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U.S. Department of Justice
Office of the Inspector General
Investigations Division
ATTN: Civil Rights & Civil Liberties
Complaints
950 Pennsylvania Ave., NW
Washington, DC 20530

September 29, 2022

RE: Request for investigation into separation of tender age child from his mother and father during border processing

Dear Officer Culliton-Gonzalez and CRCL Compliance Team:

The National Immigrant Justice Center (NIJC) files this complaint on behalf of Victoria, a mother [REDACTED] who suffers ongoing, irreparable harm as a result of U.S. Customs and Border Patrol's (CBP) decision to seemingly violate agency policy by separating her and her husband (Anton) from their 11-year-old child (Felipe) in order to refer her for prosecution for a low-level misdemeanor.¹ Four months after the separation, Victoria remains separated from her son, languishing in U.S. Marshals Service (USMS) custody awaiting resolution of her case because CBP referred her for prosecution and the U.S. Attorney for the Western District of Texas elected to charge her with a misdemeanor offense for failure to present herself at a legally designated port of entry.²

The Department of Homeland Security (DHS) and Department of Justice (DOJ) have violated the rights of Victoria and her family, causing extreme trauma and pain to her, Anton, and Felipe. Upon entry to the United States, CBP officials referred Victoria and her husband for prosecution for failure to report at a border crossing point (19 U.S.C. § 1459(a)); a federal misdemeanor charge. This prosecution resulted in the family's separation. While Victoria and Felipe were transferred to federal criminal custody, young Felipe, who was 10 years old at the time, was

¹ NIJC obtained declarations and signed authorization from both Victoria and Felipe to file this complaint on their behalf. Due to the communication restrictions imposed by USMS as discussed in this complaint, NIJC was unable to obtain a written declaration or signed privacy waiver from Anton.

² Victoria, Anton and Felipe are pseudonyms, used to protect the identity of the complainant and the family.

transferred to the custody of the Office of Refugee Resettlement (ORR) and sent to shelter more than a thousand miles away, [REDACTED]. The decision by the U.S. Attorney for the Western District of Texas to pursue misdemeanor charges has caused ongoing detention of Victoria and her husband, preventing them from reunifying with their child. The separation is aggravated by the refusal of USMS to facilitate regular communication between Victoria and Anton and their son, Felipe, who remains in the custody of ORR. USMS has further restricted Victoria from communicating with her immigration attorney, obstructing her access to legal counsel and blocking her, her husband, and her son from pursuing their asylum claim and taking steps to pursue reunification. To date, neither DHS nor DOJ has provided Victoria or her attorney with any written explanation as to the basis for the separation, nor have any charges been brought against her other than the one relating to manner of entry. Put simply, this devastating separation persists with no justification whatsoever provided to the family.

Four years after the devastation of the Zero-Tolerance family separation program, it is unconscionable that the U.S. government continues to tear families apart. To date, DOJ and DHS officials have failed to implement many of the basic recommendations issued by oversight and watchdog agencies in the wake of Zero-Tolerance, such as allowing for parents to communicate with the child from whom they have been separated and ensuring prompt reunification. The United States government continues to ignore its obligations to uphold the basic rights – and recognize the fundamental integrity – of immigrants and asylum seeking families. This case tragically illustrates that the government is repeating the pain and suffering of family separations with little scrutiny.

NIJC urges your offices to initiate an immediate investigation into Victoria's separation from her son, the justification for the separation and the government's failure to communicate this basis to Victoria and her counsel, and the ongoing detention of her and her husband in U.S. Marshals' custody. We request that you urgently recommend that: 1. The Justice Department and USMS immediately ensure that Victoria and her husband are permitted regular, free, and confidential phone conversations with their immigration counsel; 2. The Justice Department immediately ensure the release of Victoria and Anton from USMS custody; and 3. DHS lift any pending immigration detainer so that the parents can be released without threat of ICE detention and be reunified with their child. This complaint urges your offices to take immediate action to ensure family reunification so that Victoria, Anton and Felipe can begin to recover from the trauma of the separation and pursue their asylum claim without obstruction.

I. DHS has inflicted irreparable harm and trauma on Victoria by separating her from her son & failing to reunify the family

Victoria arrived with her husband and then-10-year-old child to the U.S. Mexico border in May 2022, seeking safety in the United States. Border Patrol agent [REDACTED] arrested Victoria

and her husband [REDACTED].³ Following the arrest, CBP referred Victoria and her husband for criminal prosecution under 19 U.S.C. § 1459(a), failure to report at a border crossing point. Victoria and Felipe were detained together in a CBP facility for about three days. A guard took Felipe away one day without explanation, and drove him to a facility an hour away. A plain clothed officer then interrogated Victoria, and later that day a different official wearing an immigration uniform told Victoria that her son would be returned and they would be released together the following day. Officials brought back Felipe that same day. The following day, different CBP officials made Victoria and her husband sign papers in English that she did not understand. Victoria signed the papers believing that her family would be released together. That same day, however, CBP officials called on Felipe and took him from the holding room before Victoria had a chance to intervene. Victoria started crying and asked where they took her son, but none of the officials provided any answers. Victoria was not able to say goodbye and a few hours later was on a vehicle to a U.S. Marshal facility without any knowledge of her son's whereabouts. *See* Exh. A. CBP designated Felipe as an "unaccompanied minor" and sent him to ORR custody. Their son was flown more than a thousand miles away to an ORR shelter facility [REDACTED].

The U.S. Attorney for the Western District of Texas chose to pursue the prosecution for the misdemeanor charge, and Victoria and her husband remain in U.S. Marshals' custody awaiting sentencing. The separation has caused Victoria and her family irreparable harm. As Victoria stated in her attached declaration:

"After about one month in U.S. Marshal custody, I was finally connected with my son by phone. I am allowed one fifteen-minute phone call with my son per week. At first, he was happy to talk with me, but as the months have passed he has become more withdrawn and deeply sad. Sometimes he refuses to speak with me and says my husband and I abandoned him.

On [REDACTED], my son turned eleven years old in a detained children's shelter. I wasn't able to speak with him on his birthday but I spoke with him the day after. He seemed deflated. He said, "If there's no cake, there's no birthday." I told him we'd celebrate when we see each other. He has always loved celebrating his birthday. My heart broke not being able to be by his side. I felt so powerless on his birthday that I barely left my bed in my cell." Exh. A.

Felipe explained the deep pain and trauma he is experiencing being separated from his parents in his attached declaration:

"I have been away from my mom and dad for around four months. I do not understand why I cannot be with them. I am filled with sadness. I have been so worried and felt so alone that I am struggling [REDACTED]. I began seeing a doctor because of this. I

³ United States District Court, Western District of Texas, [REDACTED], Criminal Complaint. *United States of America vs. (I) [REDACTED]*. Copy on file with author available upon request.

do not understand why I cannot be with my parents. I feel like I am being punished but I did not do anything wrong.

I deserve to be back with my mom and dad. I want to live with them again so they can give me hugs and cook for me, and we can do other things together. We always used to play together and now I cannot even see them.

Before this experience, I was never apart from my parents for more than one day. Now, so many months have passed without any hope of reuniting with them anytime soon. I do not know when I will be able to see them again and this is what makes me the saddest. I know my parents brought me here to protect me against bad things in ██████████ and I feel very sad that we are apart now. I ask that you please let my dad, mom, and I be together again.” Exh. B.

a. Victoria’s case illustrates that family separations with flimsy bases persist even four years after the end of Zero Tolerance.

The Trump administration’s Zero-Tolerance policy that led to systemic separations of families at the U.S. southern border was meant to deter asylum seekers by taking away their children. The cruelty implicit in this scheme was breathtaking and it was met with widespread protest and condemnation.⁴ Human rights experts and legal scholars found that the intentional harm behind the Trump administration’s policy constituted government-sanctioned torture.⁵ Separations have a detrimental physical and emotional impact on both children and adults, and can cause extraordinary trauma that will have life-long implications.⁶ Families who have suffered separations have brought legal challenges to stop family separation policies.⁷ Nevertheless, the

⁴ See, i.e., Caitlin Dickerson, “The secret history of the U.S. government’s family-separation policy,” *The Atlantic*, August 7, 2022, <https://www.theatlantic.com/magazine/archive/2022/09/trump-administration-family-separation-policy-immigration/670604>. See also Maria Sacchetti, “Lawyers for migrants say U.S. officials slowed family reunifications,” *Washington Post*, June 8, 2022, <https://www.washingtonpost.com/nation/2022/06/08/migrant-families-reunifications-delayed>.

⁵ See, i.e., Katie Peeler, *Forced Family Separation Isn’t Just Traumatic. It’s Torture*, Physicians for Human Rights (March 10, 2020), <https://phr.org/our-work/resources/forced-family-separation-isnt-just-traumatic-its-torture>. See also Condon, Jenny-Brooke, *When Cruelty Is the Point: Family Separation as Unconstitutional Torture*, 56 *Harv. C.R.-C.L. L. Rev.* 37 (2021), Seton Hall Public Law Research Paper, <https://harvardcrcl.org/wp-content/uploads/sites/10/2021/04/condon.pdf>. [This article draws upon “Eighth Amendment and Due Process doctrine to articulate why the policy’s intentional cruelty and infliction of grievous harm constituted unconstitutional torture.”].

⁶ See, i.e., Women’s Refugee Commission, Lutheran Immigrant and Refugee Services, and Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*, January 10, 2017m <https://reliefweb.int/sites/reliefweb.int/files/resources/BetrayingFamilyValues-Feb2017.pdf>. See also Teicher, Martin H., *Childhood trauma and the enduring consequences of forcibly separating children from parents at the United States border*, *BMC Med.*, August 22, 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6103973>.

⁷ See, i.e., Sarah Rogerson, *Cruelty was the Point: Theories of Recovery for Family Separation and Detention Abuses*, [Vol. 21:2] *Nev. L.J.* 583, (August 2021), <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1847&context=nlj>. [discussing the various legal challenges, including those premised on violations of the Fifth Amendment Due Process right to family integrity,

U.S. government continues to subject asylum seekers and migrants arriving at the U.S.-Mexico border to the trauma of family separation.⁸

In *Ms. L vs. ICE*, the U.S. District Court for the Southern District of California found that parents separated because of the Zero-Tolerance program (referred for prosecutions for U.S.C. § 1325(a), improper entry) would likely succeed on their claim that the government violated their due process rights.⁹ Subsequent CBP guidance outlining the circumstances under which separations could occur does not not allow for Border Patrol to separate parents for misdemeanor prosecutions.¹⁰ The Biden administration has also committed to “protect family unity and ensure that children entering the United States are not separated from their families” barring the most extreme circumstances.¹¹

Nonetheless, CBP officials made the decision to refer Victoria and her husband for criminal prosecution on a misdemeanor manner of entry charge, comparable to the 8 U.S.C. § 1325 prosecutions under Zero-Tolerance, resulting in the family’s separation. To the best of our knowledge, no subsequent charges have been brought. The charge brought against Victoria and her husband by the U.S. government was not a felony and did not include allegations of any violent conduct.

among other Constitutional and statutory claims. At the time of the article, the right to family integrity had been “universally recognized in the family separation cases filed to date.”]

⁸ See, i.e., Comment in response to request from the Family Reunification Task Force, *Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families*, National Immigrant Justice Center, January 19, 2022, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2022-01/Family-separation-policies-NIJC-comment-2022-01-19.pdf>. See also Letter to Secretary Mayorkas Raising Concerns Over Continued Family Separations, Calling for Justice for Separated Family, *Mother Assaulted and Separated from Children at Border; Demands Accountability from the Department of Homeland Security*, ACLU, Jewish Family Service, UCLA Center for Immigration Law and Policy, August 16, 2022, <https://www.jfssd.org/press/mother-assaulted-and-separated-from-children-at-border-demands-accountability-from-the-department-of-homeland-security>.

⁹ See *Ms. L. v. U.S. Immigration & Customs Enforcement*, 310 F. Supp. 3d 1133, 1142-45, 1149 (S.D. Cal. 2018) (finding that the “practice of separating class members from their minor children, and failing to reunify class members with those children, without any showing the parent is unfit or presents a danger to the child is sufficient to find Plaintiffs have a likelihood of success on their due process claim.” The Court also found that, in “the context of this case, and enforcement of criminal and immigration laws at the border, ‘fitness’ could include a class member’s mental health, or potential criminal involvement in matters other than ‘improper entry’ under 8 U.S.C. § 1325(a), (see EO § 1), among other matters.”).

¹⁰ See U.S. Customs and Border Protection (CBP), Memo from CBP Commissioner Kevin McAleenan, *Interim Guidance on Preliminary Injunction Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018)*, June 27, 2018, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/Interim%20Guidance%20on%20Preliminary%20Injunction%20June%202018.pdf>. See also U.S. Customs and Border Protection (CBP), Memo from Raul Ortiz, Chief Border Patrol Agent, Del Rio Sector, *U.S. Border Patrol Family Separation Unit Guidance*, January 7, 2020, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/20-876%20-%20Family%20Unit%20Separation%20Guidance%2001082020%20%281%29%20Redacted.pdf>.

¹¹ See President Biden, *Establishment of Interagency Task Force on the Reunification of Families*, Exec. Order 14,011, § 1, 86 Fed. Reg. 8273, 8273, February 2, 2021.

b. DHS has failed to implement recommendations to mitigate harm and is violating congressional requirements to report on ongoing family separations

In the wake of Zero-Tolerance, DHS’s Office of Civil Rights and Civil Liberties issued vital recommendations regarding documentation and inter-agency communication intended to ensure that family members would be tracked as a unit even after separation and to ensure the likelihood of reunification subsequent to a family separation. This case reveals that CBP has largely failed to implement these recommendations. In 2019, for example, CRCL recommended that “OFO [Office of Field Operations] and USBP officers and agents should ensure that family separation decisions, the reasons underlying decision [sic], and the separation processes are relayed to the family members in a language they understand, and allow, when appropriate, the family members to communicate before physical transfer to ICE or ORR custody occurs.”¹² Neither the Office of Field Operations nor Border Patrol offices *ever* communicated to Victoria or her husband the reasons underlying their separation from their child or the processes that would be followed to allow for subsequent reunification. *See* Exh. A.

On September 9, 2022, the DHS OIG issued a scathing report finding that DHS has still not sufficiently improved its ability to “track migrants from apprehension to release or transfer,” in spite of the OIG’s 2019 recommendation to do so in the wake of the Zero Tolerance policy.¹³ DHS has failed to even develop the basic systems needed to coordinate transfer of unaccompanied children from CBP to ORR, or to share information on people transferred from CBP to USMS. That report concludes that such “deficiencies can delay uniting children with families and sponsors and cause migrants to remain in DHS custody beyond legal time limits.”¹⁴ Because of these deficiencies, Victoria did not even know where her child was for around three weeks after their separation, and USMS staff made no effort to facilitate communication between separated family members or with their immigration counsel.

Victoria explained:

I learned I was being criminally charged for coming to the United States around five days later during my first court date. My husband, son and I crossed the border with a group of people and waited for immigration officials to arrive. We weren’t running or hiding. I brought evidence to show immigration officials in support of our asylum application and told the immigration officials about why we fled ████████ to save our lives.

¹² Memo from the Department of Homeland Security, Office of Civil Rights and Civil Liberties (CRCL) to CBP & ICE, *Family Separation Complaints*, July 25, 2019, <https://www.dhs.gov/sites/default/files/2022-06/2019.07.25%20Recommendations%20Memo%20to%20CBP%20and%20ICE%20Family%20Separation%20Redacted%20Accessible.pdf>.

¹³ Department of Homeland Security, Office of the Inspector General (OIG), *DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families*, OIG 20-06, November 25, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf>.

¹⁴ Department of Homeland Security, Office of the Inspector General (OIG), *DHS Technology Systems Do Not Effectively Support Migrant Tracking at the Southwest Border*, September 9, 2022, OIG-22-66, <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-66-Sep22.pdf>.

I was held in a quarantine tank for new arrivals for around twelve days and couldn't call my family. I continued to ask the guards about my son. They had no information and could not help me. Once I had an attorney appointed for me I asked him for help locating my son. He said he couldn't help because they don't receive information about a child's location from immigration.

Once I joined the general population, a fellow detainee taught me how to call my family [REDACTED]. I had been in U.S. Marshal custody for around three weeks when I finally learned where my son was located through my family [REDACTED] who had established communication with the ORR shelter [REDACTED]. Exh. A.

DHS is also required by Congress to report on every instance of family separation at the border and the justification behind the separation.¹⁵ However, the evidence suggests that DHS *did not report* Victoria and her husband's separation from their child as required by Congress. U.S. Health and Human Services (HHS), which reports on information provided by DHS, reported that 6 separations took place in May 2022 involving children ages 6-12. Five of those separations took place in Harlingen, Texas, the other one in Arizona.¹⁶ None of the recorded separations for May occurred in the sector in which Border Patrol agents arrested Victoria and her husband and separated them from her son. Your agencies should investigate CBP's failure to report on Victoria's separation, and demand answers from DHS on the failure to report on this and other separations.

II. U.S. Marshals and DHS officials restricted Victoria's access to counsel and ability to communicate with her child

U.S. Marshals and DHS officials have restricted Victoria's access to communicate with her immigration attorney, obstructing her right to access legal counsel and her ability to reunify with her child. In limiting Victoria and her husband's access to their immigration attorney, USMS and DHS officials have also restricted the right of their 11-year-old son to pursue his asylum claim, given that communication with his parents is pivotal to developing his asylum case.

NIJC Senior Attorney Colleen Kilbride represents Victoria and her husband in their immigration proceedings, and has attempted to arrange calls with Victoria and her husband. Ms. Kilbride first received confirmation from a GEO Group staff contractor at the USMS facility to set up a call and received instructions on how to do so.¹⁷ However, a U.S. Marshal official responded informing Ms. Kilbride that she was prohibited from having a legal call with Anton.¹⁸ According to the official, people detained with federal pending cases could "not discuss or meet with any

¹⁵ See U.S. Department of Homeland Security, *Family Unit Actions Report October 1, 2020–September 30, 2021*, March 30, 2022, https://www.dhs.gov/sites/default/files/2022-03/22_0323_plyc_family_unit_actions_report_fy21_September_0.pdf.

¹⁶ See Health and Human Services (HHS), *Monthly Reports on Separated Children*, May 2022, <https://www.hhs.gov/sites/default/files/may-2022-monthly-report-on-separated-children.pdf>.

¹⁷ See email correspondence with Case Manager, GEO Secure Services. On file with NIJC, available upon request.

¹⁸ See email correspondence with Supervisory Deputy U.S. Marshal. On file with NIJC, available upon request.

attorney outside their attorney of record.”¹⁹ The USMS official wrote that Ms. Kilbride had to wait until after the sentencing date to speak with Anton.²⁰ For Anton, that means no legal phone calls until on or after January 2023 and Victoria on or after May 2023 due to the staggered processing of their respective cases. Ms. Kilbride has since been able to speak with Victoria on a few occasions by phone, with ongoing difficulties. Victoria has used her commissary account to make paid, non-confidential calls, that are interrupted and limited to 15 minutes. The legal phone call prohibition makes it impossible for Ms. Kilbride to provide Victoria and her family comprehensive legal guidance. *See* Exh. C.

U.S. Marshals’ refusal to allow Victoria and her husband to communicate with their immigration attorney is a violation of their right to legal access. U.S. Marshals are required to adhere to the Federal Performance Based Detention Standards, which clearly state that prisoner “access to counsel is ensured,” and that prisoners are “assisted in making confidential contact with attorneys and their authorized representatives.”²¹ Because Victoria is held under an active ICE detainer, her ability to communicate with her immigration attorney must be protected in addition to her ability to communicate with her criminal defense attorney.

The case also demonstrates that the Justice Department and DHS have failed to put in place mechanisms to ensure that parents in USMS custody are able to communicate regularly and for free with their child after a separation. For the first weeks of their separation, the government did not inform Victoria and her husband where their son was located. For weeks, Victoria and her husband lived in anguish as both the Justice Department and DHS failed to facilitate communication between Victoria and her son. Eventually, after weeks, Victoria was given access to speak to her son but only once per week, using a system in which ORR shelter staff helped facilitate by adding funds to her commissary account in USMS custody to pay for the calls. *See* Exh. C.

The watchdog reports issued in the wake of the Zero-Tolerance policy included numerous and specific recommendations to ensure that if families were separated in the future, systems would be in place to ensure free communication between parents and child. In 2020, for example, the Government Accountability Office (GAO) recommended that CBP and ICE ensure they track family separations, and that DHS and HHS work together to improve information sharing on separating children.²² In January 2021, the DOJ Office of the Inspector General (OIG) recommended the Justice Department and USMS put in place measures to “facilitate communication between family unit adults separated from associated family unit minors, especially parents in U.S. Marshals Service custody and their children in Office of Refugee

¹⁹ Ibid.

²⁰ Ibid.

²¹ *See* Federal Performance Based Detention Standards Handbook, Rev 11, May 2022, <https://www.usmarshals.gov/sites/default/files/media/document/detention-standards.pdf>.

²² U.S. Government Accountability Office (GAO), *Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS*, GAO Report, GAO-20-245, February 2020, <https://www.gao.gov/assets/gao-20-245.pdf>.

Resettlement custody.”²³ Yet Victoria’s affidavit reveals these recommendations to have been largely ignored, resulting in agonizing weeks in which Victoria and her husband had no ability to speak with their son, followed by limited weekly calls in which ORR shelter staff had to initially facilitate in order to help Victoria overcome USMS’s refusal to accommodate calls.

“I deserve to be able to communicate with my attorneys and to be reunited with my son. The U.S. Marshal officials and Geo facility are prohibiting me from having legal calls with my immigration attorneys. I need to speak with my attorneys, I need to be reunified with my husband and son, and I need to file for asylum. My son has spent almost four months in immigration detention alone. I’m overcome with grief when I think about the possibility of him being placed with a foster family. I worry about the long-term impact this separation and his feelings of abandonment will have on him and on us as a family. My son is not an unaccompanied minor. I am right here and am desperate to be reunited with him.” *See* Exh. A.

III. The government has failed to provide any written explanation or evidence (apart from the prosecution) justifying Victoria’s separation from her son and ongoing detention

Government officials have informally, and never in writing, informed NIJC that the family separation could have resulted in part because DHS has claimed that Victoria and her husband were accused of alleged association with armed groups in their home country. These allegations are false and Victoria awaits the opportunity to refute them, should they formally be lodged against her. Despite extensive outreach to ICE’s parental interests unit, DHS officials, and various levels of ORR hierarchy, NIJC has been unable to discern the basis for these allegations. Months after their separation, NIJC is still unaware of any official charges related in any way to associations with foreign armed groups being brought against either Victoria or her husband. NIJC has also obtained three official documents from different branches and agencies of the ██████████ government confirming no records of criminal history associated with either Victoria or Anton.²⁴

In CBP custody, an official questioned Victoria about her work schedule, her church, and affiliations. The official accused her of spending time in jail and belonging to an armed group, allegations she vehemently denies. Victoria describes in her declaration that the only time she has been in jail is in her capacity as an attorney. Victoria felt discriminated against based on the stigma associated with people ██████████, due to the long history of armed conflict in the country. *See* Exh. A.

“I was told it was my turn for an interview. The officer wore plain clothes, introduced himself as an investigator and showed me a badge on his belt. I explained I was afraid to return to ██████████. He claimed I had spent time in jail in ██████████. I was baffled because I have never been arrested

²³ *See* Department of Justice, Office of the Inspector General, *Review of the Department of Justice’s Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services*, Page 70, (January 2021), https://oig.justice.gov/sites/default/files/reports/21-028_0.pdf.

²⁴ Comprehensive criminal history document from the government ██████████, confirming “no criminal records” relating to Vicky or Anton. Records on file with NIJC, available upon request.

and never spent any time in jail. The only time I was at or near a jail was for work as an attorney. The official also falsely claimed that I belonged to an armed group. I have never been involved with any armed group. The investigator didn't give any more details or specifics. He just kept asserting that I had been in jail previously and belonged to an armed group. He asked several specific questions about the name of the school I attended, what Catholic church I attended, the name of the priest, how often we attended church, and specifics of my work schedule. He told me we'd speak again.

My suffering is so large I struggle to put it into words. I have never been detained before in my life. I never imagined to be in this situation. We are a law-abiding family. No one in my entire family has ever been in jail. I've helped people in jail as an attorney in [REDACTED], but this is a totally different experience of helplessness. It's one thing to be put into prison when you've committed a crime, but it's another thing when you've come to ask for asylum." See Exh. A.

NIJC has raised alarm in the past over separations occurring involving parents accused of crimes or criminal associations shared by unsubstantiated foreign sources.²⁵ Internal records also show DHS separated hundreds of families well beyond the end of the Zero-Tolerance program based on suspected criminal histories in the parent's "home country."²⁶ Victoria's case raises concern that unreliable separations continue to occur on the basis of allegations from foreign governments that are often false and have little to no connection to the individual's fitness to be a parent.

The Biden White House has ordered a review of foreign government information sharing practices, in order to "evaluate the efficacy of those practices," and to examine how the U.S. ensures the accuracy and reliability of the information provided by foreign governments.²⁷ Congress has also sought to pierce the secrecy on the issue of foreign data sharing leading to family separations.²⁸ Your agencies should take steps to ensure that Victoria and Anton are

²⁵ See U.S. House Judiciary Committee Hearing, *Oversight of Family Separation and U.S. Customs and Border Protection Short-Term Custody under the Trump Administration*, Statement of the National Immigrant Justice Center (NIJC), July 25, 2019, <https://docs.house.gov/meetings/JU/JU00/20190725/109852/HHRG-116-JU00-20190725-SD014.pdf>. See also *Ms. L v. U.S. Immigration & Customs Enforcement*, U.S. Southern District of California, Declaration of Lisa Koop, Case No. 18-cv-00428- DMS-MDD, July 20, 2019. (NIJC found that parents were sometimes given some verbal indication at their credible fear interviews of the basis for the separation, but no specific details or documentation. As attorneys for separated parents, NIJC asked numerous government officers, including ICE Deportation Officers, USCIS Asylum Officers, ICE Trial Attorneys, and attorneys from the Department of Justice, for documentation to substantiate allegations of gang affiliation or criminal history. In all but one case, the government refused to provide NIJC with documentation reflecting the reason or justification for the separation.)

²⁶ See Jesse Franzblau, "Family Separation Policy Continues, New Documents Show," National Immigrant Justice Center, June 22, 2019, <https://immigrantjustice.org/staff/blog/family-separation-policy-continues-new-documents-show>. See also Lomi Kriel and Dug Begley, "Trump administration still separating hundreds of migrant children at the border through often questionable claims of danger," Houston Chronicle, June 24, 2019, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-administration-still-separating-hundreds-of-14029494.php>.

²⁷ White House, *Proclamation on Ending Discriminatory Bans on Entry to The United States*, Sec. 3, January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states>.

²⁸ See U.S. House of Representatives, Department of Homeland Security Appropriations Act, Joint Explanatory

afforded the right to rebut any allegations levied against them and challenge any evidence obtained through foreign sources and relied on by DHS to separate them from their child.

IV. Victoria's family separation experience is emblematic of the system-wide failure to protect migrant families seeking to maintain family unity

The Trump administration's Zero-Tolerance policy was just one program in the myriad of cruel deterrence and enforcement programs that continue to separate parents from their children and cause lasting harm to migrant families. The Biden administration officially rescinded the policy²⁹ and established an interagency task force to reunify families separated as a result of Zero-Tolerance or "any other related policy, program, practice, or initiative resulting in the separation of children from their families at the United States-Mexico border."³⁰ Nevertheless, families continue to suffer from separations resulting from deterrence programs carried out by the Biden administration.³¹

In Fiscal Year 2021, CBP reported on 227 recorded family separations, "marking a 252 percent increase" from Fiscal Year 2020.³² U.S. Health and Human Services (HHS) reported that another 131 separations have taken place so far in Fiscal Year 2022 (through July 2022).³³ These are merely the cases that are recorded, and do not account for the cases that go undocumented, such as Victoria's. The alarming increase in numbers of separations, and the failure of DHS to report on this separation merits urgent investigation and action by your agencies.

Statement, 2022, Division F, <https://docs.house.gov/billsthisweek/20220307/BILLS-117RCP35-JES-DIVISION-F.pdf>. (Congressional appropriations includes a requirement in the FY 2022 DHS funding bill that requires DHS to report monthly on instances of family separations, the basis for the separation, including whether such separation was based on information obtained by a foreign government. This reporting requirement that passed in March 2022 required DHS to provide this information to Congress within 60 days. DHS has so far failed to report which family separation cases resulted from information obtained by a foreign government).

²⁹ See Office of the Attorney General, Memo for All Federal Prosecutors from the Acting Attorney General, *Rescinding the Zero-Tolerance Policy for Offenses Under 8 U.S.C. § 1325(a)*, January 26, 2021, <https://www.justice.gov/ag/page/file/1360706/download>.

³⁰ See President Biden, Establishment of Interagency Task Force on the Reunification of Families, Exec. Order 14,011, § 1, 86 Fed. Reg. 8273, 8273 (February 2, 2021).

³¹ See, *i.e.*, Comment in response to request from the Family Reunification Task Force, "Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families," National Immigrant Justice Center, January 19, 2022, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2022-01/Family-separation-policies-NIJC-comment-2022-01-19.pdf>.

³² See U.S. Department of Homeland Security, *Family Unit Actions Report*, Fiscal Year 2021 Report to Congress, March 23, 2022, https://www.dhs.gov/sites/default/files/2022-03/22_0323_plcy_family_unit_actions_report_fy21_September_0.pdf.

³³ See U.S. Health and Human Services, *Reports to Congress on Separated Children*, October 2021 - July 2022, <https://www.hhs.gov/programs/social-services/unaccompanied-children/index.html>.

Conclusion

DHS and DOJ officials are responsible for the protracted separation detailed in this complaint, causing ongoing trauma and harm for Victoria, her husband, and 11-year-old child, that will likely leave life-long scars. The case merits an urgent response; the uncertainty and anguish the family is experiencing is intolerable, considering the long-term impact on the child's health resulting from separation and impact on them as a family. With every passing day, Victoria and her husband worry about the extended time their child is spending in ORR detention, and fear the government will place their child with a foster family when he has loving parents desperate to reunite.

We request that your agencies take measures to ensure the release and reunification of Victoria and her family. Specifically, we request that you urgently recommend that: 1. The Justice Department and USMS immediately ensure that Victoria and her husband are permitted regular, free, and confidential phone conversations with their immigration counsel; 2. The Justice Department immediately ensure the release of Victoria and Anton from USMS custody; and 3. DHS lift any pending immigration detainer so that the parents can be released without threat of ICE detention and be reunified with their child.

We also ask that your agencies request information, in writing, from ICE or CBP regarding the basis for this separation, the nature of any undisclosed allegations against the parents, and the process available for Victoria and her attorneys to rebut any such allegations.

Sincerely,

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Enclosures:

Exh. A: Declaration submitted on behalf of Victoria
Exh. B: Declaration submitted on behalf of Felipe
Exh. C: Declaration submitted on behalf of NIJC Senior Attorney Colleen Kilbride