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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION
 11

12 WILBUR P.G., et al.,

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA,

16 Defendant.

) CASE NO. 4:21-cv-4457-KAW
)
)

) **AMENDED ANSWER TO COMPLAINT FOR**
) **DAMAGES UNDER THE FEDERAL TORT**
) **CLAIMS ACT**
)

)
)
) The Hon. Kandis A. Westmore

1 Defendant, the United States of America (“Defendant”), by and through undersigned counsel,
2 respectfully submits the following Amended Answer to Plaintiffs’ Complaint for Damages Under the
3 Federal Torts Claim Act (ECF No. 1) (hereinafter “Complaint”). Defendant has the written consent of
4 Plaintiffs, pursuant to Federal Rule of Civil Procedure 15(a)(2), to file an Amended Answer. *See* ECF
5 No. 51 (Stipulation Regarding Amended Answer).

6 In its original answer, Defendant noted that it would supplement its Answer for specific
7 allegations wherein at that time the United States was not permitted by law to disclose any information it
8 may have regarding those allegations (*see, e.g.*, 8 U.S.C. § 1376) until receipt of executed privacy
9 waivers from Plaintiffs. ECF No. 45 at General Answer ¶ 4, Specific Answer ¶¶ 118-119, 123, 126, 130-
10 132, 138-146, 148-149, 202, 213. Defendant received said executed waivers from Plaintiffs on July 18,
11 2022 and therefore amends its original Answer in response thereto. Defendant also amends the language
12 of Affirmative Defense No. 18 for purposes of clarity, in response to an inquiry from Plaintiffs’ counsel.

13 GENERAL ANSWER

14 1. Plaintiffs quote various documents throughout their Complaint, including United States
15 District Court cases, Congressional statutes, reports and testimony, new media articles, and investigatory
16 reports from federal agencies. Defendant responds to these citations as follows:

17 a. In the specific answers that follow, to the extent a paragraph in Plaintiffs’
18 Complaint cites or otherwise references one of these documentary sources solely as support for a factual
19 allegation, Defendant answers the factual allegation in accordance with Federal Rule of Civil Procedure
20 8 by either admitting, denying, or pleading lack of sufficient information with respect to that factual
21 allegation. The citation of the source underlying the factual allegation is in and of itself not a factual
22 allegation requiring a response.

23 b. To the extent a paragraph in Plaintiffs’ Complaint contains a factual allegation,
24 purports to provide a quotation from a documentary source in whole or in part in a manner requiring a
25 response as to its truthfulness or accuracy, or specifically describes a finding or conclusion of a report,
26 policy, or other cited source, Defendant answers those allegations in accordance with Rule 8.

27 2. Insofar as Plaintiffs’ Complaint contains allegations regarding the subjective mindset,
28 knowledge, or motivation of various Executive Branch officials and employees, those allegations are

1 denied throughout the Answer.

2 3. Insofar as allegations relate to or reference the identities, ages, relationships, and
3 nationalities of Plaintiffs, those allegations are denied throughout the Answer on the ground that
4 Defendant lacks information sufficient to form a belief as to the allegations because Plaintiffs are
5 proceeding pseudonymously. Therefore, any specific admissions or denials, in full or in part, of such
6 allegations are qualified by the provision that Defendant is answering based on its belief, but lack of
7 certainty, as to the identities of Plaintiffs.

8 **SPECIFIC ANSWERS BY PARAGRAPH**

9 **INTRODUCTION**

10 1. Defendant admits that, for a limited period of time in 2018, the United States
11 implemented a Zero-Tolerance Policy that resulted in the separation of some families at the United
12 States–Mexico border. Defendant denies that it had a so-called “Family-Separation Policy.” Defendant
13 denies the purpose of the Zero-Tolerance Policy was to cause families emotional harm and that it was
14 intended to be a policy of unprecedented and unmatched barbarity. Defendant lacks information
15 sufficient to form a belief as to the intent of aliens arriving at the United States–Mexico border.
16 Defendant lacks information sufficient to form a belief as to the specifically alleged methods of
17 separation, and on that basis denies them.

18 2. Defendant lacks information sufficient to form a belief as to the intent of policymakers as
19 alleged in this paragraph, and on that basis denies them.

20 3. Defendant admits that this case concerns the three Plaintiff families identified in the
21 Complaint. Defendant lacks information sufficient to form a belief about their subjective suffering.
22 Defendant admits that government officials separated Plaintiff children and parents. Defendant denies
23 the remaining allegations.

24 4. Defendant admits that either the persons believed to be Plaintiff children, or the persons
25 believed to be their parents, represented to Defendant that Plaintiff children were 6, 11 and 13 years old
26 at the time of separation. Defendant lacks information sufficient to form a belief about the subjective
27 knowledge of beliefs of the Plaintiff children and parents. Defendant denies the remaining allegations.

28 5. Defendant denies that the government’s conduct was tortious. The remaining portion of

1 this paragraph contains Plaintiffs’ characterization of this civil action, to which no response is required.

2 **JURISDICTION, VENUE, AND INTRA-DISTRICT ASSIGNMENT**

3 6. The allegation that this Court has subject matter jurisdiction is not a statement of fact but
4 a conclusion of law to which no response is required. To the extent a response is required, Defendant
5 denies this allegation.

6 7. Defendant admits that Plaintiffs bring their suit under the FTCA, and that the FTCA
7 contains an administrative exhaustion requirement. Defendant admits that Plaintiffs filed administrative
8 claims to which the relevant federal agencies did not respond within six months.

9 8. Defendant lacks information sufficient to form a belief about the current residence of
10 Plaintiffs. The remaining allegations are not statements of fact but are conclusions of law to which no
11 answer is required. To the extent an answer is required, Defendant denies these allegations.

12 9. Defendant denies that this action arises in Alameda and San Francisco Counties and is
13 therefore proper for assignment in the San Francisco/Oakland Division of this District.

14 **PARTIES**

15 10. Defendant admits that the person believed to be Wilbur P.G. (“Wilbur P.G.”) has a minor
16 son, the person believed to be Wilfredo Baltazar P.E. (“Wilfredo”), who was separated by government
17 officials from his father when he was 11 years old. Defendant lacks information sufficient to form a
18 belief about the subjective intent of Wilbur P.G. in bringing this lawsuit and the current residence of
19 Wilbur P.G. and his son. Defendant admits that Wilbur P.G. and Wilfredo applied for asylum in the
20 United States.

21 11. Defendant admits that the person believed to be Erendira C.M. (“Erendira C.M.”) has a
22 minor daughter, the person believed to be Yasmin Alicia M.C. (“Yasmin”), who was separated by
23 government officials from her mother when she was 6 years old. Defendant lacks information sufficient
24 to form a belief about the subjective intent of Erendira C.M. in bringing this lawsuit and the current
25 residence of Erendira C.M. and her daughter. Defendant admits that Erendira C.M. and Yasmin applied
26 for asylum in the United States.

27 12. Defendant admits that the person believed to be Joshua G.G. (“Joshua G.G.”) has a minor
28 son, the person believed to be Karl Luis G.G. (“Karl”), who was separated by government officials from

1 his father when he was 13 years old. Defendant lacks information sufficient to form a belief about the
2 subjective intent of Joshua G.G. in bringing this lawsuit and the current residence of Joshua G.G. and his
3 son. Defendant admits that Joshua G.G. and Karl applied for asylum in the United States.

4 13. These allegations are not statements of fact but conclusions of law to which no response
5 is required. To the extent a response is required, Defendant admits that the United States of America is
6 the appropriate defendant in an action brought under the FTCA.

7 14. Defendant lacks information sufficient to form a belief as to whether every federal
8 official referenced in the Complaint were at all relevant times employees of the United States, working
9 within the scope and course of their employment with the federal agencies listed in paragraph 13 of the
10 Complaint.

11 15. Defendant admits these allegations.

12 16. HHS has custody and provides care for each Unaccompanied Child (“UC”), defined as a
13 child who has no lawful immigration status in the United States; has not attained 18 years of age; and,
14 with respect to whom, there is no parent or legal guardian in the United States, or no parent or legal
15 guardian in the United States available to provide care and physical custody, in the least restrictive
16 setting through a network of state licensed ORR-funded care providers. While in the custody of HHS
17 Plaintiffs’ children were cared for at an ORR-funded care provider facility. The remaining allegations
18 are denied.

19 17. The allegation that high-ranking officials from DHS, HHS and DOJ worked together to
20 design and promulgate an unlawful and unconstitutional policy is not a statement of fact but a
21 conclusion of law to which no answer is required. To the extent an answer is required, Defendant denies
22 this allegation.

23 **FACTUAL ALLEGATIONS**

24 18. These allegations are not statements of fact but conclusions of law to which no response
25 is required.

26 19. Defendant admits that Donald Trump became President of the United States in 2017.
27 Defendant admits that the quoted words are contained in the cited news media article purporting to
28 contain tweets from President Trump. Defendant lacks information sufficient to form a belief as to the

1 accuracy of these tweets or any of the remaining allegations, and on that basis denies them.

2 20. Defendant lacks information sufficient to form a belief as to these allegations, and on that
3 basis denies them.

4 21. Defendant denies that in early 2017 federal government officials began discussing
5 strategies to deter people from seeking to enter the United States. Defendant lacks information sufficient
6 to form a belief as to the remaining allegations.

7 22. Defendant admits that the news media article referenced in this paragraph purports to
8 contain notes from a town hall meeting held on February 2, 2017. Defendant lacks information sufficient
9 to form a belief as to the accuracy of these notes or the information contained therein.

10 23. Defendant admits that on March 6, 2017, John Kelly was the Secretary of Homeland
11 Security. Defendant admits that the partial quotation from John Kelly and the quotation from an email
12 excerpt from an unidentified DHS official, both of which are referenced in this paragraph, are contained
13 in the cited 551-page Majority Staff Report for the Committee of the Judiciary of the U.S. House of
14 Representatives dated October 2020 (“2020 House Report”). Defendant lacks information sufficient to
15 form a belief as to accuracy of either quotation or the referenced email. Defendant further admits that the
16 cited March 3, 2017 Reuters news article reports that three unidentified DHS officials were stating on or
17 around that date that a family separation proposal was being considered. Defendant lacks information
18 sufficient to form a belief as to accuracy of the information cited in the March 3, 2017 Reuters article.

19 24. Defendant denies that there was a family-separation pilot program. Defendant admits that
20 that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the separations of
21 some family units. Defendant denies the remaining allegations.

22 25. Defendant denies that there was a family-separation pilot program. Defendant admits that
23 in 2017 there was a prosecution initiative in the El Paso sector that resulted in the separations of some
24 family units. Defendant admits that the 93-page OIG Report dated January 2021 (“OIG Report”) quoted
25 in this paragraph states that “[t]he decision to prosecute adults entering the country as part of a family
26 unit represented a change in long-standing DOJ and DHS practice.” Defendant also admits that this
27 paragraph purports to contain a quote from an unidentified Border Patrol to the acting U.S. Attorney for
28

1 the District of New Mexico. Defendant lacks information sufficient to form a belief as to accuracy of
2 these quotes or any of the remaining allegations.

3 26. Defendant denies that there was a family-separation pilot program. Defendant admits that
4 in 2017 there was a prosecution initiative in the El Paso sector that resulted in the separations of some
5 family units. Defendant lacks information sufficient to form a belief concerning coordination between
6 the United States Attorney's office and immigration officials.

7 27. Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that
8 resulted in parents being prosecuted for illegal entry at the United States–Mexico border. Defendant
9 lacks information sufficient to form a belief as to the remaining allegations.

10 28. Defendant denies the allegation that there was a family-separation pilot program.
11 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector. The allegation that
12 immigration officials were exploiting provisions of the TVPRA is not a statement of fact but conclusion
13 of law to which no response is required. Defendant denies the allegation that, for the 2017 prosecution
14 initiative in the El Paso sector, separation was a pretext to justify seizing long-term custody of a child
15 from the child's parent. Defendant admits that some children were separated from their parents during
16 the 2017 prosecution initiative. Defendant further admits that some children were classified as UCs and
17 transported to ORR-funded care provider facilities. Defendant lacks information sufficient to form a
18 belief as to the remaining allegations.

19 29. Defendant denies the allegation that there was a family-separation pilot program.
20 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in
21 some parents being prosecuted for misdemeanor illegal entry and held in the custody of the U.S.
22 Marshals Service and some children being classified as UCs were transported to ORR-funded care
23 provider facilities. Defendant lacks information sufficient to form a belief as to the remaining
24 allegations.

25 30. Defendant denies the allegation that there was a family-separation pilot program.
26 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
27 separations of some family units. Defendant further admits that some children were classified as UCs
28 and transported to ORR-funded care provider facilities. Defendant denies that those responsible for a

1 child's care were not informed that the child had been separated from his or her parent. Defendant lacks
2 information sufficient to form a belief as to the remaining allegations.

3 31. Defendant denies the allegation that there was a family-separation pilot program.
4 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
5 separations of some family units. Defendant admits that the quotations in this paragraph are contained in
6 the cited 93-page OIG Report. Defendant lacks information sufficient to form a belief as to accuracy of
7 these quotations or the information contained therein. Defendant lacks information sufficient to form a
8 belief as to the remaining allegations.

9 32. Defendant denies the allegation that there was a family-separation pilot program.
10 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
11 separations of some family units. Defendant lacks information sufficient to form a belief as to the
12 subjective knowledge of unidentified high-ranking DOJ officials concerning the emotional damage of
13 separation. Defendant admits that the page cited in the 93-page OIG Report references briefings to high-
14 ranking policymakers about the pilot program. Defendant lacks information sufficient to form a belief as
15 to the existence or contents of these briefings.

16 33. Defendant denies the allegation that there was a family-separation pilot program.
17 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
18 separations of some family units. Defendant lacks information sufficient to form a belief as to the
19 subjective knowledge of unidentified high-ranking DOJ and DHS policymakers. Defendant lacks
20 information sufficient to form a belief as to the remaining allegations.

21 34. Defendant admits that the quotation referenced in this paragraph is contained in the 166-
22 page Report of the DHS Advisory Committee on Family Residential Centers, dated September 30, 2016.

23 35. Defendant admits that the quotations referenced in this paragraph is contained in a March
24 7, 2017 CNN online article. Defendant lacks information sufficient to form a belief as to accuracy of the
25 quote or any of the remaining allegations.

26 36. Defendant denies the allegation that there was a family-separation pilot program.
27 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
28 separations of some family units. Defendant admits that the 2020 House Report cited by this paragraph

1 contains information detailing complaints to the DHS Office for Civil Rights and Civil Liberties
2 (CRCL) concerning family separations that occurred prior to May 2018. Defendant lacks information
3 sufficient to form a belief as to accuracy of this information. Plaintiffs' characterizations of this
4 information are not statements of facts for which a response is required.

5 37. Defendant denies the allegation that there was a family-separation pilot program.
6 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
7 separations of some family units. Defendant admits that the OIG Report cited in this paragraph contains
8 the purported quotation from Acting U.S. Attorney Bash. Defendant lacks information sufficient to form
9 a belief as to accuracy of this quotation. Plaintiffs' characterizations of this quotation are not statements
10 of facts for which a response is required.

11 38. Defendant admits that Commander Jonathan White was a career officer in the U.S. Public
12 Health Service Commissioned Corps. Defendant admits that the quotation cited in this paragraph
13 appears in the preliminary, unedited transcript of proceedings for the February 7, 2019 House of
14 Representatives, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce.
15 Defendant admits that Commander White testified before Congress that he raised concerns regarding
16 family separation to department leadership.

17 39. Defendant admits that the quotation referenced in this paragraph appears in the cited
18 preliminary, unedited transcript of Congressional testimony of Dr. Julie Linton, a practicing pediatrician
19 in Greenville, South Carolina and Co-Chair of the American Academy of Pediatrics Immigrant Health
20 Special Interest Group, on February 7, 2019 before the House of Representatives, Subcommittee on
21 Oversight and Investigations, Committee on Energy and Commerce. Defendant lacks information
22 sufficient to form a belief as to the accuracy of the quotation or the information referenced therein.

23 40. Defendant denies the allegation that there was a family-separation pilot program.
24 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
25 separations of some family units. Defendant lacks information sufficient to form a belief as to the
26 subjective knowledge of unidentified high-ranking DOJ officials and as to the subjective suffering of
27 migrants that were separated. Defendant denies the specific allegation that the emotional pain and
28

1 suffering of migrants is what motivated the 2017 prosecution initiative or the 2018 Zero-Tolerance
2 policy.

3 41. Defendant denies that the allegation that there was a family-separation pilot program.
4 Defendant admits that in 2017 there was a 2017 prosecution initiative in the El Paso sector that resulted
5 in the separations of some family units. Defendant admits that, for a limited period of time in 2018, the
6 United States implemented a Zero-Tolerance policy that resulted in the separation of some families at
7 the United States–Mexico border. Defendant further admits that prior to the implementation of that
8 policy, the government weighed policy proposals. Defendant denies the remaining allegations.

9 42. Defendant lacks information sufficient to form a belief as these allegations.

10 43. Defendant admits that the undated American Oversight online news article referenced in
11 this paragraph reports that on December 11, 2017 ICE Chief of Staff Thomas Blank wrote that he had
12 been asked to take the lead on drafting a decision memo ““on separating Family Units and on vetting
13 sponsors’ for minors in the Unaccompanied Alien Children (UAC) program.” Defendant lacks
14 information sufficient to form a belief as to the accuracy of this information or the purported writing
15 from Thomas Blank on or around this date.

16 44. Defendant admits that the online news article referenced in this paragraph states that
17 ““Press reports later indicate that a draft policy memo dated Dec. 16, 2017, titled ‘Policy Options to
18 Respond to Border Surge of Illegal Immigration,’ is ‘circulated between high level officials at DHS and
19 the Justice Department.’” Defendant lacks information sufficient to form a belief as to the accuracy of
20 this quotation. Defendant further admits that the quotations in this paragraph are contained in the
21 purported policy memo cited in this paragraph. Defendant lacks information sufficient to form a belief
22 as to the authenticity of this redlined policy memo.

23 45. Defendant denies that the allegation that there was a family-separation pilot program.
24 Defendant admits that in 2017 there was a prosecution initiative in the El Paso sector that resulted in the
25 separations of some family units. Defendant lacks information sufficient to form a belief as to the
26 subjective suffering of migrants separated during the 2017 prosecution initiative. Defendant admits that
27 on April 6, 2018, the Attorney General issued a memorandum for federal prosecutors along the
28 Southwest border regarding “zero-tolerance” for offenses under 8 U.S.C. § 1325(a). The Zero-Tolerance

1 memorandum speaks for itself in terms of the provisions it outlines for the underlying Zero-Tolerance
2 policy. Plaintiffs' characterizations of the Zero-Tolerance policy laid out in this memorandum are not
3 statements of facts for which a response is required.

4 46. Plaintiffs' characterizations of the Zero-Tolerance policy laid out in the April 6, 2018
5 Zero-Tolerance memorandum are not statements of facts for which a response is required. The Zero-
6 Tolerance memorandum speaks for itself in terms of the provisions it outlines for the underlying Zero-
7 Tolerance policy. To the extent a further response is required, Defendant denies this allegation.

8 47. Defendant admits that part of the quotation referenced in this paragraph is contained on
9 the page cited within the 93-page OIG Report. Defendant lacks information sufficient to form a belief as
10 to the accuracy of the quotation. Plaintiffs' characterizations of this purported quotation are not
11 statements of facts but conclusions of law for which a response is required.

12 48. Defendant admits that the quotation referenced in this paragraph is contained in the page
13 cited within the 93-page OIG Report. Defendant lacks information sufficient to form a belief as to the
14 accuracy of the quotation.

15 49. Defendant admits that the partial quotation referenced in this paragraph is contained in a
16 news article purporting to transcribe a colloquy between Attorney General Sessions and a Fox News
17 host, Laura Ingraham. Defendant admits that the complete colloquy referenced in the news article is:
18 “‘Fundamentally, we are enforcing the law,’ Sessions replied. ‘If you break into the country ...’ ‘But is
19 it a deterrent, sir?’ Ingraham interjected. ‘Are you considering it a deterrent?’ ‘I see that the fact that no
20 one was being prosecuted for this was a factor in a fivefold increase in four years in this kind of illegal
21 immigration,’ Sessions said. ‘So, yes, hopefully people will get the message and come through the
22 border at the port of entry and not break across the border unlawfully.’” Defendant lacks information
23 sufficient to form a belief as to the accuracy of the quotations or of the colloquy between Sessions and
24 the Fox News host. To the extent a further response is required, Defendant denies this allegation.

25 50. Defendant admits that the quotation in this paragraph is contained in the cited May 11,
26 2018 transcript of interview of John Kelly by NPR correspondence John Burnett. Defendant lacks
27 information sufficient to form a belief as to the accuracy of the quotation or of the colloquy between
28 Kelly and Burnett.

1 51. Defendant admits that the quotation referenced in this paragraph is contained in a news
2 article purporting to transcribe a conference call between reporters and HHS's acting assistant secretary,
3 Steven Wagner. Defendant lacks information sufficient to form a belief as to the accuracy of the
4 quotation or of the conference call involving Wagner and reporters.

5 52. Defendant denies that the allegation that there was a family-separation pilot program.
6 Defendant admits that that there was a 2017 prosecution initiative in the El Paso sector that originated at
7 the local CBP level that resulted in the separations of some family units. Defendant lacks information
8 sufficient to form a belief as to the remaining allegations.

9 53. Defendant denies the allegation that the Zero-Tolerance policy was a pretext to justify
10 separation of a child from the child's parent. The Zero-Tolerance memorandum speaks for itself in terms
11 of direction to U.S. Attorneys for prosecution of families that had been apprehended crossing the
12 southwest border. Plaintiffs' characterization of the Zero-Tolerance policy is not a statement of fact for
13 which a response is required.

14 54. Defendant admits that, for a limited period of time in 2018, the United States
15 implemented a Zero-Tolerance policy that resulted in the separation of some families at the United
16 States–Mexico border. Defendant further admits that Plaintiff families were separated. Defendant denies
17 the allegation that the Zero-Tolerance policy was a pretext to justify separation of a child from the
18 child's parent. Defendant admits that the last sentence in this paragraph is part of a quotation contained
19 in the referenced page of the DHS OIG Report. Defendant lacks information sufficient to form a belief
20 as to the accuracy of this quotation or the remaining allegations.

21 55. Defendant admits that the quotation from Secretary of Homeland Security Kirstjen
22 Nielsen in this paragraph is contained within the remarks Nielson made at a June 18, 2018 White House
23 Press Briefing on the illegal immigration crisis at the southern border. Defendant denies the accuracy of
24 the partial quotation from Attorney General Sessions referenced in this paragraph. The correct quotation
25 that is contained in Sessions' interview with Fox News host Laura Ingraham on The Ingraham Angle on
26 June 19, 2018 is: "We want to end this process of children being brought across dangerous territory,
27 placing those children at risk. If they want to claim asylum, let them go through the port of entry. That's
28

1 the way it should be done.” Defendant lacks information sufficient to form a belief as to the remaining
2 allegations.

3 56. Defendant admits that the information cited in this paragraph is contained in the 22-page
4 May 29, 2020 OIG Report. Defendant lacks information sufficient to form a belief as to the accuracy of
5 this information.

6 57. Defendant lacks information sufficient to form a belief as to these allegations.

7 58. Defendant admits that there was litigation by the federal court in *Ms. L.* concerning the
8 Zero-Tolerance policy and that on June 6, 2018 the federal court in that case granted Defendants’
9 motion to dismiss Plaintiffs’ claims under the APA and the Asylum Statute, and denied Defendants’
10 motion to dismiss Plaintiffs’ due process claim. Defendant admits that the quote in this paragraph is
11 contained in the June 6, 2018 *Ms. L.* decision.

12 59. Defendant admits that President Trump issued an Executive Order on June 20, 2018,
13 entitled “Affording Congress an Opportunity to Address Family Separation.” Defendant admits that the
14 quote in this paragraph is contained in Section 3 of aforementioned Executive Order. Defendant further
15 admits that the quotes from President Trump referenced in this paragraph are contained in (1) an April
16 28, 2019 *Washington Post* news article purporting to transcribe a colloquy between Trump and a Fox
17 News host, Maria Bartiromo, and (2) an October 23, 2018 Reuters online article purporting to describe
18 comments made by President Trump to reporters at the White House. Defendant lacks information
19 sufficient to form a belief as to the accuracy of these quotes or of the colloquy between Trump and the
20 Fox News host, or Trump and the White House reporters. Plaintiffs’ characterizations of these purported
21 quotes are not statements of facts for which a response is required.

22 60. Defendant admits that on June 26, 2018, the federal court in *Ms. L.* granted the Plaintiffs’
23 motion for a class-wide preliminary injunction. Defendant admits that the *Ms. L.* court held: “This Order
24 does not implicate the Government’s discretionary authority to enforce immigration or other criminal
25 laws, including its decisions to release or detain class members. Rather, the Order addresses only the
26 circumstances under which the Government may separate class members from their children, as well as
27 the reunification of class members who are returned to immigration custody upon completion of any
28 criminal proceedings.” Defendant further admits that the quotation referenced in this paragraph is

1 contained in the cited *Ms. L* opinion. The *Ms. L* decisions cited by this paragraph speak for themselves.
2 Plaintiffs' characterizations thereof are not statements of facts for which a response is required.

3 61. Defendant admits that, for a limited period of time in 2018, the United States
4 implemented a Zero-Tolerance policy that resulted in the separation of some families at the United
5 States–Mexico border. Defendant further admits that Plaintiff families were separated. Defendant admits
6 that the OIG Report cited in this paragraph states, “Between May 5 and June 20, 2018, the zero-
7 tolerance policy resulted in the separation of more than 3,000 children from their families when a parent
8 was referred to DOJ for prosecution.” Defendant lacks information sufficient to form a belief as to the
9 accuracy of this information. Defendant denies that the goal of the Zero-Tolerance policy was to
10 separate families. Defendant lacks information sufficient to form a belief as to the remaining allegations.

11 62. Defendant admits that the quotation referenced in this paragraph is contained in the cited
12 *Ms. L* opinion. Insofar as the quotation is intended to be an allegation, Defendant lacks information
13 sufficient to form a belief. Defendant lacks information sufficient to form a belief as to the remaining
14 allegations.

15 63. Defendant admits that the partial quotations in this paragraph are contained on the cited
16 pages of the February 2020 Physician for Human Rights document. Defendant lacks information
17 sufficient to form a belief as to the information contained in these partial quotes. Plaintiffs'
18 characterizations of these quotes are not statements of facts for which a response is required.

19 64. Defendant admits that the quotation referenced in this paragraph, from an Assistant
20 Professor of psychology at Yale University, is contained in the cited judicial opinion. Defendant lacks
21 information sufficient to form a belief as to the remaining allegations.

22 65. Defendant admits that the quotation in this paragraph appears in the Congressional
23 testimony of Dr. Julie Linton, a practicing pediatrician in Greenville, South Carolina and Co-Chair of
24 the American Academy of Pediatrics Immigrant Health Special Interest Group, on February 7, 2019
25 before the House of Representatives, Subcommittee on Oversight and Investigations, Committee on
26 Energy and Commerce. Defendant lacks information sufficient to form a belief as to the accuracy of the
27 quotation or the information referenced therein.

1 66. Defendant admits that the quotation attributed to the American Academy of Pediatrics in
2 this paragraph is contained on the cited page of the referenced Amnesty International document.
3 Defendant lacks information sufficient to form a belief as to the accuracy of the quotation or the
4 information referenced therein. Defendant admits that the quotation cited in this paragraph from
5 Commander White appears in the preliminary, unedited transcript of proceedings for the February 7,
6 2019 House of Representatives, Subcommittee on Oversight and Investigations, Committee on Energy
7 and Commerce. Defendant lacks information sufficient to form a belief as to the accuracy of the
8 quotation or the information referenced therein. The judicial opinion cited in this paragraph speaks for
9 itself. Plaintiffs' characterization thereof is not a statement of fact for which a response is required.
10 Defendant admits that the last sentence of this paragraph appears in the preliminary, unedited transcript
11 of Congressional testimony of Jack Shonkoff, a Professor of Child Health and Development at the
12 Harvard Chan School of Public Health and the Graduate School of Education, on February 7, 2019
13 before the House of Representatives, Subcommittee on Oversight and Investigations, Committee on
14 Energy and Commerce. Defendant lacks information sufficient to form a belief as to the accuracy of the
15 quotation or the information referenced therein.

16 67. This paragraph contains Plaintiffs' characterization of this civil action, to which no
17 response is required. Defendant admits that this is an action alleging injuries to three parents and their
18 respective children caused by Defendant's implementation of Zero-Tolerance policies for individuals
19 detained on suspicion of committing an illegal entry offense crossed the border from Mexico into
20 Arizona. Defendant further admits that Plaintiff families were separated and detained in government and
21 government-contracted facilities. Defendant lacks information sufficient to form a belief as to the
22 remaining allegations.

23 68. Defendant admits that Plaintiffs Wilbur and Wilfredo entered the United States in or near
24 San Luis, Arizona on or about May 27, 2018. Admit that either Plaintiff Wilfredo, or his father, Wilbur,
25 represented to Defendant that Wilfredo was 11 years old. Defendant admits that Wilbur P.G. and
26 Wilfredo applied for asylum in the United States. As to the remaining allegations of the paragraph,
27 Defendant lacks sufficient information to form a belief as to the truth of the allegations, and on that basis
28 denies them.

1 69. Defendant admits that Plaintiffs Wilbur and Wilfredo were taken into custody by U.S.
2 Border Patrol Agents and transported to the Yuma, Arizona Border Patrol Station. Defendant denies that
3 Border Patrol Agents did not conduct a medical screening of Plaintiffs Wilbur and Wilfredo. As to the
4 remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief as to the
5 truth of the allegations, and on that basis denies them.

6 70. Defendant admits that Plaintiffs Wilbur and Wilfredo were transported to the Yuma,
7 Arizona Border Patrol Station. As to the remaining allegations of the paragraph, Defendant lacks
8 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them.

9 71. Defendant denies that Plaintiffs Wilbur and Wilfredo were not medically screened. As to
10 the remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief as to
11 the truth of the allegations, and on that basis denies them.

12 72. Defendant denies Plaintiffs' allegations regarding conditions in the Border Patrol facility.
13 As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief
14 as to the truth of the allegations, and on that basis denies them.

15 73. Defendant denies Plaintiffs' allegations regarding conditions in the Border Patrol facility.
16 As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief
17 as to the truth of the allegations, and on that basis denies them.

18 74. Defendant denies Plaintiffs' allegations regarding their treatment by Border Patrol Agents
19 and conditions in the Border Patrol facility. As to the remaining allegations of the paragraph, Defendant
20 lacks sufficient information to form a belief as to the truth of the allegations, and on that basis denies
21 them.

22 75. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
23 and on that basis denies them.

24 76. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
25 and on that basis denies them.

26 77. Defendant denies Plaintiff Wilbur's allegations regarding his treatment by Border Patrol
27 Agents. As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form
28 a belief as to the truth of the allegations, and on that basis denies them.

1 78. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
2 and on that basis denies them.

3 79. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
4 and on that basis denies them.

5 80. Defendant denies Plaintiff Wilbur's allegations regarding conditions in the Border Patrol
6 facility. As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form
7 a belief as to the truth of the allegations, and on that basis denies them.

8 81. Defendant denies Plaintiff Wilbur's allegations regarding conditions in the Border Patrol
9 facility. As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form
10 a belief as to the truth of the allegations, and on that basis denies them.

11 82. Defendant denies Plaintiff Wilbur's allegations regarding his treatment by Border Patrol
12 Agents. As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form
13 a belief as to the truth of the allegations, and on that basis denies them.

14 83. Defendant denies Plaintiff Wilbur's allegations regarding his treatment by Border Patrol
15 Agents. As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form
16 a belief as to the truth of the allegations, and on that basis denies them.

17 84. Defendant denies Plaintiff Wilbur's allegation that he was not allowed to shower.
18 Defendant further denies Plaintiff Wilbur's allegation that he received no medical attention while in
19 CBP custody. As to the remaining allegations of the paragraph, Defendant lacks sufficient information
20 to form a belief as to the truth of the allegations, and on that basis denies them.

21 85. Defendant denies Plaintiff Wilbur's allegations regarding his treatment by Border Patrol
22 Agents. As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form
23 a belief as to the truth of the allegations, and on that basis denies them.

24 86. Defendant admits that Plaintiff Wilbur was not removed from the United States. Admit
25 that Plaintiff Wilbur was transferred to an ICE Immigration Detention Facility in Florence, Arizona. As
26 to the remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief as
27 to the truth of the allegations, and on that basis denies them.

28 87. Defendant lacks sufficient information to form a belief as to the truth of the allegations,

1 and on that basis denies them.

2 88. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
3 and on that basis denies them.

4 89. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
5 and on that basis denies them.

6 90. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
7 and on that basis denies them.

8 91. Defendant admits that Plaintiff Wilbur was transferred to an ICE Immigration Detention
9 Facility in Eloy, Arizona. As to the remaining allegations of the paragraph, Defendant lacks sufficient
10 information to form a belief as to the truth of the allegations, and on that basis denies them.

11 92. Defendant denies that Plaintiff Wilbur's allegation that he received no medical attention
12 from immigration officials. As to the remaining allegations of the paragraph, Defendant lacks sufficient
13 information to form a belief as to the truth of the allegations, and on that basis denies them.

14 93. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
15 and on that basis denies them.

16 94. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
17 and on that basis denies them.

18 95. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
19 and on that basis denies them.

20 96. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
21 and on that basis denies them.

22 97. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
23 and on that basis denies them.

24 98. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
25 and on that basis denies them but admits that Wilfredo's ORR case file contains a note dated May 27,
26 2018 indicating that Wilfredo traveled to the United States with his father and was separated at the
27 border.

28 99. Defendant admits that Wilfredo ORR case file reflects that a phone conversation between

1 Wilbur and Wilfredo was facilitated on June 20, 2018 followed by weekly scheduled calls on Tuesdays
2 at 9 am. Defendant lacks sufficient information to form a belief as to the truth of the remaining
3 allegations, and on that basis denies them.

4 100. Defendant admits that Plaintiffs Wilbur and Wilfredo were separated and that Wilfredo
5 was taken into ORR custody and placed at Southwest Key Estrella, in Tucson, Arizona on May 27, 2018
6 and remained at the shelter until he was reunified with Wilbur on July, 23, 2018, in San Francisco,
7 California. Defendant lacks sufficient information to form a belief as to the truth of the remaining
8 allegations, and on that basis denies them.

9 101. Defendant admits that Wilfredo was placed at Southwest Key Estrella, a privately owned
10 and operated, state licensed facility that maintains a cooperative agreement with ORR for placement and
11 care of UCs. Defendant lacks sufficient information to form a belief as to the truth of the remaining
12 allegations, and on that basis denies them.

13 102. Defendant admits that Wilfredo's ORR case file contains a Significant Incident Report
14 that indicates that on May 31, 2018, at 4:00 PM Wilfredo reported that he was inappropriately touched
15 by another minor at the facility. Defendant lacks sufficient information to form a belief as to the truth of
16 the remaining allegations, and on that basis denies them.

17 103. Defendant admits that Wilfredo's ORR case file documented that Wilfredo experienced
18 some altercations with his peers and behavioral issues while in ORR custody. Defendant lacks sufficient
19 information to form a belief as to the truth of the remaining allegations, and on that basis denies them.

20 104. Defendant denies that Wilfredo was not offered counseling, therapy or mental health
21 related services while in ORR custody. Defendant lacks sufficient information to form a belief as to the
22 truth of the remaining allegations, and on that basis denies them.

23 105. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
24 and on that basis denies them.

25 106. Defendant admits that an immigration judge granted Plaintiff Wilbur a \$16,000 bond. As
26 to the remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief as
27 to the truth of the allegations, and on that basis denies them.

28 107. Defendant lacks sufficient information to form a belief as to the truth of the allegations,

1 and on that basis denies them.

2 108. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
3 and on that basis denies them.

4 109. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
5 and on that basis denies them.

6 110. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
7 and on that basis denies them.

8 111. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
9 and on that basis denies them.

10 112. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
11 and on that basis denies them.

12 113. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
13 and on that basis denies them.

14 114. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
15 and on that basis denies them.

16 115. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
17 and on that basis denies them.

18 116. Defendant denies that Plaintiff Wilbur had an infection that went untreated. As to the
19 remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief as to the
20 truth of the allegations, and on that basis denies them.

21 117. Defendant admits that Plaintiff Wilbur was not prosecuted in connection with his illegal
22 entry into the United States.

23 118. Defendant admits that Plaintiffs Erendira and Yasmin are from Guatemala, that they have
24 sought asylum in the United States and that they crossed the U.S.-Mexico border on or about May 11,
25 2018. Defendant further admits that either Plaintiff Yasmin, or her mother, Erendira, represented to
26 Defendant that Yasmin was 6 years old. As to the remaining allegations of the paragraph, Defendant
27 lacks sufficient information to form a belief as to the truth of the allegations, and on that basis denies
28 them.

1 119. Defendant admits that Plaintiffs Erendira and Yasmin were detained and transported to a
2 government facility. As to the remaining allegations of the paragraph, Defendant lacks sufficient
3 information to form a belief as to the truth of the allegations, and on that basis denies them.

4 120. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
5 and on that basis denies them.

6 121. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
7 and on that basis denies them.

8 122. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
9 and on that basis denies them.

10 123. Defendant denies the allegations regarding the frequency and type of meals. As to the
11 remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief as to the
12 truth of the allegations, and on that basis denies them.

13 124. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
14 and on that basis denies them.

15 125. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
16 and on that basis denies them.

17 126. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
18 and on that basis denies them.

19 127. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
20 and on that basis denies them.

21 128. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
22 and on that basis denies them.

23 129. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
24 and on that basis denies them.

25 130. Defendant admits that Plaintiff Erendira was transferred for criminal prosecution for
26 violation of 8 U.S.C. § 1325(a)(1). As to the remaining allegations of the paragraph, Defendant lacks
27 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them.

28 131. District Court records indicate that Plaintiff Erendira required Mam interpretation.

1 Defendant lacks information sufficient to form a belief as to the subjective intent or belief of Plaintiff
2 Erendira. Defendant lacks sufficient information to form a belief as to the truth of the remaining
3 allegations, and on that basis denies them.

4 132. Defendant admits that after prosecution, Plaintiff Erendira was transferred back to Border
5 Patrol custody. Defendant denies that Plaintiff Erendira was then in Border Patrol custody for two
6 weeks. As to the allegations regarding conditions in the Border Patrol facility, Defendant denies. As to
7 the allegations regarding the type of meals, Defendant denies. As to the remaining allegations of the
8 paragraph, Defendant lacks sufficient information to form a belief as to the truth of the allegations, and
9 on that basis denies them.

10 133. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
11 and on that basis denies them.

12 134. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
13 and on that basis denies them.

14 135. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
15 and on that basis denies them.

16 136. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
17 and on that basis denies them.

18 137. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
19 and on that basis denies them.

20 138. Defendant denies that Plaintiff Erendira was in Border Patrol custody for two weeks after
21 returning from prosecution. Defendant admits that Plaintiff was detained in facilities in Arizona and was
22 transported by air during her detention period. Defendant lacks sufficient information to form a belief as
23 to the truth of the remaining allegations, and on that basis denies them.

24 139. Defendant admits that Plaintiff Erendira was transferred to an ICE Immigration Detention
25 Facility in Georgia. As to the remaining allegations in the paragraph, Defendant lacks sufficient
26 information to form a belief as to the truth of the allegations, and on that basis denies them.

27 140. Defendant admits that Plaintiff was housed in a detention facility in Georgia. Plaintiff
28 lacks sufficient information to form a belief as to the truth of the remaining allegations and on that basis,

1 denies them.

2 141. Defendant admits that Plaintiff Erendira spoke to Plaintiff Yasmin over the phone while
3 at a detention facility in Georgia. As to the remaining allegations in the paragraph, Defendant lacks
4 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them.

5 142. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
6 and on that basis denies them.

7 143. Defendant lacks sufficient information to form a belief as to the truth of the allegations
8 concerning phone use, and on that basis denies them. The detention facility in Georgia is run by a
9 contractor, and on that basis Defendant denies that the government charges for calls. Defendant admits
10 that it did not directly release Yasmin to her father, but denies that Yasmin's father made efforts to
11 "arrange for her to come live with him."

12 144. Defendant admits that Yasmin was sheltered in New York. Defendant lacks sufficient
13 information to form a belief as to the truth of the remaining allegations, and on that basis denies them.

14 145. Defendant denies that Yasmin was depressed in ORR custody. Defendant lacks
15 sufficient information to form a belief as to the truth of the remaining allegations, and on that basis
16 denies them.

17 146. Defendant denies that Yasmin spoke to her mother only once while in ORR custody.
18 Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and
19 on that basis denies them.

20 147. Defendant admits that Plaintiff Erendira was transported to an airfield following her
21 detention in Georgia. Defendant lacks sufficient information to form a belief as to the truth of the
22 remaining allegations, and on that basis denies them.

23 148. Defendant admits that Erendira was transferred to a detention facility in Texas.
24 Defendant further admits that Erendira and Yasmin were reunified. As to the remaining allegations in
25 the paragraph, Defendant lacks sufficient information to form a belief as to the truth of the allegations,
26 and on that basis denies them.

27 149. Defendant admits that Plaintiff Erendira and Plaintiff Yasmin were released from
28 government custody. As to the remaining allegations in the paragraph, Defendant lacks sufficient

1 information to form a belief as to the truth of the allegations, and on that basis denies them.

2 150. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
3 and on that basis denies them.

4 151. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
5 and on that basis denies them.

6 152. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
7 and on that basis denies them.

8 153. Defendant admits that Plaintiffs Joshua and Karl are from Guatemala. Admit that
9 Plaintiffs sought asylum after entering the United States. Admit that either Plaintiff Karl, or his father,
10 Joshua, represented to Defendant that Karl was 13 years old. As to the remaining allegations of the
11 paragraph, Defendant lacks sufficient information to form a belief as to the truth of the allegations, and
12 on that basis denies them.

13 154. Defendant admits that Plaintiffs Joshua and Karl entered the United States in or near San
14 Luis, Arizona on or about May 18, 2018. As to the remaining allegations of the paragraph, Defendant
15 lacks sufficient information to form a belief as to the truth of the allegations, and on that basis denies
16 them.

17 155. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
18 and on that basis denies them.

19 156. Defendant admits that Plaintiffs Joshua and Karl were transported to the Yuma, Arizona
20 Border Patrol Station. As to the remaining allegations of the paragraph, Defendant lacks sufficient
21 information to form a belief as to the truth of the allegations, and on that basis denies them.

22 157. Defendant admits that Plaintiffs Joshua and Karl were detained at the Yuma Border
23 Patrol Station. Defendant further admits that Border Patrol Agents collected biographic and
24 demographic information from Plaintiffs. As to the remaining allegations of the paragraph, Defendant
25 lacks sufficient information to form a belief as to the truth of the allegations, and on that basis denies
26 them.

27 158. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
28 and on that basis denies them.

1 159. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
2 and on that basis denies them.

3 160. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
4 and on that basis denies them.

5 161. Defendant denies Plaintiff Joshua’s allegations regarding conditions in the Border Patrol
6 facility. Defendant lacks sufficient information to form a belief as to the truth of the remaining
7 allegations, and on that basis denies them.

8 162. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
9 and on that basis denies them.

10 163. Defendant denies that Plaintiff Joshua did not receive clean clothing and never received
11 personal hygiene products. Defendant further denies that Plaintiff Joshua was never permitted to shower.
12 As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief
13 as to the truth of the allegations, and on that basis denies them.

14 164. Defendant denies that Plaintiff Joshua’s allegations as to the type of food and quality of
15 food provided, and that Plaintiff Joshua was not provided with appropriate hydration. Defendant further
16 denies that Plaintiff Joshua’s allegations regarding conditions at the Border Patrol facility. As to the
17 remaining allegations of the paragraph, Defendant lacks sufficient information to form a belief as to the
18 truth of the allegations, and on that basis denies them.

19 165. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
20 and on that basis denies them.

21 166. Defendant denies that Plaintiffs Joshua and Karl were separated at Yuma Border Patrol
22 Station for two days. As to the remaining allegations of the paragraph, Defendant lacks sufficient
23 information to form a belief as to the truth of the allegations, and on that basis denies them.

24 167. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
25 and on that basis denies them.

26 168. Defendant denies that Plaintiff Joshua was at Yuma Border Patrol Station for “over a
27 week.” As to the remaining allegations of the paragraph, Defendant lacks sufficient information to form
28 a belief as to the truth of the allegations, and on that basis denies them.

1 169. Defendant denies Plaintiff Joshua’s allegations regarding his treatment by Border Patrol
2 Agents and conditions in the Border Patrol facility. As to the remaining allegations of the paragraph,
3 Defendant lacks sufficient information to form a belief as to the truth of the allegations, and on that basis
4 denies them.

5 170. Defendant admits that Plaintiff Joshua was not prosecuted in connection with his illegal
6 entry into the United States.

7 171. Defendant denies that Plaintiff Joshua was at Yuma Border Patrol Station for “10 or 12
8 days.” Defendant admits that on May 21, 2018, Plaintiff Joshua was transported to Wellton Border
9 Patrol Station. As to the remaining allegations of the paragraph, Defendant lacks sufficient information
10 to form a belief as to the truth of the allegations, and on that basis denies them.

11 172. Defendant denies that Plaintiff Joshua did not receive clean clothing or personal hygiene
12 products. Defendant further denies that Plaintiff Joshua was not permitted to shower. Defendant denies
13 that Plaintiff Joshua had been in Border Patrol custody for “nearly two weeks” upon his arrival at
14 Wellton Border Patrol Station. As to the remaining allegations of the paragraph, Defendant lacks
15 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them.

16 173. Defendant admits that Plaintiff Joshua spent approximately eight (8) days at Wellton
17 Border Patrol Station. As to the remaining allegations of the paragraph, Defendant lacks sufficient
18 information to form a belief as to the truth of the allegations, and on that basis denies them.

19 174. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
20 and on that basis denies them.

21 175. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
22 and on that basis denies them.

23 176. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
24 and on that basis denies them.

25 177. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
26 and on that basis denies them.

27 178. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
28 and on that basis denies them.

1 179. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
2 and on that basis denies them.

3 180. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
4 and on that basis denies them.

5 181. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
6 and on that basis denies them.

7 182. Defendant admits that Plaintiff Joshua and Karl spoke on the phone. Defendant lacks
8 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them.

9 183. Defendant admits that Plaintiff Joshua and Karl spoke on the phone. Defendant lacks
10 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them.

11 184. Defendant admits that Plaintiff Joshua and Karl spoke on the phone. Defendant lacks
12 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them.

13 185. Defendant admits that Plaintiff Joshua and Karl spoke on the phone. Defendant lacks
14 sufficient information to form a belief as to the truth of the allegations, and on that basis denies them..

15 186. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
16 and on that basis denies them.

17 187. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
18 and on that basis denies them.

19 188. Defendant admits that Plaintiff Joshua was transferred to an ICE detention facility in
20 Arizona. As to the remaining allegations in the paragraph, Defendant lacks sufficient information to
21 form a belief as to the truth of the allegations, and on that basis denies them.

22 189. Defendant admits that Plaintiff Joshua was transferred to an ICE detention facility in
23 Arizona. As to the remaining allegations in the paragraph, Defendant lacks sufficient information to
24 form a belief as to the truth of the allegations, and on that basis denies them.

25 190. Defendant admits that Plaintiffs Joshua and Karl were reunited. As to the remaining
26 allegations in the paragraph, Defendant lacks sufficient information to form a belief as to the truth of the
27 allegations, and on that basis denies them.

28 191. Defendant admits that Plaintiff Joshua and Plaintiff Karl were transferred out of the ICE

1 immigration detention facility in Phoenix, Arizona. As to the remaining allegations of the paragraph,
2 Defendant lacks sufficient information to form a belief as to the truth of the allegations, and on that basis
3 denies them.

4 192. Defendant admits that Plaintiff Joshua and Plaintiff Karl were transferred to Karnes
5 County Residential Center (“Karnes”) in Karnes City, Texas. As to the remaining allegations of the
6 paragraph, Defendant lacks sufficient information to form a belief as to the truth of the allegations, and
7 on that basis denies them.

8 193. Defendant admits that Plaintiff Joshua and Plaintiff Karl were released from government
9 custody. As to the remaining allegations of the paragraph, Defendant lacks sufficient information to
10 form a belief as to the truth of the allegations, and on that basis denies them.

11 194. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
12 and on that basis denies them.

13 195. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
14 and on that basis denies them.

15 196. Defendant lacks sufficient information to form a belief as to the truth of the allegations,
16 and on that basis denies them.

17 197. Defendant lacks information sufficient to form a belief as to the intent of policymakers as
18 alleged in this paragraph. Defendant denies that the sole purpose of the Zero-Tolerance policy was as
19 stated in this paragraph. The remaining allegations are not statements of fact but conclusions of law to
20 which no response is required.

21 198. These allegations are not statements of fact but conclusions of law to which no response
22 is required.

23 199. Defendant admits that the quotes referenced in this paragraph are contained in the 31-
24 page document titled U.S. Customs and Border Protection National Standards on Transport, Escort,
25 Detention, and Search, dated October 2015. The allegations concerning CBB’s violations of statutory
26 and regulatory duties are not statements of fact but conclusions of law to which no response is required.
27 Plaintiffs’ allegation that no law or regulation required the government to separate the Plaintiff families
28 is not a statement of fact but conclusions of law to which no response is required. Defendant lacks

1 information sufficient to form a belief as to the specific allegations concerning Plaintiff parents, children
2 and families.

3 200. The allegations concerning duties of CBP agents, and violations of these duties in
4 separation of Plaintiff families, are not statements of fact but conclusions of law to which no response is
5 required. Defendant lacks information sufficient to form a belief as to the specific allegations concerning
6 “well documented damage” that separation “would cause” to Plaintiff children. Defendant denies that it
7 failed to make even basic efforts toward reunification of Plaintiff families.

8 201. Defendant admits that individual immigrants have a right to apply for asylum in the
9 United States. Defendant lacks information sufficient to form a belief as to the specific allegation
10 concerning federal agents placing conditions on Wilbur P.G.’s ability to reunite with his son. The
11 remaining allegations are not statements of fact but conclusions of law to which no response is required.

12 202. Defendant denies that Karl’s and Yasmin’s non-detained family members were qualified
13 sponsors capable of providing for the child’s physical and mental well-being. The allegations concerning
14 duties of CBP and ORR officials, and violations of these duties, the *Flores* settlement or Congressional
15 statutes, in the separation of Plaintiff families, are not statements of fact but conclusions of law to which
16 no response is required.

17 203. Defendant denies that Yasmin and Karl’s non-detained family members were qualified
18 sponsors capable of providing for the children’s physical and mental well-being. The remaining
19 allegations concerning the government’s violation of non-discretionary obligations concerning
20 reunification is not a statement of fact but conclusion of law to which no response is required.

21 204. Defendant admits that Wilbur P.G. is a national of El Salvador. Defendant lacks
22 information sufficient to form a belief as to the allegation that federal agents pressured Wilbur to accept
23 deportation and to abandon his asylum claim. The remaining allegation concerning the government’s
24 violation of the *Orantes* injunction is not a statement of fact but conclusion of law to which no response
25 is required.

26 205. Defendant lacks information sufficient to form a belief as to the full scope of Plaintiffs’
27 treatment during custody. The remaining allegation concerning the government’s violation of the United
28 States Constitution and multiple mandatory federal policies is not a statement of fact but conclusion of

1 law to which no response is required.

2 206. Defendant admits that Plaintiff families were held in Border Patrol facilities. Defendant
3 denies Plaintiffs' allegations regarding the conditions of confinement in these facilities. The remaining
4 allegations concerning CBP's violation of constitutional or other federal standards or policies is not a
5 statement of fact but conclusion of law to which no response is required.

6 207. Defendant admits that Plaintiff families were held in Border Patrol facilities. Defendant
7 denies Plaintiffs' allegations regarding conditions of confinement in these facilities, and Plaintiffs'
8 allegations regarding treatment by Border Patrol Agents, including the alleged use of withholding food
9 as punishment and alleged failure to provide clean water and drinking cups to Plaintiff families.
10 Defendant admits that the quotations referenced in this paragraph are contained in the 31-page document
11 titled U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and
12 Search, dated October 2015. The remaining allegations concerning CBP's violation of mandatory,
13 nondiscretionary policies is not a statement of fact but conclusion of law to which no response is
14 required.

15 208. Defendant admits that the quotation referenced in this paragraph is contained in the 31-
16 page document titled U.S. Customs and Border Protection National Standards on Transport, Escort,
17 Detention, and Search, dated October 2015. Defendant lacks information sufficient to form a belief as to
18 the accuracy of the specific CPB conduct with regard to the Plaintiff families referenced in this
19 paragraph. The remaining allegations concerning violations of duties by CBP officials are not statements
20 of fact but conclusions of law to which no response is required.

21 209. Defendant admits that the quotation referenced in this paragraph is contained in the 31-
22 page document titled U.S. Customs and Border Protection National Standards on Transport, Escort,
23 Detention, and Search, dated October 2015. The remaining allegations concerning violations of duties
24 by CBP employees are not statements of fact but conclusions of law to which no response is required.

25 210. Defendant admits that the quotation referenced in this paragraph is contained in the 31-
26 page document titled U.S. Customs and Border Protection National Standards on Transport, Escort,
27 Detention, and Search, dated October 2015. The remaining allegation concerning the duty of CBP
28 officers is not a statement of fact but conclusion of law to which no response is required.

1 211. Defendant admits that the quotation referenced in this paragraph is contained in the 31-
 2 page document titled U.S. Customs and Border Protection National Standards on Transport, Escort,
 3 Detention, and Search, dated October 2015. Defendant lacks information sufficient to form a belief as to
 4 the accuracy of allegations concerning CBP interactions with Wilbur P.G for his purported injuries. The
 5 remaining allegations concerning duties of CBP officers, and violations of CBP policy, are not
 6 statements of fact but conclusions of law to which no response is required.

7 212. Defendant admits that the U.S. Department of Health and Human Services, Office of the
 8 Inspector General Issue Brief, titled Separated Children Placed in Office of Refugee Resettlement, dated
 9 January 2019 at page 6, reported an increase in UCs placed in ORR custody in 2017 creating
 10 operational challenges including a shortfall of available beds at state-licensed facilities for younger
 11 children. The allegation that the government ignored applicable child welfare standards in violation of
 12 mandatory duties is not a statement of fact but conclusion of law to which no response is required. The
 13 remaining allegations are denied.

14 213. Defendant admits that Plaintiffs Karl was in ORR custody for 65 days and that Yasmin
 15 was in ORR custody for approximately 70 days. Defendant denies the remaining allegations concerning
 16 Plaintiffs Karl and Yasmin. Defendant further admits that Wilfredo’s ORR case file contains a
 17 Significant Incident Report that indicates that on May 31, 2018, at 4:00 PM Wilfredo reported that he
 18 was inappropriate touched by another minor at the facility. Defendant lacks information sufficient to
 19 form a belief as to whether this constituted a sexual assault. Defendant denies the remaining allegations
 20 concerning Wilfredo.

CAUSES OF ACTION

COUNT 1 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23 214. Defendant repeats and incorporates by this reference its responses to each and every
 24 allegation contained in paragraphs 1 through 213 as if set forth herein. To the extent a response is
 25 required, Defendant denies this allegation.

26 215. These allegations are not statements of fact but conclusions of law to which no response
 27 is required. To the extent a response is required, Defendant denies this allegation.

28 216. These allegations are not statements of fact but conclusions of law to which no response

1 is required. To the extent a response is required, Defendant denies this allegation.

2 217. These allegations are not statements of fact but conclusions of law to which no response
3 is required. To the extent a response is required, Defendant denies this allegation.

4 218. Defendant lacks information sufficient to form a belief as to the subjective knowledge of
5 DHS and DOJ officials. The remaining allegations are not statements of fact but conclusions of law to
6 which no response is required. To the extent a response is required, Defendant denies this allegation.

7 219. Defendant lacks information sufficient to form a belief as to the emotional or physical
8 states due to the separation of Plaintiffs.

9 **COUNT 2 – NEGLIGENCE**

10 220. Defendant repeats and incorporates by this reference its responses to each and every
11 allegation contained in paragraphs 1 through 219 as if set forth herein. To the extent a response is
12 required, Defendant denies this allegation.

13 221. This allegation is not statement of fact but conclusions of law to which no response is
14 required. To the extent a response is required, Defendant denies this allegation.

15 222. These allegations are not statements of fact but conclusions of law to which no response
16 is required. To the extent a response is required, Defendant denies these allegations.

17 223. These allegations are not statements of fact but conclusions of law to which no response
18 is required. To the extent a response is required, Defendant denies these allegations.

19 224. This allegation is not statement of fact but conclusions of law to which no response is
20 required. To the extent a response is required, Defendant denies this allegation.

21 **COUNT 3 – ABUSE OF PROCESS**

22 225. Defendant repeats and incorporates by this reference its responses to each and every
23 allegation contained in paragraphs 1 through 224 as if set forth herein. To the extent a response is
24 required, Defendant denies this allegation.

25 226. These allegations are not statements of fact but conclusions of law to which no response
26 is required. To the extent a response is required, Defendant denies these allegations.

27 227. Defendant admits that it initiated a criminal prosecution of Erendira. Defendant denies
28 the remaining allegations.

1 228. These allegations are not statements of fact but conclusions of law to which no response
2 is required. To the extent a response is required, Defendant denies these allegations.

3 **COUNT 4 – NEGLIGENT SUPERVISION/BREACH OF FIDUCIARY DUTY**

4 229. Defendant repeats and incorporates by this reference its responses to each and every
5 allegation contained in paragraphs 1 through 228 as if set forth herein. To the extent a response is
6 required, Defendant denies this allegation.

7 230. These allegations are not statements of fact but conclusions of law to which no response
8 is required. To the extent a response is required, Defendant denies these allegations.

9 231. These allegations are not statements of fact but conclusions of law to which no response
10 is required. To the extent a response is required, Defendant denies these allegations.

11 232. Defendant admits that Wilfredo’s ORR case file contains a Significant Incident Report
12 that indicates that on May 31, 2018, at 4:00 PM Wilfredo reported that he was inappropriately touched by
13 another minor at the facility. Defendant lacks information sufficient to form a belief as to whether this
14 constituted a sexual assault. The remaining allegations are not statements of fact but conclusions of law
15 to which no response is required. To the extent a response is required, Defendant denies these
16 allegations.

17 233. Defendant lacks information sufficient to form a belief as to whether Wilfredo suffered a
18 sexual assault. The remaining allegations are not statements of fact but conclusions of law to which no
19 response is required. To the extent a response is required, Defendant denies these allegations.

20 234. Defendant lacks information sufficient to form a belief as to the extent the minors were
21 able to comprehend Spanish and Mam interpretation was required. The remaining allegations are not
22 statements of fact but conclusions of law to which no response is required. To the extent a response is
23 required, Defendant denies these allegations.

24 **COUNT 5 – LOSS OF CONSORTIUM**

25 235. Defendant repeats and incorporates by this reference its responses to each and every
26 allegation contained in paragraphs 1 through 234 as if set forth herein. To the extent a response is
27 required, Defendant denies this allegation.

28 236. These allegations are not statements of fact but conclusions of law to which no response

1 is required. To the extent a response is required, Defendant denies these allegations.

2 237. Defendant lacks information sufficient to form a belief as to the extent of any suffering
3 by Plaintiffs. The remaining allegations are not statements of fact but conclusions of law to which no
4 response is required. To the extent a response is required, Defendant denies these allegations.

5 238. These allegations are not statements of fact but conclusions of law to which no response
6 is required. To the extent a response is required, Defendant denies these allegations.

7 239. Defendant admits that Wilfredo's ORR case file contains a Significant Incident Report
8 that indicates that on May 31, 2018, at 4:00 PM Wilfredo reported that he was inappropriately touched by
9 another minor at the facility. Defendant lacks information sufficient to form a belief as to whether this
10 constituted a sexual assault. Defendant lacks information sufficient to form a belief as to the extent to
11 which Wilfredo was able to discuss said incident with his father. The remaining allegations are not
12 statements of fact but conclusions of law to which no response is required. To the extent a response is
13 required, Defendant denies these allegations.

14 240. Defendant lacks information sufficient to form a belief as to the extent of any suffering
15 by Plaintiffs. The remaining allegations are not statements of fact but conclusions of law to which no
16 response is required. To the extent a response is required, Defendant denies these allegations.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs seeks the relief identified in Paragraphs A to D at page 63, Defendant
19 avers as follows.

20 A. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To
21 the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

22 B. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To
23 the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

24 C. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To
25 the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

26 D. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To
27 the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief.

28 **AFFIRMATIVE AND OTHER DEFENSES**

1 1. The Court lacks subject matter jurisdiction over Plaintiffs’ claims.

2 2. Plaintiffs’ claims are barred to the extent that they are based on the exercise or
3 performance or the failure to exercise or perform a discretionary function or duty. 28 U.S.C. § 2680(a).

4 3. Plaintiffs’ claims are barred to the extent that they are based on the execution of federal
5 statutes or regulations. 28 U.S.C. § 2680(a).

6 4. Plaintiffs have failed to state a claim on which relief may be granted in whole or in part.

7 5. The United States, through employees, did not owe a legal duty to Plaintiffs.

8 6. The United States, through employees, did not breach a legal duty owed to Plaintiffs

9 7. The United States has waived its sovereign immunity only for the actions of “employees
10 of the government” as defined in 28 U.S.C. § 2671.

11 8. Acts or omissions of the United States, through employees, were not the proximate cause
12 of injury to Plaintiffs.

13 9. In the event the United States is found to have been negligent or otherwise wrongful,
14 which negligence or wrongful conduct is denied, the superseding and intervening negligence or
15 wrongful conduct of third parties, for whom the United States cannot be held liable, broke any causal
16 connection between the United States’ negligence or wrongful conduct and Plaintiffs’ alleged injuries,
17 cutting off the legal effect of the United States’ negligence or wrongful conduct.

18 10. Plaintiffs’ recovery of damages, if any, is limited by federal and applicable state law.

19 11. Plaintiffs’ recovery against the United States, if any, is limited to the amount stated in
20 timely and properly presented administrative claims. 28 U.S.C. § 2675(b). To the extent Plaintiffs have
21 not timely or properly presented administrative tort claims, or seek relief different from, or in excess of,
22 that set forth in a timely and properly filed administrative tort claim, Plaintiffs have not exhausted their
23 administrative remedies.

24 12. Plaintiffs may not recover punitive damages, non-monetary damages, or pre-judgment
25 interest under the Federal Tort Claims Act. 28 U.S.C. § 2674.

26 13. To the extent the Court enters a money judgment against the United States, Plaintiffs are
27 entitled to post-judgment interest only in accordance with the provisions of 28 U.S.C. § 1961(b) and 31
28 U.S.C. § 1304(b).

1 14. Plaintiffs' claims are barred by any exception to or limitation on the United States'
2 waiver of sovereign immunity.

3 15. Under the FTCA, the United States only may be held liable in the same manner and to the
4 same extent as a private individual under like circumstances. 28 U.S.C. § 2674.

5 16. To the extent that there are persons who were comparatively at fault, whether or not they
6 are currently parties to this lawsuit, principles of comparative fault apply and liability must be
7 apportioned or any judgment reduced as set forth under applicable state law.

8 17. Plaintiffs' claims are barred or diminished by Plaintiffs' failure to mitigate damages.

9 18. Plaintiffs' claims are barred to the extent they allege misrepresentations by federal
10 employees. 28 U.S.C. § 2680(h).

11 19. The United States specifically reserves the right to raise additional affirmative defenses
12 which become evident through discovery, and to amend its Answer to raise any affirmative defense –
13 including, but not limited to, those identified by Federal Rule 8(c) – not currently known and/or which it
14 may have or through discovery learn may be applicable. asserts that it has, or may have, additional
15 affirmative defenses that are not known to the United States at this time but may be ascertained through
16 discovery.

17 **JURY DEMAND**

18 Defendant demands a trial by jury on any claim so triable.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. Plaintiffs take nothing by their Complaint;
2. The Complaint be dismissed with prejudice;
3. Judgment be entered in favor of Defendant;
4. Defendant be awarded its costs of suit;
5. The Court award such other and further relief as it may deem proper.

Dated: July 29, 2022

Respectfully submitted,

STEPHANIE M. HINDS
United States Attorney

/s/ Kenneth Brakebill
Kenneth Brakebill
Assistant United States Attorney

Counsel for Defendant