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FOIA EXEMPT

August 20, 2008

Re: [redacted]



COVINGTON

Such information is exempt from the public access provisions of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). Should any U.S. government agency receive a request for disclosure related to these claims, we ask that the government: (1) notify the undersigned before responding to the requestor; and (2) redact any information, including but not limited to the claimants' names and address, that is exempt from disclosure under FOIA or any other applicable statute or regulation protecting the privacy of the claimants.

We look forward to discussing any proposals you may have for the prompt and fair resolution of these claims. Please feel free to contact us at any time.

Sincerely,



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ATTACHMENT A

1. Submit to Appropriate Federal Agency

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Mail Stop 0485
Washington, DC 20528-0485

Office of the Principal Legal Advisor
Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, DC 20536

U.S. Customs and Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue, N.W.
Washington, DC 20229

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

U.S. Customs and Border Protection
Tucson Field Office
4760 N. Oracle Road
Suite 316
Tucson, AZ 85705

2. Claimant's Personal Representative

Counsel: Matthew Schlesinger, Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, DC 20001-4956

Counsel: Michelle Lapointe, Southern Poverty Law Center, P.O. Box 1287, Decatur, GA 30031

6. Date and Day of Accident

J.D.G. and his daughter, M.G.G.L., were forcibly separated by agents of the U.S. Department of Homeland Security ("DHS") on or about May 25, 2018. M.G.G.L. was put into the custody of the U.S. Department of Health and Human Services ("HHS"), Office for Refugee Resettlement ("ORR"), while J.D.G. remained in DHS custody. J.D.G. and his daughter were not reunited until approximately July 22, 2018.

7. Time (A.M. or P.M.)

J.D.G. believes that he and his daughter were separated in the afternoon.

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2. J.D.G. and M.G.G.L. Are Taken into Custody by Customs and Border Protection ("CBP").

Shortly after J.D.G. and M.G.G.L. entered the United States near San Luis, Arizona, with

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A little girl in the same cell was experiencing a severe stomachache. The child's father tried to get a guard's attention to ask for help. J.D.G. also tried to get the guard to help, but the guard ignored him and the other father. The guard responded dismissively, stating that the facility was not a hospital. While J.D.G. helped the other father attend to the little girl, he looked over to M.G.G.L., who was sitting in a corner crying to herself. J.D.G. tried to be strong, but could not manage to summon the strength. He went over to M.G.G.L. and held her while they both cried. He felt utterly helpless and overwhelmed.

Seeing his child cry because she was suffering broke J.D.G.'s heart. He could not stand to see her suffering in the icebox. He feared that M.G.G.L. too would become seriously sick and denied medical attention. J.D.G. and M.G.G.L. had been in the icebox for almost a week, and with each passing day, M.G.G.L. was deteriorating. J.D.G. asked an officer when they would let them go. The officer said he did not know and expressed surprise that they had not taken M.G.G.L. from J.D.G. yet. A few hours later, two officers and a third person dressed in civilian clothes came to take M.G.G.L. The officers told J.D.G. that they were going to take M.G.G.L. to a "shelter." J.D.G. believed there was no other option for M.G.G.L. M.G.G.L. pleaded with J.D.G. that she didn't want to go and that she wanted to stay with him. M.G.G.L. was crying as J.D.G. hugged her. He did not want to let her go, but felt that he had no other choice. He had traveled a long distance to keep her safe, and he could not fathom losing her to dehydration, hypothermia, and illness in a concrete jail cell.

M.G.G.L. asked her father when she would see him again. J.D.G. told her that they would see each other soon. Still crying, M.G.G.L. walked out with the officers. J.D.G. genuinely believed that he would see his daughter soon. An officer had told him that the separation was temporary and that as soon as J.D.G. resolved his "situation," they would be reunited. He assured J.D.G. that M.G.G.L. would be okay. J.D.G. asked where they were taking her and how to contact her, but no one gave him any information. J.D.G. felt destroyed by the separation. He realized that he no longer had M.G.G.L. in his arms, but wanted to believe that wherever the officers were taking her, she would at least receive better care than in the icebox.

3. J.D.G. Pleads Desperately for His Daughter as He Is Transferred Among Several Detention Facilities. Receiving No Information, He Begins to Feel Suicidal.

While J.D.G. was still in the icebox, he asked several officers where his daughter was taken. The officers told him that they had taken M.G.G.L. because the icebox was not a place for children, they did not have any information about her, and did not know where she was. After spending a few additional days in the icebox after M.G.G.L. was taken from him, J.D.G. was transferred to what he believes was the Florence Detention Center outside of Phoenix, Arizona, where he spent a few days. Here, J.D.G. became severely ill with a fever and body ache. He felt as if his body was giving up on him. His emotional state was deteriorating. He was sad and in despair over his daughter. His pleas for medical attention were repeatedly denied. Despite his physical and mental state, J.D.G. inquired repeatedly about M.G.G.L. He was told that they could not give him any information and that he had to wait. At that moment, J.D.G. was in such deep despair that he considered taking his own life.

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J.D.G.'s health worsened when he was placed on an airplane with other detainees and sent to Georgia. He was handcuffed with his hands chained to his waist and his ankles chained together. Throughout the flight, J.D.G. was coughing up blood, with no means to cover his mouth as his hands were shackled and chained to his waist. As soon as the detainees disembarked the plane after their cross-country flight, they were placed on buses headed to Stewart ICE Detention Center in Lumpkin, Georgia. J.D.G. recalls being chained for approximately 15 hours during the journey by plane and bus. The only food that J.D.G. and the other detained immigrants were given during this long and exhausting trip was bread, cheese, and one small cup of water. The men had to figure out on their own how to eat and drink, as their hands remained shackled to their waists, and the officers refused to unchain them. As soon as J.D.G. arrived at Stewart, he was placed in quarantine because medical staff there thought that he had rotavirus. He was coughing up substantial amounts of blood at this point. Debilitated by his illness and in deep distress over having been separated from his daughter, J.D.G. again felt that he did not want to live anymore. He thought death could not be worse than what he was going through at that moment. Medical staff began to provide him with pills for his condition, which he considered saving and then taking all at once to end his life. He soon realized that this plan would not work because the medical staff required him to open his mouth to confirm he had swallowed his pills.

This was the lowest moment in J.D.G.'s life. Before the separation from his daughter, he had never previously experienced suicidal thoughts. He believes that the only thing that gave him the strength to survive was his love for his family and M.G.G.L.

4. In Despair, J.D.G. Relinquishes His Asylum Claim.

When J.D.G. was held in the icebox with M.G.G.L., J.D.G. remembers being interviewed by an immigration officer. The officer asked him several questions, including his name, home country, if he brought documents with him, and why he had traveled to the United States. J.D.G., despite his deteriorating health, recalls that he managed to tell the officer about his niece's rape and the threat that was made against him and M.G.G.L. The officer did not ask any follow up questions and barely acknowledged J.D.G.'s answers. J.D.G. felt that the officer was completely indifferent to his situation.

At Stewart, a different officer conducted a credible fear interview for J.D.G. over the phone. The person who interviewed J.D.G. told him that the asylum process could take several months, during which he would have to wait in detention. J.D.G. could not conceive of being separated from M.G.G.L. for that long. He decided to not proceed with his asylum claim and—believing it was the only way he could be reunited with his daughter—asked to be sent back to his country. At this point, J.D.G. still had no information on where M.G.G.L. was being held or how she was doing. He was particularly concerned about whether, after the unhealthy conditions in the icebox, she was able to start eating and sleeping again, and if the color had returned to her face. His primary concern was to do everything he could to get M.G.G.L. back as soon as possible, even if it meant being deported to Guatemala, where at least they could be together. At this point, J.D.G. pleaded with any official he came into contact with to send him back to Guatemala with his daughter.

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5. J.D.G. Desperately Seeks Information About M.G.G.L. and Is Finally Able to Speak to Her After a Month of Separation.

While at Stewart, J.D.G. again inquired about his daughter's location. An officer informed him that he needed to know M.G.G.L.'s identification number in order to locate her. J.D.G. did not have any idea what that number was or how to obtain it. The officers with whom he had previously dealt had not provided him with any information or guidance on what he could do to locate his daughter. When he received funds in his commissary account from an outside Attag. did TM

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broke J.D.G. He felt that his only option was to ask the government to deport him and M.G.G.L. so that they could finally be together again.

The calls with M.G.G.L. were infrequent. J.D.G. tried to call his daughter on multiple occasions, but no one picked up the phone at the Southwest Key facility where she was being held. This deepened J.D.G.'s anxiety and concern for M.G.G.L.'s well-being. He felt that his calls were being ignored, and that when they did manage to speak, he could not get a full sense of how M.G.G.L. was doing.

He came to believe that he would never again see M.G.G.L. and that the government might put her up for adoption. He was in despair, and the officers' treatment of him in detention only made things worse. When J.D.G. was in Folkston, he and other separated fathers were given a sheet of paper to sign in English. Another detainee advised him not to sign the document. When officers presented J.D.G. with the document, he told them that he did not want to sign it and only wanted to see his daughter. But the officers told him that if he did not sign the document, he would never see his daughter again. Fearing that this threat was true, J.D.G. signed the document even though it was in a language he did not read or understand.

From Folkston, officers transferred J.D.G. for the fourth time, this time to a detention center in Texas. J.D.G. does not recall the name of the center. Again, he was handcuffed, chained to his waist and at the ankles from approximately 8 a.m. to midnight of the following day, a total of about 16 hours. Officers provided the detainees very little food and very little water during the transfer. J.D.G. was eventually transferred to another ICE detention center in Port Isabel, Texas.

6. After Approximately Two Months Apart, J.D.G. and M.G.G.L. Are Reunified.

Late in the night on or about July 21, 2018, an officer at the detention center in Port Isabel ordered J.D.G. to gather his belongings and informed him that he was leaving. The officer did not tell J.D.G. where he was going. J.D.G. had seen other fathers released that same day and had heard that they were being reunified with their children. J.D.G. wanted to be hopeful but thought it was more likely that officers were merely transferring him to another detention center.

The officer took J.D.G. to a room and told him to sign several documents and that they were going to return his daughter to him. J.D.G. couldn't believe what he was hearing. He had

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crying babies from their parents. He remains in fear that the government will find a way to separate him from his daughter again.

B. The Government Illegally Separated Families for the Purpose of Deterring Future Migrants.

Since 2017, the Administration has taken thousands of children from their parents, intending to cause terror, anguish and harm, and to use that cruelty to deter future migrants from seeking to enter the United States. Both the practice of separating families itself, and its implementation, violate the Constitution, the law, and basic human decency.

The many harms that the Administration inflicted on J.D.G. and M.G.G.L., as described in Section A, were not only foreseeable, but intentional. Forcible parent-child separations have long been known to cause significant short- and long-term damage to mental, physical, and emotional health. Knowing this, and indeed because of this, the government cruelly separated J.D.G. and M.G.G.L. and others like them for the purpose of deterring future migrants from entering the United States. It made the harm far worse by implementing a policy with carelessness and callous disregard for the physical safety and emotional well-being of J.D.G. and M.G.G.L. Administration officials have yet to acknowledge or accept any responsibility for the harms they caused. For all of these reasons, J.D.G. and M.G.G.L. seek relief through these claims.

1. The Government's Forcible Separation of Families Violated the Constitution, the Law, and Norms of Basic Human Decency.

The government's policy of separating families who, like J.D.G. and M.G.G.L., sought to enter the United States through the U.S. southern border in 2017 and 2018 deliberately violated the constitutional rights of those separated, including the right to family integrity. For decades, this nation's highest court has recognized the fundamental right to family integrity protected by the Constitution: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."¹ These constitutional protections extend to citizens and non-citizens alike, even when confined by the government.²

In the name of deterrence, the government indiscriminately tore immigrant children from their parents, sent the children thousands of miles away, refused to inform parents and children of each other's whereabouts or well-being, refused to provide adequate means for parents and children to talk with each other, and failed to have any system for tracking the children or ensuring that families could ever be reunited.

¹ *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

² *Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enft*, 319 F. Supp. 3d 491, 500 (D.D.C. 2018) ("The fact that [families are] lawfully detained in immigration custody does not eliminate [their] due process right to family integrity.").

As Judge Sabraw concluded in *Ms. L. v. U.S. Immigration and Customs Enforcement*, the government's actions "shock[] the conscience."³ The *Jacinto-Castanon de Nolasco* court further stated that "nothing in federal law suggests that deterring immigration by indefinitely separating families once the parents have been transferred to immigration custody is a compelling or legitimate government objective."⁴ Both the policy itself and its callous implementation violate the Constitution, the law, and norms of human decency.

2. Forcibly Separating Families Causes Irreparable Harm to Children and Parents.

Keeping parents separated from their children with "little or no direct access to basic information about their health or general well-being, *plainly causes irreparable harm.*"⁵ Children attach to their caregiver from the time they are born, and the children's sense of safety "depends on that relationship."⁶ Disrupting that relationship causes "the parts of the brain that deal with attachment and fear" to "develop differently."⁷

It is not surprising, then, that "[s]eparation irreparably harms [families] every minute it persists."⁸ This finding of the *Jacinto-Castanon de Nolasco* court is firmly anchored in scientific studies and literature. As an expert physician testified to Congress, "[a] century of

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Given the Administration's own internal comments and the government's response to the many public warnings opposing a family separation policy, there is no question that the Administration was well aware of the harms family separation would cause — before it began separating families in mid-2017.

4. Knowing the Harm, the Government Forcibly Separated Families for the Purpose of Deterring Future Migrants.

Despite Secretary Kelly's public assurance that families crossing the border would be separated only in specific circumstances for the welfare of the child, in 2017 the Administration

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For example, a December 2017 internal DHS memo confirms that “prosecution of family units” and “separat[ion] [of] family units” (as well as the publicity that would accompany such actions) were viewed as differing pathways to deterring future migration.²² Despite the “official” federal government policy of “not referring for prosecutions families or individuals arriving at ports of entry or attempting to enter the country through legal means,”²³ many families lawfully crossed the border and yet were separated anyway.²⁴

Moreover, while the Zero Tolerance Policy was in effect, CBP limited the number of asylum seekers permitted to lawfully cross the border at ports of entry each day.²⁵ This drove many families who had fled their home countries in fear “to take other routes into the country, at

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happening and how the adults could get in touch with their kids.”³⁵ The government failed to provide parents with any “paperwork” documenting the location or well-being of their children,

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transmitted disease.⁴³ In another reported case, staff gave a child medicine to which she was allergic despite warnings on the child's medical bracelet.⁴⁴

The Administration's express intent to inflict the trauma of family separation as a deterrent — followed by its failures to track children, tell their parents anything about their whereabouts and well-being, and provide them with safe and appropriate care — evidence at best a callous disregard for the anguish of separated parents and children, and at worst an intent to increase their suffering to maximize the deterrent effect of the family separation policy.

10. State the Nature and Extent of Each Injury or Cause of Death, Which Forms the Basis
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13b. Phone Number of Person Signing the Form

Matthew Schlesinger, Covington & Burling LLP, (202) 662-5581.

Michelle L. Lapointe, Southern Poverty Law Center, (404) 521-6700.