimed should be substantiated by competent evidence as follows: (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical,
If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.	hospital, or burial expenses actually incurred. (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.	(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form,	(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.
PRIVACY A	ACT NOTICE
This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached. A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.	 B. Principal Purpose: The information requested is to be used in evaluating claims. C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information. D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."
PAPERWORK RED	LICTION ACT NOTICE

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

Addendum to FTCA Claim Form, Standard Form 95

Question 8. BASIS OF CLAIM, cont.

Federal immigration officers subsequently detained Mr. and in separate facilities, several states away from each other. For more than a week, and Mr. did not even know each other's whereabouts. U.S. government officials later told Mr. that he was about to be reunited with his son, but this was a ruse. Instead of taking him to be reunited with officials instead took him to an airport and unlawfully removed him to Guatemala. Alone in the United States, remained detained in ORR custody for eight more months. Mr. and were reunited in Seattle, Washington, in March 2019 after <i>nine months</i> of forced separation. As a direct and proximate result of the U.S. government's unlawful conduct, Mr. and suffered significant physical, emotional, and financial harm.
Question 10. PERSONAL INJURY / WRONGFUL DEATH, cont.
The forced separation from his son in detention, and later, from deportation, also produced lasting emotional trauma for Mr. He lost eight pounds in a single month of detention, and reports suffering from depression, anxiety, and nightmares to this day. He feels anxious when is not nearby, and fears that his family will be separated again. Finally, the immigration officers' actions offended Mr. States – which is statutorily obligated to provide asylum protection – immigration officers treated Mr. as a person without rights and without a voice. They disregarded Mr. So valid and well-supported fear of return to Guatemala, and – through forced separation and detention – punished him for seeking safety in the United States. This is not intended to be an exhaustive list of possible causes of action.
Question 11. WITNESSES, cont.

Possible witnesses include the following:

- Former Secretary Kirstjen Nielsen, Department of Homeland Security
- Acting Secretary Kevin K McAleenan, Department of Homeland Security

Possible witnesses also include employees of CBP, ICE, and ORR and each entity's co	ntractors
who had contact with or reviewed records related to	
and their apprehension, separation, detention, and Mr.	val;
federal government officials involved in developing and implementing the family separate	ration
action; and the many individuals with whom Mr.	were
detained in Texas and New York. This is not intended to be an exhaustive list of possib	ole
witnesses.	