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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 J.A.M., a minor child; O.A.M., a minor
12 child; and Thelma Medina Navarro, their
13 mother.

14 Plaintiffs,

15 v.

16 UNITED STATES OF AMERICA;
17 UNKNOWN CUSTOMS AND
18 BORDER PROTECTION OFFICER 1,
19 UNKNOWN CUSTOMS AND
20 BORDER PROTECTION OFFICER 2,
21 and UNKNOWN CUSTOMS AND
22 BORDER PROTECTION OFFICER 3,
23 in their individual capacities;
24 and DOES 1-10 inclusive,

25 Defendants.

Case No. **'22CV0380 GPC DEB**

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

1. False Imprisonment (FTCA)
2. Intentional Infliction of Emotional Distress (FTCA)
3. Negligence (FTCA)
4. Bane Act – Cal. Civ. Code § 52.1 / Article I, Section 1 of the California Constitution (FTCA)
5. Fourth Amendment Unreasonable Seizure (*Bivens*)
6. Fifth Amendment Due Process Interference with Parent-Child Relationship (*Bivens*)
7. Fifth Amendment Equal Protection (*Bivens*)

26 COMES NOW Plaintiffs, J.A.M., a minor child; O.A.M., a minor child; and
27 THELMA MEDINA NAVARRO, their mother and guardian (collectively “Plaintiffs”),
28 for causes of action against defendants UNITED STATES OF AMERICA (“United

1 States”) and UNKNOWN CUSTOMS AND BORDER PROTECTION OFFICER 1,
2 UNKNOWN CUSTOMS AND BORDER PROTECTION OFFICER 2, UNKNOWN
3 BORDER PROTECTION OFFICER 3, and DOES 1-10, whose true names and identities
4 are currently unknown, and herein alleges, based on information and belief:
5

6 **JURISDICTION AND VENUE**

7 1. This Complaint is for damages based on tort violations committed by
8 employees of the United States acting under color of law and within the scope of their
9 employment and in violation of the Federal Tort Claims Act and California law.

10 2. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and
11 1346(b), because Plaintiff’s claims arise under the Federal Tort Claims Act, 28 U.S.C.
12 § 2671 *et seq.*, involving violations of California tort law.

13 3. Plaintiffs exhausted the administrative remedies prescribed by 28 U.S.C.
14 § 2675 by timely presenting the Federal Tort Claims Act (“FTCA”) claims to the
15 appropriate agencies of the United States on March 10, 2021. In letters sent via certified
16 mail on September 29, 2021, United States Customs and Border Protection denied the
17 claims in full.

18 4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and
19 1391(e)(1)(B), because this is the judicial district in which the events and omissions
20 giving rise to the claims occurred.

21 **PARTIES**

22 5. At the time of the incident, Thelma Medina Navarro (“Mrs. Medina”) and
23 her husband lived near the U.S.-Mexico border with their 14-year-old son, O.A.M., and
24 9-year-old daughter, J.A.M. Mrs. Medina brings this action on behalf of her two minor
25 children, O.A.M. and J.A.M., and on her own behalf.

26 6. O.A.M. is the minor son of Mrs. Medina and her husband. O.A.M. is a
27 United States Citizen born in San Diego County. O.A.M. was 14 years old at the time of
28 the incident.

1 7. J.A.M. is the minor daughter of Mrs. Medina and her husband. J.A.M. is a
2 United States Citizen born in San Diego County. J.A.M. was 9 years old at the time of
3 the incident.

4 8. UNKNOWN CUSTOMS AND BORDER PROTECTION OFFICER 1
5 (“CBP Officer 1”), whose true name is unknown at this time, is and was at all relevant
6 times employed by Defendant UNITED STATES OF AMERICA as a United States
7 Customs and Border Protection (“CBP”) law enforcement officer. At all times described
8 in this Complaint, CBP Officer 1 was acting as a sworn law enforcement or peace officer,
9 agent, servant, or employee of the United States, and under color of legal authority.
10 Plaintiff sues CBP Officer 1 in his individual capacity.

11 9. UNKNOWN CUSTOMS AND BORDER PROTECTION OFFICER 2
12 (“CBP Officer 2”), whose true name is unknown at this time, is and was at all relevant
13 times employed by Defendant UNITED STATES OF AMERICA as a United States
14 Customs and Border Protection (“CBP”) law enforcement officer. At all times described
15 in this Complaint, CBP Officer 2 was acting as a sworn law enforcement or peace officer,
16 agent, servant, or employee of the United States, and under color of legal authority.
17 Plaintiff sues CBP Officer 2 in his individual capacity.

18 10. UNKNOWN CUSTOMS AND BORDER PROTECTION OFFICER 3
19 (“CBP Officer 3”), whose true name is unknown at this time, is and was at all relevant
20 times employed by Defendant UNITED STATES OF AMERICA as a United States
21 Customs and Border Protection (“CBP”) law enforcement officer. At all times described
22 in this Complaint, CBP Officer 3 was acting as a sworn law enforcement or peace officer,
23 agent, servant, or employee of the United States, and under color of legal authority.
24 Plaintiff sues CBP Officer 3 in his individual capacity.

25 11. DOES 1 - 10 (“Doe Defendants” or “the CBP Officers”), whose true names
26 are unknown at this time, are and were at all relevant times employed by Defendant
27 UNITED STATES OF AMERICA as United States Customs and Border Protection
28 (“CBP”) law enforcement officers. At all times described in this Complaint, Doe

1 Defendants were acting as sworn law enforcement or peace officers, agents, servants, or
2 employees of the United States, and under color of legal authority. Plaintiff sues Doe
3 Defendants in their individual capacity.

4 12. Defendant UNITED STATES OF AMERICA (“United States”) is a
5 sovereign nation that has waived its sovereign immunity for the claims that Plaintiff
6 asserts against it. At all relevant times, Defendant United States was the government
7 entity that controlled, directed, and otherwise oversaw United States Customs and Border
8 Protection (“CBP”) and employed the law enforcement officers whose true names are
9 unknown but are referred to in this Complaint as CBP OFFICER 1, CBP OFFICER 2,
10 CBP OFFICER 3 and Doe Defendants, each of whom were acting under color of law and
11 within the course and scope of their employment with respect to the conduct about which
12 Plaintiff complains.

13 **FACTS**

14 13. Mrs. Medina, her husband, and their two children, 14-year-old O.A.M. and
15 9-year-old J.A.M., live near the U.S.-Mexico border. Both children are United States
16 Citizens born at hospitals in San Diego County, and both have United States Passports
17 and United States Passport Cards. In 2019, J.A.M. was a 4th-grader at Nicoloff
18 Elementary School in San Diego, and O.A.M. was in his freshmen year at nearby San
19 Ysidro High School. Mrs. Medina, O.A.M. and J.A.M. routinely entered the United
20 States at the San Ysidro Port of Entry (“SYPOE”) on their way to school.

21 14. On Monday, March 18, 2019, Mrs. Medina woke up early to get O.A.M. and
22 J.A.M. ready for school. That morning, Mrs. Medina was scheduled for uterine surgery
23 at a medical clinic in Tijuana, Mexico. Mrs. Medina arranged for her close family friend
24 who her children called, “Aunt Michelle,” to take them to school that morning. Aunt
25 Michelle is a U.S. Citizen with two children attending the same elementary and high
26 schools as O.A.M. and J.A.M.. Around 4:30 a.m., Aunt Michelle picked up O.A.M. and
27 J.A.M. along with her children, drove a short distance to the SYPOE, and began waiting
28 to enter the United States in the SYPOE vehicle lanes.

1 15. Around 7 a.m., after nearly two and a half hours in line, J.A.M., O.A.M.,
2 Aunt Michelle and her children, were still waiting, but the vehicular lanes were not
3 progressing. Aunt Michelle called the father of O.A.M. and J.A.M. to pick up the children
4 from the vehicular crossing area and take them to the PedWest (also known as Chaparral)
5 pedestrian crossing. The father of O.A.M. and J.A.M. is a Mexican Citizen without a visa
6 to cross into the United States with his children.

7 16. O.A.M. and J.A.M. waited to cross the border in the PedWest pedestrian line.
8 They both had their current U.S. Passport Cards and their school identification cards ready
9 to present upon entry. O.A.M. and J.A.M. called Mrs. Medina on O.A.M.'s mobile phone
10 right before they arrived at the primary inspection counters at the front of the pedestrian
11 line. After that call, Mrs. Medina did not hear from her children and became increasingly
12 worried while she is at the medical clinic.

13 17. When it was O.A.M.'s and J.A.M.'s turn to approach the counter, they each
14 presented their U.S. Passport Cards to the CBP primary inspector and were questioned
15 and pulled aside to secondary inspection. During the secondary inspection, at first they
16 were questioned together, then they were separated and individually questioned. Both
17 children were taken into custody at approximately 7:40 a.m.

18 18. Over the next two hours, Mrs. Medina and Aunt Michelle repeatedly called
19 O.A.M.'s mobile phone but he did not answer. Aunt Michelle crossed the border around
20 9:40 a.m. and headed to PedWest. When she arrived, CBP Officers confirmed that
21 O.A.M. and J.A.M. were in custody. Aunt Michelle advised the CBP Officers that she
22 had identification and proof of her U.S. Citizenship, as well as a notarized parental
23 consent letter authorizing her to cross the border with O.A.M. and J.A.M.. The CBP
24 Officers made her wait for two hours without providing her with any updates or additional
25 information.

26 19. Aunt Michelle contacted Mrs. Medina at the medical clinic and informed her
27 about the children's detention. Mrs. Medina immediately left the clinic while still in the
28 pre-operative stages of her surgery. After collecting further identity documents of O.A.M.

1 and J.A.M., Mrs. Medina arrived at PedWest around 11 a.m. Mrs. Medina asked CBP
2 Officers for her children and provided the CBP Officers with their names and dates of
3 birth. CBP Officers told Mrs. Medina that her children were not in CBP's custody. Mrs.
4 Medina explained that Aunt Michelle was told by CBP Officers that the children were
5 taken into custody. CBP Officers once again told Mrs. Medina that her children were not
6 there and that they had not crossed that day at PedWest. Mrs. Medina then called Aunt
7 Michelle and together they explained to the CBP Officers what Aunt Michelle had been
8 previously told regarding the children being in their custody. Aunt Michelle identified
9 the CBP Officers that she had talked to. CBP Officers asked to see more documents
10 regarding the children's identity and then told Mrs. Medina that they would check the
11 surveillance cameras. Mrs. Medina and Aunt Michelle continued to wait. CBP Officers
12 blamed Mrs. Medina for losing her children, and told her to leave and that they would
13 contact her in two days. Mrs. Medina and Aunt Michelle called 911 and were told by the
14 emergency dispatcher that the issue was not within their jurisdiction.

15 20. Mrs. Medina went back into the CBP building and continued to ask for
16 information about her children. CBP Officers responded that they had so many people
17 detained that they did not know if her children were in their custody. They advised Mrs.
18 Medina to go to her house and relax and they would let her know about her children later
19 that evening or the next day. Mrs. Medina continued to wait.

20 21. Around 6:40pm, CBP Officer 1 called Aunt Michelle. He said he knew
21 O.A.M. was born in the U.S., but that J.A.M. is an imposter without legal permission to
22 be in the U.S. Aunt Michelle told CBP Officer 1 he was wrong and that O.A.M. and
23 J.A.M. were U.S. Citizens who cross regularly. CBP Officer 1 then told her that he could
24 not provide her information and hung up.

25 22. CBP Officer 1 then called Mrs. Medina and told her that O.A.M. was her son
26 but the little girl was not her daughter. CBP Officer 1 said the little girl in CBP's custody
27 "looked Honduran." CBP Officer 1 did not provide additional information and told Mrs.
28 Medina he would call her back. Around 8 p.m., over 12 hours after her children were

1 taken into CBP custody, Mrs. Medina received a call from CBP telling her she could pick
2 up O.A.M.. Mrs. Medina arrived at PedEast with more documents and photographs of
3 her daughter, but she again was told by CBP Officers that the girl in their custody was not
4 her daughter, J.A.M.. Mrs. Medina showed the CBP Officers family pictures and told
5 them to compare the photos to J.A.M.'s passport photos on file. The CBP Officers told
6 her that the girl pictured in the photographs was J.A.M., but that the little girl in their
7 custody was not the same person.

8 23. CBP Officers released O.A.M. to Mrs. Medina and told her to leave the
9 premises. Mrs. Medina asked the CBP Officers if they were going to give her something
10 in writing to explain the detention of her daughter, but they refused her request and
11 threatened to detain Mrs. Medina if she did not leave. Mrs. Medina went to the Coronado
12 Police Station around 10 p.m. to ask for help finding her daughter, and then went to the
13 Border Patrol station in San Ysidro around 11 p.m. Border Patrol agents suggested she
14 contact the Mexican Consulate. Mrs. Medina called the Mexican Consulate and left a
15 voicemail pleading for help.

16 24. Mrs. Medina continued her efforts to locate her daughter until around 5 p.m.
17 on Tuesday when she received a call from the Mexican Consulate instructing her where
18 to meet them at the SYPOE. After 33 hours of terror, Mrs. Medina was reunited with her
19 9-year-old daughter.

20 25. During O.A.M.'s 12 hours and J.A.M.'s 33 hours of custody, CBP Officer 1
21 repeatedly interrogated O.A.M. and J.A.M., he isolated them in various detention areas,
22 he forced each child into close quarters with handcuffed adult males, he subjected O.A.M.
23 and J.A.M. to inhumane conditions that were terrifying for a child, and he repeatedly
24 falsely accused O.A.M. and J.A.M. of being involved in sex-trafficking, prostitution,
25 trafficking in organs, and other smuggling activity without any lawful justification

26 26. During O.A.M.'s 12 hours and J.A.M.'s 33 hours of custody, CBP Officer 2
27 repeatedly interrogated O.A.M. and J.A.M., he isolated them in various detention areas,
28 he forced each child into close quarters with handcuffed adult males, he subjected O.A.M.

1 and J.A.M. to inhumane conditions that were terrifying for a child, and he repeatedly
2 falsely accused O.A.M. and J.A.M. of being involved in sex-trafficking, prostitution,
3 trafficking in organs, and other smuggling activity without any lawful justification

4 27. During O.A.M.'s 12 hours and J.A.M.'s 33 hours of custody, CBP Officer 3
5 repeatedly interrogated O.A.M. and J.A.M., he isolated them in various detention areas,
6 he forced each child into close quarters with handcuffed adult males, he subjected O.A.M.
7 and J.A.M. to inhumane conditions that were terrifying for a child, and he repeatedly
8 falsely accused O.A.M. and J.A.M. of being involved in sex-trafficking, prostitution,
9 trafficking in organs, and other smuggling activity without any lawful justification.

10 28. During the interrogation of O.A.M., CBP Officer 1, 2, and/or 3 asked O.A.M.
11 how many female cousins he had. He answered that he had three cousins and provided
12 their names and respective ages. CBP Officer 1, 2, and/or 3 then made a statement
13 indicating that J.A.M. was actually Melanie, the cousin closest to J.A.M.'s age. O.A.M.
14 insisted that the girl he was with was actually his sister, J.A.M., and not his cousin. The
15 male CBP officer told O.A.M. that his little sister looked too "developed" to be a 9-year-
16 old. CBP Officer 1, 2, 3 and/or Doe Defendants continued to interrogate O.A.M. about
17 the "true identity" of his sister. He was told by CBP Officer 1, 2, 3 and/or Doe Defendants
18 that if he did not say that the girl was Melanie, that he would be arrested and charged with
19 human and organ trafficking. After several hours of interrogation, intimidation, and
20 threats, CBP Officer 1, 2, 3 and/or Doe Defendants told O.A.M. that if he said that she
21 was Melanie, he would be released immediately. O.A.M. was scared of being arrested
22 and charged with human and organ trafficking, and he finally agreed to say his sister was
23 his cousin. CBP Officer 1, 2, 3 and/or Doe Defendants then coerced O.A.M. into writing
24 out a declaration in which he stated that he went in the morning to pick up his cousin from
25 her house and brought her to the border. After he wrote the statement, he was released to
26 Mrs. Medina.

27 29. Throughout J.A.M.'s interrogation, CBP Officer 1, CBP Officer 2, and CBP
28 Officer 3 each repeatedly told J.A.M. she was not the girl who was pictured on her U.S.

1 Passport Card. At one point, J.A.M. showed them her school identification card to
2 compare to the passport photo. She also had her school identification card from the
3 previous year. CBP Officer 1, CBP Officer 2, and CBP Officer 3 told J.A.M. she looked
4 different than her photo. CBP Officer 1, CBP Officer 2, and CBP Officer 3 told J.A.M.
5 that if she did not say she was Melanie, her brother was going to be arrested and taken to
6 jail. CBP Officer 1, CBP Officer 2, and CBP Officer 3 explained that her brother would
7 be in jail for many years and it would be her fault. After several hours when O.A.M. told
8 CBP Officer 1, CBP Officer 2, and CBP Officer 3 that J.A.M. was in fact Melanie, CBP
9 Officer 1, CBP Officer 2, and CBP Officer 3 shared the false coerced confession with
10 J.A.M. and added that she was now alone. CBP Officer 1, CBP Officer 2, and CBP
11 Officer 3 kept her in custody for another 24 hours until the following evening.

12 **The Conditions of J.A.M.’s Unlawful Detention**

13 30. J.A.M. was detained at the SYPOE for approximately thirty-three (33) hours.

14 31. J.A.M. was not given adequate food or drink during her detention. She was
15 fed only twice during the thirty-three hour period.

16 32. She was held all night overnight in a cold room at the SYPOE with several
17 other detainees. CBP Officers did not even give her a pillow.

18 33. Throughout the day and night, J.A.M. asked about her parents and brother,
19 and she often cried.

20 34. CBP is bound by the Flores v. Reno Settlement Agreement (the “Flores
21 Agreement”), which requires that noncitizen children in CBP’s control be provided with
22 food and drinking water and that they be detained in an adequately heated location.
23 Although J.A.M. is a U.S. Citizen, the Flores Agreement constitutes the required standard
24 of care for minors held in immigration-related detention.

25 35. CBP internal policies, including the Office of Border Protection’s “Hold
26 Room and Short Term Custody” policy and the Office of Field Operations’ “Secure
27 Detention, Transport and Escort Procedures at Ports of Entry,” require that noncitizen
28 children be offered meals every six hours, and that they be given regular snacks and

1 beverages. A U.S. Citizen child such as J.A.M. and O.A.M. cannot be afforded a lesser
2 standard of care.

3 36. In any event, CBP's treatment of J.A.M. violated applicable standards of care
4 because she was not provided with adequate food or water, and was kept in a room
5 overnight that was far too cold.

6 **DAMAGES**

7 37. As a direct and proximate result of the aforesaid acts, omissions, and
8 decisions of CBP Officer 1, CBP Officer 2, and CBP Officer 3, and Doe Defendants,
9 Plaintiffs suffered and/or will continue to suffer great mental and physical pain, suffering,
10 anguish, fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, and
11 apprehension, and damage to their parent-child relationships, which have caused
12 Plaintiffs to sustain damages in a sum to be determined at trial. Mrs. Medina, O.A.M.,
13 and J.A.M. each suffered severe emotional distress as a direct and proximate result of the
14 aforesaid acts, omissions, and decisions of CBP Officer 1, CBP Officer 2, and CBP
15 Officer 3, and Doe Defendants. Mrs. Medina cannot help but frequently relive the terror
16 of being separated from her children, at first being told they were lost, and then later
17 learning that her 14-year-old son and her 9-year-old daughter were being subjected to
18 ongoing interrogation and other circumstances akin to torture for over 12 hours and 33
19 hours, respectively. Mrs. Medina suffers insomnia, paranoia, severe anxiety and ongoing
20 psychological trauma as a direct and proximate result of the aforesaid acts, omissions, and
21 decisions of CBP Officer 1, CBP Officer 2, and CBP Officer 3, and Doe Defendants.
22 O.A.M. suffered and continues to suffer psychological trauma, insomnia, paranoia,
23 debilitating anxiety, and severe emotional distress as a direct and proximate result of the
24 aforesaid acts, omissions, and decisions of CBP Officer 1, CBP Officer 2, and CBP
25 Officer 3, and Doe Defendants. J.A.M. suffered and continues to suffer psychological
26 trauma, insomnia, night terrors, paranoia, debilitating anxiety, and severe emotional
27 distress as a direct and proximate result of the aforesaid acts, omissions, and decisions of
28 CBP Officer 1, CBP Officer 2, and CBP Officer 3, and Doe Defendants.

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FIRST CAUSE OF ACTION

False Imprisonment (FTCA)

(against Defendant United States of America)

38. Plaintiffs repeat and re-alleges each allegation contained in paragraphs 1 through 37 of this Complaint.

39. At all times relevant to this action, CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants were federal employees acting in their official capacity within the scope of their employment as law enforcement officers for CBP, an agency of Defendant United States.

40. The actions of Defendant United States, by and through CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants, were a substantial factor in causing harm to Plaintiffs, and each suffered damages in an amount to be proven at trial.

41. By the acts alleged above, Defendant United States, by and through CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants, willfully detained O.A.M. for 12 hours and J.A.M. for 33 hours without consent and without authority of law or legal justification, thereby causing Plaintiffs to suffer damages as set forth above, for which Plaintiffs are entitled to monetary relief pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*

SECOND CAUSE OF ACTION

Intentional Infliction of Emotional Distress (FTCA)

(against Defendant United States of America)

42. Plaintiffs repeats and re-alleges each allegation contained in paragraphs 1 through 41 of this Complaint.

43. By the acts alleged above, Defendant United States, by and through CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants, engaged in extreme and outrageous conduct that transcended the bounds of human decency.

44. Defendant United States, by and through CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants, intended to cause, and did cause, Plaintiffs to experience

1 severe emotional distress and each acted with a reckless disregard of the probability that
2 Plaintiffs would suffer severe emotional distress.

3 45. CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants acted in
4 their official capacity and in the scope of their employment as CBP Officers of Defendant
5 United States.

6 46. Plaintiffs suffered severe emotional distress, and the conduct of Defendant
7 United States, by and through CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe
8 Defendants, was a substantial factor in causing Plaintiffs' severe emotional distress, for
9 which Plaintiffs are entitled to monetary relief pursuant to the Federal Tort Claims Act,
10 28 U.S.C. § 2671 *et seq.*

11 **THIRD CAUSE OF ACTION**

12 **Negligence (FTCA)**

13 **(against Defendant United States of America)**

14 47. Plaintiffs repeat and re-alleges each allegation contained in paragraphs 1
15 through 46 of this Complaint.

16 48. Defendant United States, by and through CBP Officer 1, CBP Officer 2, CBP
17 Officer 3, and Doe Defendants, had a duty to use reasonable care in interacting with a
18 citizen, had a duty to use reasonable care in performing a search, had a duty to use
19 reasonable care in performing a detention, and had a duty to refrain from using any force
20 that was not objectively reasonable under the totality of the circumstances. Defendant
21 United States, by and through its employees, had a duty to avoid needlessly and
22 negligently subjecting Plaintiffs to severe emotional distress.

23 49. Defendant United States, by and through CBP Officer 1, CBP Officer 2, CBP
24 Officer 3, and Doe Defendants, breached all these duties by the conduct alleged above in
25 paragraphs 1 through 30 of this Complaint.

26 50. At all times relevant to this action, CBP Officer 1, CBP Officer 2, CBP
27 Officer 3, and Doe Defendants were federal employees acting in their official capacity
28 within the scope of their employment as law enforcement officers for CBP, an agency of

1 Defendant United States.

2 51. The actions of Defendant United States, by and through CBP Officer 1, CBP
3 Officer 2, CBP Officer 3, and Doe Defendants, were a substantial factor in causing harm
4 to Plaintiffs, and each suffered damages in an amount to be proven at trial.

5 52. By the acts alleged above, Defendant United States, by and through CBP
6 Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants, was negligent and
7 breached its duty of due care owed to Plaintiffs, thereby causing Plaintiffs to suffer harm
8 as set forth above, for which Plaintiffs are entitled to monetary relief pursuant to the
9 Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq*

10 **FOURTH CAUSE OF ACTION**

11 **Bane Act – California Civil Code § 52.1 / Article I, Section 1 of the California**
12 **Constitution (FTCA)**
13 **(against Defendant United States of America)**

14 53. Plaintiffs repeats and re-alleges each allegation contained in paragraphs 1
15 through 52 of this Complaint.

16 54. Defendant United States, by and through the conduct of CBP Officer 1, CBP
17 Officer 2, CBP Officer 3, and Doe Defendants, repeatedly and intentionally interfered by
18 threats, intimidation, and coercion, and attempted to interfere by threats, intimidation, and
19 coercion, with the exercise and enjoyment of Plaintiffs rights as secured by Article I,
20 Section 1 of the California Constitution, with the parent-child relationship of Mrs. Medina
21 and her 14-year-old son, O.A.M., and of Mrs. Medina and her 9-year-old daughter,
22 J.A.M., without any lawful justification, by separating and isolating the children for 12
23 hours and 33 hours, respectively, because CBP Officers thought J.A.M., a United States
24 Citizen, “looked Honduran.”

25 55. Defendant United States, by and through the conduct of CBP Officer 1, CBP
26 Officer 2, CBP Officer 3, and Doe Defendants as described above, intended to deprive
27 Plaintiffs of their enjoyment of the rights and interests protected by the California
28 Constitution.

1 56. CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe Defendants, and
2 thereby Defendant United States, acted in their official capacity and in the scope of their
3 employment as CBP officers of Defendant United States.

4 57. The actions of CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe
5 Defendants, and thereby the actions of Defendant United States, were a substantial factor
6 in causing harm to Plaintiffs as set forth above, and they suffered damages for which
7 Plaintiffs are entitled to monetary relief pursuant to the Federal Tort Claims Act, 28
8 U.S.C. § 2671 *et seq.*

9 **FIFTH CAUSE OF ACTION**

10 **Fourth Amendment Unreasonable Seizure (*Bivens*)**

11 **(against Defendants CBP Officer 1, CBP Officer 2, CBP Officer 3, and**
12 **Doe Defendants 1-10)**

13 58. Plaintiffs repeat and re-allege each allegation contained in paragraphs 1
14 through 57 of this Complaint.

15 59. As a result of the acts alleged above by CBP Officer 1, CBP Officer 2, CBP
16 Officer 3, and Doe Defendants, the arrest, detention, unnecessary and extended restraint,
17 incarceration and interrogation of O.A.M. and J.A.M. constituted unreasonable seizures
18 in violation of the Fourth Amendment to the U.S. Constitution.

19 60. As a proximate result of the acts alleged above, Plaintiffs sustained the
20 damages alleged above. Plaintiffs are therefore entitled to general and compensatory
21 damages in an amount to be proven at trial.

22 61. In committing the acts alleged above, CBP Officer 1, CBP Officer 2, CBP
23 Officer 3, and Doe Defendants acted maliciously and/or were guilty of a wanton and
24 reckless disregard for the rights and safety of Plaintiffs, and by reason thereof Plaintiffs
25 are entitled to punitive damages in an amount to be proven at trial.

26 62. The above acts by CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe
27 Defendants had no justification or excuse in law, and instead constitute a gross abuse of
28 governmental authority and power, shock the conscience, are fundamentally unfair,

1 arbitrary and oppressive, and are unjustifiable as a means of conducting any activity in
2 which governmental officers may appropriately and legally undertake in the course of
3 protecting persons or property, or ensuring civil order.

4 **SIXTH CAUSE OF ACTION**

5 **Fifth Amendment Due Process Violation – Interference with Parent-Child**
6 **Relationship (*Bivens*)**

7 **(against Defendants CBP Officer 1, CBP Officer 2, CBP Officer 3, and**
8 **Doe Defendants 1-10)**

9 63. Plaintiffs repeat and re-allege each allegation contained in paragraphs 1
10 through 62 of this Complaint.

11 64. As a result of the acts alleged above by CBP Officer 1, CBP Officer 2, CBP
12 Officer 3, and Doe Defendants, the unnecessary and extended detention and separation of
13 O.A.M. and J.A.M. from Mrs. Medina violated Plaintiffs’ Due Process rights to family
14 integrity and family association under the Fifth Amendment to the U.S. Constitution.

15 65. As a proximate result of the acts alleged above, Plaintiffs sustained the
16 damages alleged above. Plaintiffs are therefore entitled to general and compensatory
17 damages in an amount to be proven at trial.

18 66. In committing the acts alleged above, CBP Officer 1, CBP Officer 2, CBP
19 Officer 3, and Doe Defendants acted maliciously and/or were guilty of a wanton and
20 reckless disregard for the constitutional rights of Plaintiffs, and by reason thereof
21 Plaintiffs are entitled to punitive damages in an amount to be proven at trial.

22 67. The above acts by CBP Officer 1, CBP Officer 2, CBP Officer 3, and Doe
23 Defendants had no justification or excuse in law, and instead constitute a gross abuse of
24 governmental authority and power, shock the conscience, are fundamentally unfair,
25 arbitrary and oppressive, and are unjustifiable as a means of conducting any activity in
26 which governmental officers may appropriately and legally undertake in the course of
27 protecting persons or property, or ensuring civil order.

28

SEVENTH CAUSE OF ACTION

**Fifth Amendment Equal Protection (*Bivens*)
(against Defendants CBP Officer 1)**

68. Plaintiffs repeat and re-allege each allegation contained in paragraphs 1 through 67 of this Complaint.

69. As a result of the acts alleged above by CBP Officer 1, including the unjustified and prolonged detention of a 9-year-old United States citizen of Hispanic ethnicity based on discriminatory animus because according to CBP Officer 1 she “looked Honduran,” CBP Officer 1 violated Plaintiffs’ Equal Protection rights under the Fifth Amendment of the United States Constitution.

70. As a proximate result of the acts alleged above, Plaintiffs sustained the damages alleged above. Plaintiffs are therefore entitled to general and compensatory damages in an amount to be proven at trial.

71. In committing the acts alleged above, CBP Officer 1 acted maliciously and/or were guilty of a wanton and reckless disregard for the constitutional rights of Plaintiffs, and by reason thereof Plaintiffs are entitled to punitive damages in an amount to be proven at trial.

72. The above acts by CBP Officer 1 had no justification or excuse in law, and instead constitute a gross abuse of governmental authority and power, shock the conscience, are fundamentally unfair, arbitrary and oppressive, and are unjustifiable as a means of conducting any activity in which governmental officers may appropriately and legally undertake in the course of protecting persons or property, or ensuring civil order

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter a judgment including:

- a. General damages, special damages, and compensatory damages in an amount according to proof;
- b. Punitive damages according to proof against the individual defendants only;

- 1 c. Civil penalties as provided by law;
- 2 d. Attorneys' fees and other allowable costs of suit under California Civ. Code
- 3 § 52.1;
- 4 e. Legal interest on all damages awards from the date of judicial demand until
- 5 paid;
- 6 f. And for such other and further relief as the Court may deem proper.

7
8 Respectfully submitted,

9 Dated: March 21, 2022

/s/ Joseph M. McMullen
10 JOSEPH M. McMULLEN
11 Attorney for Plaintiffs

12 **DEMAND FOR JURY TRIAL & BENCH TRIAL**

13 Plaintiffs respectfully demand a Jury Trial in this Court as to the *Bivens* causes of
14 action against the individual defendants and a bench trial in this Court as to each FTCA
15 cause of action against Defendant United States of America.

16 Respectfully submitted,

17
18 Dated: March 21, 2022

/s/ Joseph M. McMullen
19 JOSEPH M. McMULLEN
20 Attorney for Plaintiff