

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

J.A.M., a minor child; O.A.M., a minor
child; and THELMA MEDINA
NAVARRO, their mother,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendant.

Case No.: 22-cv-380-GPC-BGS

**MEMORANDUM DECISION AND
ORDER FOR ENTRY OF
JUDGMENT**

Julia and Oscar,¹ by and through their mother and guardian Thelma Medina Navarro (“the Children”), and Thelma Medina Navarro (“Thelma”) (collectively “Plaintiffs”) sue the United States of America (“Defendant” or “the United States”) for emotional injuries sustained during the U.S. Customs & Border Protection (“CBP”) detention of the Children at the San Ysidro Port of Entry (“SYPOE”). Both Children are U.S. citizens and presented their valid U.S. passport cards when attempting to cross the

¹ Although the Children’s full names were used at trial, the Court will use only their first names in this decision because they were both minors at the time of incident.

1 border into the U.S., but Julia was detained for approximately 34 hours and Oscar for
 2 about 14 hours. Plaintiffs assert the United States is liable under the Federal Tort Claims
 3 Act (“FTCA”) for false imprisonment, intentional infliction of emotional distress, and
 4 negligence.² A bench trial was held starting on March 19, 2024, with closing arguments
 5 delivered on March 22, 2024. ECF Nos. 51-54.

6 Having carefully reviewed the evidence and the arguments of the parties, as
 7 presented at trial, and in their written submissions, the Court makes the following
 8 findings of fact and conclusions of law pursuant to Federal Rule (“Rule”) of Civil
 9 Procedure 52(a) and finds in favor of Plaintiffs on each cause of action.

10 **FINDINGS OF FACT³**

11 Julia and Oscar are siblings born in the U.S. and are U.S. citizens. ECF No. 59 at
 12 46; ECF No. 57 at 47. In March of 2019, Julia was 9-years-old and attending fourth
 13 grade at an elementary school in San Ysidro, California, a city in the U.S. just across the
 14 U.S.-Mexico border. ECF No. 59 at 54; ECF No. 60 at 47. Oscar was 14-years-old and
 15 attending ninth grade at a high school in San Ysidro, California. ECF No. 59 at 45-46.
 16 The Children lived with their parents and siblings in Tijuana, Mexico, the city
 17 immediately across from San Ysidro on the Mexican side of the U.S.-Mexico border.
 18 ECF No. 59 at 46; ECF No. 60 at 46-47. Their mother, Thelma, is a Mexican citizen, but
 19 possessed a valid U.S. Border Crossing Card. ECF No. 60 at 49-50. Their father does
 20 not have the legal status or a visa to enter the U.S. *Id.* at 59. Like many U.S. citizen
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 23 ² Plaintiffs agreed not to pursue their claim for violations of California Civil Code section
 24 52.1 (“the Bane Act”). ECF No. 49 at 2-3.

25 ³ In making the factual findings, the Court relies very little on the testimony of the
 26 Children. Children are generally poor historians and both Oscar and Julia were
 27 impeached on a number of points. Instead, the Court relies primarily on the testimony of
 28 the adults—though many of the officers had very little recollection of the particular
 events at issue and Thelma and some of the officers provided inconsistent testimony.

1 children living in Mexico in the San Diego-Tijuana metropolitan area, the Children rose
 2 early to cross the U.S.-Mexico border every morning to go to school. ECF No. 59 at 49-
 3 53.

4 **I. Primary Inspection**

5 On Monday, March 18, 2019, unaccompanied by an adult, the Children attempted
 6 to cross through the western pedestrian crossing at SYPOE, known as “PedWest.”
 7 Initially, Michelle Cardenas, Julia’s godmother, was going to drive Julia across with her
 8 own daughter, and Oscar was going to separately use the pedestrian crossing with
 9 Cardenas’s son. ECF No. 60 at 55; ECF No. 57 at 49-50. Because the car line was too
 10 long, Cardenas asked Oscar and her son to pick up the girls from the car line and cross
 11 into the United States using the pedestrian crossing. ECF No. 57 at 50-51.

12 At primary inspection—the encounter that all border crossers have at which they
 13 present their documents—CBP Officer Dennese Viger examined the Children’s valid
 14 passport cards and noticed a dot on Julia’s photo that appeared to be a mole on her upper
 15 lip, which was not visible on Julia in person. ECF No. 62 at 8. Two CBP officers
 16 testified at trial that there are sometimes irregularities on identification cards that do not
 17 reflect the person’s appearance. ECF No. 56 at 49, 117. Julia also presented a school
 18 identification from her former elementary school in Mexico which did not reveal a mole,
 19 ECF No. 62 at 23-24; Ex. 120-A at 17 (USA-0190), but Officer Viger reported that the
 20 school ID did not resemble Julia, Ex. 16. Officer Viger then asked some questions about
 21 Julia’s crossing history, “to which Julia was not sure of.”⁴ Ex. 16. After briefly checking
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 24 ⁴ Officer Viger testified that she asked Julia if she had ever crossed by car and Julia said
 25 she had not, though her crossing history showed that she had crossed by car many times.
 26 ECF No. 62 at 9. However, Officer Viger’s detailed report, written only hours after the
 27 incident does not include this question and response so the Court is not convinced that
 28 Officer Viger asked this question and Julia answered it in this way. *See* Ex. 16 (“I

1 with the “Lead” Officer Smith Vincent, Officer Viger referred the Children to secondary
2 inspection at 7:39 a.m. ECF No. 56 at 91-92; Ex. 16.

3 **II. Secondary Inspection**

4 Secondary inspection at PedWest is located just behind primary inspection in the
5 same building. *See* ECF No. 56 at 92. While the Children waited in the secondary
6 inspection intake/waiting area, Officer Vincent pulled CBP Officer Willmy Lara from
7 primary inspection to conduct an interview of the Children. ECF No. 56 at 93-94. The
8 officers in secondary chose Officer Lara because he had a reputation for obtaining
9 confessions. ECF No. 56 at 94 (“He is pretty skilled at interviewing travelers.”); ECF
10 No. 56 at 45 (“He was able to speak very well and get them to confess.”).

11 Officer Lara briefly spoke with the Children in the waiting room, at which time
12 they stated that they were siblings, Oscar and Julia. ECF No. 57 at 56. He or Officer
13 Erick Melendrez, another CBP officer in secondary, asked Oscar when the two had last
14 crossed together, and Oscar mistakenly answered incorrectly, not remembering exactly.
15 ECF No. 59 at 72, 187-88. The crossing records for Julia disclosed dozens of crossings
16 between January and March 2019, with repeated crossings in vehicles associated with
17 Cardenas, Julia’s godmother who had initially driven her to the border that day. Ex. 35 at
18 1-4. After brief questioning in the waiting area, Officer Lara brought Julia to a semi-
19 private security office within secondary for an individual interview. ECF No. 56 at 97;
20 ECF No. 59 at 153.

21 CBP policy prohibits officers from interviewing a minor in a private area unless
22 another officer is present to witness the interview. ECF No. 59 at 171-72; ECF No. 56 at
23 104. This is because, as Officer Lara observed, “minors get confused all the time” and
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26 proceeded to ask Julia Amparo Medina questions about how often and where she usually
27 crosses to which she was not sure of.”).

1 “they get scared.” ECF No. 59 at 171. Officer Lara testified that Officer Albert Avila
2 and a third officer were present for the interview, ECF No. 59 at 154, 168, but Officer
3 Lara’s report makes no reference to any witnesses to the interview, Ex. 9. Each of the
4 other CBP officers in secondary that day—Smith Vincent, Erick Melendrez, and Albert
5 Avila—testified that they did not remember a witness being present for the interview.⁵
6 ECF No. 56 at 97, 103; ECF No. 56 at 31, 36; ECF No. 56 at 68, 70, 85-88 (Officer Avila
7 was about 15 feet away and could not hear details). Lead Officer Vincent was unable to
8 understand the Spanish-language interview and does not remember seeing any other
9 officer witnessing the interview but did not take steps to ensure that there was a witness
10 present. ECF No. 56 at 103-04. Though other officers could see part of the room, no one
11 else was in the room or within clear listening distance and the interview was not audio or
12 video recorded. The Court finds that Officer Lara violated the CBP policy requiring a
13 witness for interviews of children and otherwise failed to record the interview.

14 The parties dispute what happened in the interview. Plaintiffs assert that Officer
15 Lara came up with the idea that Julia was her cousin Melany, and then pressured Julia
16 into agreeing. *See, e.g.*, ECF No. 57 at 60. The United States contends that Julia and
17 Oscar stated that Julia was Melany unprompted and then continued to say that throughout
18 their interviews. ECF No. 47-4 at 2. The United States does not offer a coherent
19 explanation as to why Julia would falsely confess that she was her cousin Melany.
20 Further, because Officer Lara failed to have a witness present and prepared a report
21 lacking in details, *see* Ex. 9, there is no corroboration of either claim.

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24 ⁵ Officer Vincent also testified that Officer Kim was working in secondary inspection that
25 day, but the Court heard no other testimony regarding Officer Kim and no party or
26 witness suggested that Officer Kim may have served as a witness for Officer Lara’s
27 interview with Julia. ECF No. 56 at 95. Officer Kim’s first name was not mentioned
28 during trial.

1 At the very start of the 10 - 30 minute interview, Julia stated that her name was
2 Julia. ECF No. 59 at 174; ECF No. 56 at 31-32. Officer Lara testified that he asked Julia
3 about her school colors and what train she took in San Ysidro to get to school and that
4 she gave incorrect answers to those questions. ECF No. 59 at 151-53. However, in his
5 post-interview report, Officer Lara made no reference to any questions regarding school
6 colors or trains. Ex. 9. The cursory report provides little detail as to what happened
7 during the interview itself.⁶ *Id.* The report states only that “I interviewed [Julia] about
8 her crossing history and her family member[s] and noticed inconsistencies on the names
9 and relationship to her. [Julia] admitted that she had been using the passport card with
10 her cousin’s name (true bearer of the document) to cross into the United States to go to
11 school.” *Id.* The report does not identify any inconsistencies “on the names and
12 relationship to her.”

13 Officer Lara’s report makes no reference as to what prompted Julia to (falsely)
14 confess that she was Melany. Ex. 9. Officer Lara testified “it was just a normal
15 interview” and that he did not remember Julia crying during or after the interview. ECF
16 No. 59 at 156, 176. However, according to Julia, Oscar, and Officer Melendrez, Julia
17 was crying after the interview and Oscar consoled her. ECF No. 56 at 34; ECF No. 59 at
18 89; ECF No. 57 at 62. Additionally, at trial, Officer Lara testified with a confident and
19 intense manner. Meanwhile, Julia was soft-spoken, easily confused by leading questions,
20 and prone to freezing up and unthinkingly agreeing with the questioner, resulting in
21 contradictory answers.

22 Officer Lara testified that during the interview he went in and out of the interview
23 room a few times to speak with Oscar and Officer Melendrez. ECF No. 56 at 32; ECF
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26 ⁶ The lack of detail is in contrast to the report completed by primary Officer Viger, who
27 spent no more than a minute or two with the children but wrote a longer report. Ex. 16.

1 No. 59 at 77, 80. Oscar confirmed that Officer Lara came out on three occasions and
2 spoke with him or Officer Melendrez. ECF No. 59 at 76, 81. Oscar stated that Officer
3 Melendrez asked him if he had any female cousins, and that he responded that he had
4 three female cousins: Nicole, Natalie and Melany. *Id.* at 77-78. Oscar then saw Officers
5 Lara and Melendrez interact. *Id.* at 80. Afterwards, Officer Lara approached Oscar and
6 told him that the girl in the next room was not Julia, but rather, that she was his cousin
7 Melany. *Id.* at 81. The Court finds that Officer Lara learned about Melany through the
8 questioning of Oscar by Officer Melendrez.

9 Officer Melendrez testified that at some point during or after the interview Officer
10 Lara told him that Julia admitted to being her cousin Melany, instead of Julia as listed on
11 her passport card. ECF No. 56 at 38; ECF No. 56 at 51 (“Q: Do you recall specifically
12 when there was a report of a cousin named Melany? . . . A: I think the cousin didn’t come
13 through until Lara came out and said that she had confessed to that, I believe.”). Officer
14 Melendrez’s initial reaction was one of surprise and shock. ECF No. 56 at 39. Officer
15 Melendrez had also been interviewing Oscar for a few minutes here and there during this
16 time. ECF No. 56 at 32. But he did not remember Oscar saying or agreeing that Julia
17 was his cousin. ECF No. 56 at 39. Officer Lara testified that Oscar separately admitted
18 in response to his questioning in the waiting room that Julia was not the individual
19 identified in the passport card but his cousin. ECF No. 59 at 155, 184. However, Officer
20 Lara’s report does not appear to state this, Ex. 9, though Officer Lara testified that he
21 meant to convey it, ECF No. 59 at 181-82. Nor does Officer Melendrez remember
22 Officer Lara telling him that Oscar made such an admission. ECF No. 56 at 39.

23 The evidence reveals that Julia was scared and extremely vulnerable at the time
24 that she was referred to secondary inspection and during her interview. The Court finds
25 that Officer Lara, assuming that Julia was not who she said she was primarily because of
26 the “mole” apparent on her passport card, erroneously concluded that Julia was Melany
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1 and conducted his interrogation with that conclusion in mind. Because there were no
2 witnesses or recording of the interview, it is not possible to determine whether Julia was
3 threatened, pressured, or coerced to make a false confession. At the very least though,
4 the Court finds that Officer Lara's intense manner in questioning a scared 9-year-old who
5 was prone to freezing up and automatically agreeing when questioned by authority
6 caused Julia to falsely admit that she was her cousin, Melany. Julia testified that she
7 never stated that she was Melany, ECF No. 57 at 61, but the Court does not find this
8 credible. However, contrary to the government's argument, the Court finds that Oscar
9 did not direct Julia to say that she was Melany in secondary inspection.

10 As a result of Officer Lara's interview and Julia's false confession, the secondary
11 officers and supervisor concluded that Julia was lying about her identity and was actually
12 her cousin Melany. They testified that they suspected Oscar of smuggling or trafficking
13 her. ECF No. 56 at 123-24. The officers did not attempt to call the Children's mother (or
14 Melany's mother), even though they sometimes do so during investigations. ECF No. 45
15 at 6, 13. Nor did they attempt to look at Julia's passport application materials in the State
16 Department database as a way to determine or verify her identity. ECF No. 59 at 166-67.

17 Two other officers then fingerprinted the Children and completed an "Appendix
18 D," which records biographical information. Julia's Appendix D lists the name Melany,
19 along with Melany's parents' names and Melany's birthdate with the wrong year. ECF
20 No. 56 at 71, 73, 77-78. The supervisor then sent them to the Admissibility Enforcement
21 Unit ("AEU"). The Children were at secondary for an hour and half to two and half
22 hours, meaning that they were sent to the AEU between 9 - 10 a.m. ECF No. 56 at 40;
23 Ex. 9 (noting that the Children arrived in secondary around 7:40 a.m.).

24 **III. Attempts to Determine the Whereabouts of the Children**

25 Around this time, at approximately 9:40 a.m., Cardenas, who had initially driven
26 Julia to the border, appeared at PedWest to inquire about the Children. ECF No. 57 at
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1 137. Cardenas told the CBP officer she was the Children's aunt, though she is not a
2 blood relative. Instead, Cardenas is Julia's godmother, is listed as Julia's legal guardian
3 at her school, and has a notarized letter authorizing her to act on the Children's behalf.
4 ECF No. 57 at 137-140. Cardenas identified herself with a birth certificate and driver's
5 license. *Id.* at 141. CBP informed Cardenas that the Children were referred for further
6 inspection. *Id.* at 142. There was no follow-up by the CBP officer to determine the
7 immigration status of the Children or to have Cardenas obtain identification
8 documentation for the Children. Assuming it was a routine inspection, Cardenas left and
9 returned to the border sometime later that morning. *Id.* at 142-43. The second time, the
10 officers told her that the Children's mom needed to come. *Id.* at 145.

11 In the late morning, after attending a doctor's appointment, Thelma learned from
12 her husband, who had been in contact with Cardenas, that there was a problem and that
13 her children could not be located. ECF No. 60 at 55-56, 58-59. Thelma testified that she
14 felt "a lot of fear" upon discovering that her children had not successfully crossed the
15 border. *Id.* at 58. She immediately asked her husband to take her to the border. *Id.* at 59.
16 Upon attempting to bypass the line and cross the border, explaining to the guard that
17 there was "a problem with [her] children," the guard told her that she needed to go back
18 in line like everyone else. *Id.* Thelma waited in line for approximately three hours until
19 she reached the front of the line at PedWest. *Id.* Around 3 p.m., she explained to an
20 officer that her children had crossed in the morning, were sent for inspection, and had not
21 been heard from since. *Id.* at 60-61. According to Thelma, the officer initially told
22 Thelma her children were not there and that she needed to leave. *Id.* at 61-62.

23 Given the passage of time between the incident and trial and the fact that none of
24 the AEU officers prepared reports memorializing their contacts with Thelma, the
25 witnesses' recollection as to the contact between CBP and Thelma after 3 p.m. is not
26 clear or consistent. Nonetheless, the Court finds that Thelma made contact with the
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1 officers in the AEU responsible for the Children around 3:30 p.m. Officer Julio Corrales,
2 who worked in the AEU, testified that at an undetermined time, he overheard a
3 speakerphone conversation with Officer Hua,⁷ an officer working in PedWest, indicating
4 that someone claiming to be the Children's mom had arrived at PedWest and was
5 directed to Pedestrian East ("PedEast") where the AEU is located. ECF No. 61 at 143-
6 144. There, Officer Corrales and Officer Anthony Ascher, the AEU Supervisor, met with
7 Thelma. *Id.* at 105. Officer Corrales testified that Thelma showed them a photo of what
8 appeared to be a big family gathering, possibly a quinceañera, in an effort to show she
9 was Julia's mother, and that he asked her for more documentation. *Id.* at 144, 155.
10 Officer Corrales could not initially recall what time he and Supervisor Ascher met with
11 Thelma, *id.* at 105, 157, but on cross exam, he estimated that Thelma arrived at PedEast
12 between 3:30 – 4 p.m., *id.* at 144.⁸ Upon reviewing the photograph of the family
13 gathering, Officer Corrales' concerns that Julia/Melany was the victim of trafficking or
14 smuggling were eased. ECF No. 61 at 144-45.

15 After learning she needed to obtain additional documents to prove her relationship
16 to the Children, Thelma testified that she stayed at the border and sent Cardenas's son to
17 get documentation, including birth certificates, social security cards, and additional
18 photos, from her home in Tijuana. ECF No. 60 at 64. Cardenas's son returned to the
19 border with the additional documentation around 6 p.m. ECF No. 57 at 147; ECF No. 61
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22 ⁷ Officer Hua's first name is not mentioned in the record.

23 ⁸ The United States in its proposed Findings of Fact and Conclusions of Law submits that
24 Thelma applied for admission at PedWest at 2:56 p.m. and spoke with Officer Hua and
25 that Hua called Officer Ascher who instructed him to direct Thelma to PedEast. ECF No.
26 48 at ¶ 35. At approximately 3:30 pm, Officer Ascher spoke with Thelma with Officer
27 Corrales interpreting and Thelma showed them a single photograph that appeared to be a
28 family group photo. *Id.* at ¶ 36. The photograph satisfied both officers that Julia was not
the victim of trafficking and was only being smuggled by a family member.

1 at 155-56; ECF No. 60 at 63-64. Upon obtaining the documents, Thelma and Cardenas
2 went to PedEast to show the officers the documents. ECF No. 57 at 147-48. After
3 showing the officers the documents, Thelma received a phone call between 6 – 7 p.m.
4 informing her that Oscar was going to be released.⁹ ECF No. 60 at 65-66.

5 During their contacts, Officers Corrales and Ascher did not ask Thelma for
6 additional information about Julia or Melany or request contact information for Melany's
7 mother. ECF No. 61 at 133-36. Officer Corrales testified that there would be no way to
8 confirm Melany's mother's phone number. *Id.* at 136. Even after concluding that Oscar
9 was not smuggling Julia/Melany, there was no attempt to obtain Melany's mother's
10 phone number or any other further information about Julia. *Id.* at 137.

11 **IV. Admissibility Enforcement Unit**

12 While Thelma was attempting to get in touch with CBP about the Children, the
13 Children were waiting in the AEU. The AEU is not at PedWest, so to send the Children
14 to the AEU, the officers loaded them into a van with a handcuffed man and drove them to
15 the main SYPOE between 9 - 10 a.m. ECF No. 59 at 92-93; ECF No. 56 at 40; Ex. 9.
16 Officers then led them underground, down a hallway of detention cells, and into a waiting
17 area, ECF No. 59 at 95, where they waited for roughly 5 - 6 hours. They were not
18 electronically checked in to the AEU until a little after 4 p.m. Ex. 18 (USA-0065); ECF
19 No. 61 at 40-41, 45. During this long wait, Oscar decided they would be released more
20 quickly if they said Julia was Melany, and he stated as such when he was first
21 interviewed at the AEU. ECF No. 59 at 99, 103. Julia initially resisted when Oscar told
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25 ⁹ Officer Corrales testified that Thelma was told that Oscar would be released shortly
26 during her meeting with Officers Ascher and Corrales around 3:30 p.m., ECF No. 61 at
27 106, however Oscar was not released until 9 – 11 p.m. ECF No. 60 at 67.

1 her this plan but later complied. ECF No. 59 at 107, 198. Both the Children stated that
2 Julia was Melany when at the AEU.

3 Around roughly 5 p.m.—after Officers Ascher and Corrales had already met
4 Thelma—Officer Corrales pulled the Children from the waiting area into a private room
5 to interview them. ECF No. 59 at 113; ECF No. 61 at 101, 158. He interviewed the
6 Children separately and without a witness, ECF No. 61 at 85, 89, again in violation of
7 CBP policy. Officer Corrales chose a particular room that he believed automatically
8 recorded audio and video. ECF No. 61 at 83-84. However, despite the fact that there
9 was an inquiry from the Office of the Inspector General to the Port Director on April 16,
10 2019, ECF No. 57 at 12-13, any recording that may have been made was not preserved
11 because CBP routinely deletes recordings, *id.* at 32, 38.

12 The interviews took roughly an hour each. ECF No. 61 at 86. The Children stated
13 that Julia was Melany during the interviews. ECF No. 61 at 88, 90-91, 143 (Corrales's
14 testimony); ECF No. 57 at 69-70 (Julia's testimony). According to Julia, Officer
15 Corrales told her that Oscar could be prosecuted for smuggling her if she did not say she
16 was Melany. ECF No. 57 at 70. Oscar testified that during his interview, Officer
17 Corrales told him that if he lied, he could be prosecuted and would not be able to pursue
18 his desired career in the Navy, and that he should not get in trouble for someone else.
19 ECF No. 59 at 116-17; ECF No. 61 at 90, 93. Because the interview recordings were not
20 preserved, the Children's accounts cannot be verified. But given that Julia had admitted
21 to being Melany since her interview in secondary inspection, it does not make sense that
22 Officer Corrales needed to pressure her to maintain her false claim to being Melany.
23 Nonetheless, however incorrectly, the Children understood from Officer Corrales that if
24 they did not say Julia was Melany, they would be in trouble. ECF No. 59 at 117.
25 Following the interviews, Officer Corrales asked them to write a statement about what
26 happened that morning. ECF No. 59 at 118; ECF No. 61 at 95. The Children then wrote
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1 brief statements, stating that they were cousins, not siblings. Ex. 13. Officer Corrales did
2 not notify a parent during the interview, explaining that Julia said she did not know her
3 mother's phone number, ECF No. 61 at 102, and that CBP would not make a phone call
4 for Oscar until it was determined that he was not a smuggler, *id.* at 103.

5 At some point after the interview, an officer contacted the Mexican Consulate to
6 ask them to interview Julia, which they agreed to do the next morning. ECF No. 60 at 30,
7 42. Also at some point probably after this interview, one of the officers researched
8 Cardenas, the godmother who had driven Julia to the border and initially approached the
9 port of entry asking about the Children, and discovered that she had an alien smuggling
10 conviction. ECF No. 60 at 25; ECF No. 61 at 100 (Officer Corrales learns that Cardenas
11 initially drove Julia to the border). The officers stated that this increased their suspicions
12 about the risk of smuggling and Julia's identity.

13 Sometime around 7:30 p.m., the Children were separated and placed into detention
14 cells, Oscar with young men, and Julia with mothers and children. ECF No. 59 at 122-
15 23; ECF No. 61 at 117-18. Other than when all of the detained individuals were brought
16 to the cafeteria for food, CBP kept the Children in these cells until they released them to
17 their mother, which would not be for another few hours for Oscar and another day for
18 Julia.

19 **V. Oscar's Release & Julia Held Overnight**

20 After reviewing Thelma's additional documentation, Supervisor Ascher decided to
21 release Oscar. *Id.* at 106. Oscar was taken from a detention cell and reunited with his
22 mother between 9 - 11 p.m., around 14 hours after he was first detained. ECF No. 60 at
23 67. CBP refused to release Julia because she continued to say that her name was Melany
24 and that Thelma was her aunt, so they were uncertain of her identity. ECF No. 59 at 132-
25 33; ECF No. 60 at 40. But upon releasing Oscar, the officers failed to ask Thelma any
26 questions about Julia/Melany or even if she had a phone number for Melany's mother,
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1 her sister or sister-in-law. ECF No. 134 - 137. When asked if the officers suspected
2 Thelma of being involved in a smuggling organization, Officer Corrales explained that
3 they were still investigating. ECF No. 61 at 137. However, the officers never interviewed
4 Thelma. ECF No. 61 at 25; ECF No. 61 at 137.

5 Thelma and Oscar left the border around midnight and stayed at a friend's house in
6 the United States. ECF No. 59 at 134. Oscar explained to his mother that they had
7 agreed that Julia was Melany because the officers were not accepting any other answer,
8 ECF No. 59 at 202, and said that it was "his mistake" for suggesting that Julia say she
9 was Melany. ECF No. 59 at 202; ECF No. 60 at 79-80; ECF No. 61 at 5-6.

10 **VI. Day Two & Julia's Release**

11 In the morning on Tuesday, March 19, 2019, the Mexican consulate conducted
12 their first interview of Julia at the AEU. In the interview Julia stated that she was
13 Melany. ECF No. 60 at 86. Also early the following morning, Thelma went to Julia's
14 school in San Ysidro, CA to obtain documentation that Julia was a student there. ECF
15 No. 60 at 83-84. She then went to the Mexican Consulate, where she was told that
16 someone had interviewed Julia and Julia was saying that she was Melany. ECF No. 60 at
17 84-86. Thelma explained that there had been confusion over Julia's identity, but that
18 Julia was not Melany. ECF No. 61 at 20. The Consulate eventually agreed to conduct
19 another interview. Still feeling desperate, Thelma then went to the television station
20 Telemundo, where both she and Oscar recorded a live interview. ECF No. 59 at 136,
21 205; ECF No. 60 at 87.

22 Around 3 p.m., the Mexican Deputy Consul reinterviewed Julia at the AEU, ECF
23 No. 57 at 81, and Julia agreed during that interview that she was Julia. ECF No. 57 at
24 110. The Consulate then informed Watch Commander Mariza Marin that Julia might be
25 Julia. CBP also appears to have received word that Telemundo was reporting on Julia's
26 detention. This prompted Watch Commander Marin to interview Julia herself. She
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1 placed a coat over her uniform and briefly and kindly spoke with Julia, spent time
2 reviewing her passport photo, and fairly quickly determined that Julia was indeed Julia.
3 Watch Commander Marin therefore initiated the process to release Julia to the Mexican
4 Consulate, who delivered her to her mother Thelma. Thelma received the phone call that
5 Julia would be returned to her while at Telemundo and agreed to let Telemundo film their
6 reunion. ECF No. 60 at 87. Julia was reunited with her mother and Oscar around 6 p.m.
7 on Tuesday, March 19, about 34 hours after she had first been detained.

8 **VII. After-the-Fact: Impact on Plaintiffs**

9 Following the incident, Julia suffered sleeplessness, nightmares, and bed-wetting.
10 ECF No. 60 at 93; ECF No. 57 at 84. Her most recent nightmare was in early 2024, ECF
11 No. 57 at 86. She saw a therapist for a year following her detention. ECF No. 60 at 95.
12 Thelma testified that in 2021, around two years after the incident, when Juila was put
13 under anesthesia for an unrelated surgery, “the doctor called me over because Julia would
14 be screaming that she was Julia, that she was not Melany; and the doctor got scared . . .
15 that’s when I became aware that my daughter has not yet overcome.” ECF No. 60 at 96-
16 97. Oscar also saw a therapist for six months following the incident on the advice of his
17 school counselor who noticed that his grades had gone down and that he was distracted
18 and nervous. ECF No. 59 at 140-41; ECF No. 60 at 93-94. Both Children continued to
19 attend school in the U.S., though Thelma initially attempted to withdraw Julia but was
20 dissuaded by the principal. ECF No. 60 at 91-92. In addition to Thelma’s manifest
21 distress during the incident, she continues to feel fear when the Children cross the border.
22 ECF No. 60 at 99.

23 CBP did not interview any of the officers involved in the incident after the fact,
24 ECF No. 56 at 148; ECF No. 60 at 35-36, and it never provided Thelma with an
25 explanation of what happened, ECF No. 60 at 89. CBP continues to maintain that their
26 officers did nothing wrong and were simply trying to confirm Julia’s true identity to
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1 maintain her safety. ECF No. 57 at 26. On multiple occasions, such as in responding to
 2 an inquiry from the Office of the Inspector General and in trial testimony, CBP has even
 3 suggested that Julia was not the person in her passport. ECF No. 57 at 19-22; ECF No.
 4 56 at 115-16.

5 CONCLUSIONS OF LAW

6 I. The discretionary function exception does not apply.

7 Plaintiffs bring each of their claims under the Federal Tort Claims Act, which
 8 waives the federal government’s sovereign immunity and permits state-law tort suits
 9 against the United States. 28 U.S.C. § 2674; 28 U.S.C. § 1346(b)(1); *Brownback v. King*,
 10 592 U.S. 209, 210 (2021). However, the discretionary function exception excludes from
 11 this waiver, “any claim . . . based upon the exercise or performance or the failure to
 12 exercise or perform a discretionary function or duty on the part of a federal agency or an
 13 employee of the Government, whether or not the discretion involved be abused.” 28
 14 U.S.C. § 2680(a). Whether this exception applies involves a “particularized and fact-
 15 specific” two-part inquiry regarding the nature of the conduct. *Prescott v. United States*,
 16 973 F.2d 696, 700 (9th Cir. 1992); *Berkovitz by Berkovitz v. United States*, 486 U.S. 531,
 17 536 (1988). First, the court must determine whether the action is a matter of choice.
 18 *Berkovitz*, 486 U.S. at 536. “Thus, the discretionary function exception will not apply
 19 when a federal statute, regulation, or policy specifically prescribes a course of action for
 20 an employee to follow. In this event, the employee has no rightful option but to adhere to
 21 the directive.” *Id.* The exception similarly does not apply where a federal official
 22 violates the constitution. *Galvin v. Hay*, 374 F.3d 739, 758 (9th Cir. 2004). Second, if
 23 the challenged conduct involves judgment, the court must decide the exception was
 24 designed to apply to that judgment. *Id.* The government has the burden of proving that
 25 the discretionary function exception applies. *Prescott*, 973 F.2d at 702.

1 The United States argues that the discretionary function exception applies because
2 the CBP officers “exercised investigative discretion in carrying out 8 U.S.C. § 1232,”
3 ECF No. 48 at 9, which requires CBP officers to screen unaccompanied Mexican
4 children to determine if they are at risk of a severe form of human trafficking, 8 U.S.C. §
5 1232(a)(4). It argues that their decision to detain the Children and then release them
6 within the statutorily-mandated 48 hours was within their discretion. ECF No. 48 at 10.
7 Plaintiffs contend that the discretionary function exception does not apply because the
8 CBP officers violated both the federal constitution and CBP policy in detaining the
9 Children. ECF No. 49 at 14-17. The Court concludes that the discretionary function
10 exception does not apply because the Children’s detention was in violation of the Fourth
11 Amendment.

12 The Fourth Amendment mandates that searches and seizures must be reasonable.
13 *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985). At the border, the
14 government may stop any traveler without suspicion for a routine border search and
15 seizure. *Id.* at 538. Non-routine border seizures, however, must be reasonable. *Rhoden*
16 *v. United States*, 55 F.3d 428, 432 (9th Cir. 1995) (applying a reasonableness standard in
17 determining whether a noncitizen’s six-day detention at the border was permissible under
18 the Fourth Amendment); *Caban v. United States*, 728 F.2d 68, 70, 75 (2d Cir. 1984)
19 (same). Thus, non-routine seizures must be supported by reasonable suspicion. *Montoya*
20 *de Hernandez*, 473 U.S. at 541 (holding that a reasonable suspicion standard applied to
21 the 16-hour detention of a woman by CBP at an airport on suspicion that she was
22 smuggling drugs in her body); *Sanchez v. United States*, No. 05CV1985, 2006 WL
23 8455371, at *1-2 (S.D. Cal. July 6, 2006) (holding that using a reasonable suspicion
24 standard to determine if plaintiffs’ detention by federal officers at the border on suspicion
25 that their companion resided illegally in the United States and was a terrorist was
26 constitutional). Here, the Children were detained for long enough that their seizure was
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1 non-routine. *See United States v. Bravo*, 295 F.3d 1002, 1006 (9th Cir. 2002) (“We have
2 determined that searches involving extended detention or an intrusive search of a
3 person’s body are not routine.”).

4 Whether reasonable suspicion exists “depends on the totality of the circumstances,
5 including the scope and the duration of the deprivation.” *United States v. Cotterman*, 709
6 F.3d 952, 960 (9th Cir. 2013) (en banc). “Even when factors considered in isolation from
7 each other are susceptible to an innocent explanation, they may collectively amount to a
8 reasonable suspicion.” *Id.* at 968 (cleaned up).

9 Here, Julia’s two-year-old passport card revealed what appeared to be a mole that
10 Julia does not have. ECF No. 62 at 8; Ex. 63-A. While the primary officer had
11 encountered anomalies such as this before, she decided to refer the Children to secondary
12 for further inquiry. *Id.* at 9. There is no question that referral to secondary was justified
13 and permitted additional reasonable steps to dispel concerns created by the apparent
14 mole. Although reasonable suspicion may have existed initially to believe that Julia was
15 making a false claim of citizenship by fraudulently using the passport card of another, the
16 duration of her and Oscar’s detention was unreasonable and in violation of the Fourth
17 Amendment because officers repeatedly failed to take available steps to investigate their
18 suspicions and failed to follow CBP’s own policies and precautions regarding the
19 treatment of detained minors.

20 The length of time for which a detention is reasonable is not subject to “hard-and-
21 fast time limits,” but rather “common sense and ordinary human experience.” *Montoya*
22 *de Hernandez*, 473 U.S. at 543 (citation omitted). “In assessing whether a detention is
23 too long in duration to be justified as an investigative stop, we consider it appropriate to
24 examine whether the police diligently pursued a means of investigation that was likely to
25 confirm or dispel their suspicions quickly, during which time it was necessary to detain
26 the defendant.” *See United States v. Sharpe*, 470 U.S. 675, 686 (1985). Ultimately, the
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1 question “is not simply whether some other alternative was available, but whether the
2 police acted unreasonably in failing to recognize or to pursue it.” *Id.* at 687. Common
3 sense and ordinary human experience indicate that it was not reasonable to detain Julia
4 for 34 hours to determine her identity or to detain Oscar for about 14 hours to determine
5 whether he was smuggling or trafficking his sister when multiple means of investigation
6 were available and officers unreasonably failed to pursue them.

7 Cardenas, Julia’s godmother, first inquired about the Children at the border at
8 around 9:40 a.m. ECF No. 57 at 137. She returned to the border in the late morning. *Id.*
9 at 142-43. Thelma, the Children’s mother, presented herself at the border around noon
10 looking for her Children and was directed to the pedestrian line. ECF No. 60 at 59. Prior
11 to this time, CBP had failed to attempt to contact her. She managed to communicate
12 with, and show a photograph to, the CBP officers with authority over the Children by
13 around 3:30 p.m., *id.* at 60-62, and she had obtained birth certificates and social security
14 cards for the Children and additional family photos by around 6 p.m., ECF No. 61 at 155-
15 56; ECF No. 60 at 63-64, 68.

16 But at their 3:30 p.m. meeting, CBP did not attempt to interview Thelma, ECF No.
17 61 at 25—who (1) claimed to be both the Children’s mother and authorities knew was
18 Oscar’s mother; (2) was undisputedly the mother of the holder of the passport allegedly
19 being fraudulently used; and (3) was the aunt of Melany, who Julia was claiming to be.
20 Given her relationship to Julia, Melany, and Oscar, Thelma should have been interviewed
21 to obtain information about the children. As the mother of Julia, Thelma could have
22 provided additional proof that Julia did not have a mole above her lip and could have
23 addressed any concerns that she herself was part of a smuggling group. As the aunt of
24 Melany, Thelma could have provided correct identifying information for Melany,
25 permitting officers to verify that Julia was not Melany and allowing them to contact
26 Melany’s mother. If she had been allowed contact with Oscar, she could have learned
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1 what happened and corrected the officers' misconceptions. Thelma was not informed
2 that Julia was claiming to be Melany until late at night on March 18, and by Oscar, not by
3 CBP. ECF No. 60 at 77-79.

4 The officers again failed to interview Thelma when she returned to the border at
5 approximately 6 p.m. to provide additional documents relating to the children. Finally,
6 even when Oscar was released between 9 – 11 p.m., reflecting a conclusive determination
7 that he was not a trafficker or smuggler, no one interviewed Thelma or asked her for
8 contact information for Melany's mother.

9 In addition, CBP did not question Michelle Cardenas, who initially drove Julia to
10 the border, approached the border officers twice to ask about the Children, and had
11 crossed with Julia many times in the previous few months. Ex. 34 at 4. Given that the
12 officers never confirmed the child's identity as Melany through any documentation or
13 records, the investigative opportunities presented by Cardenas and Thelma would have
14 dispelled suspicions that Julia was Melany in far less time. Plus, from the start, officers
15 had access to Julia's passport application, which included additional photos of her, but
16 none of the officers chose to look at it. ECF No. 56 at 9-10; ECF No. 59 at 166-67.
17 Moreover, Julia also presented her old Mexican school ID, listing her name—Julia. ECF
18 No. 62 at 23-24.

19 Instead of following any of these wide-open avenues of investigation, CBP officers
20 elected to place Julia and Oscar in the queue to be processed in the AEU with dozens of
21 other individuals ahead of them, based upon a false confession that was not recorded or
22 witnessed. The officers apparently did no investigating between sending the Children to
23 the AEU around 9 – 10 a.m. until around 3:30 p.m. when Thelma managed to get in
24 touch with them. Officer Corrales's interviews were again without a witness. ECF No.
25 61 at 85, 89. And to the extent his interviews were recorded, the recording was not
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1 preserved—despite an inquiry from the Office of the Inspector General about the
2 incident. ECF No. 57 at 12-13, 32-33, 38.

3 It was not reasonable to detain a 9-year-old and 14-year-old on suspicion of a false
4 claim of citizenship while their mother and Julia’s godmother were trying to reach them
5 and without doing any further investigating for over 5 hours in the middle of the
6 workday. Officers failed to pursue opportunities to interview Thelma and Cardenas at
7 9:40 a.m., later in the morning, around noon, around 3:30 p.m., and again around 6
8 p.m.—opportunities created not by CBP but by Thelma and Cardenas looking for the
9 Children. In determining that the actions of the officers were unreasonable, the Court has
10 taken into account the CBP officers’ failures to abide by common sense and CBP
11 directives aimed to protect the children, such as: (1) having a child’s interview witnessed
12 or recorded; (2) providing timely parental notice; and (3) preserving recorded interviews.

13 The Supreme Court in *Montoya de Hernandez* held that it was reasonable to
14 determine whether the suspect was smuggling drugs in her alimentary canal by detaining
15 her for 16 hours until she had a bowel movement. 473 U.S. at 535, 542-43. Here the
16 delay is not similarly justifiable. The Children’s 14 and 34 hours in detention were far
17 more than “the period of time necessary to either verify or dispel” the officers’ concerns
18 about Julia’s identity given the totality of the circumstances. 473 U.S. at 544. Unlike the
19 “*post hoc* evaluation of police conduct [where one] can almost always imagine some
20 alternative means by which the objectives of the police might have been accomplished,”
21 *Sharpe*, 470 U.S. at 686-87, the avenues identified here were presented to the officers on
22 a silver platter and were necessary to determining who Julia/Melany was because
23 otherwise the officers were relying entirely on the statements of children.

24 The government argues that the duration of the Children’s detention was
25 reasonable because “(1) both Oscar and Julia repeatedly stated that Julia was an imposter
26 whom Oscar was assisting to enter the United States unlawfully, (2) a known convicted
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1 human smuggler, Michelle Cardenas, lied about her relationship to the minors when she
2 attempted to effect their release to her, (3) the then-putative mother, Plaintiff [Thelma],
3 did not show up for several hours, (4) when she did show up, [Thelma] did not have
4 identification documents, and (5) Julia told Mexican consular officers that she was
5 Melany[.]” ECF No. 48 at 12.

6 First, there is no question that Officer Lara’s unrecorded and unwitnessed
7 interrogation of Julia produced a false confession. Since the confession was not
8 recorded, witnessed or even recounted in any written detail, it will never be known why a
9 9-year-old U.S. citizen falsely confessed to being someone she is not. Nonetheless, it is
10 clear that during this one-officer interview, Julia started by stating that she was Julia, but
11 at some point, under the influence and pressure from an intense officer known for getting
12 confessions, she agreed that she was actually Melany. CBP violated the directive that its
13 officers not interview minors alone. Having two officers in an interview is meant as a
14 check on the pressure exerted by the officers, and that check failed. This violation
15 affected the Children’s extended detention. That the Children stated or agreed at multiple
16 points that Julia was Melany created substantial confusion regarding Julia’s identity but
17 does not justify 14- and 34-hour detentions to determine the veracity of the 9-year-old’s
18 statements.

19 Second, the Court is also not persuaded that the fact that Cardenas had a decade-
20 old conviction for alien smuggling changed the calculus regarding Julia’s identity or risk
21 of being trafficked. The officers did not discover this until at least eight hours into the
22 Children’s detention and after Cardenas had made contact with CBP officers at
23 approximately 9:40 a.m. and around noon. ECF No. 57 at 140, 143; ECF No. 61 at 100
24 (Officer Corrales learned that Michelle brought Julia to the border during his early
25 evening interview). And the Court agrees with Plaintiffs that “[t]he fact that Ms.
26 Cardenas remained at the SYPOE for hours, providing her valid U.S. birth certificate,
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1 identification, and phone number to CBP Officers, weighs heavily against the
2 reasonableness of any suspicion that [Julia] was being smuggled by Ms. Cardenas.” ECF
3 No. 49 at 11.

4 Third, the Court finds Thelma arrived at the SYPOE around noon and that officers
5 failed to contact Thelma before that time. When she arrived at the border, she was
6 redirected to the back of the line where she was delayed for three hours. ECF No. 60 at
7 59. Officers failed to tell her what documentation she would need to prove she was
8 Julia’s mother and never interviewed her. ECF No. 61 at 109, 155; ECF No. 61 at 25.
9 Even after she appeared with the documentation around 6 p.m., it still took approximately
10 3-4 hours to release Oscar and another 24 to release Julia. ECF No. 61 at 155-56; ECF
11 No. 60 at 63-64. Thus, that Thelma did not quickly arrive at the border following the
12 Children’s detention does not support the reasonableness of the duration of detention.
13 Rather, Thelma’s presence and interactions with CBP beginning at noon instead indicate
14 that the duration of detention was unreasonable.

15 For these reasons, the Court therefore holds that the duration of the Children’s
16 detention was unreasonable and violated the Fourth Amendment. As a result, the
17 government has not met its burden to show that the discretionary function exception to
18 the FTCA’s waiver of sovereign immunity applies. *Galvin*, 374 F.3d at 758 (holding that
19 the discretionary function exception does not apply where federal officials violate
20 constitutional rights).

21 Because the Court finds that the discretionary function exception does not apply
22 due to the Fourth Amendment violation it does not address Plaintiffs’ arguments that the
23 government violated their Fifth Amendment substantive due process rights by coercively
24 interrogating the Children or their First and Fifth Amendment rights to familial
25 association by preventing Thelma from being with her Children. ECF No. 49 at 14-16.

1 The Court also need not address whether the discretionary function exception does not
2 apply because CBP violated its own non-discretionary policies. *Id.* at 16-17.

3 **II. False Imprisonment**

4 Plaintiffs first allege a claim of false imprisonment. Under the FTCA, the Court
5 applies the law of the place in which the incident occurred—here, California. *See*
6 *Brownback v. King*, 592 U.S. 209, 210 (2021); 28 U.S.C. § 1346(b). To show tortious
7 false imprisonment under California law, Plaintiffs must demonstrate: “(1) the
8 nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3)
9 for an appreciable period of time, however brief.” *Tekle v. U.S.*, 511 F.3d 839, 854 (9th
10 Cir. 2007). “A false imprisonment action may also be maintained if the defendant
11 unlawfully detains the [plaintiff] for an unreasonable period of time after an otherwise
12 legal seizure or arrest.” *Rhoden v. United States*, 55 F.3d 428, 430 (9th Cir. 1995)
13 (citation and internal quotation marks omitted); *see also Lincoln v. Grazer*, 163 Cal. App.
14 2d 758, 761 (1958). Here, the officers clearly intended to detain the Children without the
15 Children’s consent and did in fact detain them for an appreciable period of time—14 and
16 34 hours. And as the Court already explained, the duration of the Children’s detention
17 violated the Fourth Amendment. The United States’ actions were therefore without
18 lawful privilege. The Court thus holds that Plaintiffs have successfully shown each
19 element of false imprisonment and finds that the United States committed tortious false
20 imprisonment against Plaintiffs.

21 **III. Intentional Infliction of Emotional Distress**

22 Plaintiffs next allege a claim of intentional infliction of emotional distress
23 (“IIED”). In California, IIED requires a showing of “(1) extreme and outrageous conduct
24 by the defendant with the intention of causing, or reckless disregard of the probability of
25 causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional
26 distress; and (3) actual and proximate causation of the emotional distress by defendant’s
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1 outrageous conduct.” *Sabow v. United States*, 93 F.3d 1445, 1454 (9th Cir. 1996). “A
2 defendant’s conduct is ‘outrageous’ when it is so extreme as to exceed all bounds of that
3 usually tolerated in a civilized community.” *Hughes v. Pair*, 46 Cal. 4th 1035, 1050-51
4 (2009) (cleaned up). The defendant need not have “malicious or evil purpose.” *KOVR-*
5 *TV, Inc. v. Superior Ct.*, 31 Cal. App. 4th 1023, 1028, 1031 (1995). “It is enough that
6 defendant devoted little or no thought to the probable consequences of his conduct.” *Id.*
7 at 1031-32 (internal quotation marks and citation omitted).

8 Here, the government’s conduct in detaining U.S. citizen children at the border for
9 14 and 34 hours respectively after obtaining a false confession from Julia about her
10 identity exceeded “all bounds of that usually tolerated in a civilized community.”
11 *Hughes*, 46 Cal. 4th at 1051 (citation omitted). At the start of the day, in primary
12 inspection, and when she was first brought to secondary inspection, Julia reported that
13 she was herself. But scared, intimidated, and under pressure in the interview with Officer
14 Lara, she falsely admitted to being someone else, her cousin Melany, a noncitizen.
15 Courts have previously found that intimidating and threatening a suspect during an
16 investigatory interview can constitute extreme and outrageous conduct. *See Plascencia v.*
17 *United States*, No. ECV 17-02515, 2018 WL 6133713, at *10 (C.D. Cal. May 25, 2018)
18 (holding that plaintiffs stated a claim for IIED where agents denigrated, insulted, and
19 threatened to deport plaintiff); *Mendia v. Garcia*, 165 F. Supp. 3d 861, 879 (N.D. Cal.
20 2016) (finding that an officer stating “We’ll see if you want to talk when we’re deporting
21 your ass!” during an interrogation was sufficient to plead extreme and outrageous
22 conduct); *Crain v. Krehbiel*, 443 F. Supp. 202, 212 (N.D. Cal. 1977) (holding that
23 intimidating and threatening to expose plaintiff’s identity to make him sign a statement
24 was extreme and outrageous conduct).

25 Because Officer Lara’s interview with Julia was not witnessed, recorded, or
26 otherwise preserved, there is insufficient evidence to conclude that Julia was threatened.

1 Still, the Court concludes that the pressure exerted over Julia causing her to falsely
2 confess to fraudulently using the passport card of someone else combined with her and
3 Oscar's extended detention is beyond the bounds "usually tolerated in a civilized
4 community." *Hughes*, 46 Cal. 4th at 1051.

5 Ultimately, CBP officers failed to pursue the available investigative opportunities
6 which would have reduced the period of detention for the Children substantially. After
7 eliciting the false confession, CBP officers detained the Children with no further
8 investigation for over 5 hours and continued to detain them when their mother came to
9 the port of entry with their birth certificates and social security cards. Between 9:40 a.m.
10 and 3 p.m., Thelma and Cardenas made contact with CBP officers multiple times in an
11 attempt to learn the whereabouts of the Children. ECF No. 57 at 140, 143; ECF No. 60 at
12 58-59, 60-61. Having failed to independently contact Thelma, none of the officers
13 interviewed her regarding Julia/Melany's identity or their concerns about smuggling or
14 human trafficking or provided clear guidance on what she needed to prove that Julia was
15 her daughter. ECF No. 61 at 25. Even after releasing Oscar, they failed to ask Thelma
16 for contact information for Melaney's mother. Instead, they detained 9-year-old Julia in
17 a detention cell overnight and did not release her until 6 p.m. the next day—some 34
18 hours after she had initially tried to cross the border as a U.S. citizen with a valid passport
19 card. The severity of the officers' conduct is exacerbated by the fact that they were in
20 positions of power and authority over Plaintiffs. *See Alcorn v. Anbro Eng'g, Inc.*, 2 Cal.
21 3d 493, 498, 498 n.2 (1970) ("The cases and commentators have emphasized the
22 significance of the relationship between the parties in determining whether liability
23 should be imposed."). The Court therefore concludes that the United States' conduct was
24 extreme and outrageous.

25 Nor was any thought given to the probable consequences that holding the Children
26 for 14 and 34 hours would have on them. The officers recklessly disregarded that
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1 detaining children for an extended period of time without contact with their parents
2 would almost certainly cause the 9-year-old and 14-year-old emotional distress. *See*
3 *KOVR-TV*, 31 Cal. App. 4th at 1031-32 (“It is enough that defendant devoted little or no
4 thought to the probable consequences of his conduct.”). Children are particularly
5 susceptible to emotional distress given their age. *See C.B. v. Moreno Valley Unified Sch.*
6 *Dist.*, 544 F. Supp. 3d 973, 994 (C.D. Cal. 2021) (considering the plaintiff’s susceptibility
7 given “his young age and documented disabilities”). Similarly, it was obvious after
8 Thelma came to the border that continuing to detain her children would cause her severe
9 emotional distress.

10 The CBP officers’ conduct was the actual and proximate cause of the Plaintiffs’
11 “severe and extreme emotional distress.” *Sabow*, 93 F.3d at 1454. Severe emotional
12 distress means “emotional distress of such substantial quality or enduring quality that no
13 reasonable person in a civilized society should be expected to endure it,” and the bar is
14 high. *Young v. City of Visalia*, 687 F. Supp. 2d 1155, 1168-69 (E.D. Cal. 2010) (cleaned
15 up). Julia expressed psychological and physiological changes following the incident,
16 including bedwetting, sleeplessness, and nightmares as recently as this year. ECF No. 60
17 at 93; ECF No. 57 at 86. The impact on Julia was so enduring that when she was put
18 under anesthesia for surgery in 2021, she started screaming “I’m Julia, I’m not Melany,”
19 causing the doctors to become concerned. ECF No. 60 at 96-97. Julia also manifested
20 significant distress testifying about the incident during trial. And both Oscar and Julia
21 began to see a therapist afterwards. In Oscar’s case, this was recommended by a school
22 counselor who noticed changes in his behavior—that his grades had gone down and that
23 he was distracted and nervous. ECF No. 60 at 93-94. For Thelma, she felt desperate and
24 helpless during the Children’s detention and spent much of the two days crying. ECF
25 No. 60 at 66-67. She continues to feel fear when her children have to cross the border.
26 *Id.* at 99.

1 Courts have previously found that similar types of emotional distress were
2 sufficiently severe to state an IIED claim. *See Plascencia*, 2018 WL 6133713, at *11
3 (holding that the plaintiff stated severe emotional distress where she alleged experiencing
4 “headaches, nausea, loss of sleep, fatigue, and anxiety for more than ten months”);
5 *Mendia*, 165 F. Supp. 3d at 879 (holding that plaintiff stated a claim for IIED where they
6 experienced fright, worry, grief, depression, and a gastrointestinal disorder for more than
7 two years following the incident). No reasonable person should be expected to endure
8 the distress suffered by Plaintiffs, *see Young*, 687 F. Supp. 2d at 1168, and it is therefore
9 sufficiently severe and extreme.

10 In short, defendant’s “conduct was extreme and outrageous, having a severe and
11 traumatic effect upon plaintiff’s emotional tranquility.” *Alcorn*, 2 Cal. 3d at 498. Thus,
12 the Court holds that Plaintiffs have successfully shown IIED.

13 **IV. Negligence**

14 Plaintiffs also bring a negligence cause of action under the FTCA. “In order to
15 prove facts sufficient to support a finding of negligence, a plaintiff must show that the
16 defendant had a duty to use due care, that he breached that duty, and that the breach was
17 the proximate or legal cause of the resulting injury.” *Hayes v. Cnty. of San Diego*, 57
18 Cal. 4th 622, 629 (2013). The government does not contest that they had a duty of due
19 care towards the Children while the Children were in custody. ECF No. 48 at 14; *see*
20 *Cotta v. Cnty. of Kings*, 686 F. App’x 467, 469 (9th Cir. 2017) (“In California, prison
21 officials owe detainees a duty to protect them from foreseeable harm.”). Instead, it
22 argues that the officers did not violate the standard of due care by acting reasonably
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1 under the circumstances and that they did not cause injury.¹⁰ ECF No. 48 at 14. The
 2 Court disagrees.

3 As the Court discussed in finding a Fourth Amendment violation, the officers did
 4 not act reasonably in detaining the Children for 14 and 34 hours to determine Julia's
 5 identity after obtaining a false confession. They breached their duty of care, and their
 6 actions proximately caused severe emotional distress as the Court explained in holding
 7 that Plaintiffs have shown IIED. The Court thus holds that Plaintiffs have successfully
 8 shown that the United States was negligent.

9 **V. Damages**

10 Having concluded that Plaintiffs have established that the United States bears
 11 responsibility for Plaintiffs' injuries related to the incident, the Court now turns to the
 12 Plaintiffs' damages. Plaintiffs request only non-economic compensatory damages for
 13 their "mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety,
 14 humiliation, and emotional distress." ECF No. 49 at 17. Requests for such emotional
 15 damages can be established by testimony alone. *Passantino v. Johnson & Johnson*
 16 *Consumer Prod., Inc.*, 212 F.3d 493, 513 (9th Cir. 2000). In closing argument, Plaintiffs
 17 requested \$800,000 to \$1.4 million for Oscar, a similar amount for Thelma, and \$1.8 to
 18 \$3.3 million for Julia. ECF No. 62 at 69. The government made no arguments regarding
 19 the amount of damages.

21
 22 ¹⁰ The parties do not explicitly argue for a particular standard of care. Because this is not
 23 dispositive, the Court does not resolve the issue. It notes only that "[g]enerally, a greater
 24 degree of care is owed to children[.]" *Juarez v. Boy Scouts of Am., Inc.*, 81 Cal. App. 4th
 25 377, 410 (2000), *overruled on other grounds by Brown v. USA Taekwondo*, 11 Cal. 5th
 26 204 (2021); *cf. In re Gault*, 387 U.S. 1, 55 (1967) (holding that, when interrogating a
 27 minor without counsel "the greatest care must be taken to assure that the admission was
 28 voluntary, in the sense not only that it was not coerced or suggested, but also that it was
 not the product of ignorance of rights or of adolescent fantasy, fright or despair.").

1 The Court first examines the awards in a series of roughly comparable cases. Cases
2 involving false imprisonment and unlawful detention result in a wide range of damages
3 awards, from just tens of thousands of dollars to millions of dollars. On the low-end are
4 California cases for false imprisonment. For example, in 1991, a California Appellate
5 court approved a \$10,000 award (approximately \$23,204 in 2024 dollars) on a false
6 imprisonment claim where plaintiff was arrested, forced to lie face down in the road,
7 handcuffed, and detained for 4 hours on suspicion that he had stolen a car where the
8 registration in the car showed that it was his wife's. *Washington v. Farlice*, 1 Cal. App.
9 4th 766, 768, 770-71 (1991). On the high end, Plaintiffs point the Court towards
10 *Loggervale v. Holland*, 677 F. Supp. 3d 1026 (N.D. Cal. 2023). There, a Black family, a
11 mother and her two teenage daughters, were separated, handcuffed, and detained without
12 violence in the back of police cars for 91 minutes, even though any reasonable suspicion
13 to stop them had long since dissipated. *Id.* at 1029-30. The jury awarded, and the district
14 court refused to reduce, \$687,500 in actual damages for the mother, and \$1.25 million for
15 each daughter. *Id.* at 1061 (not including the addition of treble damages).

16 Most of the other instructive cases involved awards in the hundreds of thousands.
17 In *Martinez v. The Port Auth. of New York & New Jersey*, the Second Circuit approved
18 the district court's decision reducing the emotional distress damages to \$200,000 for a
19 false arrest and \$160,000 for the deprivation of liberty where plaintiff was handcuffed
20 and detained for 19 hours but not physically assaulted, and suffered from sleeplessness,
21 loss of appetite, anxiety, and suicidal ideation and saw a therapist following the incident.
22 No. 01 CIV. 721, 2005 WL 2143333, at *17-18, 21-22 (S.D.N.Y. Sept. 2, 2005), *aff'd*,
23 445 F.3d 158 (2d Cir. 2006).

24 In *Hall v. Ochs* in 1987, the First Circuit approved a \$100,000 emotional distress
25 award (approximately \$280,900 in 2024 dollars), where the plaintiff was falsely arrested,
26 handcuffed face down on the ground, detained for a little less than two hours, and
27
28

1 suffered recurring nightmares and needed counseling following the incident. 817 F.2d
2 920, 922, 927 (1st Cir. 1987).

3 In *Larson v. Nanos*, the Court upheld a jury award of \$750,000 for a wife and
4 \$500,000 for a husband who were seized from their home in the middle of the night at
5 gun point, handcuffed, and detained for 15-20 minutes while the police searched their
6 home on a mistaken 911 call regarding domestic violence. No. CV-14-01592, 2016 WL
7 4592184, at *1 (D. Ariz. June 21, 2016), *aff'd sub nom. Larson v. Napier*, 700 F. App'x
8 609 (9th Cir. 2017). The damages were based primarily on their emotional and mental
9 distress as they experienced physical injuries consisting only of scratches and light
10 bruises. *Id.* at *5-6.

11 Finally, in *C.B. v. Sonora School District*, the Court upheld a jury award of
12 \$215,000 for seizure, IIED, and false arrest where police handcuffed an 11-year-old boy
13 and removed him from school. 819 F. Supp. 2d 1032, 1035, 1041, 1052 (E.D. Cal.
14 2011), *rev'd in part on other grounds sub nom. C.B. v. City of Sonora*, 769 F.3d 1005
15 (9th Cir. 2014).

16 In other factual scenarios involving non-economic emotional damages, courts have
17 approved even higher awards. The Ninth Circuit upheld \$5 million damage awards for
18 officer plaintiffs who suffered paranoia, suicidal ideation, anxiety, high blood pressure,
19 back pain, intestinal problems, loss of reputation, inability to find similar jobs, and
20 divorce as a result of being falsely implicated in a high-profile police scandal. *See*
21 *Harper v. City of Los Angeles*, 533 F.3d 1010, 1015, 1029 (9th Cir. 2008). District courts
22 have also upheld emotional distress damage awards in the millions in discrimination
23 cases. *See Diaz v. Tesla, Inc.*, 598 F. Supp. 3d 809, 835 (N.D. Cal. 2022) (reducing non-
24 economic damage award to \$1.5 million in a case of racial discrimination in the
25 workplace).

1 The Court finds that substantial awards are appropriate here, within the middle of
2 the range presented by these cases for Oscar and Thelma, and towards the higher end of
3 the range for Julia. It awards \$175,000 to Oscar, \$250,000 to Thelma, and \$1.1 million to
4 Julia for past and future emotional distress. The Court finds that a little over \$1 million is
5 an appropriate award for Julia because she was very young, only 9-years-old, at the time
6 of the incident and was detained overnight, for a full day and a half without contact with
7 her parents. She manifested fear and distress during the detention and was so traumatized
8 that she experienced nightmares, bed-wetting, and insomnia following the incident. She
9 needed counseling for a year and the impact on her has been so enduring that years later
10 when she was put under anesthesia, she referenced the incident. The Court also finds that
11 her demeanor during her testimony in trial manifested substantial distress.

12 The Court holds that Oscar is entitled to a much lower, but still notable award of
13 \$175,000 because he was somewhat older at the time of the incident, was detained for
14 about half the time and not overnight, and manifested less distress during the detention
15 itself. Nonetheless, the detention had enough of an impact on him that his school
16 counselor noticed a concerning change in his grades and behavior following the incident.
17 He also needed to attend therapy for six months.

18 The Court finds that Thelma is entitled to slightly more, \$250,000. This is due to
19 the manifest distress she suffered as a mother of innocent young children who were
20 detained for an extended period of time and whom CBP refused to release to her even
21 when she produced documentation of their relationship. She also had to watch her
22 children suffer the consequences of trauma after the fact.

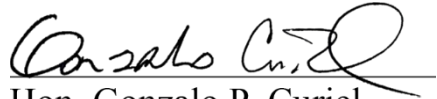
23 Accordingly, the Court finds that \$1.1 million for Julia, \$175,000 for Oscar, and
24 \$250,000 for Thelma appropriately compensate them for their past and future non-
25 economic damages.

1 **CONCLUSION**

2 For the reasons above, the Court holds that the United States is liable under the
3 FTCA for false imprisonment, intentional infliction of emotional distress, and negligence.
4 In damages, the Court awards \$175,000 to Oscar, \$250,000 to Thelma Medina Navarro,
5 and \$1.1 million to Julia.

6 **IT IS SO ORDERED.**

7 Dated: June 21, 2024

8 
9 Hon. Gonzalo P. Curiel
United States District Judge