

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1101 K Street, NW,
Washington, D.C. 20005, and

REFUGEE AND IMMIGRANT CENTER
FOR EDUCATION AND LEGAL
SERVICES, INC.,
1305 N. Flores Street,
San Antonio, TX 78212,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY,
245 Murray Lane, SW,
Washington, D.C. 20528, and

KIRSTJEN M. NIELSEN, in her official
capacity as Secretary of Homeland Security,
245 Murray Lane, SW,
Washington, D.C. 20528,

Defendants.

Civil Action No. 18-cv-2473-RC

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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Plaintiffs Citizens for Responsibility and Ethics in Washington (“CREW”) and Refugee and Immigrant Center for Education and Legal Services, Inc. (“RAICES”) bring this First Amended Complaint against Defendants U.S. Department of Homeland Security and Kirstjen M. Nielsen, in her official capacity as Secretary of Homeland Security (collectively, “DHS”), alleging as follows:

NATURE OF THE ACTION

1. This is an action for injunctive and declaratory relief under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, seeking redress for DHS’s violations of the Federal Records Act (“FRA”), 44 U.S.C. §§ 2101, *et seq.*, specifically its (1) failure to establish and maintain a records management program compliant with the FRA; and (2) repeated failure to make and preserve records that (i) adequately and properly document DHS’s functions, policies, decisions, procedures, and essential transactions, and (ii) are designed to furnish the information necessary to protect the legal rights of persons directly affected by the agency’s activities.

2. DHS’s ongoing records management deficiencies manifested acutely in its implementation of the so-called “zero tolerance” immigration enforcement and family separation policy (“Zero Tolerance Policy” or “Zero Tolerance”). Rarely, if ever, has a records management failure had such catastrophic consequences: DHS ripped thousands of children away from their families, failed to make and preserve adequate documentation of individuals taken into its custody, and, consequently, has been unable to reunify each of the families it separated. As one court has observed, the “unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as *property*.” *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1144 (S.D. Cal. 2018). To make matters worse, DHS political appointees: (1) falsely represented to the public DHS’s ability to track the thousands of migrants

harmful by its Zero Tolerance Policy; (2) ignored repeated concerns raised by career DHS employees about the agency's records management deficiencies during the rollout of Zero Tolerance; and (3) failed to create records memorializing critical policy decisions relating to the implementation and later rollback of Zero Tolerance, instead doing so orally, over conference calls and the like, without leaving a paper trail sufficient to scrutinize the agency's actions.

3. There is an urgent need for judicial relief requiring DHS to fix its woefully deficient records management practices. Recent reports by the DHS Office of Inspector General ("OIG"), National Archives and Records Administration ("NARA"), and U.S. Government Accountability Office ("GAO") reveal that DHS has an agency-wide culture of noncompliance with statutory records management obligations that persists to this date. And despite the Trump Administration's public claims that it has halted family separations, DHS continues, to this day, to separate migrant children from their parents, legal guardians, family members, and other adult companions without creating adequate records prior to such separations. Insofar as DHS has taken any steps to improve recordkeeping (which are themselves inadequate), those efforts solely concern the separation of children from *parents*; there is no indication that DHS is creating records sufficient to link children to *non-parental* adult companions with whom they were apprehended at the border, nor does it appear that DHS believes it even has an obligation to create such records. The administration has also made clear that it is actively exploring reinstating a new form of the family separation policy. Taken together, this is a recipe for yet another family separation disaster.

4. DHS's FRA violations have deprived Plaintiff CREW of present and future access to documents that CREW is entitled to receive by law, and that CREW needs for its organizational work. DHS's noncompliance with its records management obligations has also

directly harmed migrant families apprehended at the border who are clients of Plaintiff RAICES, and perceptibly impaired RAICES's own ability to provide critical services to migrant families, causing RAICES to divert substantial resources to counteract that harm. Moreover, to the extent that DHS continues to tear apart families without creating proper and contemporaneous records sufficient to facilitate subsequent reunification, judicial intervention is necessary to prevent irreparable injury.

5. This suit therefore requests a declaratory judgment that DHS has violated the FRA, and injunctive relief compelling its compliance with the FRA.

JURISDICTION AND VENUE

6. This action arises under the APA, 5 U.S.C. § 701, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has personal and subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States).

7. Venue lies in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

8. Plaintiff CREW is a nonprofit, non-partisan corporation organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. To advance its mission, CREW uses a combination of research, litigation, advocacy, and public education to disseminate information to the public about public officials and their actions. CREW researches and reviews agency records created and preserved pursuant to the FRA and made available to the public pursuant to executive branch agency obligations imposed by statutes like the Freedom of Information Act ("FOIA"). CREW disseminates information in a variety of ways, including posting records it has received from its FOIA

requests on its website, www.citizensforethics.org, and by writing and publishing reports and blog posts.

9. Plaintiff RAICES is a nonprofit, non-partisan corporation organized under section 501(c)(3) of the Internal Revenue Code, which provides free and low-cost legal services to underserved immigrant children, families, and refugees in Texas. Founded in 1986 as the Refugee Aid Project by community activists in South Texas, RAICES has grown to be the largest immigration legal services provider in Texas, with offices in Austin, Corpus Christi, Dallas, Fort Worth, Houston and San Antonio. RAICES provides consultations, direct legal services, representation, assistance and advocacy to communities in Texas and to clients after they leave the state.

10. Defendant DHS is an agency within the meaning of the APA, 5 U.S.C. § 701. Among DHS's component agencies are U.S. Customs and Border Protection ("CBP") and U.S. Immigration and Customs Enforcement ("ICE"). DHS operates under the supervision and direction of the Secretary of Homeland Security.

11. Defendant Kirstjen M. Nielsen is the Secretary of Homeland Security and is sued in her official capacity only. As the Secretary of DHS, Ms. Nielsen has an obligation under the FRA to ensure adequate and proper documentation of agency decisions and activities, and to establish and maintain a records management program compliant with the FRA.

LEGAL FRAMEWORK

I. The Federal Records Act

12. The FRA is a collection of statutes that govern the creation, management, and disposal of federal records. *See* 44 U.S.C. §§ 2101, *et seq.*; §§ 2901, *et seq.*; §§ 3101, *et seq.*; and §§ 3301, *et seq.* Among other things, the FRA ensures the "[a]ccurate and complete documentation of the policies and transactions of the Federal Government." 44 U.S.C. § 2902.

13. Both the Archivist of the United States (the “Archivist”) and the heads of the various executive departments and agencies share responsibility to ensure that an accurate and complete record of their policies and transactions is compiled. *See* 44 U.S.C. §§ 2901, *et seq.*; §§ 3101, *et seq.*

14. The Archivist must “provide guidance and assistance to Federal agencies” and has the responsibility “to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies.” 44 U.S.C. § 2904. NARA has promulgated regulations governing the creation and maintenance of federal records pursuant to this authority. *See* 36 C.F.R. §§ 1222.22, *et seq.*

15. The head of each executive branch agency “shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.” 44 U.S.C. § 3101.

16. NARA has promulgated regulations implementing the FRA’s demands, which provide:

To meet their obligation for adequate and proper documentation, agencies must prescribe the creation and maintenance of records that:

- (a) Document the persons, places, things, or matters dealt with by the agency.
- (b) Facilitate action by agency officials and their successors in office.
- (c) Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.
- (d) Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government’s actions.

(e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.

(f) Document important board, committee, or staff meetings.

36 C.F.R. § 1222.22.

17. Under the FRA, agencies also must “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.” 44 U.S.C. § 3102.

18. NARA regulations detail these obligations. Agencies “must develop recordkeeping requirements that identify . . . [t]he record series and systems that must be created and maintained to document program policies, procedures, functions, activities, and transactions.” 36 C.F.R. § 1222.26. In addition, agencies “must implement a records maintenance program so that complete records are filed or otherwise identified and preserved, [and] records can be readily found when needed.” *Id.* § 1222.34. To meet these requirements, “[a]gency records maintenance programs must,” among other things:

(a) Institute procedures for organizing and storing records; . . .

(c) Assign responsibilities for maintenance of records in all formats within each agency component, including designation of the officials that are responsible for maintenance and disposition of electronic records and management of automated systems used for recordkeeping;

(d) Institute reference and retrieval procedures and controls that:

(1) Facilitate the finding, charging out, and refiling of records, including safeguards against loss during transit; and

(2) Ensure that access to electronic records minimizes the risk of unauthorized additions, deletions, or alterations;

(e) Issue appropriate instructions to all agency employees on handling and protecting records.

Id.

II. The Administrative Procedure Act

19. The APA provides that a “person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U. S.C. § 702.

20. The term “agency action” includes “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

21. A court reviewing a claim under 5 U.S.C. § 702 “shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. § 706. The reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed” and “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* §§ 706(1), (2)(A).

22. The APA authorizes judicial review of properly pleaded claims that an agency has violated its non-discretionary obligations under the FRA, including (1) the failure to make records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency, and (2) the failure to establish and maintain a records management program in compliance with the FRA and its implementing regulations. *See Armstrong v. Bush*, 924 F.2d 282, 291-94 (D.C. Cir. 1991); *CREW v. Pruitt*, 319 F. Supp. 3d 252, 257-58 (D.D.C. 2018).

RELEVANT FACTS

I. NARA Reports Criticizing DHS's Records Management Practices

23. DHS and its component agencies have a history of failing to comply with their statutory records management obligations. For instance, on January 11, 2016, NARA issued an inspection report regarding DHS's records management program that identified various "issues with the finalization of plans, policies, and procedures at the Department level that should be addressed by . . . senior managers." NARA Records Management Inspection Report, DHS Records Management Program at 18 (Jan. 11, 2016), *available at* <https://www.archives.gov/files/records-mgmt/resources/dhs-2016-inspection.pdf>. Specifically, NARA found that "DHS records management policies, procedures, and strategic plans ha[d] been in draft form for several years" and needed to be "revised, approved, and issued." *Id.* at ii. NARA further found that DHS lacked a "Department-wide strategy for retention scheduling for email records," and that "[c]urrent DHS email use and storage strategies do not allow for effective retention and retrieval of email." *Id.* at ii-iii.

24. On July 16, 2018, NARA issued a highly critical inspection report regarding CBP's records management system. NARA found that, "[i]n its current state, *the records management program at CBP is substantially non-compliant with Federal statutes and regulations*, NARA policies, Office of Management and Budget (OMB) Circular A-130, and DHS Records and Information Management policies." NARA Records Management Inspection Report, CBP Records Management Program at 2 (July 16, 2018), *available at* <https://www.archives.gov/files/records-mgmt/pdf/cbp-2018-inspection.pdf> ("July 2018 NARA Report") (emphasis added). Specifically, NARA's report identified the following deficiencies, among others:

- a. “CBP has not assigned records management responsibility to a person and office with appropriate authority within the agency to coordinate and oversee the creation and implementation of a comprehensive records management program.” July 2018 NARA Report at 3.
- b. Records management “directives establishing program objectives, responsibilities, and authorities for the creation, maintenance, and disposition of agency records are out of date or in draft form.” *Id.* at 3-4.
- c. The structure governing its records officers “is not adequately implemented throughout each program to ensure incorporation of recordkeeping requirements and records maintenance, storage, and disposition practices into agency programs, processes, systems, and procedures.” *Id.* at 4.
- d. “CBP does not integrate records management and recordkeeping requirements into the design, development, and implementation of its electronic systems.” *Id.* at 5.
- e. “CBP does not require records management training for all CBP staff, and the [records management] training it offers does not meet records management training requirements” established by NARA regulations and directives. *Id.* at 6.
- f. CBP “does not conduct regular records management evaluations of agency components.” *Id.* at 7.
- g. “CBP does not identify or manage vital records in accordance with 36 CFR 1223.” *Id.*
- h. “CBP offices are not routinely conducting records inventories.” *Id.* at 8.
- i. “CBP has not established policies and procedures for handling and reporting unauthorized disposals of records to NARA.” *Id.*

- j. “CBP has not developed procedures to conduct exit briefings for departing employees or senior officials.” *Id.*
- k. “CBP has no strategic plan for records management.” *Id.* at 9-10.
- l. “Successful implementation of CBP plans for a Records Management Application and Electronic Records Management System are at risk of failure due to lack of basic records management fundamentals.” *Id.* at 10.

25. Based on these findings, NARA concluded that CBP’s records management program “lacks numerous basic elements of a compliant records management program as prescribed in 36 CFR Chapter XII, Subchapter B.” July 2018 NARA Report at 11. NARA added that it “will require careful strategic planning” for the program “to become effective and compliant in the many areas where it is currently underdeveloped,” noting that “[p]rogram plans and studies to institute [records management] throughout the agency have been formulated since 2015, but limited progress has been made to date.” *Id.* NARA recommended that CBP leadership “begin with developing and implementing a strategic plan for the overall records management program,” and “foster a culture that includes records management in the regular and routine practices of all program functions within the CBP.” *Id.*

II. DHS’s Records Management Failures Concerning Migrant Children Apprehended at the Border

A. The Zero Tolerance Policy

26. DHS’s culture of non-compliance with its FRA obligations manifested acutely, with disastrous results, in its implementation and rollback of the Zero Tolerance Policy.

27. From July to November 2017, DHS conducted a secret pilot program of the Zero Tolerance Policy in the “El Paso sector,” which spans from New Mexico to West Texas.¹ Under this program, federal prosecutors criminally charged adults who allegedly crossed the border unlawfully in the El Paso sector. If accompanied by a minor child, the child would be separated from the adult. Over 280 migrants were separated under this initiative. Border Patrol ended the program in November 2017.

28. In April 2018, the Trump Administration formally announced the Zero Tolerance Policy, without advance notice to agency officials or pre-planning by those officials. Under the policy, all adults entering the United States illegally would be subject to criminal prosecution. As with the El Paso pilot program, if the apprehended adult was accompanied by a minor child, the child would be separated from the adult.

29. CBP, ICE, and the U.S. Department of Health and Human Services (“HHS”) all play critical roles in implementing the Zero Tolerance Policy. CBP’s Office of Field Operations (“OFO”) inspects foreign visitors and goods entering at established ports of entry, and Border Patrol apprehends individuals who enter the United States between ports of entry. CBP transfers adult migrants in its custody to ICE, which detains certain migrants with pending immigration proceedings and deports migrants who receive final removal orders. Children apprehended at the border who are separated from their parents and reclassified as “Unaccompanied Alien Children” (“UCs”) are held in DHS custody until they can be transferred to HHS’s Office of Refugee Resettlement.²

¹ CBP’s U.S. Border Patrol (“Border Patrol”) divides responsibility for border security operations geographically into sectors.

² “Unaccompanied Alien Child” is defined by statute as one who (1) “has no lawful immigration status in the United States,” (2) “has not attained 18 years of age,” and (3) “has no parent or legal

30. The Zero Tolerance Policy fundamentally changed DHS's approach to immigration enforcement. Under prior policy, when CBP apprehended a migrant family unit attempting to enter the United States illegally, it usually placed the adult in civil immigration proceedings without referring the adult for criminal prosecution. CBP only separated apprehended parents from children in limited circumstances, such as where the adult had a criminal history or outstanding warrant, or if CBP could not determine whether the adult was the child's parent or legal guardian.

B. Fallout from Zero Tolerance

31. The fallout from the Zero Tolerance Policy was catastrophic, resulting in thousands of children being ripped from their families.

32. Following massive public outcry, President Trump purportedly halted family separations by an Executive Order issued June 20, 2018. *See* Exec. Order No. 13841, 83 Fed. Reg. 29,435 (June 25, 2018) ("EO 13841"). EO 13841 states that the Trump Administration will continue to criminally prosecute illegal entry offenses, but that the Secretary of Homeland Security "shall, to the extent permitted by law and subject to the availability of appropriations, maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members." *Id.* It adds that the "Secretary shall not, however, detain an alien family together when there is a concern that detention of an alien child with the child's alien parent would pose a risk to the child's welfare." *Id.* The EO's definition of "alien family" is limited to children and adults who have "a legal parent-child relationship." *Id.* Thus, the EO does not prevent DHS from separating children from adults who are not parents or legal guardians, such as non-guardian grandparents, siblings, and other family

guardian in the United States; or no parent or legal guardian . . . in the United States available to provide care and physical custody." 6 U.S.C. § 279(g)(2).

members. Nor does EO 13841 address reunification of the thousands of children DHS had already separated.

33. Three days after the issuance of EO 13841, DHS released a “Fact Sheet” on June 23, 2018, outlining the government’s efforts to “ensure that those adults who are subject to removal are reunited with their children for the purposes of removal.” DHS Fact Sheet: Zero-Tolerance Prosecution and Family Reunification, *available at* <https://bit.ly/2K6QRpm>. The fact sheet stated that “[m]inors come into HHS custody with information provided by DHS regarding how they illegally entered the country and whether or not they were with a parent or adult and, to the extent possible, the parent(s) or guardian(s) information and location. There is a central database which HHS and DHS can access and update when a parent(s) or minor(s) location information changes.” *Id.*

34. By order dated June 26, 2018, the U.S. District Court for the Southern District of California entered a preliminary injunction requiring DHS and HHS to reunify a certified class of migrant parents and their separated children within 30 days (an order that still has not been fulfilled to this day). *Ms. L. v. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018). In so holding, the court noted that DHS’s “practice of separating these families was implemented without any effective system or procedure for (1) tracking the children after they were separated from their parents, (2) enabling communication between the parents and their children after separation, and (3) reuniting the parents and children after the parents are returned to immigration custody following completion of their criminal sentence.” *Id.* at 1144. The “unfortunate reality,” the court explained, “is that under the present system migrant children are not accounted for with the same efficiency and accuracy as *property*. Certainly, that cannot satisfy the requirements of due process.” *Id.*

35. By order dated October 9, 2018, the court approved a class settlement in *Ms. L* and a related case. *Ms. L. v. ICE*, No. 18-cv-428, ECF No. 256 (S.D. Cal. Oct. 9, 2018). The settlement covers both “parent” and “children” classes. The class of parents is defined as “[a]ll adult alien parents who entered the United States at or between designated ports of entry with their child(ren), and who, on or before the effective date of this agreement: (1) were detained in immigration custody by the DHS; (2) have a child who was or is separated from them by DHS and, on or after June 26, 2018, was housed in [HHS] custody, [HHS] foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child; and (3) have been (and whose child(ren) have been) continuously physically present within the United States since June 26, 2018, whether in detention or released.” *Id.* at 3. Like EO 13841, then, the *Ms. L* class settlement does not apply to separations of children from adults who are not the child’s parents or legal guardians. The class definition also expressly excludes “alien parents with criminal histories or a communicable disease, or those encountered in the interior of the United States.” *Id.*

C. DHS’s Records Management Failures During Zero Tolerance

1. Failure to Create Records Linking Migrant Children and Adult Companions with whom they were Apprehended at the Border

36. On September 27, 2018, the DHS OIG issued a report titled *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*, OIG-18-84, available at <https://bit.ly/2NhATFE> (“OIG Report”). This report reveals numerous records management failings by DHS that, in turn, complicated the agency’s ability to provide OIG with “accurate, complete, reliable data on family separations and reunifications, raising concerns about the accuracy of its reporting.” OIG Report at 9. Specifically, OIG made the following findings, among others:

- a. DHS lacks complete and adequate records documenting basic details concerning migrant family separations and reunifications. Specifically, “OIG requested a list of every migrant child separated from an adult since April 19, 2018, as well as basic information about each child, including the child’s date of birth; the child’s date of apprehension, separation, and (if applicable) reunification; and the location(s) in which the child was held while in DHS custody. It took DHS many weeks to provide the requested data, indicating that the Department does not maintain the data in a readily accessible format. Moreover, the data DHS eventually supplied was incomplete and inconsistent, raising questions about its reliability.” *Id.* at 11.
- b. Relatedly, OIG found no evidence that the purported “central database” with location information for separated parents and minors, which DHS described in the June 2018 fact sheet discussed above, actually exists. *Id.* at 10. “The OIG team asked several ICE employees, including those involved with DHS’ reunification efforts at ICE Headquarters, if they knew of such a database, and they did not.” *Id.* And “when the OIG team asked ICE for information that should have been accessible to ICE via the central database (*e.g.*, information on the current location of separated children), ICE did not have ready access to the information. Instead, ICE had to request the information from HHS. DHS has since acknowledged to the OIG that there is no ‘direct electronic interface’ between DHS and HHS tracking systems.” *Id.* at 11.
- c. CBP officials stated that they “could not feasibly identify children who were separated before” “April 19, 2018,” *id.* at 11 n.23, indicating that the agency failed altogether to create records documenting that information.

- d. CBP does not have an adequate, uniform system for creating or retrieving records of unaccompanied minors apprehended at the border. *Id.* at 10. Rather than following a standardized intake procedure for such minors, CBP officers “manually enter information into a Microsoft Word document, which they then send to HHS as an email attachment. Each step of this manual process is vulnerable to human error, increasing the risk that a child could become lost in the system.” *Id.*
- e. ICE does not have an adequate, uniform system for creating or retrieving records of detainees in its custody who have been separated from a child. *Id.* at 9-10. Although CBP enters “family separation data into certain fields within its own system, those particular fields are not visible in ICE’s system. As a result, ICE officers at the Port Isabel Detention Center stated that when processing detainees for removal, officials initially treated separated adults the same as other detainees and made no additional effort to identify and reunite families prior to removal. Eventually, in early June 2018, Port Isabel officials began taking manual steps—such as interviewing detainees—to identify adults separated from their children.” *Id.* at 10.
- f. CBP does not create adequate records of its transmissions to HHS of information regarding minors transferred from DHS to HHS custody. *Id.* at 10 n.21. CBP told the OIG “it does not store that data and therefore could not provide it to the OIG team.” *Id.*

37. In October 2018, GAO released a report titled *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, GAO-19-163, available at <https://www.gao.gov/assets/700/694918.pdf> (“GAO Report”). Like the OIG Report, the GAO

Report identified several records management deficiencies concerning DHS's implementation of the Zero Tolerance Policy, including the following:

- a. Before Zero Tolerance was implemented in April 2018, "DHS and HHS data systems did not systematically collect and maintain information to indicate when a child was separated from his or her parents, and [HHS] officials stated that such information was not always provided when children were transferred from DHS to HHS custody." GAO Report at 16.
- b. Although the agencies "made changes to their data systems" between April and August 2018 "to help notate in their records when children are separated from parents," these changes were ineffective. *Id.* at 16-17. Specifically, "Border Patrol officials told [GAO] that information on whether a child had been separated is not automatically included in the referral form sent to [HHS]. Rather, agents may indicate a separation in the referral notes sent electronically to [HHS], but they are not required to do so, according to Border Patrol officials. Therefore, while the changes to the system may make it easier for Border Patrol to identify children separated from their parents, [HHS] officials stated [HHS] may not receive information through this mechanism to help it identify or track separated children." *Id.* at 17.
- c. "As of August 2018, OFO officials stated that while OFO has access to [HHS's] [UC] Portal, not all field staff input referrals directly in the [UC] Portal. Rather, OFO officials typically email the referral request to [HHS]." *Id.*
- d. "Border Patrol issued guidance on July 5, 2018, directing its agents to use [a] new [check box] indicator for separated children in the [UC] Portal and provide the

- parent's alien number in the [UC] Portal when making referrals to [HHS] as of July 6, 2018. . . .However, [HHS] officials . . . said that DHS components with access to the [UC] Portal are not yet utilizing the new check box consistently and the [HHS] Intakes Team completes the box based on information in DHS's referral email, if DHS has not entered the information." *Id.* at 18.
- e. "Border Patrol agents and CBP officers provide packets of information to [HHS] when unaccompanied children are transferred to [HHS] custody that includes information about separation from a parent; however, [HHS] officials told us that [HHS] rarely receives some of the forms in the packets to which CBP officials referred. In addition, the forms themselves do not contain specific fields to indicate such a separation." *Id.* at 18-19.
- f. There is "no single database with easily extractable, reliable information on family separations," and thus agency officials must use an amalgam of "three methods to determine which children in [HHS's] custody as of June 26, 2018, had been separated from parents at the border," each of which poses completeness and reliability concerns. *Id.* at 23-25.

38. Several current and former DHS officials have provided detailed, insider accounts of DHS's disastrous implementation of the Zero Tolerance Policy. One such former official is Scott Shuchart, who served as a senior adviser at DHS's Office for Civil Rights and Civil Liberties from 2010 to July 2018. In an October 25, 2018 *Washington Post* article, Shuchart made the troubling revelation that career DHS employees repeatedly raised concerns about the agency's records management deficiencies during the rollout of the Zero Tolerance Policy, but that political appointees simply ignored those concerns. *See* Scott Shuchart, Careless cruelty:

Civil servants said separating families was illegal. The administration ignored us, *Wash. Post.*, Oct. 25, 2018, available at <https://wapo.st/2yAjNy1>. Specifically, Shuchart stated:

- a. “[M]y colleagues and I were pushing for record-keeping, communication and other policies that Trump appointees ignored.” *Id.*
- b. Career employees “noticed early that CBP and ICE weren’t providing HHS with proper records to allow families to be reunited or pursue their immigration cases jointly. . . . [W]e tried to ring the alarm that the legal, strategic and human dimensions of the policy hadn’t been thought through, needed fast improvement and posed a massive liability for the government.” *Id.*
- c. “Every attempt to raise civil rights concerns led nowhere. . . . Civil servants advanced recommendations for mitigating the worst of the harm,” including “improving record-keeping,” and “giving separated parents and children better information,” all to no avail. *Id.*
- d. Career employees asked agency leadership if “officials in Washington directed agents to record family members’ names and information, so they could later be reunited?” and were told blithely “I think we sent an email.” *Id.* Agency leadership ignored the career employees’ requests to see the purported email. *Id.*

39. Shuchart reiterated these points in a November 26, 2018 interview with *60 Minutes*, stating that the Zero Tolerance Policy “bypassed the usual review” process, which would have entailed consulting his office; that his office would have insisted “on the recordkeeping that needed to be done” had it been consulted; and that when his office “tried to provide” that advice, “it was ignored.” Scott Pelley, *The Chaos Behind Donald Trump’s Policy*

of Family Separation at the Border, *60 Minutes*, Nov. 26, 2018, available at <https://cbsn.ws/2P604fn>.

40. On information and belief, DHS has failed, and continues to fail, to create records sufficient to link migrant children with *non-parental* adult companions (*e.g.*, grandparents, siblings, aunts and uncles, or non-familial caretakers) with whom the children were apprehended at the border, but later separated. DHS appears to believe it has no legal obligation to create such records, despite the fact that HHS has issued guidance indicating that it requires such information for UCs transferred to its custody. See HHS Office of Refugee Resettlement, *Children Entering the United States Unaccompanied* § 1.3.1 (Jan. 30, 2015), available at <https://bit.ly/2tenebf> (HHS “requests . . . from the referring agency . . . [i]dentifying information and contact information for a parent, legal guardian, or *other related adult providing care for the child or youth* prior to apprehension, if known.”) (emphasis added); DHS Fact Sheet: Zero-Tolerance Prosecution and Family Reunification, available at <https://bit.ly/2K6QRpm> (recognizing that HHS “releases minors to sponsors in the following order of preference: parent; legal guardian; an adult relative (brother, sister, aunt, uncle, grandparent or first cousin); an adult individual or entity designated by the parent or legal guardian . . .”).

2. Failure to Create Records of Agency Policy and Decisions

41. On information and belief, during the implementation and rollback of the Zero Tolerance policy, DHS also failed to create adequate records of critical agency policies and decisions, instead doing so orally and through informal channels, such as conference calls.

42. For instance, DHS leadership did not issue written, formalized guidance to agency employees providing detailed instructions on how to implement the Zero Tolerance Policy. Rather, Border Patrol Sector Chiefs worked out these details on an *ad hoc* basis, through

conversations and conference calls. On information and belief, the decisions made on these calls were not memorialized into written policies.

43. This failure to adequately document agency policy is consistent with an overall agency culture of resisting memorializing policy decisions and guidance into written records. For instance, CBP's policymakers rebuked prior efforts by its own policy office and the Office for Civil Rights and Civil Liberties to issue employees meaningful guidance on completing screening forms for UCs, and official policy guidance concerning the classification of same-sex couples.

D. DHS's Continued Practice of Separating Migrant Children from Adult Companions

44. As of the date of this filing, hundreds of children (if not many more) remain separated from their families as a result of the Zero Tolerance Policy.

45. In addition, despite the Trump Administration's purported halting of family separations via EO 13841 in June 2018, DHS continues to this day to separate migrant children from their parents, as well as their non-parental adult companions. Senior CBP officials have confirmed as much, but claim that the practice has nothing to do with Zero Tolerance. DHS is instead invoking exceptions to EO 13841 and the *Ms. L* class settlement that allow family separation based on the parent's alleged criminal history and risks to the child's welfare.

46. It has been widely reported that DHS is abusing these exceptions. As *ProPublica* recently found, "immigration officials—taking their cues from an administration that has made it clear it still believes family separations are an effective deterrent—are using whatever justification they can find, with or without substantiation, to deem immigrant parents unfit or unsafe." Ginger Thompson, Families Are Still Being Separated at the Border, Months After "Zero Tolerance" Was Reversed, *ProPublica*, Nov. 27, 2018, available at <https://bit.ly/2zxD3gb>.

“If the authorities have even the most specious evidence that a parent was a gang member, or had some kind of blemish on their record, . . . anything they can come up with to say that the separation is for the health and welfare of the child, then they’ll separate them.” *Id.* (quoting Neha Desai, senior attorney at the National Center for Youth Law). Equally troubling, the government has kept the details of these new family separations secret, with the Department of Justice arguing that it is not obligated to report the separations to the court or class counsel in the *Ms. L* case because they are not Zero Tolerance cases. *Id.*

47. This reporting is consistent with the experience of Plaintiff RAICES, whose clients continue to be harmed by DHS’s child separation practices and related recordkeeping failures. For instance, RAICES currently represents several parents who were, at one point, detained in ICE custody with their children. After the parents reported to DHS officials that they were forced to assist transnational criminal organizations in their home countries (*e.g.*, by paying extortion demands), and that this involuntary assistance was the very persecution they were fleeing from, DHS separated the parents and children, transferring the parents to ICE adult detention centers, and reclassifying the children as UCs and transferring them to HHS custody. On information and belief, DHS used the parents’ forced assistance with the criminal organization to justify separating these families.

48. The Trump Administration and the President himself have confirmed that they are actively exploring reinstating a form of the family separation policy, which, like the first family separation policy, could be implemented at any moment without advance notice to agency officials or the public. Acting ICE Director Ronald Vitiello has confirmed that the

administration favors a “binary choice” option, under which parents would be forced to choose between relinquishing their children to foster care or remaining detained together as a family.³

49. On information and belief, the records management deficiencies at DHS described above persist to this date and have not been adequately remedied.

III. Plaintiffs’ Injuries

50. Plaintiff CREW has been, and continues to be, harmed by DHS’s records management deficiencies. CREW has a strong operational interest in ensuring agency compliance with records responsibilities under the FRA. CREW’s efforts to ensure such compliance stem from, among other things, CREW’s mission to promote transparency in government activities and decision making, highlight industry influence over agency decisions, and combat ethics violations. For example, in July 2018, CREW sent a letter to the Archivist requesting that NARA investigate the potential destruction of records in violation of the FRA by DHS and HHS in connection with their implementation of the Zero Tolerance Policy. And in February 2018, CREW filed suit against the Environmental Protection Agency (“EPA”), former Administrator Scott Pruitt, NARA, and the Archivist, alleging, among other things, that (1) EPA was violating the FRA by affirmatively electing not to create and preserve records adequately documenting the organization, functions, policies, decisions, procedures, and essential

³ Maria Sacchetti, Trump’s nominee to lead ICE won’t rule out separating migrant families again, *Wash. Post*, Nov. 15, 2018, available at <https://wapo.st/2EafzBM>; see also Kathryn Krawczyk, Trump officials zero in on ‘voluntary’ family separations to ‘maximize deterrence’ of migrants, *The Week*, Oct. 23, 2018, available at <https://bit.ly/2yuellNi>; Miriam Jordan, Caitlin Dickerson, and Michael D. Shear, Trump’s Plans to Deter Migrants Could Mean New ‘Voluntary’ Family Separation, *N.Y. Times*, Oct. 22, 2018, available at <https://nyti.ms/2Cz0xUt>; Philip Rucker, Trump says he is considering a new family separation policy at U.S.-Mexico border, *Wash. Post*, Oct. 13, 2018, available at <https://wapo.st/2q9RbXL>; Ted Hesson, Trump administration considers family separation option as border arrests soar, *Politico*, Oct. 12, 2018, available at <https://politi.co/2PBAJe8>.

transactions of the agency, and (2) Administrator Pruitt was violating the FRA by knowingly and affirmatively refusing to create records of his own phone calls, meetings, and decisions.

51. The FOIA requests CREW has filed also reflect CREW's interest in DHS's recordkeeping practices. Since January 2017, CREW has submitted 18 separate FOIA requests to DHS, many of which remain outstanding. Those outstanding FOIA requests include a request concerning DHS's records management policies and practices, and a separate request concerning the agency's implementation of the Zero Tolerance Policy. CREW expects to continue filing FOIA requests with DHS and to have an ongoing interest in the agency's compliance with executive branch ethics requirements and its recordkeeping responsibilities under the FRA.

52. When DHS fails to adequately document its functions, policies, decisions, procedures, and essential transactions in compliance with the FRA, CREW's FOIA requests yield fewer or no responsive documents, which by itself injures CREW. Deprivation of these records also frustrates CREW's ability to fulfill its organizational objectives, including its goal to shed light on the formulation and implementation of agency policies, such as Zero Tolerance, that have a substantial impact on individuals with whom the government interacts.

53. Plaintiff RAICES's mission is to provide effective, free and low-cost legal services to underserved immigrant children, families, and refugees in Texas. To further this mission, RAICES provides consultations, direct legal services, representation, assistance and advocacy to communities in Texas and to clients after they leave the state.

54. RAICES's clients have been significantly and, in some cases, permanently harmed by DHS's records management deficiencies. Indeed, RAICES is currently providing legal services and representation to migrant adults and children who, due in part to DHS's recordkeeping failures, have been unable to be reunited with their family members, whose

reunifications were significantly delayed, or who have experienced other hardship. For example, RAICES currently represents a 24-year-old man from Honduras who was separated from his eight-year-old brother upon their entry to the United States. The 24-year-old man obtained legal guardianship of his brother in Honduras and brought the guardianship order and related documents with him to the United States. He informed DHS officials that he is a legal guardian, and ICE provided him with the election form provided to *Ms. L* class members, which states that he is a member of the *Ms. L* class and that he could seek relief under the class settlement agreement. Yet RAICES recently learned that DHS has determined the 24-year-old client is not a “parent” because DHS cannot, based on current records, identify his “child”—*i.e.*, his minor brother. To date, the brothers remain separated: the 24-year-old is in ICE custody, while the eight-year-old is in HHS custody.

55. RAICES represents another parent who was separated from his wife and three daughters after being apprehended at the border. As is often the case, RAICES’s client was placed in ICE adult detention, while his wife and children were placed in ICE family detention. The wife and children succeeded on their credible-fear asylum claims and were released from ICE custody. RAICES’s client, however, is still pursuing his credible-fear claim and remains in ICE custody. During his immigration proceeding, the client has attempted to show that he is a parent who has been separated from his children, but DHS has reported that they have no records linking him to any of his three daughters.

56. RAICES itself has also been, and continues to be, harmed by DHS’s deficient records management practices. Specifically, as explained below, DHS’s records management failures perceptibly impair RAICES’s ability to provide critical services to migrant families, and have caused RAICES to divert substantial resources to counteract that harm.

57. DHS's recordkeeping failures have most palpably impacted RAICES's representation of UCs who were separated from adult companions after being apprehended at the border. Indeed, DHS's failure to create proper records linking children to adult companions has had a significant ripple effect throughout the immigration process for UCs. In the first instance, it has caused delays in identifying adult sponsors to whom UCs may be released, which means increased detention times for the UCs. Because ICE typically does not commence removal proceedings against UCs until they have been detained for at least 60 days, increased detention times makes it substantially more likely that the child's removal proceedings will begin while he or she is still in HHS custody. This is critical because removal proceedings for *detained* UCs are demonstrably more difficult than they are for *released* UCs. Among other things, detained UCs undergo the proceeding without the support of their family, and, since they are detained at government expense, the immigration court process happens quickly, usually within just a few weeks.

58. Prior to Zero Tolerance, UCs were generally released from HHS custody prior to this 60-day period—*i.e.*, *before* removal proceedings commenced. Under that system, RAICES provided detained children with “know your rights” advice, consultations, and post-release referrals to counsel, but generally did not provide representation during the actual removal proceeding. This changed after Zero Tolerance. Due in part to DHS's recordkeeping failures and attendant delay in the release of UCs, substantially more UCs have faced removal proceedings while they are still in HHS custody.

59. Because RAICES is committed to ensuring that no child attends court alone and thus seeks to assist all detained UACs in immigration court, RAICES has been forced to divert substantial resources in response to the increase of removal proceedings against detained UACs.

For example, RAICES now must draft, research, and argue preliminary motions when charging documents are deficient, which it typically did not do before. Moreover, because court hearings are sometimes scheduled with only a few days' notice, this work often must be performed at a rapid pace.

60. DHS's deficient recordkeeping has also impaired RAICES's ability to prepare applications for relief or obtain evidence for UCs in removal proceedings. Migrant children apprehended at the border often lack information about family or potential sponsors in the United States, knowledge of the reasons why the family fled their home country, or documents or evidence to support a potential asylum case. Typically that information is maintained by the adult companion with whom the child is apprehended at the border, as they are traveling together and the child is reliant on that adult. Yet, due in part to DHS's failure to create records from which the knowledgeable adult companion may be readily identified, RAICES has undertaken significant efforts to independently locate those adults to gather relevant information (which is further complicated if the adult is also detained), and must do so quickly since, as noted, UCs removal proceedings often occur on an expedited basis. Again, RAICES has had to reallocate its resources and staffing to carry out these tasks.

61. DHS's records management deficiencies have impacted RAICES in various other ways, including by requiring RAICES to: (a) undertake efforts to try to "match" separated family members where DHS failed to create adequate records linking those family members; (b) change questions asked during client intake; (c) create and maintain additional documents, data points, and data tracking tools; (d) increase conference calls and staff training; (e) increase recruitment and training of pro bono attorneys and volunteers; and (f) have its lawyers invest significant time

researching, discussing means of legal redress, and initiating or cooperating with legal actions related to separations.

PLAINTIFFS' CLAIMS FOR RELIEF

CLAIM ONE

DHS's Failure to Establish and Maintain an FRA-Compliant Records Management Program in Violation of the FRA and APA (Declaratory and Injunctive Relief)

62. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

63. The FRA directs that agencies “shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.” 44 U.S.C. § 3102.

64. Implementing NARA regulations specify that agencies “must develop recordkeeping requirements that identify . . . [t]he record series and systems that must be created and maintained to document program policies, procedures, functions, activities, and transactions,” 36 C.F.R. § 1222.26, and “implement a records maintenance program so that complete records are filed or otherwise identified and preserved, [and] records can be readily found when needed,” *id.* § 1222.34. An agency’s records management program must, among other things, “[i]nstitute reference and retrieval procedures and controls that . . . [f]acilitate the finding . . . of records”; “[a]ssign responsibilities for maintenance of records in all formats within each agency component”; and “[i]ssue appropriate instructions to all agency employees on handling and protecting records.” *Id.* § 1222.34.

65. Despite these unambiguous requirements, DHS has failed to establish and maintain a sufficient agency-wide records management program in compliance with the FRA and its implementing regulations. These failures are detailed in NARA reports, described above

in paragraphs 23-25, and manifested in DHS's recent actions with respect to migrant children apprehended at the border, described above in paragraphs 36-49.

66. DHS's actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), insofar as they violate FRA and its implementing regulations.

67. DHS has "unlawfully withheld" agency action, 5 U.S.C. § 706(1), by failing to take actions required by FRA and its implementing regulations.

68. DHS's unlawful actions have deprived Plaintiff CREW of present and future access to documents that CREW is entitled to receive by law; that would shed light on DHS's functions, policies, decisions, procedures, and essential transactions; and that CREW needs for its organizational work.

69. DHS's unlawful actions have directly harmed Plaintiff RAICES's clients, and perceptibly impaired RAICES's own ability to provide critical services to migrant families, causing RAICES to divert substantial resources to counteract that harm.

70. Plaintiffs are therefore entitled to a declaratory judgment that DHS is in violation of its legal obligations under the FRA, 44 U.S.C. § 3102, and implementing NARA regulations, 36 C.F.R. §§ 1222.26, 1222.34, and an order compelling DHS to comply with those obligations.

CLAIM TWO

DHS's Failure to Create Records Linking Migrant Children to Adult Companions with Whom They Were Apprehended at the Border in Violation of the FRA and APA (Declaratory and Injunctive Relief)

71. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

72. The FRA directs that agencies "shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information

necessary to protect the legal . . . rights . . . of persons directly affected by the agency's activities." 44 U.S.C. § 3101.

73. Implementing NARA regulations specify that agency officials must, among other things, create and maintain records that: (1) "[d]ocument the persons" or "matters dealt with by the agency"; (2) "[f]acilitate action by agency officials and their successors in office"; (3) "[m]ake possible a proper scrutiny by the Congress or other duly authorized agencies of the Government"; and (4) "[p]rotect the . . . legal[] and other rights . . . of persons directly affected by the Government's actions." 36 C.F.R. § 1222.22(a)-(d).

74. As detailed above in paragraphs 36-49, DHS has repeatedly failed, and continues to fail, to create records sufficient to link migrant children with adult companions with whom they were apprehended at the border, including not only parents, but other adult family members and caretakers. These actions violate DHS's non-discretionary legal obligations to create records that: (1) "[d]ocument the persons" or "matters dealt with by the agency"; (2) "[f]acilitate action by agency officials and their successors in office," including legally-required actions by officials at both DHS and HHS; (3) "[m]ake possible a proper scrutiny by the Congress or other duly authorized agencies of the Government," including the DHS OIG; and (4) "[p]rotect the . . . legal[] and other rights" of the migrant families "directly affected by [DHS's] actions." 36 C.F.R. § 1222.22(a)-(d).

75. DHS's actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), insofar as they violate FRA and its implementing regulations.

76. DHS has "unlawfully withheld" agency action, 5 U.S.C. § 706(1), by failing to take actions required by FRA and its implementing regulations.

77. DHS's unlawful actions have deprived Plaintiff CREW of present and future access to documents that CREW is entitled to receive by law; that would shed light on DHS's functions, policies, decisions, procedures, and essential transactions; and that CREW needs for its organizational work.

78. DHS's unlawful actions have directly harmed Plaintiff RAICES's clients, and perceptibly impaired RAICES's own ability to provide critical services to migrant families, causing RAICES to divert substantial resources to counteract that harm.

79. To the extent that DHS continues to tear apart families without creating proper and contemporaneous records sufficient to facilitate subsequent reunification, judicial intervention is necessary to prevent irreparable injury.

80. Plaintiffs are therefore entitled to a declaratory judgment that DHS is in violation of its legal obligations under the FRA, 44 U.S.C. § 3101, and implementing NARA regulations, 36 C.F.R. § 1222.22, and an order compelling DHS to comply with those obligations.

CLAIM THREE

DHS's Failure to Create Records of Agency Policy and Decisions in Violation of the FRA and APA (Declaratory and Injunctive Relief)

81. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

82. The FRA directs that agencies "shall make and preserve records containing adequate and proper documentation of the . . . policies" and "decisions . . . of the agency" that is "designed to furnish the information necessary to protect the legal . . . rights . . . of persons directly affected by the agency's activities." 44 U.S.C. § 3101.

83. Implementing NARA regulations specify that agency officials must create and maintain records that, among other things, "[d]ocument the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and

commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.” 36 C.F.R. § 1222.22(e).

84. As detailed above in paragraphs 41-43, DHS has failed to create adequate records documenting “the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically” in connection with its implementation and rollback of the Zero Tolerance Policy.

85. DHS’s unlawful actions have deprived Plaintiff CREW of present and future access to documents that CREW is entitled to receive by law; that would shed light on DHS’s policies and decisions; and that CREW needs for its organizational work.

86. DHS’s unlawful actions have directly harmed Plaintiff RAICES’s clients, and perceptibly impaired RAICES’s own ability to provide critical services to migrant families, causing RAICES to divert substantial resources to counteract that harm.

87. Plaintiffs are therefore entitled to a declaratory judgment that DHS is in violation of its legal obligations under the FRA, 44 U.S.C. § 3101, and implementing NARA regulations, 36 C.F.R. § 1222.22, and an order compelling DHS to comply with those obligations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that DHS has failed to establish and maintain a sufficient records management program in compliance with the FRA.
2. Issue injunctive relief compelling DHS to establish and maintain a sufficient records management program in compliance with the FRA.
3. Declare that DHS has failed to make and preserve records that (1) adequately and properly document DHS’s functions, policies, decisions, procedures, and essential transactions,

and (2) are designed to furnish the information necessary to protect the legal rights of persons directly affected by the agency's activities.

4. Issue injunctive relief compelling DHS to make and preserve records that (1) adequately and properly document DHS's functions, policies, decisions, procedures, and essential transactions, and (2) are designed to furnish the information necessary to protect the legal rights of persons directly affected by the agency's activities.

5. Award Plaintiffs their costs and reasonable attorneys' fees in this action; and

6. Grant such other and further relief as the Court may deem just and proper.

Date: December 14, 2018

Respectfully Submitted,

/s/ Nikhel Sus

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