

Immigration Legal Services, Education and Advocacy

October 14, 2015

Office of the General Counsel U.S. Department of Homeland Security Washington, D.C. 20528

### Dear Counsel:

Please find enclosed the following documents submitted on behalf of my minor client, administrative complaint, made pursuant to 8 C.F.R. §§14.2-14.4 and 28 U.S.C. § 2401(b):

- Form SF 95 along with attached Supplement to Claim form,
- Authorization for Representation, signed by
- Copy of Douglas County Court Order Appointing as legal guardian for and
- G-28, Notice of Entry of Appearance as Attorney, signed by

Should you have any questions or wish to discuss this matter further, please feel free to contact me at 402-898-1349 ext. 17. Thank you very much for your attention to this matter.

Sincerely.

Charles S. Ellison, Esq.

Legal Director

Justice for Our Neighbors-Nebraska

### CC:

Office of the Principal Legal Advisor Immigration and Customs Enforcement U.S. Department of Homeland Security 500 12<sup>th</sup> Street, S.W. Washington, D.C. 20536

U.S. Customs and Border Protection Office of the Chief Counsel 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229

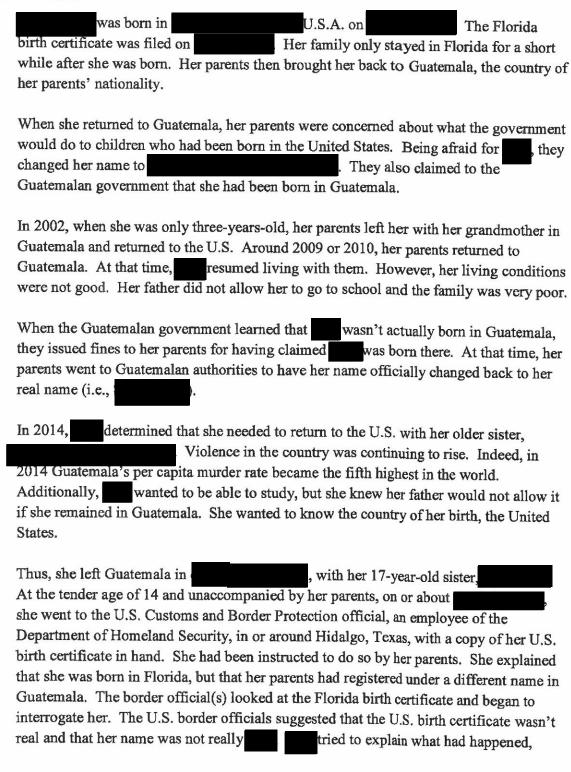
U.S. Department of Health and Human Services Office of the General Counsel 200 Independence Avenue, S.W. Washington, D.C. 20201

CLAIM FOR DA INJURY, OR D		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.				
Submit to Appropriate Federal Agency	y:			2. Name, address of claimant, a	and claimant's personal	representative if any.
Office of the General Counsel U.S. Department of Homeland Security Washington, DC 20528		(See Instructions on reverse) Claimant:	. Number, Street, City,	State and Zip code.		
		<u>,</u>		<u></u>		
MILITARY X CIVILIAN	4. DATE OF BIRTH	5, MARITAL STATE		6. DATE AND DAY OF ACCIDE		'. TIME (A.M. OR P.M.)
8. BASIS OF CLAIM (State in detail the	known facts and circumstar	nces attending the de	amage, i	njury, or death, identifying person	s and property involved	, the place of occurrence and
the cause thereof. Use additional pages if necessary).  See attached "Supplement to Claim Form" for the remainder of the form.						
9.		PROPE	RTY DA	MAGE		
NAME AND ADDRESS OF OWNER, IF	OTHER THAN CLAIMANT					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side).						
10.		PERSONAL INJU	RYMR	ONGFUL DEATH		
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.						
11.		VVI	TNESSE	ES		***************************************
NAME	44 USB 4-46-48-48-48-48			ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse).		AMOUNT OF	FCLAIM	(in dollars)		
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY		12c. WF	RONGFUL DEATH	12d. TOTAL (Failure to forfeiture of your	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.						
13a. SIGNATURE OF CLAIMANT (See Instructions on reverse side).		13b. PHONE NUMBER OF PER	SON SIGNING FORM	14. DATE OF SIGNATURE		
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS			
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			Fine, Imprisonment, or both. (Se	e 18 U.S.C. 287, 1001.	)	

INSURANCE	COVERAGE
In order that subrogation claims may be adjudicated, it is essential that the claimant provid	e the following information regarding the insurance coverage of the vehicle or property.
15. Do you carry accident Insurance? Yes If yes, give name and address of insurance?	rance company (Number, Street, City, State, and Zip Code) and policy number. No
16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full cov	verage or deductible? Yes No 17. If deductible, state amount.
<ul><li>18. If a claim has been filed with your carrier, what action has your insurer taken or proposed.</li><li>19. Do you carry public liability and property damage insurance? Yes If yes, give not appropriate the property damage.</li></ul>	ed to take with reference to your claim? (It is necessary that you ascertain these facts).  ame and address of insurance carrier (Number, Street, City, State, and Zip Code).
Claims presented under the Federal Tort Claims Act should be su employee(s) was involved in the incident. If the incident involves claim form.	DCTIONS bmitted directly to the "appropriate Federal agency" whose more than one claimant, each claimant should submit a separate
Complete all items - Insert the	e word NONE where applicable.
A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY	DAMAGES IN A <u>SUM CERTAIN</u> FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN <u>TWO YEARS</u> AFTER THE CLAIM ACCRUES.
Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.  If instruction is needed in completing this form, the agency listed in item #1 on the reverse	The amount claimed should be substantiated by competent evidence as follows:  (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical,
side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.	hospital, or burial expenses actually incurred.  (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.	(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.	(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.
PRIVACY	ACT NOTICE
This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.  A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.	<ul> <li>B. Principal Purpose: The information requested is to be used in evaluating claims.</li> <li>C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.</li> <li>D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."</li> </ul>
PAPERWORK REDI This notice is solely for the purpose of the Paperwork Reduction Act. 44 U.S.C. 3501. Pub	UCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

### 8. Basis of claim:



what her parents did when she was a baby, but the officials didn't listen to her or believe her. They told her that she would have to go to immigration court and that the immigration judge would figure out if she was a U.S. citizen or not.

was then physically arrested, detained, and transferred to a detention facility to be held overnight. The holding cell was extremely cold; she refers to the detention facility as the "Icebox." She was also very hungry while in detention, having been given insufficient food. She explains that that night felt like a week because it was so cold and she was so hungry. She could not sleep at all during the night, even though she was exhausted.

The next day, she was processed in Weslaco, Texas and then transferred to a juvenile detention facility located at 32120 FM1847 Los Fresnos, Texas, 78566. This facility is maintained by the Office of Refugee Resettlement, a component of the U.S. Department of Health and Human Services. On officials issued a Notice To Appear, charging her as a citizen of Guatemala and not a citizen of the U.S. She was then forced to appear in Immigration Court in Harlingen, Texas on She explains that the experience was terrifying as she thought she was going to be deported out of the U.S. back to the country from which she had just fled.

She remained in federal custody until for a total of 44 days in detention. She did not understand why, as a U.S. citizen, she was being held in detention for so long. She was very afraid during this time in detention.

The form I-213 and I-831, while internally inconsistent in several places, do clearly indicate that unequivocally asserted to be a U.S. citizen to border officials from the moment she first came in contact with them, but the officials did not take her claim seriously. She presented them with a copy of her Florida birth certificate. However, border officials apparently discounted the document, or at a minimum concluded they were unsure about the document. In notified U.S. officials during her interrogation that she had an adult sister living in Omaha, Nebraska and she gave them that sister's phone number.

Yet, despite assertions and cooperativeness during the interrogation, U.S. investigative and law enforcement officials utter failed to adequately consider this child's claim to U.S. citizenship. They failed to give due consideration to her statements and the credible documents she provided. Instead she was simply presumed to be an alien. It is not clear what analysis, if any, officials conducted when concluding that they could simply presume alienage. It appears that it was based upon the officials' uncertainty alone, that they arrested her, placed her in detention, and held here in custody for 44 days

U.S. citizenship, her rights and liberty interest would not have been trampled upon. After was held in a juvenile detention facility for approximately a month and a half, she was released to her sister, who lives in Omaha, Nebraska. The removal proceedings, which started in Harlingen, Texas, were then transferred to the Omaha Immigration Court on she consulted with staff attorney, Virginia Maynes, of Justice for Our One Neighbors-Nebraska (JFON-NE). JFON-NE accepted case and Ms. Maynes filed an appearance in her immigration removal case on at the Omaha Immigration Court, located at 1717 Avenue H, Omaha, NE 68110. At Ms. Maynes notified the Office of Chief Counsel Calendar Hearing on for ICE, a component of the Department of Homeland Security, and the Immigration Court, a components of the Department of Justice, that was a U.S. citizen and that proceedings should be terminated. Immigration Judge did not terminate the case and instead instructed Ms. Maynes to speak with opposing counsel. The Judge then reset the case for ICE incorrectly asserted that needed to file an N-600 at the hearing. Ms. Maynes called and spoke with ICE Counsel, who instructed Ms. Maynes to call Deputy Chief on Counsel, She called Mr. the same day and left a message. He did not return her call. As it became apparent that ICE was refusing to acknowledge that was a U.S. citizen. Ms. Maynes began collecting more evidence of U.S. citizenship (i.e., a copy of her social security card, her Nebraska identification card, a certified copy of her Florida birth certificate, and the Medical Center birth records). On she then sent a formal request to ICE (along with copies of the above proof of citizenship) to join in a motion to terminate the case. On called and spoke with ICE Counsel. who indicated that ICE would not join in a motion to terminate and again incorrectly suggested file an N-600. After further insistence by Mr. Maynes that an N-600 was not necessary, ICE counsel indicated they would review the case again and get back to Ms. Maynes. Not having received any word back from ICE by I Ms. Maynes filed a written motion to terminate removal proceedings based upon citizenship. On ICE filed a non-opposition motion and the immigration judge granted the motion on explicitly finding that is a U.S. citizen.

while starting and sustaining the process of seeking her removal from the U.S., the country of her birth. Had officials exercised due diligence to investigate her claim to

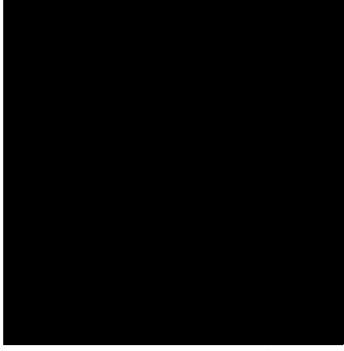
was negligently, wrongfully, and unlawfully arrested, interrogated, detained for 44 days (including a horrific overnight stay in the "Icebox"), and threatened with deportation for nearly one year before her removal proceedings were terminated and she was finally recognized as a U.S. citizen. U.S. investigative and law enforcement officers unequivocally breached their duty to this child which resulted in a loss of her liberty as well as psychological and emotional damages. She asserts that the above U.S. government employees, acting within the official scope of their office or employment, committed the following torts: negligence, assault and battery, malicious prosecution, abuse of process, false arrest, false imprisonment, and negligent/intentional infliction of emotional distress.

## 9. Property damage: No property was damaged

10. Nature and extent of injury: a mere child, sustained psychological and emotional injuries, the proximate cause of which was the government's breach of its duty owned to the U.S. citizen child. As a result of DHS, CBP, ICE and DHHS officials' negligent and unlawful acts, suffered a loss of her liberty, physical confinement for 44 days, a horrific overnight detention in the "Icebox," and threat of deportation and removal that lasted for nearly 1 year, all of which caused substantial and continuing emotional distress. Since coming through this harrowing experience, when the substantial ideations.

### 11. Witnesses:

Witnesses as to the circumstances of unlawful arrest and removal proceedings include:



## Witnesses concerning

damages include:



12. (a) Property damage: None

(b) Personal injury: \$750,000

(c) Wrongful death: none

(d) Total: \$750,000

15.-19: loes not carry any insurance responsive to these requests.



Immigration Legal Services, Education and Advocacy

## **AUTHORIZATION FOR REPRESENTATION**

I, to the attached	Guardian on behalf of administrative tort claim:	state the following with regard
1.	I have retained the following attorney referenced tort claim:	to represent me with regard to the
	Charles S. Ellison, Esq.	

Justice For Our Neighbors-Nebraska 2414 E Street Omaha, NE 68107 (4020 898-1349

2. I hereby authorize Mr. Ellison to serve as my legal representative for purposes of this administrative claim and intend this document to serve as proof of my authority for Mr. Ellison to serve in this role under 28 C.F.R. § 14.2(a).

DATE: <u>9-29-15</u>

Guardian on behalf of

STATE OF NEBRASKA FORM NO. CC 16:2.1.2 11/2011 NEW. REQUIRED.

## ORDER APPOINTING GUARDIAN FOR A MINOR

CASE NUMBER:

PR

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

IN THE MATTER OF



# ORDER APPOINTING GUARDIAN FOR A MINOR

The Petition for Appointment of Guardian having come before the Court, the Court finds as follows:

- 1. Petitioners is entitled to file the Petition pursuant to Neb. Rev. Stat. § 30-2633 and § 30-2605 through § 30-2616.
- 2. Notice has been given or waived as required by law.
- 3. Venue in this county is proper.

X Is not required because

4. Upon clear and convincing evidence presented to the Court, there is a sufficient basis for the appointment of the guardian for a minor, pursuant to the provisions of the Last Will and Testament of. parent of said minor, which Will was admitted to probate in this court: or X a minor, pursuant to lawful proceedings of record in this court and there are no less restrictive alternatives than the appointment of a guardian for the above-named minor/ward. 5. Appointment of a guardian is necessary because the minor is without parental supervision. is entitled to appointment pursuant to Neb. Rev. Stat. § 30-2608 and should be 6. appointed as guardian. The above named person is authorized and ordered to obtain an Acknowledgement of Financial Institution Form completed by each financial institution holding any assets or accounts titled in any manner in the name of the ward/protected person along with a printout of all assets and account numbers in each financial institution, which shall be filed in these proceedings. 7. If any funds are restricted, the above named person is further authorized and ordered to open an account at a financial institution with the restriction that no withdrawals can be made without a court order. To show the court that the guardian/conservator has complied with this restriction the guardian/ conservator shall file with the court a Proof of Restricted account form within 10 days of this order. 8. Bond: ☐ Is required and set in the sum of \$\_\_\_\_\_

Is not required because the Court finds good cause to waive the requirement	of bond.		
9. Training:			
The Guardian shall complete training within 90 days;			
☐ For good cause shown training is waived;			
IT IS THEREFORE ORDERED that	an(s) of _		
upon Letters of Guardianship being issued to the Guardian(s) and	d upon the		
Guardian(s) filing the following documents:	•		
Acceptance of Appointment;			
2. General Information Form;			
3. Address Information Form;			
4. Acknowledgement of Financial Institution with a printout of all assets in each fin	nancial institution:		
5. Inventory and Affidavit of Due Diligence;	The state of the s		
6. Approved bond, if required.			
Upon completion of the filing requirements above and sending the appropriate form	ns to all interested		
parties, Letters will be issued which will appoint you as Guardian. The Guardian shall deli	ver to each financial		
institution where the ward/minor has any accounts/assets, a copy of the Letters of Guardia	anchin and file with		
the court an Acknowledgement from the Financial Institution that they received the Letters	along with a printer		
of all assets and account numbers in each financial institution. The Guardian shall thereat	for he estitled to		
deal with such assets. This form shall be filed within 10 days. Failure to file this form will result in a			
suspension of your authority.	esuit in a		
•			
As a Guardian you are ordered to comply with the following restrictions:			
The Guardian(s) shall not pay himself/herself/themselves or his/her/their attorned.	5) / 50mm - 1 - 1		
from the assets or income of the protected person nor sell real property of the	ey compensation		
obtaining an Order permitting such compensation, after an application, notice to	state without first		
and a hearing. This Order may be entered without a hearing if all interested par	interested persons,		
notice of hearing or have executed their consent to such compensation and any	ues nave waived		
as determined to be appropriate by the Court.	other restrictions		
<ol><li>The Guardian shall not make any ATM withdrawals or cash back on debit trans- order.</li></ol>	actions without court		
Older.			

3. Other:\_\_\_

DATED this 23day of September, 2015

BY THE COURT:

County Judge

### PREPARED AND SUBMITTED BY:

Virginia J. Maynes, #25634 Justice For Our Neighbors 2414 E Street Omaha, NE 68107 Ph: (402) 898-1349 Fax: (402) 884-7045 Virginia@jfon-ne.org Nebraska State Court Form REQUIRED

## LETTERS OF GUARDIANSHIP FOR A MINOR

CC 16:2.3.2

Revised 09/13

IN THE COUNTY COURT OF **DOUGLAS** COUNTY, NEBRASKA

IN THE MATTER OF THE GUARDIANSHIP OF	Case #
Ward	LETTERS OF GUARDIANSHIP FOR A MINOR
TO: Guardian	
The court finds you are qualified and you are appo	pinted as the guardian of
You are authorized and empowered to perform the required by law, subject to the following limitation of power	
LIMITATIONS OF POWER:	
You shall <u>not</u> pay compensation to yourself or ward, nor sell real property of the estate withou obtaining an order of the court. The order may persons have waived notice of hearing or have sale.	ut first giving notice to interested persons and be entered without a hearing if all interested
You shall <u>not</u> make ATM withdrawals or cash b	ack on debit transactions without court order
Other restrictions:	
You are directed to:	
<ul> <li>If you are authorized to handle any of the minor's a institutions where the minor has an account/assets Acknowledgement of Financial Institution form alor Guardianships and Conservatorships form with full</li> </ul>	S. You must file with the court an

If you are authorized to handle any of the minor's assets, file with the court a Notice of Newly Discovered Asset form within 30 days of becoming aware of additional assets, gifts, awards,

OCT 7 2015

FILED
COUNTY COURT
PROBATE DIVISION

By: Lestie Douglas Clerk of Court DOUGLAS COUNTY COURT OMAHA, NEBRASKA settlements, or inheritances over \$500.00 not disclosed in the current inventory. You must also file with the court a Certificate of Mailing showing you mailed the Notice of Newly Discovered Asset form by first class mail, postage pre-paid, to all interested parties along with a Notice of Right to Object form.

- File a copy of the Letters of Guardianship with the Register of Deeds in any county where the minor person has real property or an interest in real property.
- File a Condition of Ward Report, an Updated Inventory, a complete accounting of your administration of the ward's/incapacitated person's money, assets, possessions or income (including social security or other benefits), if you have possession of such, along with the required fee, bank statements for the accounting period with personal information (Social Security number, date of birth, etc.) blacked out, Notice of Right to Object form, and a Certificate of Mailing showing copies were sent to all interested parties, including the bonding company, by first-class mail, postage prepaid, not later than 30 days after the expiration of one year after the date of these Letters and annually thereafter. If you are filing an accounting, the accounting shall include Certificates of Proof of Possession for all money, assets, possessions or income (including social security or other benefits) existing at the end of the accounting period.

DATE ISSUED: 10-7-	2015	
BY THE COURT:	(Registrar)	(Seal)
	(Negistiai)	
		* SEBRASES * I
	1777A ANDREA -	

Li Deputy Clerk of the Doagles Coarts. Or set certify this in conver-

NATES (PMONY WHEREIONA Lows placed by Signature as A the

rights freezed on File in the Docular Charge Caga.