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

12
13 Ms. L., et al.,

14 *Petitioners-Plaintiffs,*

15 v.

16
17 U.S. Immigration and Customs Enforcement
("ICE"), et al.,

18 *Respondents-Defendants.*
19

Case No. 18-cv-00428-DMS-MDD
**DECLARATION OF JENNIFER
NAGDA**

20
21
22

1 I, Jennifer Nagda, hereby declare, pursuant to 28 U.S.C. § 1746:

2 1. I am the Policy Director for the Young Center for Immigrant Children's
3 Rights (hereinafter "Young Center"). I have been employed by the Young Center
4 since November 2008.

5 2. This declaration is based on my own knowledge and that of other Young
6 Center staff at programs across the country.

7 3. The Young Center is a registered 501(c)(3) organization based in Chicago
8 with programs in seven additional locations including: Harlingen, Texas; Houston,
9 Texas; San Antonio, Texas; Phoenix, Arizona; Los Angeles, California;
10 Washington, D.C.; and New York, New York.

11 4. The Young Center was created in 2004 as a pilot project of the federal
12 Office of Refugee Resettlement, Department of Health and Human Services
13 (hereinafter "ORR") to create a program to provide best interests guardians *ad*
14 *litem* (Child Advocates) for trafficking victims and other vulnerable
15 unaccompanied children. Young Center attorneys and social workers are appointed
16 as Child Advocates alongside trained, bilingual volunteers.

17 5. The role of the Child Advocate is to advocate for the best interests of the
18 child. Child Advocates identify a child's best interests by considering the child's
19 expressed wishes, safety, and right to family integrity, liberty, developmental
20 needs and identity. These "best interests factors" are well-established in the child
21 welfare laws of all 50 states and in international law, including the Convention on
22 the Rights of the Child.

6. Child Advocates play a critical role when a child is pre-verbal, or otherwise
unable to express her wishes; when her expressed wishes would endanger her life
(for example, a child so frustrated with the conditions of custody that she asks to
return to her trafficker rather than waiting for her application for protection to be

1 adjudicated, and where her attorney (if she has one) must represent her expressed
2 wish to repatriate); when there is uncertainty about whether a decision is in her
3 best interests or when various best interests factors conflict (for example, when two
4 different adults step forward to sponsor the child's release from custody); or when
5 there is a risk that the government will not consider or will not give appropriate
6 weight to the child's best interests when making a decision (for example, when the
7 child faces prolonged detention, or faces unsafe repatriation).

7. Beginning in 2004, ORR assigned Young Center staff and volunteers as
Child Advocates for unaccompanied children in ORR custody.

8. In 2008, Congress passed and President George W. Bush signed into law the
9 Trafficking Victims Protection Reauthorization Act ("TVPRA") which authorizes
10 the Secretary of Health and Human Services to appoint "independent child
11 advocates" to identify and advocate for the best interests of child trafficking
12 victims and other vulnerable unaccompanied children.¹ In 2013, Congress
13 expanded the Child Advocate program from the original programs in Chicago and
Harlingen to the eight locations listed above.

9. Since its founding, the Young Center has served as the independent Child
Advocate for more than 2,000 children in government custody. We are the only
organization authorized by ORR to serve in that capacity.

10. As the Child Advocate, we submit best interests recommendations on behalf
of unaccompanied children in government custody to federal agencies including
the Executive Office for Immigration Review within the Department of Justice,
Immigration and Customs Enforcement within the Department of Homeland
Security, and ORR. The Child Advocates' recommendations are grounded in
federal and domestic best interests law.

¹ 8 U.S.C. § 1232(c)(6) (2013).

1 11. In July 2019, the Young Center was called to testify before Congress about
2 our work with immigrant children, including those separated from their parents
3 after this Court’s July 26, 2018 order.

4 **Federal Government Appointment of Child Advocates**

5 12. As specified in the TVPRA, child trafficking victims and other vulnerable
6 unaccompanied children may be appointed an independent Child Advocate.²

7 13. The role of the Child Advocate is to identify the child’s best interests, and to
8 advocate with government agencies to consider the child’s best interests in all
9 decisions. Young Center Child Advocates submit best interests recommendations
10 (in writing and orally) on issues including the child’s placement in ORR custody,
11 services for the child in ORR custody, the child’s release from custody, family
12 reunification, and the child’s permanency—whether it is in the child’s best
interests to be granted protection in the United States or whether the child can be
safely repatriated.

13 14. The Young Center depends upon stakeholders—ORR officials, staff at
14 ORR-contracted facilities, staff at ORR-contracted legal services providers,
15 immigration judges, asylum officers, ICE trial attorneys and other DHS officials—
16 to identify vulnerable, unaccompanied children and refer them to the Young Center
for the appointment of a Child Advocate.

17 15. When the Young Center receives a referral, we determine whether we have
18 the capacity to accept the referral. We then submit the referral to ORR
19 Headquarters either approving appointment or declining the referral, using the
20 “Child Advocate Recommendation and Appointment Form, OMB Control No.
0970-0498” (hereinafter “Appointment Form”).

21 ² *Id.*
22

1 16. When ORR approves a referral to be appointed, it returns the completed
2 Appointment Form to the Young Center and we begin work on the case.

3 17. To the best of my knowledge, ORR has never declined our request to be
4 appointed as the independent Child Advocate for an unaccompanied or separated
5 child in the agency's custody.

6 **Domestic Child Welfare Framework Guiding Child Advocate** 7 **Recommendations**

8 18. In all of our advocacy on behalf of unaccompanied and separated children,
9 the Young Center relies on state child welfare laws as guidance on standards for
10 the placement, care, and protection of children.

11 19. The right of parents to the care and custody of their children is a
12 fundamental right protected by the Constitution and the child welfare laws of all 50
13 states.³

14 20. As the U.S. Department of Health and Human Services has explained, the
15 government generally cannot remove a child from the care and custody of the
16 parent absent "imminent danger" to the child's safety.⁴

17 ³ *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (holding that the Due Process
18 Clause of the Fourteenth Amendment "protects the fundamental right of parents to
19 make decisions concerning the care, custody, and control of their children . . . and
20 that the right to care for one's child is "perhaps the oldest of the fundamental
21 liberty interests recognized by [the] Court.").

22 ⁴ Children's Bureau, Admin. for Children & Families, U.S. DEP'T OF HEALTH &
HUMAN SERVS., *How the Child Welfare System Works* 4 (Feb. 2013),
<https://www.childwelfare.gov/pubPDFs/cpswork.pdf#page=3&view=What%20Happens%20When%20Possible%20Abuse%20or%20Neglect%20Is%20Reported> (a
child must be at risk of "immediate danger" before a state can remove that child
from the custody of his caregiver.).

1 21. As recently as February 2018, Congress passed and the President signed into
2 law the Family First Prevention Services Act (FFPSA), which is intended to
3 decrease the removal of children—including children subjected to maltreatment—
4 from their families.

5 22. Under the FFPSA, federal funds previously available only for the purposes
6 of supporting children in foster care can now be used for preventative services for
7 children who are at risk of being removed from their families and placed into foster
8 care—in other words, federal funds can be applied toward services designed to
9 keep children with their families even in situations where there is a history or risk
10 of abuse and neglect by the parent.⁵

11 23. In those cases where the government removes a child from the care and
12 custody of a parent, parents and children are entitled to protections including a
13 prompt hearing before an independent judge, often within 48 hours. The vast
14 majority of states appoint counsel for parents, given the parents’ fundamental right
15 to the care and custody of their children.⁶

16 24. In California, a child may only be removed from her parents without a
17 warrant when there is reasonable cause to believe that the child has an “immediate
18 need for medical care, or the minor is in immediate danger of physical or sexual
19

20 ⁵ Family First Prevention Services Act, 42 U.S.C. § 622 (2018); *The Family First*
21 *Prevention Services Act*, NAT’L CONF. FOR STATE LEGISLATURES (June 27, 2019),
22 <http://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>; Susan Schmidt, *Trauma Inflicting, Not Trauma Informed: The U.S. Federal Government’s Double Standard toward Migrant Children*, 64 SOCIAL WORK 91–93 (2019).

⁶ See, e.g., TEX. FAM. CODE ANN. §§ 262.102, 105 (1995) (stating that parents have a right to counsel at a family court hearing); N.Y. FAM. CT. ACT § 261 (McKinney 1975) (stating that parents have a constitutional right to counsel in family court proceedings that may infringe on their interests and rights); ARIZ. REV. STAT. ANN. § 8-824 (2014) (stating that parents are have a right to counsel during preliminary protective hearings, including appointed counsel if they are indigent).

1 abuse, or the physical environment or the fact that the child is left unattended poses
2 an immediate threat to the child's health or safety."⁷ After removal, written notice
3 must be given to the caregiver,⁸ and a social worker must "immediately investigate
4 the circumstances of the child and the facts surrounding the child's being taken
5 into custody and attempt to maintain the child with the child's family through the
6 provision of services."⁹ The child must be immediately reunited with her caregiver
7 unless the social worker finds that "continued detention of the child is a matter of
8 immediate and urgent necessity for the protection of the child and there are no
9 reasonable means by which the child can be protected in his or her home or the
10 home of a relative"¹⁰ and files a petition with the court.¹¹ A hearing must then be
11 held the next day.¹² If the caregiver desires counsel but cannot afford counsel, the
12 court will appoint counsel.¹³ The child shall also be appointed counsel whose
13 primary responsibility is to "advocate for the protection, safety, and physical and
14 emotional well-being of the child."¹⁴ The court must consider whether adequate
15 efforts were made to prevent the removal of the child and if there are services
16 available that would prevent the need for further detention.¹⁵

17 25. Under Illinois law a child can be separated from a caregiver on an
18 emergency basis only where there is an "immediate danger of moderate to severe
19 harm" to the child, such as suspected or documented abuse or neglect of the
20
21
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⁷ CAL. WELF. & INST. CODE § 305(a) (West 1976).

⁸ *Id.* §§ 307.4(a), 308(a).

⁹ § 309(a).

¹⁰ § 309(a)(2).

¹¹ § 311(a).

¹² § 315.

¹³ § 317(a)(1).

¹⁴ § 317(c)(1), (2).

¹⁵ § 319(f)(1).

1 child.¹⁶ Moreover, an Illinois court could only authorize the ongoing separation of
2 a child from a caretaker beyond a period of 48 hours where it found “probable
3 cause of abuse, neglect, or dependency.”¹⁷

4 26. Pursuant to Texas law, a child may be removed from a parent on an
5 emergency basis only if “there is an immediate danger to the physical health or
6 safety of the child.” To meet this standard, the government must seek a court
7 hearing within one business day of the separation and provide an affidavit showing
8 “immediate danger to the physical health or safety of the child” at the time of the
9 separation—or that the child “was a victim of sexual abuse or trafficking,” or that
10 the parent’s current use of a controlled substance “constituted an immediate danger
11 to the child,” or that the parent “permitted the child to remain on the premises used
12 for the manufacture of methamphetamine”—and that reasonable efforts were made
13 “to prevent or eliminate the need for removal of the child.”¹⁸

14 27. Similarly, in Arizona, the government is prohibited from separating a parent
15 and child absent exigent circumstances, which are limited to situations “where
16 there is probable cause to believe the child is likely to suffer serious harm in the
17 time it would take to obtain a court order for removal” and “there is no less
18 obtrusive alternative to taking temporary custody of the child that would
19 reasonably and sufficiently protect the child’s health and safety” or the child
20 herself (not another child or adult) “is suspected to be a victim of sexual abuse or
21 abuse involving serious physical injury that can be diagnosed only by a physician .
22 . . or a health care provider who is licensed . . . and who has specific training in

19 ¹⁶ Ill. Dep’t of Children and Family Servs., Child Endangerment Risk Assessment
20 Protocol: Safety Determination Form, CFS 1441 (May 2013)
21 [https://www2.illinois.gov/dcf/aboutus/notices/Documents/cfs_1441_child_endangerment_risk_assessment_protocol_\(fillable\).pdf](https://www2.illinois.gov/dcf/aboutus/notices/Documents/cfs_1441_child_endangerment_risk_assessment_protocol_(fillable).pdf).

21 ¹⁷ 705 ILL. COMP. STAT. 405/2-10 (2018).

22 ¹⁸ TEX. FAM. CODE ANN. §§ 262.104, 105 (1995) (emphasis added).

1 evaluations of child abuse.” A child taken into temporary custody for a medical
2 examination must be returned to their parent or guardian within 12 hours “unless
3 the examination reveals abuse.” If the examination reveals abuse and the child will
4 not be returned within the 12-hour period, the state must either file a dependency
petition or release the child within 72 hours.¹⁹

5 28. In New York, the emergency separation of a child from her parent is
6 permitted only if remaining with the parent presents an “imminent danger to the
7 child’s life or health.” A petition must be filed by the next court day, and a hearing
must be held by the next court day after the petition was filed.²⁰

8 29. Every state, the District of Columbia and Puerto Rico require courts to
9 consider the “best interests of the child” when making “placement and custody
10 determinations, safety and permanency planning, and proceedings for termination
11 of parental rights.”²¹ The “importance of family integrity and the preference for
12 avoiding removal of the child from his/her home” is one of the most frequently-
13 stated guiding principles in state statutes setting forth factors to consider in any
best interests analysis.²²

14 30. No state allows for a best interests determination to rest solely on a parent’s
15 criminal history. Only five states (Delaware, Georgia, Kentucky, Montana and
16 Tennessee) explicitly permit the consideration of a parent’s criminal history in
17 determining whether a placement is in a child’s best interests, and even in those
states the criminal history may be limited to convictions or particular crimes.²³

18 ¹⁹ ARIZ. REV. STAT. ANN. §§ 8-821, 823 (1997) (emphasis added).

19 ²⁰ N.Y. FAM. CT. §§ 1024, 1026 (McKinney).

20 ²¹ Children’s Bureau, Admin. for Children and Families, U.S. DEP’T OF HEALTH &
HUMAN SERVS., *Child Welfare Information Gateway: Determining the Best
Interests of the Child* (Mar. 2016),
https://www.childwelfare.gov/pubpdfs/best_interest.pdf.

21 ²² *Id.*

22 ²³ *Id.*

Young Center Advocacy on Behalf of Children Separated After June 26, 2018: Separations Unjustified under State Law and Contrary to Child's Best Interests

31. From the fall of 2017 through the fall of 2018, the Young Center was appointed as the independent Child Advocate for hundreds of children who were separated from their parents at the border before and during "zero tolerance," and who were designated as unaccompanied children and transferred to ORR custody.

32. Additionally, since this court issued its order halting family separation on June 26, 2018, the Young Center has been appointed to 121 children who were separated from their biological parents and who appear on the protected list of cases provided by the government to the parties in this litigation.

33. The average age of these 121 children is 6.87 years old.

34. Fifty-five of the 121 children (approximately 46 percent) were five years old or younger at the time they were separated from their parents.

35. In nearly all of the 121 cases the separated child could have safely remained in the parent's care while concerns about the child's long-term safety (based on allegations of criminal conduct by the parent, or possible abuse or neglect by the parent) were investigated to determine if separation was actually necessary and would be consistent with domestic child welfare laws.

36. Of the 121 cases, we did not identify any situations in which a biological parent was determined to pose a risk of trafficking to his or her child.

37. We have been appointed to children who were allegedly separated because of the parent's criminal history; in nearly every case, we found that the parent's alleged or actual criminal history would not have been enough to justify separating the parent and child under our state child welfare laws, the parent did not pose a threat to the child's safety, and separation was contrary to the child's best interests. Following are illustrative and representative examples:

1 *Allegations of “criminal history”*

- 2 a. Five-year-old “KL” was apprehended with his father in October 2018.
3 The information provided by the government in this litigation does not
4 provide any indication that KL was in imminent danger or the reason
5 that KL was separated from his father; it states only that they were
6 separated “due to Father’s criminal history.” Our Child Advocate
7 subsequently learned that KL’s father had a 2001 conviction for
8 carrying a concealed knife and for sale of marijuana. KL’s father was
9 deported before he was reunified with his young son. KL spent 228
10 days—nearly eight months—in federal custody before he was
11 returned to his family, including the father from whom he was
12 originally separated.
- 13 b. Five-year-old “EY” was apprehended with her father in December
14 2018, separated from him and rendered unaccompanied. Her father
15 was charged under 8 U.S.C. § 1326 for re-entry after removal. His sole
16 criminal history was identified as a controlled substance offense
17 (“manufacturing, distributing or disbursing of any controlled
18 substance”). There is no indication that the father was ever charged
19 with endangering the welfare of a child. EY spent 144 days in
20 custody—nearly five months—before she was reunified with her
21 father so that they could be deported together. DHS facilitated their
22 joint repatriation.
- c. Seventeen-year-old “DR” was apprehended with and separated from
his father in April 2019. His father was charged under 8 U.S.C. §
1326 for re-entry after removal. His criminal history was identified as
multiple driving under the influence charges. There is no indication
that the father was ever charged with endangering the welfare of a

1 child. DR was held in custody for more than 50 days before he was
2 released to a family member.

- 3 d. Two-year-old “YJ” was separated from her father on February 26,
4 2019. Her father had previous charges involving misdemeanor theft
5 and misdemeanor driving under the influence. After their separation,
6 YJ’s father was released from immigration detention. Baby YJ was
separated from her father for 78 days.

7 *Allegations of “gang involvement”*

- 8 e. Three-year-old “MA” was apprehended with his mother in February
9 2019. Government records are consistent with what we were first told
10 about MA’s mother when we were appointed to his case: that she had
11 alleged gang ties and a criminal record in her home country
12 (“Separated due to the mother's affiliation with the 18th St Gang and
13 her criminal record in El Salvador.”). We determined that this
14 information was incorrect. MA’s mother was a victim of extreme
15 violence at the hands of MA’s father; she was beaten so badly that she
16 gave birth to MA two months early, when she was just 15 years old.
17 MA’s mother left MA’s father before fleeing El Salvador but was
18 sexually, verbally, and physically abused by a gang member; her son
19 was forced to watch as she was raped and when she was hospitalized,
20 a gang member held her son and threatened to kill him if she disclosed
21 what had happened to her. At one point, her abuser was arrested while
22 they were together; and MA’s mother was arrested along with him,
and then released with no charges. MA’s mother fled El Salvador
because of this violence and to protect her son. We obtained
documentation from the El Salvadoran government confirming that

1 MA's mother had "no criminal history." MA was in federal custody
2 for 43 days before he was released to a relative he had never met.

3 MA's mother remains in federal custody.

- 4 f. Six-year-old "EE" was apprehended with his mother in August 2018.
5 They were separated on the basis of his mother's alleged gang
6 affiliation. However, EE's mother had been coerced into participating
7 in gang activities, and she was granted a finding of credible fear by
8 immigration authorities. Despite this positive recognition of the threat
9 she faced in home country, EE's mother sought voluntary departure so
10 that she could be reunited with her son as quickly as possible. In total,
11 EE spent more than 100 days in federal custody, separated from his
12 mother, before returning to home country with her; in their case, DHS
13 also approved their joint repatriation.

14 38. In a limited number of cases, the government separated children from
15 parents based on purported concerns about the parent's ability to care for the child.
16 We found that the concerns that led to separation were typically unfounded or
17 unsupported, or reflected an inability to make effective assessments of the child's
18 safety. For example:

- 19 a. In December 2018, two-year-old "JA" and her father were
20 apprehended and separated. J and her father belong to the Q'anjob'al
21 Maya community in Huehuetenango, Guatemala. Upon entry, U.S.
22 immigration authorities referred JA for medical attention due to fever
and a diaper rash. Medical personnel raised concerns that JA appeared
underdeveloped and malnourished. JA was unable to stand or crawl,
and her weight and height were below standard. DHS—without
additional inquiry—attributed these issues to parental neglect and took
the infant from her father's care. JA's father was deported.

1
2 In order to determine the basis for JA's underdevelopment and
3 determine if JA could be safely repatriated, the Young Center
4 conducted a home study of JA's home in Guatemala. The Young
5 Center retained a licensed psychologist and social worker competent
6 in both the language and culture of Q'anjob'al, to conduct a study of
7 JA's home. The assessment showed that while J's family lived in
8 extreme poverty, JA's family provided a loving home, and that one of
9 the reasons that JA's father had brought his daughter to the U.S. was
10 to try and obtain medical care for her. The home study also revealed
11 that JA, like most Maya babies, was carried continuously by her
12 mother—cast upon her back in a Maya wrap. In Maya indigenous
13 cultures, it is not uncommon to carry babies on their mother's backs
14 until the child reaches three or four years of age. This cultural practice
15 may impact the ability of a child to reach developmental milestones
16 based on American norms.

17 Prior to leaving for the United States, JA's father had made her a
18 beautiful wooden walker to facilitate her ability to stand and,
19 eventually, to walk. The Young Center recommended JA's
20 expeditious return to her family, as our primary concern was her
21 length of separation from her father and primary caregiver. All of our
22 work to ensure her safe return to home country could have been done
while JA remained safely in the care and custody of her father, who
presented no risk to her safety and well-being.

- b. Twelve-year-old "LR" was apprehended and separated from his father
in October 2018. The government alleged that his father had mental
health concerns and was unfit to care for his son. We received no

1 information indicating that a child welfare or mental health expert
2 made this determination. Our work led us to believe that an inability
3 to understand the father’s indigenous language may have created
4 concerns about his mental health. We identified no reasons that LR
5 could not be safely reunified with his father; but because his father
6 had been quickly deported and the family feared for LR’s safety in
7 home country, LR was released to a sponsor while he pursued his
claim for protection.

8 39. In a number of cases to which we were appointed, DHS permitted a child it
9 had previously separated due to alleged safety concerns to be reunified with the
10 separated parent—but only for the sole purpose of repatriation, such as the cases of
“EY” at paragraph 37(b), and “EE” at paragraph 37(f).

- 11 a. Similarly, six-year-old “AT” was apprehended with and separated
12 from her father in February 2019. Her father’s prior criminal history
13 consisted of breach of peace and assault charges. DHS nevertheless
14 agreed to AT’s reunification with her father for the sole purpose of
15 their joint return to home country. In all, AT spent more than 121
days—almost four months—separated from her father before they
were jointly repatriated.

16 40. In sum, in nearly every case, the Young Center determined that purported
17 reasons for the separation were insufficient under child welfare laws to justify the
18 children’s separation and that the separations were contrary to the children’s best
19 interests. In most of those cases, we recommended reunification with the parent
20 from whom the children were separated. There were cases in which the child could
21 not be reunified with the separated parent because the parent faced prolonged
22 government custody or because the parent(s) believed it would be unsafe for the
child to return to home country. In those cases, we recommended reunification

1 with the child's other parent or another family member. But those
2 recommendations to release the child to another parent or safe individual does not
3 mean that the original separation was necessary for the child's safety or otherwise
4 in the child's best interests. Rather, in these cases it was determined that it was in
the child's best interests not to be detained.

5 41. To date, of the 121 cases, the Young Center recommended against the
6 reunification of the child with the separated parent for safety reasons in just four
7 cases. In those specific cases, evidence that the parent posed a risk to the safety of
the child if they were to be reunified was as follows:

- 8 a. The child alleged abuse by the parent and did not wish to be reunified
9 with him (one instance).
- 10 b. The parent was cited for the neglect of a child resulting in substantial
11 harm to the child (one instance).
- 12 c. The non-accompanying parent filed a report indicating that the parent
accompanying the child had kidnapped the child (two instances).

13 42. One case involved an adult who claimed to be a parent but who lacked
14 sufficient evidence such that we recommended against the child's reunification
15 with the adult; and in that case, continued separation was consistent with the
child's wishes.

16 43. In nine of the 121 cases, we cannot determine whether the concerns that led
17 to the separation were sufficient based on limited information. For example, in at
18 least two of those nine cases, the parent exhibited signs of emotional or mental
19 distress while in custody, after which DHS separated the child from the parent. We
20 do not have the information necessary to know whether the distress was related to
21 the family's detention or fears of separation (which could have been mitigated
without separation) or whether the child was in imminent danger due to the
22 parent's distress.

The decision to separate a family in DHS custody can take months to reverse with serious harm to the child as a result of the prolonged separation.

44. In the state child welfare system, when there is a concern that a parent poses a risk to the child's safety, an employee of the state child protection agency evaluates the child and makes the decision to separate. Those decisions are governed by child welfare laws, which permit separation only if the child is in imminent danger. Before making the decision to separate, caseworkers will visit the child's home, speak to caregivers or other adults in the child's life, speak with the child, and review relevant records.

45. To the best of my knowledge, CBP officials, not child welfare officials, make the decision to separate children from their parent in immigration custody. The information they have provided about the reasons for separation do not include evidence of a threat to the child's safety if the child remains with the parent.

46. State child welfare officials who make the decision to separate a child from a parent must bring their concerns and evidence to a state court, where the basis for the separation is reviewed by an independent judge in a matter of days and where the child must be returned to the parent if reasonable measures can ensure the child's safety while remaining in the parent's custody.

47. In the cases of children separated from their parents by CBP officials, we have found that children spend months in government custody without their parents, without any court review of the basis of the separation.

48. In the 121 cases we identified for the purposes of this affidavit, the average length of custody for the separated children was over 115 days—nearly four months. As a point of comparison, the most recent, publicly available information

1 states that the average length of stay for children in ORR custody was just 44
2 days.²⁴

3 49. A child's separation from his parents is a deeply traumatizing experience
4 and can carry significant physical and emotional consequences well beyond the
5 period of separation.²⁵

6 a. The American Psychological Association has raised grave concerns
7 that the sudden and unexpected separation of a child from his or her
8 parent can cause severe emotional trauma, noting that "the longer that
9 parents and children are separated, the greater the reported symptoms
10 of anxiety and depression are for children."²⁶

11 b. A Past President of the American Academy of Pediatrics (AAP)
12 cautions: "[H]ighly stressful experiences, like family separation, can
13 cause irreparable harm, disrupting a child's brain architecture and
14 affecting his or her short- and long-term health. This type of

14 ²⁴ Miriam Jordan, *Migrant Children are Spending Months 'Crammed' in a*
15 *Temporary Florida Shelter*, NY TIMES (June 26, 2019),
16 <https://www.nytimes.com/2019/06/26/us/homestead-migrant-children-shelter.html>
(stating that in May 2019, the average length of stay for children in ORR was 44
17 days).

18 ²⁵ Letter to Department of Homeland Security Secretary Kirstjen M. Nielsen,
19 *Renewed Appeal from Experts in Child Welfare, Juvenile Justice and Child*
20 *Development to Halt the Separation of Children from Parents at the Border* (June
21 7, 2018) (a letter from over 200 child-centered organizations opposed to family
22 separation on the grounds that it "disrupts the parent-child relationship and puts
children at increased risk for both physical and mental illness" even after
reunification), [https://www.childrensdefense.org/wp-](https://www.childrensdefense.org/wp-content/uploads/2018/08/child-welfare-juvenile.pdf)
[content/uploads/2018/08/child-welfare-juvenile.pdf](https://www.childrensdefense.org/wp-content/uploads/2018/08/child-welfare-juvenile.pdf).

²⁶ See Letter to Former Department of Homeland Security Secretary John F. Kelly,
AMERICAN PSYCHOLOGICAL ASSOC. (Apr. 5, 2017),
<http://www.apa.org/advocacy/immigration/separating-families.pdf>.

1 prolonged exposure to serious stress—known as toxic stress—can
2 carry lifelong consequences for children.”²⁷

- 3 c. The World Health Organization (WHO) agrees: “Parent-child
4 separation has a direct and immediate impact on a child’s physical,
5 cognitive, mental and emotional well-being.”²⁸

6 50. In the experience of Young Center Child Advocates, children separated from
7 their parents exhibit a range of responses that demonstrate their deep distress and
8 the emotional and physical harm of separation.

9 Signed:

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12 _____
13 Jennifer Nagda
14 July 29, 2019
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19 ²⁷ Colleen Kraft, AAP Statement Opposing Separation of Children and Parents at
20 the Border (May 8, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>.

21 ²⁸ Catherine Jan et al., *Improving the Health and Well-Being of Children of*
22 *Migrant Workers*, BULLETIN OF THE WORLD HEALTH ORG. 850, 850 (2017),
<http://www.who.int/bulletin/volumes/95/12/17-196329.pdf>.