

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Kerlin Sanchez Villalobos, and Daysi Villalobos Izaguirre, on behalf of her minor daughter, Y.S.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>United States of America,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No.</p> <p style="text-align: center;">COMPLAINT</p>
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INTRODUCTION

1. The girls slept in a cage with more than 30 other scared children —many times on the floor. They were hungry all the time. Guards, with guns visibly attached to their hips, made them participate in competitions for extra food and for the guards’ own amusement. When they were allowed to eat, they had to eat outside and on the ground. No pillow. No shower for a week. No towel, hairbrush, or even a rubber band to keep their long hair out of their faces.

2. They were children. When one girl didn’t move out of the way fast enough, an armed guard kicked her twice—slamming his heavy boot into her and knocking her to the ground. They watched armed guards grab a young man by the neck and throw him on his knees. They saw armed guards march a boy outside and make him kneel in the hot sun with his arms raised as punishment for simply looking for his socks.

3. It wasn’t war, a horrifying nightmare, or a jail in a remote, lawless land. In June of 2019, this was real life for Kerlin and Y.S. in a Texas Customs and Border

Protection (CBP) facility run by the United States. The conduct of the United State and its agents should not—and cannot—be ignored and unaccounted for.

4. Kerlin and Y.S. came to the United States from Honduras, seeking asylum and hoping to reunite with their mother in Minnesota to start a better life. Despite decades of court orders establishing that the government has a duty to care for and protect unaccompanied children like Kerlin and Y.S., the United States failed to fulfill its most basic obligations to these girls. Their jailors—agents of the United States—degraded them, terrified them, and physically assaulted Kerlin. Kerlin and Y.S. filed an administrative claim under the Federal Tort Claims Act, seeking relief. The United States denied their claim. Kerlin and her mother, on behalf of Y.S., now file suit against the United States.

PARTIES

5. Plaintiff Kerlin Sanchez Villalobos is a Honduran national and currently lives in Rochester, Minnesota. She was 16 years old at the time of the events described in this complaint and is now 18 years old.

6. Plaintiff Daysi Villalobos Izaguirre is a Honduran national and currently lives in Rochester, Minnesota. She is the mother of Kerlin and Y.S., who name is abbreviated to ensure the privacy and protect her identity as a minor. Daysi brings these claims on behalf of Y.S. who is 16 years old. Y.S. was 14 years old at the time of the events described in this complaint.

7. Defendant United States of America is the appropriate defendant subject to the claims stated herein under the Federal Tort Claims Act.

JURISDICTION

8. This Court has jurisdiction over Plaintiffs' claims under the Federal Tort Claims Act pursuant to 28 U.S.C. § 1346(b).

9. Plaintiffs have exhausted all available administrative remedies pursuant to 28 U.S.C. § 2675.

10. Plaintiffs filed an administrative complaint with the United States Customs and Border Protection and the United States Department of Homeland Security (DHS) on or about December 11, 2020, under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.*, seeking redress for the violations of their rights and their injuries and damages proximately resulting therefrom.

11. On or about April 16, 2021, the claim was denied by CBP. More than six months have elapsed since Plaintiffs filed their administrative complaint without a response from DHS. Pursuant to 28 U.S.C. § 2675, DHS' failure to respond or make a final disposition of their claims constitutes a final denial of the claims.

VENUE

12. Pursuant to 28 U.S.C. § 1391(e)(1)(C) and 28 U.S.C. § 1402(b), venue is proper because Plaintiffs reside in Minnesota, and Defendant is the United States and officers or employees of the United States or any agency thereof acting in their official capacity or under color of legal authority, or an agency of the United States.

FACTS

A. The United States Has a Clear Obligation to Meet Minimum Standards of Care for the Unaccompanied Children It Detains.

13. As DHS Secretary Mayorkas has recognized, “A Border Patrol facility is no place for a child.”¹

14. The United States is aware that children are especially vulnerable members of society.

15. The United States is also aware that the treatment of children in custody – especially custody that is supposed to be non-punitive – must be designed to meet children’s emotional and social needs.

16. In fact, the United States has a legal obligation to act in accordance with the “best interests” of unaccompanied children in its custody.²

17. In late May of 2019, Kerlin (then age 16) and Y.S. (then age 14) left Honduras to escape violence and persecution and seek safety and refuge in the United States. They had very little money and only one backpack between them. The backpack had a few changes of clothes, medicine for Y.S., and their birth certificates and school records. They were alone and hoping to reunite with their mother.

¹ *Homeland Security Secretary Mayorkas Directs FEMA to Support Response for Unaccompanied Children*, UNITED STATES DEPT. HOMELAND SECURITY, <https://www.dhs.gov/news/2021/03/13/homeland-security-secretary-mayorkas-directs-fema-support-response-unaccompanied> (March 13, 2021) (last visited September 29, 2021).

² *See, e.g., Flores v. Sessions III*, 85-CV-4544, Dkt. No. 470 (*Order re Plaintiffs’ Motion to Enforce Class Action Settlement*) at 8 (July 30, 2018), available at <https://www.aila.org/File/Related/14111359ae.pdf> (discussing obligations under the *Flores* Agreement and the Victims of Trafficking and Violence Protection Act of 2000).

18. On or about June 9, 2019, the girls entered the United States on foot. Upon crossing into the United States, the girls presented themselves to CBP agents, who arrested them, despite their legal right to seek asylum on U.S. soil.

19. The United States has a duty to care for and protect unaccompanied minor children like Kerlin and Y.S., including by providing them with adequate food, clothing, shelter, sanitation, and medical care, while ensuring their personal welfare and safety.

20. Federal officials have a duty to take reasonable steps to protect children in their custody from abuse.

21. Before Kerlin and Y.S. came to the United States, these duties had already been established in federal policies and statutes, including the Trafficking Victims Protection Reauthorization Act of 2008, and repeatedly reinforced by federal courts.

22. The legal obligations owed by the United States to children in its custody pursuant to the *Flores* line of cases include, without limitation:

- a. Placing unaccompanied children in safe and sanitary conditions;
- b. Providing adequate food and drinking water;
- c. Providing for the child's basic hygienic needs, such as soap, showers and clean bathrooms, toothbrushes, and hair brushes;
- d. Providing sanitary housing that is not overcrowded;
- e. Providing bedding and mattress;
- f. Informing unaccompanied children of their legal rights;
- g. Unifying children with family as quickly as possible;

- h. Providing housing for children that is not in a prison-like facility for more than three to five days. While limited exceptions may apply, the burden is on the U.S. to show that it worked diligently to meet its obligations;
 - i. Protecting children from physical and mental abuse;
 - j. Treating children with dignity; and
 - k. Keeping siblings together.
23. Relevant to these duties of care, CBP policy³ requires that:
- a. CBP employees speak and act with the utmost integrity and professionalism.
 - b. CBP employees conduct themselves in a manner that reflects positively on CBP at all times.
 - c. All detained unaccompanied children’s personal property discovered during apprehension or processing and not deemed to be contraband will be safeguarded, itemized according to the operational office’s policies and

³ *U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search* (Oct. 2015), U.S. DEPARTMENT OF HOMELAND SECURITY, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>; see also <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search#> (“This policy continues our commitment to the safety, security and care of those in our custody. The policy, titled U.S. Customs and Border Protection (CBP) National Standards on Transport, Escort, Detention, and Search (TEDS), is the result of collaborative work among various offices. The policy document is grounded firmly in the experience and policies of the Office of Field Operations and the United States Border Patrol. It incorporates best practices developed in the field, and it reflects key legal and regulatory requirements. In addition to transport, escort, detention and search provisions, TEDS also includes requirements related to: . . . care of at-risk individuals in custody; and personal property.”).

procedures, and documented in the appropriate electronic system(s) of record.

- d. All personal property (including prescribed medications) and legal papers that are in the child's possession, or are served upon the child during processing, must accompany the child upon transfer to any other agency or facility.
- e. Taking inventory of a detained unaccompanied child's personal property must be conducted in the presence of the child and recorded according to the operational office's policies and procedures.
- f. All personal property instructions must be communicated to the child in a language or manner the child can comprehend. Detained children with personal property who are not being immediately repatriated to a contiguous country must receive notification of CBP's procedures relating to personal property.
- g. Whenever operationally feasible, officers/agents conducting a search, or present at a medical examination, must be of the same gender, gender identity, or declared gender as the detained child being searched.
- h. All medications will generally be maintained with the child's personal property unless other conditions warrant, such as the medication needing to be regularly administered due to need, and/or needing to be properly stored as the prescription requires.

- i. Documents determined to be genuine, unaltered, and issued under the proper authority to the detained child, must be returned to the detained child upon release, removal or repatriation or maintained in the detainees' personal property.
- j. When a search involves a child, prior supervisory authorization must be obtained in all cases with the exception of pat-down searches. Although officers/agents have the same authority to search a child as to search an adult, officers/agents should weigh all factors before requesting authorization to further search a child.
- k. Whenever operationally feasible, unaccompanied minor siblings should not be separated, unless deemed necessary for safety purposes. In circumstances where siblings must be separated due to different immigration dispositions, such separation must be documented in the appropriate electronic system(s) of record.
- l. Every effort must be made to transfer children from CBP to the custody of the Office of Refugee Resettlement (ORR) as soon as possible, but no later than 72 hours after determining that a child is unaccompanied. Requested placement notification for the child must be conducted and logged in the appropriate electronic system(s) of record. The reasons for any detention longer than 72 hours must be logged in the appropriate electronic system(s) of record.

- m. Children will be given access to basic hygiene articles, and clean bedding. When available, children will be provided clean and dry clothing. Officers/Agents may give access to these provisions to any child at any time.
- n. Children must be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals must be hot. Children must have regular access to snacks, milk, and juice.
- o. Reasonable efforts will be made to provide showers, soap, and a clean towel to children who are approaching 48 hours in detention.
- p. All children must be advised of their right to consular and telephone access in a language or manner the detainee comprehends.

B. The United States Breached Its Obligations to Kerlin and Y.S.

24. After their arrest, Kerlin and Y.S. were brought to a CBP detention center in West Texas.

25. Upon information and belief, the CBP detention center facility was located in Clint, Texas (the Clint Facility).

26. Kerlin and Y.S. were survivors of the Clint Facility, whose grotesque violations of children's rights were brought to the world's attention on June 20, 2019, mere days after Kerlin and Y.S. were transferred out of that facility.

27. The AP reported that children at the Clint Facility had been locked up without “adequate food, water and sanitation.”⁴

28. Legal observers who went to the Clint Facility to ensure the United States’ compliance with the *Flores* agreement, found that the conditions were the worst they had ever seen, despite CBP knowing about the legal observers’ visit three weeks in advance. One lawyer stated: “In my 22 years of doing visits with children in detention I have never heard of this level of inhumanity.”⁵

29. CBP was aware of these deplorable conditions, acknowledging to the AP that the children there needed better medical care.⁶

30. THE NEW YORK TIMES also reported on the shocking conditions in which the United States detained children at the Clint facility: “The stench of the children’s dirty clothing was so strong it spread to the agents’ own clothing — people in town would scrunch their noses when they left work.”⁷

⁴ Cedar Attanasio, Garance Burke and Martha Mendoza, *Lawyers: 250 children held in bad conditions at Texas border* (June 20, 2019), AP News, <https://apnews.com/article/texas-immigration-us-news-ap-top-news-border-patrols-a074f375e643408cb9b8d1a5fc5acf6a>.

⁵ *Id.*

⁶ *Id.*

⁷ Simon Romero, Zolan Kanno-Youngs, Manny Fernandez, Daniel Borunda, Aaron Borunda, Aaron Montes and Caitlin Dickerson, *Hungry, Scared and Sick: Inside the Migrant Detention Center in Clint, Tex.* (July 9, 2019), <https://www.nytimes.com/interactive/2019/07/06/us/migrants-border-patrol-clint.html>.

31. The Clint Facility, THE NEW YORK TIMES reported, was not created to hold large numbers of children. Rather, it had been designed to process adult men and hold them for only a few hours before transferring them to other locations.⁸

32. Matthew Harris, the lead patrol agent at the Clint Facility in June 2019, confessed to ABC News that staff at the Clint Facility do not have any training on looking after children.⁹

33. And MSNBC's disturbing video of the inside of the Clint Facility, showing children being caged like animals, shocked and saddened the nation—leading members of the U.S. Congress to call the United States' treatment of these unaccompanied minors, "child abuse."¹⁰

34. When they arrived at the Clint Facility, the girls were placed in line for "registration," along with other immigrants. The line included adult men, women, and other unaccompanied children.

35. While standing in line, a male CBP agent forced both girls against their wishes to lift their shirts to their bra line, in view of all of the adults standing nearby.

36. During registration, CBP agents rifled through the girls' backpack and grabbed Y.S.' pain medication.

⁸ *Id.*

⁹ Matt Gutman and Quinn Owen, *Inside the Clint, Texas border facility that's been accused of child neglect and 'public health emergency,'* ABC News (June 27, 2019), <https://abcnews.go.com/Politics/inside-clint-texas-border-facility-accused-child-neglect/story?id=63992072>.

¹⁰ *It's Child Abuse! Dems blast Trump's 'kids in cages,' policy* (July 10, 2019), <https://www.msnbc.com/the-beat-with-ari/watch/-it-s-child-abuse-dems-blast-trump-s-kids-in-cages-policy-63619141748>.

37. Y.S.'s grandmother had purchased the medication for her to help with the pain in her leg and hip that Y.S. was still experiencing after a serious injury she suffered the prior year.

38. When the CBP agent questioned her about the medication, Y.S. explained that it was necessary to alleviate pain in her leg and hip after a prior injury. Y.S. then asked the CBP agent to give the medication back to her.

39. He refused. Instead, he threw the medication in a nearby garbage can.

40. Even though the CBP agents knew of Y.S.'s medical needs, they failed to do a proper medical screening, and no CBP personnel ever followed up with her about the pain in her leg and hip, or what medicine she needed.

41. During the search of the girls' backpack, the CBP agent also removed the clothes they had packed. He threw these in the garbage can as well.

42. CBP agents then took Kerlin and Y.S. to an outdoor cage, where they were given a small, cold sandwich. The cage was built on a cement slab in the center of the yard without a roof for shade. Men, women, and children were all locked inside.

43. Eventually, the girls were removed from the cage and placed in two different lines, where they were asked questions about why they came to the United States, if they were pregnant, if they had children, and if they had any criminal history. There were no questions about their medical history or their need for medication.

44. While in these lines, Kerlin and Y.S. witnessed CBP staff treat immigrants horribly, as described below.

45. Kerlin and Y.S. saw a visibly pregnant woman in the line with her husband, who was pleading with agents to help her. The agents guarding the line refused to help—dismissing the husband’s concerns until the pregnant woman finally collapsed. When an ambulance arrived, the guards physically prevented the husband from getting into the ambulance with her. Kerlin watched in horror as the distraught man begged CBP agents to let him go with his wife. They repeatedly refused, and the ambulance drove off without him.

46. A little later, Kerlin saw CBP agents assault a young man who was in line right behind her. After finding that he had a cellphone, agents aggressively shoved him up against the fence and handcuffed him. This incident frightened Kerlin, who from then on feared that the CBP agents would hurt her and her sister.

47. In the line, Kerlin and Y.S. gave CBP staff their mother’s phone number.

48. At midnight, CBP called their mother, Plaintiff Daysi Villalobos Izaguirre. The call was less than a couple minutes. Ms. Villalobos Izaguirre confirmed her address, and the CBP agent told Ms. Villalobos Izaguirre that her daughters were in Texas and hung up. She was provided no more information for four days, when Kerlin and Y.S. were finally permitted to call their mother.

49. Once the girls were finished answering the questions in the line, CBP put them in a room colloquially referred to by the asylum seekers as the “*hielera*,” which is Spanish for icebox or freezer.

50. The *hielera* was aptly named based on abnormally cold temperatures the girls experienced in that room. The cold aggravated Y.S.’s injury, and she and Kerlin resorted

to wrapping her leg in the Mylar sheet that was given to them to use as blankets. This left them with no blankets for the rest of their bodies.

51. After 30 to 60 minutes, the girls were pulled out of the *hielera* and brought to the building where they would be held for the next nine days.

52. They entered a room with two cages—one for unaccompanied girls and another for unaccompanied boys. To reach the bathrooms, the children had to be escorted outside, through a yard to another building. The yard was surrounded by wires to prevent anyone from escaping.

C. The United States Kept Kerlin and Y.S. Confined in Appalling Conditions at the CBP Facility in Texas.

53. The United States failed to fulfill its minimum legal duty to provide proper care to the girls while they were in CBP custody, denying Kerlin and Y.S. even the most basic necessities.

54. The United States let Kerlin and Y.S. shower only once in the nine days they were detained at Clint.

55. The United States did not provide towels for that one shower, forcing the girls to walk around in wet clothes.

56. The United States did not provide undergarments during Kerlin's and Y.S.'s first five days at the facility and instead forced them to wash their clothes in the bathroom sink and wear them wet.

57. The United States did not provide Kerlin and Y.S. with hairbrushes. They each instead resorted to using a fork to comb their long hair.

58. CBP agents also prohibited Kerlin and Y.S. from having any hair binder to keep their hair out of their faces in the sweltering heat.

59. The United States did not provide Kerlin and Y.S. with adequate food: the United States gave the detained children cold oatmeal in the morning, a cup of ramen noodles for lunch, a pudding or small cookie for a snack, and a burrito for dinner.

60. Kerlin and Y.S. were hungry all the time.

61. The United States did not provide Kerlin and Y.S. access to drinking water. In fact, the girls do not recall ever being given water. Agents gave them small juice boxes to drink with meals.

62. With knowledge that the regular meals were inadequate, the CBP agents tormented the detained children by making them compete with one another for extra food. Hungry children were forced to throw a ball in a basket, for example, and the winner would get a burrito while the other children would be left hungry. Both Kerlin and Y.S. competed with the other children in an attempt to get food to quell their hunger.

63. Kerlin and Y.S. slept in overcrowded cages. The cages had three rows of triple bunk beds on both sides, enough to sleep approximately 30 children. The mattresses were poorly designed with three pieces of metal pipe running across, making the beds extremely uncomfortable.

64. But there were not even enough beds for all the children, and more children were on the floor than on the bunk beds.

65. While some of the children who did not get beds could sleep on mats on the floor, the United States did not maintain enough mats for each child that needed one.

66. Many times, Kerlin had to sleep on the concrete floor, with only a thin blanket and without a mat.

67. At night, the cages would become very cold and Kerlin and Y.S. did not have enough blankets to keep them warm. They only had a small, thin blanket to cover themselves. They were too scared to ask the guards for extra blankets.

68. It was cold because above the cages were industrial type fans that blew cold air into the cages. The fans were also extremely loud.

69. The inadequate bedding, the cold, and the noise made sleeping difficult, and the girls were always tired during the day.

70. The children would be let outside to eat their meals. But despite the sweltering heat (nearly 100 degrees Fahrenheit), there was no shade or even tables and chairs for the children. The few tables, which were in shady areas, were reserved for the CBP agents and pregnant minors.

71. The cages smelled horribly.

72. The agents woke up the children at 5 A.M. every day by using their batons to bang on the bars of the cages and the bunk beds.

73. They were scared of the CBP agents. Y.S. cried daily. Kerlin worked hard to comfort her sister, “acting strong” to support her. Kerlin gave up some of her own privileges, such as phone use, so that Y.S. would have those opportunities instead. When they lacked sufficient bedding materials, Kerlin made sure Y.S. would have a mat, even though it meant she herself would not. Kerlin also willed herself not to cry in front of Y.S.,

so that she wouldn't scare her sister. But when Kerlin could find some time to herself, she would break down crying.

D. A CBP Guard Assaulted Kerlin by Repeatedly Kicking Her.

74. During Kerlin and Y.S.'s incarceration at the Clint Facility, while Kerlin was attempting to eat her deficient lunch, a CBP guard yelled at her and a few others to move.

75. While Kerlin was trying to stand up with her food, the guard kicked her twice, knocking her to the ground and ruining her food. Due to the injuries she sustained to her back and ankle as a result of the assault, she could not walk properly.

76. Despite Kerlin's noticeable injury from the agent's attack, the CBP agents ignored her need for medical attention, and so she did not receive any medical attention nor an examination until she arrived in Minnesota.

77. Due to the injuries caused by the CBP agent's conduct and/or the ensuing failure to provide her with medical attention, Kerlin required a walking cast.

78. Due to the injuries caused by the CBP agent's conduct and/or the ensuing failure to provide Kerlin with medical attention, Kerlin foreseeably incurred damages for past and future medical expenses, pain and suffering, and limitations to the quality of her life, among other compensable past and future damages.

E. Kerlin and Y.S. Witnessed CBP Agents Abuse & Neglect Other Children.

79. Both Y.S. and Kerlin saw horrific events unfold around them while detained.¹¹

80. Crying children were common at the CBP detention facility.

81. When Kerlin and Y.S. arrived at the facility they met four very young and “tiny” girls who already been in the facility for nine days.

82. The United States failed to employ proper child-care staff, so the CBP agents – adults, hired by the United States government to enforce immigration laws at the border—made the older children in the cages take care of the younger children.

83. The agents routinely yelled at the older children, “Make that kid shut up!” Agents pointed to the crying children and yelled at the older children until an older child, sometimes Y.S., sometimes Kerlin, would go to the crying children and do what they could to comfort them.

84. Kerlin and Y.S. cared for girls as young as five years old. The detained girls had come from all over Latin America. Both Kerlin and Y.S. would hold and hug the younger girls and braid their hair to try to calm them. Kerlin and Y.S. told the younger girls that things would be better and that they were brave girls.

¹¹ In June of 2019, The New York Times reported on these abuses at a CBP facility in Clint, Texas. “Children as young as 7 and 8, many of them wearing clothes caked with snot and tears, are caring for infants they’ve just met ... Toddlers without diapers are relieving themselves in their pants. Teenage mothers are wearing clothes stained with breast milk. Most of the young detainees have not been able to shower or wash their clothes since they arrived at the facility ... They have no access to toothbrushes, toothpaste or soap.” Caitlin Dickerson, *‘There Is a Stench’: Soiled Clothes and No Baths for Migrant Children at a Texas Center* (June 21, 2019), THE NEW YORK TIMES, <https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html>.

85. The CBP agents routinely told Kerlin, Y.S., and the other girls in the cage, that they were “shit” and a burden on the United States. Kerlin and Y.S. have emotional damage from their time in the facility, not just from their own mistreatment, but also from witnessing the neglect and abuse endured by other children, particularly the younger children, even as Kerlin, Y.S., and other older children were forced into care-giving roles and did what they could to comfort and protect the younger children.

86. CBP agents punished other children by making them stand outside in brutal heat (temperatures in Clint, Texas in June near 100 degrees Fahrenheit). In one instance, Kerlin witnessed guards grab a boy by the neck and drag him outside, where they forced him to kneel on the ground with his hands over his head. He was barefoot at the time. The guards did this because the boy was looking for his socks in a garbage bin. The boy was crying while the agents assaulted him.

87. Kerlin believes the boy was about 12 years old.

88. Neither Kerlin nor Y.S. knows what happened to the boy.

F. CBP Improperly Limited the Girls’ Access to Phone Calls While Detained

89. Kerlin and Y.S. were collectively permitted to make just three calls of no longer than ten minutes in duration during their nine days of detention. CBP agents would not let both sisters use the phone. When Kerlin went to the phone once for her turn, after Y.S., a CBP guard swore at her, saying “Fuck you,” and would not let her use the phone. Despite this unlawful and concocted limitation on phone use as between siblings, the CBP agents also prohibited the girls from sharing the phone.

90. When Kerlin once told an agent that it was her turn to use the phone, the agent swore at her, saying “Fuck you,” and ordering her to leave. After this incident, Kerlin never tried to use the phone again.

91. Before being allowed to make a call, CBP agents told the girls that they had to tell their mom that they were being treated well. The agents warned the girls that if they did not comply, they would be punished; because Kerlin and Y.S. had seen agents make children stand outside in the hot sun with their hands in the air, the girls obeyed the agents’ orders and never told their mom about what was happening at the facility out of fear of cruel punishment.

G. The United States Separated Kerlin and Y.S. and Transferred Them to Group Homes.

92. After nine days,¹² Kerlin and Y.S. were flown from Clint, Texas, to Brownsville, Texas.

93. The United States routinely places unaccompanied minors in group home settings and has a duty to make sure the home meets its responsibilities to care for the children and provide for their safety and welfare.

94. When CBP agents moved the girls to the group homes, they taunted them by telling the children that they were being sent back to Honduras on a plane. After the children cried out in distress, the guards laughed and told them they were “just joking.” Several children continued crying after the “joke.”

¹² Under the *Flores* agreement, the girls should not have been held in Clint for longer than five days. *See Flores v. Lynch*, 828 F.3d 898, 903 (9th Cir. 2016).

95. Group homes in Texas must be licensed.

96. Under the *Flores* agreement, these homes must meet basic standards for the detention and release of unaccompanied minors. This includes:

- a. The facilities must meet Texas state standards for housing and care of dependent children, and must comply with all applicable state child welfare laws and regulations, as well as state and local building, fire, health, and safety codes.
- b. The home must complete an individualized needs assessment for each child.
- c. The home must complete an educational assessment and plan.
- d. Siblings should not be separated unless there is a legally justifiable reason based on their immigration status or healthcare to do so.
- e. Homes must provide children with phone access to talk with family members regardless of immigration status.
- f. Homes must make proactive and reasonable efforts to reunite families.

97. CBP, or its agents under contract with DHS, put Kerlin and Y.S. on a bus with other children and drove them to several group homes in the Brownsville, Texas area.

98. While they were no longer subjected to the physical harm of the Clint Facility, the girls were subjected to further emotional and psychological harm.

99. Agents on the bus told the girls that they would not be separated. However, when the bus arrived at the group home known as Nueva Esperanza, officers instructed Y.S. to get off the bus, but would not let Kerlin get off.

100. Both girls protested, and officers lied to Y.S. by telling her that Kerlin was going to get off the bus right behind her. But as soon as Y.S. stepped out of the bus, the doors closed.

101. Other girls who had exited the bus with Y.S. held her back while she tried to chase after her sister, who was still on the departing bus as it drove away.

102. Kerlin banged on the tinted windows of the bus, screaming for her sister, but Y.S. could not see her.

103. The bus driver angrily yelled at Kerlin and it was left to girls - friends of Kerlin – on the bus to try and comfort her. They told her that Y.S. would be safe and that they would be reunited soon. Kerlin continued to cry through the night.

104. The emotional damage of being separated from one another needlessly without any knowledge of whether they would be reunited was crushing to both Kerlin and Y.S.

105. At Nueva Esperanza, instead of calming Y.S., as the girls on the bus attempted to do for Kerlin, group home employees—hired by the United States to “care” for unaccompanied children to meet the United States’ obligations under *Flores*—yelled at Y.S. to stop crying. When she could not, they physically forced her into the group home and left her alone in a room where she cried all night.

106. During her stay at Nueva Esperanza, officials constantly lied to Y.S. and said they would have Kerlin brought there.

107. Staff at both group homes refused to let the girls to talk to each other over the phone.

108. The staff at the group homes never made any effort to reunite the girls, and instead simply lied to both about their false efforts to do so.

109. Kerlin was moved to a different group home named El Presidente.

110. Both group homes were operated by Southwest Key Programs, Inc. (Southwest Key) under supervision by the United States to, among other things, ensure that Southwest Key would properly care for children whom the United States placed into its care in a manner compliant with the *Flores* agreement.

111. Upon information and belief, at no time did anyone in either facility attempt to reunite Kerlin or Y.S. or talk with them to alleviate their obvious and strong emotional injury in being needlessly separated.

H. Kerlin and Y.S. Experienced Inadequate Care and Inappropriate Treatment in the Group Homes.

112. Both group homes where Kerlin and Y.S. were placed have been cited for a significant number of safety violations between 2016 and 2019—El Presidente had 45 violations and Nueva Esperanza had 30.¹³ Yet, the United States knowingly placed Y.S. and Kerlin in these unsafe and plainly deficient housing situations.

113. Neither Kerlin's nor Y.S.'s basic educational needs were met at the homes. In fact, Kerlin was forced to learn irrelevant propaganda about then President Trump, like how he became a millionaire.

¹³ Edgar Walters, Ryan Murphy and Darla Cameron, *The number of migrant children in Texas shelters dropped dramatically in 2019* (published: June 20, 2018; updated: Dec. 20, 2019), <https://apps.texastribune.org/features/2018/texas-migrant-children-shelters/> (last visited September 29, 2021).

114. Neither Kerlin's nor Y.S.'s basic emotional needs were met. While at the homes, the girls were allowed to use a phone twice a week for just a short amount of time. They were again expressly forbidden from saying anything negative about their confinement upon risk of the conditions and treatment becoming even worse.

115. After about 20 days, Kerlin was transported via airplane to Minnesota with a Southwest Key employee, who, while acting under the control of the United States, released Kerlin to her mother and presented her with conditions of release that the United States would enforce.

116. Y.S. was forced to remain in custody nine days longer before she was placed on a plane to Minnesota with a Southwest Key employee, who, while acting under the control of the United States, released Y.S. to her mother and presented her with conditions of release that the United States would enforce.

INJURIES AND DAMAGES TO KERLIN AND Y.S.

117. As a direct and proximate result of the unlawful conduct of the Defendant and its agents, who, at all times were acting within the course and scope of their agency with the United States as described above, Kerlin and Y.S. suffered substantial damages, including, without limitation, bodily and personal injury damages, both past and future such as medical expenses, mental anguish, emotional distress, diminished quality of life, and pain and suffering.

CLAIMS FOR RELIEF

**First Claim for Relief
Federal Tort Claims Act - Negligence**

118. All of the foregoing paragraphs are hereby incorporated herein by reference and re-alleged as though fully set forth.

119. Under the FTCA, the United States is liable for the tortious acts of its agents/employees/officers.

120. Defendant United States owed a legal duty of care to Plaintiffs to, among other things, provide safe and sufficient living conditions, ensuring their welfare, and protecting them from avoidable injury and harm.

121. The United States and its agents acting in the course and scope of the agency breached that duty of care by, among other things and as pleaded above, negligently hiring and retaining staff and other agents that foreseeably would fail to provide reasonable and sufficient care to Kerlin and Y.S., and who failed to act in accordance with the minimum standards required of a reasonable and prudent person in ensuring their general safety and wellbeing. These failures include, but are not limited to:

- a. Negligently hiring and retaining staff that violated Kerlin's and Y.S.'s rights;
- b. Failing to provide Kerlin and Y.S. proper care;
- c. Physically assaulting Kerlin;
- d. Forcing Kerlin and Y.S. to watch mistreatment of other children;
- e. Forcing Kerlin and Y.S. to care for other children;
- f. Unnecessarily separating Kerlin and Y.S. from one another after lying to them; and

g. Placing Kerlin and Y.S. in group homes with records of safety violations and which failed to meet the *Flores* agreement standards for the detention and release of unaccompanied minors and inflicted harm on the girls.

122. The breach of this duty of care was the proximate cause of the damages Kerlin and Y.S. suffered.

123. The actions of the United States constitute negligence under Texas law, for which the United States is liable for damages.

Second Claim for Relief
Federal Tort Claims Act – Negligent Undertaking

124. All of the foregoing paragraphs are hereby incorporated herein by reference and re-alleged as though fully set forth.

125. Under the FTCA, the United States is liable for the tortious acts of its agents/employees/officers.

126. The United States was or should have been aware of its required compliance with the legal obligation in the *Flores* agreement when it undertook to house Kerlin and Y.S. and provide for their basic needs.

127. The United States failed to exercise reasonable care in providing the requisite care to Kerlin and Y.S.

128. The failure of the United States to exercise reasonable care in this undertaking increased the risk of harm Kerlin and Y.S. faced and caused them damages.

129. The actions of the United States constitute negligent undertaking under Texas law, for which Defendant is liable for damages.

**Third Claim for Relief – Kerlin Sanchez Villalobos
Federal Tort Claims Act – Battery**

130. All of the foregoing paragraphs are hereby incorporated herein by reference and re-alleged as though fully set forth.

131. Under the FTCA, the United States is liable for the tortious acts of its agents/employees/officers.

132. The United States had a duty to care for Kerlin and Y.S. and a duty protect them from harm. The United States failed in both of those duties when a CBP officer kicked Kerlin.

133. A CBP agent intentionally kicked Kerlin twice.

134. When the CBP agent kicked Kerlin, he intended to cause a harmful of offensive contact with her body.

135. When the CBP agent kicked Kerlin, he directly caused physical injury and other damages to Kerlin.

136. The actions of the CBP agent constitute battery under Texas law, for which the United States is liable for damages.

**Fourth Claim for Relief – Kerlin Sanchez Villalobos
Federal Tort Claims Act – Assault**

137. All of the foregoing paragraphs are hereby incorporated herein by reference and re-alleged as though fully set forth.

138. Under the FTCA, the United States is liable for the tortious acts of its agents/employees/officers.

139. The CBP agent intentionally or knowingly caused physical contact with Kerlin by kicking her twice, injuring her ankle. The agent should have reasonably believed that such contact would be offensive.

140. The action of the United States constitutes assault under Texas law, for which Defendant is liable for damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests judgment as follows:

- A. Finding, adjudging, and decreeing the Defendants have engaged in the violations of law alleged herein.
- B. Awarding to Plaintiffs compensatory damages.
- C. Awarding to Plaintiffs costs and disbursements, including such reasonable attorney's fees as are permitted by law.
- D. Awarding any and all other and additional relief as permitted by law and found by this Court to be just and appropriate.

**AMERICAN CIVIL LIBERTIES UNION OF
MINNESOTA**

Dated: October 11, 2021

s/ Ian Bratlie

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ACLU FOUNDATION OF TEXAS, INC.

Dated: October 11, 2021

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**Pro Hac Vice Applications Forthcoming*

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Dated: October 11, 2021

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