

August 28, 2018

VIA HAND DELIVERY AND E-MAIL

Mary Myers, CMC
City Clerk
City of Eloy
628 N. Main Street
Eloy, AZ 85131

Re: Notice of Claim Pursuant to A.R.S. § 12-821.01

To Whom It May Concern:

This letter constitutes a Notice of Claim pursuant to Arizona Revised Statutes § 12-821.01 against the City of Eloy, Arizona, for the extreme suffering and wrongful death of a 19-month-old child, and the severe mental pain, distress, loss of love and companionship, and other harms inflicted on the child's mother.

This firm represents Yazmin Juárez [REDACTED], and we serve this Notice of Claim on her behalf. Ms. Juárez is the mother of Mariee [REDACTED] Juárez, who died on May 10, 2018, after six agonizing weeks of hospitalization and extensive medical interventions. Mariee would have turned two years old earlier this month. Ms. Juárez is Mariee's wrongful death beneficiary and the legal representative of her estate.

We are providing this Notice of Claim without the benefit of formal discovery, and Ms. Juárez reserves the right to amend or supplement this Notice of Claim. The conduct of employees, officers, agents, or others acting within the authority and/or at the direction of the City of Eloy may also have contributed to the harms suffered by Ms. Juárez and Mariee, and when those individuals' identities become known, we may amend or supplement this claim to include them. If for any reason you believe that this Notice of Claim is not in compliance with A.R.S. § 12-821.01, or if you require any additional information, please contact undersigned counsel.

Ms. Juárez seeks an award of damages reasonably calculated to compensate for the harms she and Mariee sustained in connection with the events that led to Mariee's wrongful death on May 10, 2018. Mariee's tragic death resulted from the unsafe and

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unsanitary conditions in immigration detention at the South Texas Family Residential Center in Dilley, Texas, and the inadequate, substandard medical care Mariee received there. Under an arrangement that the U.S. Department of Homeland Security's Inspector General has deemed unlawful, the City of Eloy serves as the prime contractor for the federal government in operating the detention facility in Dilley.

The terms and content of this Notice of Claim are subject to Rule 408 of the Arizona Rules of Evidence and Rule 408 of the Federal Rules of Evidence.

I. Factual Basis for Claims

On March 1, 2018, Ms. Juárez, a citizen of Guatemala, and her then-19-month-old daughter, Mariee, crossed the Rio Grande into southern Texas. Ms. Juárez feared for her and Mariee's lives and safety in Guatemala, and they had fled to seek asylum in the United States. On their apprehension near the border, mother and daughter were temporarily detained at a U.S. Customs and Border Patrol immigration processing center, then transferred together to the South Texas Family Residential Center at Dilley, Texas ("Dilley"), four days later.

Mariee was a normal, healthy, happy child when she arrived in the United States. She had never had any significant medical problems or chronic medical conditions. The medical personnel who processed Mariee for intake at Dilley on March 5, 2018, also noted no current illnesses or health problems before clearing her for custody.

At Dilley, Ms. Juárez and Mariee were assigned to a single room with five other mothers, each with a child. Several children were ill. One boy, who was around Mariee's age, had a constant cough and runny nose, and was very lethargic. Ms. Juárez learned from the boy's mother that he had fallen ill at Dilley. His mother had sought medical attention for her son, taking him to the clinic very early in the morning, but the two were sent back to the housing area without being seen at that time.

Within a week, Mariee began to exhibit upper respiratory symptoms, including congestion and a productive cough. On March 11, 2018, a physician assistant performed a physical exam of Mariee, noting "no [history] of acute or chronic medical illnesses" and describing Mariee's general appearance as "well developed" and "well nourished." But Mariee had a cough, congestion, runny nose, and "red and swollen turbinates" (soft tissue on the side walls of the nasal cavity). The physician assistant diagnosed Mariee with an acute upper respiratory infection and prescribed Tylenol for comfort. The medical record also indicates that the physician assistant prescribed honey packs for cough and directed a follow-up in "6 months."

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The next day, March 12, 2018, Ms. Juárez again sought medical attention for Mariee, who was then running a fever of 104.2° and suffering from cough, congestion, diarrhea, and vomiting. Mariee also had not been eating that day. Another physician assistant diagnosed an ear infection—for which he prescribed Augmentin, an antibiotic—as well as acute bronchiolitis—for which he prescribed fever reducers and oral hydration. Ms. Juárez was concerned about Mariee’s respiratory symptoms and asked the physician assistant to conduct more examinations. But the physician assistant instead instructed Ms. Juárez to return to the clinic immediately if Mariee’s symptoms worsened, scheduled a follow-up in 2 days, and returned mother and daughter to the housing area.

In the subsequent days, Mariee’s fever decreased somewhat, but she was unable to hold down the Augmentin prescribed for her ear infection, her breathing problems significantly worsened, and she continued to have diarrhea. Ms. Juárez sought medical attention for Mariee multiple times but was often left waiting for many hours, including at least two instances where she was turned away and told to wait for an appointment on a later day. The clinic waiting area, resembling a gymnasium, was filled with dozens of mothers and children waiting in line to be seen. There was no separate area to isolate sick children from healthy ones, nor were protective masks provided to guard against contagion. And when Ms. Juárez and Mariee were seen, the medical appointments often lasted just minutes, and Ms. Juárez believed that medical staff were not addressing her concerns about Mariee’s deteriorating condition.

By March 15, 2018, when Mariee was next seen by a third physician assistant, the little girl had lost 2 full pounds—nearly 8 percent of her body weight—in just 10 days since arriving at Dilley. She continued to suffer from fever, congestion, cough, upset stomach, and very poor appetite. The physician assistant noted an “upper respiratory infection” and directed Ms. Juárez to continue with Tylenol and Pedialyte, and to follow up in one week.

Mariee’s fever worsened. On March 21, 2018, she presented with a 103.3° temperature, an elevated respiratory rate, and a rapid heart rate, as well as a cough, congestion, sneezing, and runny nose. The physician stated that Mariee had “no tachypnea,” despite the respiratory rate on the same form showing otherwise, and diagnosed acute viral bronchiolitis. The physician prescribed Pedialyte, Ibuprofen for fever, Zyrtec for runny nose, and Vicks VapoRub for congestion. As any pediatrician should know—and as the product’s label and website clearly state—Vicks VapoRub should not be used with children under 2 years old because it contains camphor, which can cause respiratory distress, particularly if the child’s airways are already inflamed. After ordering the use of a medicine that was in fact contraindicated for a patient so

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young, the physician directed Ms. Juárez again to follow up in one week, or to return if Mariee demonstrated signs of respiratory worsening.

Two days later, on March 23, 2018, Ms. Juárez once again brought Mariee to the clinic, reporting that Mariee had been coughing and vomiting clear liquid. The child was also suffering congestion, nasal discharge, a borderline oxygen saturation of 96%, an elevated heart rate, and a temperature of 99.2°. Her examination revealed “red sclera,” which should have been indicative of adenovirus, though the registered nurse made no note of it. By this time, Mariee had been ill with a cough for nearly two weeks and had barely regained any weight. Ms. Juárez asked the registered nurse to conduct a more detailed examination, particularly of Mariee’s lungs. After listening to Mariee’s lungs, the registered nurse returned mother and daughter to the housing area, noting that “a referral would be made for [Mariee] to see a provider.” But Mariee never saw another medical provider of any kind before leaving Dilley two days later.

Over the following two days, Mariee’s condition deteriorated rapidly. Mariee had constant diarrhea and a fever, vomited frequently, and had difficulty sleeping or eating. On March 24, 2018, Ms. Juárez was notified of an appointment for Mariee to be seen at 8 o’clock the next morning. But that appointment never happened. Instead, at 5:00 a.m. on March 25, 2018, Dilley staff took Ms. Juárez and Mariee to a staging area to be processed for transfer out of family detention and a flight to New Jersey. Ms. Juárez and Mariee (who was still vomiting) waited there until noon, when they were taken to another location at Dilley, fed lunch, and put in a van to San Antonio International Airport. No medical personnel examined Mariee to clear her for travel.

Ms. Juárez and Mariee boarded a late afternoon flight with a connection to New Jersey. Mariee slept for most of the flights but vomited in the last hour. A fellow passenger commented to Ms. Juárez that Mariee looked very unwell and needed to see a doctor.

Although no medical personnel saw Mariee on the day of their departure from Dilley, ICE medical records state that, on March 25, 2018, a “licensed vocational nurse” conducted a “Transfer Summary” before mother and daughter were released. The record states that the licensed vocational nurse “medically cleared” Mariee for release from Dilley. But the licensed vocational nurse was not qualified to make such a determination, and doing so exceeded the scope of her license. Under Texas law, licensed vocational nurses are not authorized to perform comprehensive patient assessments, to initiate any nursing care plan, or to implement or evaluate patient care. Regardless, neither the licensed vocational nurse nor anyone else actually examined Mariee that day.

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The record from Mariee's March 23 appointment—just two days earlier—indicated that Mariee was acutely ill and that she would be referred to a physician. But under the heading “History of Present Illness,” the licensed vocational nurse's March 25 “Transfer Summary” contains no information about Mariee's condition at that time, no indication that she was coughing and wheezing, that she had lost a substantial percentage of her body weight, or that she had suffered intermittent high fevers over a prolonged period of time. Instead, without even seeing Mariee, the licensed vocational nurse noted these questions and answers:

- “Is there any medical / dental / or mental health reasons for restricting the length of time the alien can be on travel status? *No*”
- “Are there any restriction [sic] or special equipment required for travel? *No*”
- “Is a medical escort required? *No*”
- “Are any transmission-based precautions required during transport? *No*”
- “Additional comments? *None*”

By the time mother and daughter arrived in New Jersey after midnight, early in the morning of March 26, 2018, Mariee's condition was dire. Hours later, after sunrise on March 26, Ms. Juárez took Mariee to a pediatrician, who said that Mariee's lungs had stiffened and that she was having difficulty breathing. After four hours of trying various treatments to get Mariee's lungs to open up, Ms. Juárez and Mariee were sent home with additional medications and instructions to seek emergency medical attention if Mariee's condition deteriorated further.

But by then it was too late. Hours later, on the evening of March 26, Mariee was admitted to the emergency room, where she presented in acute respiratory distress with a critically low blood oxygen level of 85%, requiring continuous supplemental oxygen. Shortly after admission, Mariee was moved to the Special Care Unit with a diagnosis of viral bronchiolitis versus pneumonia. She tested positive for adenovirus and parainfluenza 3. Over the next six weeks, Mariee was transferred to two different hospitals for increasingly specialized care due to her progressive respiratory failure, requiring a ventilator and later an advanced life support device (ECMO) used in dire situations.

Mariee's condition steadily worsened, and she died on May 10, 2018, following a catastrophic intrathoracic hemorrhage that resulted in irreversible brain and organ damage with no hope of survival. The cause of death was identified as bronchiectasis, pulmonitis, and pneumothorax (collapsed lung).

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In the final six weeks of Mariee’s life, Ms. Juárez watched as her daughter suffered extreme physical and emotional pain. Mariee was hospitalized continuously, surrounded by multiple medical personnel performing painful tests and examinations. She was often chemically paralyzed and sedated. She had multiple intravenous (IV) lines that needed to be replaced frequently, an arterial IV line for monitoring her blood gases, a naso-gastric for tube feedings, intravenous nutritional supplementation, and a urinary catheter. While ventilated, she could not speak. While sedated and on paralytic drugs, along with all the IV lines, she could not hug her mother or be held. Despite all the medical measures, Mariee continued to deteriorate and lung transplant evaluation was considered. In the last few hours of her life, following the catastrophic hemorrhage, Mariee experienced a chest tube insertion, replacement of the advanced life support device, massive blood transfusions, and CPR on her tiny body.

On the day of her daughter’s death, Ms. Juárez left the hospital with only an ink print of Mariee’s right hand, made the previous day as a Mother’s Day gift.

* * *

The South Texas Family Residential Center in Dilley—a 2,400-bed detention center for immigrant families—was opened in 2014 in response to a wave of families and unaccompanied children from Central America entering the United States via the southwest border. U.S. Immigration and Customs Enforcement (ICE) established Dilley by modifying its existing Inter-governmental Service Agreement with the City of Eloy, which in 2006 had contracted with ICE to build and operate an adult detention facility in Eloy. Eloy subcontracted with a corporation, then known as Corrections Corporation of America (now known as “CoreCivic” or “CCA”), which owns and operates the Eloy facility. Rather than conduct a new federal procurement process for Dilley, ICE negotiated directly with CCA to modify its existing agreement with Eloy to include the construction and operation of the Dilley facility, more than 900 miles away in a different state. ICE did so despite advice from its Commercial and Administrative Law Division that modifying the agreement with Eloy to include Dilley was not legally advisable.

On February 21, 2018, the DHS Office of Inspector General published a report finding that the 2014 contract modification was “improper” and undermined accountability, and that ICE should have contracted directly with CCA instead of using the City of Eloy as the prime contractor. Dilley’s operation is highly profitable for both Eloy and CCA. As a result of this contract modification, the City of Eloy, the party legally responsible for the agreement with ICE, receives approximately \$438,000 per year of federal taxpayer dollars for doing virtually nothing. For its part, in 2017 and 2016 respectively, CCA realized \$170.6 million and \$267.3 million in total revenue associated

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with Dilley. In its 2018 Form 10-K filed with the U.S. Securities and Exchange Commission, CCA noted that its 2016 operating margin percentages for Dilley were more favorable than for CCA's average owned-and-managed prison facility. As a result of amendments to the contract in October 2016, CCA's revenues and operating margins declined to a level more comparable to those at other CCA facilities.

Over the four years that Dilley has been in operation, immigrant rights advocates have repeatedly raised serious concerns about the unsafe and unsanitary conditions there and at other family detention facilities. In 2015, a group of immigrant rights organizations lodged a series of formal complaints about the inadequate medical care provided at Dilley. The organizations noted that mothers and children often enter the detention centers with injuries or illnesses that go untreated throughout the duration of their confinement. Others contract illnesses during their stay in detention, for which they likewise receive inadequate medical care. Among many troubling reports, the complaints noted that "women and children reported wait times of three to fourteen hours to receive medical care," including for serious and urgent conditions. In addition, "medical professionals provide insufficient information about medical care to mothers and disregard their concerns, the information they provide, and their complaints," and routinely fail to provide appropriate follow-up treatment. The City of Eloy was or should have been aware of these and similar complaints, and of the conditions that formed the basis of the complaints, but deliberately failed to take measures to remedy the problems.

A volunteer who worked at Dilley in late 2017 likewise reported that the center was filled with young children who were coughing, sneezing, and lethargic; many children also had high fevers, conjunctivitis, and were vomiting and experiencing diarrhea multiple times per day. Other children had rashes as a result of drinking contaminated tap water. This volunteer noted that the children's "obvious medical problems" did not appear to be receiving adequate medical attention. Among other things, mothers reported the failure to conduct physical examinations, lack of communication about symptoms and diagnoses, illogical and incorrect diagnoses of patients, and prescribing water instead of medicine. Many mothers were reluctant to complain about the inadequate care for fear their complaints would adversely affect their immigration cases.

By failing to exercise proper supervision, and in particular, by failing to ensure adequate medical care at Dilley, the City of Eloy exacerbates the harms caused by family detention. Under Eloy's watch, families and children at Dilley have been housed in close quarters, and many suffer from untreated illnesses and other medical conditions. These conditions are inherently unsafe and endanger the health and lives of all those who are detained there, especially small children like Mariee.

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II. Legal Basis for Claims

The claims below are asserted under both Texas and Arizona law.

Negligence, Gross Negligence, and Recklessness (Wrongful Death and Survival Claim)

The City of Eloy had a duty to maintain safe and sanitary conditions at Dilley, including a duty to ensure safe and sanitary conditions appropriate for small children detained at the facility. Eloy also had a duty to ensure that those detained at Dilley, including small children, received adequate medical care that adhered to standards of pediatric medical care. Eloy breached its duties by failing to ensure safe, sanitary, humane conditions at Dilley, including safe and sanitary conditions appropriate for small children, by failing to ensure adequate medical staffing, and by failing to address repeated reports of inadequate medical care at Dilley.

As a direct and proximate result of Eloy's negligent, grossly negligent, and reckless acts, omissions, and conduct, Mariee [REDACTED] Juárez suffered avoidable complications of a likely common and treatable upper respiratory illness that were allowed to progress until they were irreversible and ultimately fatal. Eloy's negligence, gross negligence, and recklessness caused Mariee to suffer extreme and extended physical, mental, and emotional pain and distress, loss of earnings, and death.

As a direct and proximate result of Eloy's negligent, grossly negligent, and reckless acts, omissions, and conduct that caused her daughter's death, Yazmin Juárez suffered extreme mental and emotional pain and distress, as well as loss of love and companionship, medical expenses, and other harms.

Negligent Supervision (Wrongful Death and Survival Claim)

The City of Eloy had a duty to prevent its employees or independent contractors from causing physical harm to a third party. Eloy breached its duty by failing to ensure safe, sanitary, humane conditions at Dilley, including by failing to carry out adequate management oversight of the provision of medical care at the detention facility.

As a direct and proximate result of Eloy's acts, omissions, and conduct, Mariee [REDACTED] Juárez suffered avoidable complications of a likely common and treatable upper respiratory illness, that were allowed to progress until they were irreversible and ultimately fatal. Eloy's negligence and gross negligence caused Mariee

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to suffer extreme and extended physical, mental, and emotional pain and distress, loss of earnings, and death.

As a direct and proximate result of Eloy's negligent acts, omissions, and conduct that caused her daughter's death, Yazmin Juárez suffered extreme mental and emotional pain and distress, as well as loss of love and companionship, medical expenses, and other harms.

III. Amount of Claim

The City of Eloy's wrongful conduct has caused substantial harm that entitles Ms. Juárez to monetary damages for the claims described above, and payment is justly due. Ms. Juárez will settle with Eloy for \$40,000,000, for all the harms suffered by Mariee and Ms. Juárez.

Pursuant to A.R.S. § 12-821.01, the City of Eloy has sixty (60) days to respond before further legal action can be instituted under Arizona state law.

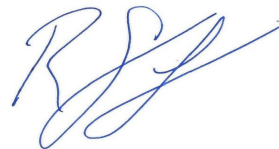
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Absent an early resolution of this claim, we intend to pursue litigation, which we anticipate will involve multiple parties, multiple forums, and multiple claims. We expect that the litigation will be emotionally draining, onerous, and expensive for all parties. We are fully prepared to prosecute that litigation vigorously, but we think it would be advantageous for both Ms. Juárez and the City of Eloy to reach an early resolution of the claim. Such a resolution would enable Ms. Juárez to focus her energies on holding the other culpable parties to account, and it would enable the City of Eloy to avoid the risks, burdens, and public censure attendant to litigating the case.

Sincerely,



David B. Rosenbaum
OSBORN MALEDON, PA



R. Stanton Jones
ARNOLD & PORTER
KAYE SCHOLER LLP

Counsel for Yazmin Juárez

Arnold & Porter

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cc: Joel G. Belloc, Mayor of the City of Eloy
Micah Powell, Vice Mayor of the City of Eloy
J.W. Tidwell, City Council Member
Andrew Rodriguez, City Council Member
JoAnne Galindo, City Council Member
Daniel Snyder, City Council Member
Jose Garcia, City Council Member
Harvey Krauss, Eloy City Manager
Stephen R. Cooper, Eloy City Attorney
Elizabeth Rueter, Eloy City Attorney