

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E.L.A. and O.L.C.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:20-cv-1524-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on the United States’ Motion to Transfer Venue and Partial Motion to Dismiss. Dkt. # 15. Plaintiffs oppose the motion. Dkt. # 17. Having considered the parties’ submissions, the relevant portion of the record, and the applicable law, the Court finds that oral argument is unnecessary. For the reasons set forth below, the Court DENIES the motion to transfer and GRANTS the partial motion to dismiss.

II. BACKGROUND

1 Plaintiff E.L.A. (“ELA”) and his son, Plaintiff O.L.C. (“OLC”) are indigenous
2 Maya people native to Guatemala.¹ Dkt. # 1 ¶ 19. ELA is a political activist who
3 advocated for indigenous land rights and received death threats due to his work. *Id.*
4 Plaintiffs allege that they “fled persecution and torture in Guatemala to seek asylum in
5 the United States.” *Id.* On June 18, 2018, Plaintiffs entered the United States near
6 McAllen, Texas. *Id.* ¶ 20. OLC was seventeen years old at the time. *Id.* ¶ 16. Plaintiffs
7 were questioned and arrested by U.S. Customs and Border Protection (“CBP”) shortly
8 after they crossed the border. *Id.* ¶ 20. Immigration officers took Plaintiffs to a CBP
9 facility where they were forcibly separated. *Id.* ¶ 21-22.

10 ELA was prosecuted for his illegal entry into the United States under 8 U.S.C.
11 § 1325 pursuant to the United States’ “Zero Tolerance” policy, announced by former
12 Attorney General Jeff Sessions. *Id.* ¶¶ 32, 37-38. ELA had a court hearing on his illegal
13 entry that lasted several hours. *Id.* ¶ 38. As a result of ELA’s prosecution, OLC was
14 designated an “unaccompanied minor.” *Id.*

15 As an unaccompanied minor, OLC was placed in the custody of the Office of
16 Refugee Resettlement (“ORR”). *Id.* ¶¶ 39, 42. On June 20, 2018, OLC was flown to
17 New York and placed in Lincoln Hall Boys Haven, which is associated with the Catholic
18 Charities of the Archdiocese of New York and contracts with ORR to provide services to
19 unaccompanied minors. *Id.* ¶¶ 50-51. Because OLC was an unaccompanied minor, ORR
20 was responsible for OLC’s care and safety after his placement at Lincoln Hall. *Id.* ¶ 52.
21 A month after OLC was taken to New York, ELA was told that he was going to be
22 reunited with OLC. *Id.* The next morning, immigration officers took ELA and other
23 fathers who had been separated from their children to the airport for deportation to
24 Guatemala. *Id.* ¶ 43.

¹ The Court assumes the truth of the complaint’s factual allegations for purposes of the motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007).

1 While OLC was at Lincoln Hall, he suffered several incidents of sexual abuse. *Id.*
2 ¶¶ 59-64. Several Serious Incident Reports (“SIRs”) documenting the abuse that OLC
3 experienced at the facility were submitted to ORR. *Id.* ¶ 58. Plaintiffs allege that OLC
4 suffered physical and emotion harm and was medicated without parental consent. *Id.*
5 ¶¶ 65-73.

6 On March 2, 2019, ELA presented himself at a California port of entry and was
7 admitted pursuant to the federal court order in *Ms. L. v. U.S. Immigration and Customs*
8 *Enforcement*, Case No. 18-cv-428 (S.D. Cal.), requiring family reunification. *Id.* ¶ 45.
9 ELA and OLC were reunited in Seattle, Washington after nine months of separation. *Id.*
10 ¶ 46. In May 2019, ELA was able to apply for asylum with the assistance of *pro bono*
11 counsel. *Id.* ¶ 47. OLC was included in the application as a derivative applicant. *Id.*

12 Plaintiffs brought this action under the Federal Tort Claims Act (“FTCA”), 28
13 U.S.C. §§ 1346(b)(1), 2671 et seq., seeking compensation for the harms they have
14 suffered as a result of their forced separation. Dkt. # 1 at 8-9. Plaintiffs assert four
15 claims under FTCA: (1) intentional infliction of emotional distress; (2) abuse of process;
16 (3) negligence related to family separation; and (4) negligence during OLC’s time in
17 custody. *Id.* at 18-19. Plaintiffs seek compensatory damage in the amount of \$3,000,000
18 for harm to ELA and \$3,000,000 for harm to OLC. They allege that they both suffer
19 from depression and anxiety based on the emotional trauma caused by their forced nine-
20 month separation. *Id.* ¶¶ 77-78.

21 The Government moved to transfer venue and partially dismiss Plaintiffs’ claims
22 on January 1, 2021. Dkt. # 15. Plaintiffs opposed the motion. Dkt. # 17. The parties
23 subsequently requested several abeyances, granted by the Court, to allow the United
24 States and the group of counsel coordinating negotiations on behalf of similarly situated
25 plaintiffs to settle district courts cases nationwide arising from family separations at the
26 U.S./Mexico border that occurred during the prior administration. Dkt. ## 25-32.

Almost a year later, the parties moved to lift the stay after it became known that a

1 nationwide resolution was not possible. Dkt. # 33. The Court lifted the stay, Dkt. # 34,
2 and now turns to the fully briefed pending motion.

3 III. DISCUSSION

4 A. Venue Transfer

5 1. Improper Venue

6 Under Federal Rule of Civil Procedure 12(b)(3), a defendant may file a motion for
7 improper venue. If venue is improper, a district court “shall dismiss, or if it be in the
8 interest of justice, transfer such case to any district” wherein venue is proper. 28 U.S.C.
9 § 1406(a). In a FTCA action, venue is proper “only in the judicial district where the
10 plaintiff resides or wherein the act or omission complained of occurred.” 28 U.S.C.
11 § 1402(b). A plaintiff carries the burden of showing that venue is proper. See *Piedmont*
12 *Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). A court may
13 consider facts outside the pleadings to determine whether venue is proper and need not
14 accept the pleadings as true. *Kukje Hwajae Ins. Co. v. M/V Hyundai Liberty*, 408 F.3d
15 1250, 1254 (9th Cir. 2005).

16 The Government argues that venue is only proper in the Southern District of New
17 York or the Southern District of Texas—where the alleged torts occurred—because
18 Plaintiffs do not “reside” in the Western District of Washington for venue purposes due
19 to their status as noncitizens who are not lawful permanent residents. Dkt. # 15 at 2, 5.
20 Historically, the Government contends, “residency” was considered only for “natural
21 persons,” defined as citizens, for purposes of venue. *Id.* at 5. Congress recently
22 expanded that in 28 U.S.C. § 1391(c)(1), specifying that “a natural person, including an
23 alien lawfully admitted for permanent residence in the United States, shall be deemed to
24 reside in the judicial district in which that person is domiciled” for all venue purposes.
Because Plaintiffs are not lawful permanent residents, the Government argues, they
cannot establish “residency” for purposes of venue. Dkt. # 15 at 5.

1 The Government raised this same argument regarding residency for venue
2 purposes before the Honorable Robert S. Lasnik in *Luna v. United States*, No. C20-
3 1152RSL, 2021 WL 673534 (W.D. Wash. Feb. 22, 2021), another FTCA matter
4 involving a noncitizen who was not a lawful permanent resident. *Id.* Judge Lasnik
5 rejected the argument and concluded that “a non-citizen who is lawfully present in the
6 United States and has taken steps under the immigration law that objectively manifest an
7 intent to make permanent his residence here can claim residence for purposes of the
8 venue statute.” 2021 WL 673534 at *2. Having considered the briefing, relevant case
9 law, statutory amendment, and legislative history, this Court reaches the same
10 conclusion.

11 Prior to 2011, courts generally held that aliens were not residents of any district of
12 the United States for purposes of venue, and the term “natural person” in the venue
13 statute applied only to citizens. *See Arevalo-Franco v. INS*, 889 F.2d 589, 590 (5th Cir.
14 1990) (noting that federal courts have held that “for purposes of venue, aliens are not
15 residents of *any* district despite where they might live”); *see also Galveston, H. & S.A.*
16 *Ry. Co. v. Gonzales*, 151 U.S. 496, 506-07 (1894); *Williams v. U.S.*, 704 F.2d 1222, 1225
17 (11th Cir. 1983); *but see Castellon-Contreras v. I.N.S.*, 45 F.3d 149, 153 (7th Cir. 1995)
18 (holding that aliens could be lawfully domiciled without first obtaining lawful permanent
19 resident status). In 2011, Congress passed the Federal Courts Jurisdiction and Venue
20 Clarification Act, which amended the venue statute by adding “alien[s] lawfully admitted
21 for permanent residence in the United States,” to the category of “natural persons” who
22 may establish venue in the district where he or she is domiciled. Pub. L. 112–63, 125
23 Stat. 758 (Dec. 7, 2011). While the Court agrees that Plaintiffs would have been unable
24 to establish venue prior to 2011, the Court finds that, under the amendment, Plaintiffs are
no longer precluded from doing so.

Under the amended language, Congress did not restrict the statute to apply only to
those with legal permanent residence (“LPR”) status, per se, but rather more broadly to

1 aliens “lawfully admitted for permanent residence in the United States.” *See Luna* at *2.
2 According to the legislative history, an alien may establish residency “only if he or she
3 has the ability under the immigration laws to form the intent to remain in this country
4 indefinitely.” H.R. REP. 112-10, 33, 2011 U.S.C.C.A.N. 576, 580. This encompasses a
5 category of aliens broader than that consisting only of those with LPR status. If Congress
6 meant only to refer to aliens with LPR status, it is highly unlikely it would have
7 articulated such a requirement instead of simply referring to those with such status.

8 The Government contends that even under this requirement, Plaintiffs still fail to
9 establish residency. Dkt. # 15 at 8. It argues that Plaintiffs “cannot currently form a
10 lawful intent to remain in this country indefinitely because both are subject to removal
11 proceedings after their illegal entries.” This is not the case. ELA has been lawfully
12 paroled into the United States pending a decision in his asylum application. Dkt. # 18-1
13 at 2. He has obtained a work permit and is lawfully employed. Dkt. # 19 ¶ 5. OLC is
14 also lawfully present pending adjudication of ELA’s asylum application and his own.
15 *See* 8. U.S.C. § 1158(b)(3)(A); Dkt. # 20 ¶ 10. OLC is enrolled in school and has also
16 obtained authorization to work. Dkt. # 20 ¶ 5-6. Both Plaintiffs have indicated their
17 desire to remain in the United States permanently based on their claims that Guatemala
18 “is a dangerous place for our family.” *Id.* ¶ 13.

19 The Court finds that Plaintiffs have demonstrated that they have the ability under
20 the immigration laws to form the intent to remain in this country indefinitely. This
21 requirement does not require Plaintiffs to show that they have the ability to remain
22 indefinitely, but rather the ability to form the *lawful intent* to remain. Plaintiffs are
23 currently permitted to be in the country and if their asylum applications are granted, they
24 will be authorized to remain in the United States. Plaintiffs’ submission of asylum
25 applications and current authorization to remain thus constitute “an objective and official
26 manifestation of [their] intent to reside permanently in the United States.” *Nwozuzu v.*

1 *Holder*, 726 F.3d 323, 334 (2d Cir. 2013) (evaluating the phrase “intent to reside
2 permanently” in the context of derivative citizenship).

3 By contrast, if Plaintiffs were in the United States illegally, without any
4 authorization, they could not establish such lawful intent. *See Madrid-Tavarez v. I.N.S.*,
5 999 F.2d 111, 113 (5th Cir. 1993) (holding that if an alien “had no legal right to be in this
6 country, he could not establish a lawful intent to remain”). Similarly, if they entered the
7 country on temporary visas, they could not establish the requisite intent. *See Brown v.*
8 *U.S. I.N.S.*, 856 F.2d 728, 731 (5th Cir. 1988) (holding that “an alien cannot lawfully
9 possess an intent to be domiciled in this country while he or she is here on a student
10 visa”). Given the facts here, the Court finds that Plaintiffs have objectively manifested a
11 lawful intent to reside here permanently and thus established residence for purposes of
12 venue.

12 The Government further argues, however, that Plaintiffs are unable to establish
13 domiciliary, which is distinct from residency and required under Section 1391(c). Dkt.
14 # 15 at 11. “A person’s domicile is her permanent home, where she resides with the
15 intention to remain or to which she intends to return.” *Kanter v. Warner-Lambert Co.*,
16 265 F.3d 853, 857 (9th Cir. 2001). Courts consider several factors in the determination
17 of an individual’s domicile: current residence, location of personal and real property,
18 location of brokerage and bank accounts, location of spouse and family, membership in
19 unions and other organizations, place of employment or business, driver’s license and
20 automobile registration, voting registration and voting practices, and payment of taxes.
21 *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986). “[A] party’s residence is ‘prima facie’
22 proof of that person’s domicile and, once a person’s domicile has been established it
23 presumptively continues unless rebutted with sufficient evidence of change.” *Bey v.*
24 *SolarWorld Indus. Am., Inc.*, 904 F. Supp. 2d 1096, 1102 (D. Or. 2012) (citation
omitted).

1 The Government cites *Little v. Grant Cty. Hosp. Dist. #1*, No. 18-cv-00292, 2020
2 WL 1433526, at *2 (E.D. Wash. Mar. 23, 2020) as “instructive,” but the case is factually
3 distinguishable from the instant case. There, the plaintiffs brought state law claims of
4 negligence and wrongful death against healthcare providers in Washington after their
5 four-month-old daughter died due to septic shock. 2020 WL 1433526, at *1. Their
6 daughter was born in Montana, they then lived in California for a period, and then moved
7 to Washington shortly before their daughter’s death. *Id.* They were staying with
8 relatives and were not gainfully employed while in Washington. *Id.* They left
9 Washington ten months after their daughter’s death and moved to Idaho for several
10 months before moving back to Montana. *Id.* It was undisputed that the plaintiffs were
11 “living a transitory lifestyle.” *Id.*

12 In contrast, Plaintiffs have lived in Washington for over three years—since March
13 2019. Dkt. # 1 ¶ 46. Although Plaintiffs may have expressed an initial intent to live in
14 Philadelphia, they have not lived anywhere else in the United States as a family. Dkt.
15 # 19 ¶ 2. ELA lives with his two sons, OLC and a younger son, in a rented apartment,
16 and has been gainfully employed while his two sons have been enrolled in schools in the
17 Western District of Washington. *Id.* ¶¶ 4, 5, 8. The Government does not dispute that
18 ELA’s current residence, place of employment, and location of two additional family
19 members are all within the Western District of Washington. Nor does the Government
20 dispute that OLC is—or was at the time of filing—enrolled in high school classes,
21 obtained employment, and lives with his father and brother within the same district.
22 Based on ELA’s financial situation, it is unclear whether he could present evidence of
23 brokerage accounts, a driver’s license, a vehicle to register, or any other personal or real
24 property. Dkt. # 19 ¶¶ 5-7. ELA’s immigration status precludes him from registering to
vote and he thus has no voting practices to speak of. Beyond arguing that Plaintiffs had
initially indicated an intent to live in Philadelphia when they first entered the United

1 States, the Government fails to provide evidence to rebut Plaintiffs' domicile in this
2 district. Venue in this district is therefore proper under 28 U.S.C. § 1402(b).

3 2. More Convenient Forum

4 If venue is proper, an action may still be transferred “[f]or the convenience of
5 parties and witnesses [and] in the interest of justice,” to any other district where venue is
6 proper. 28 U.S. Code § 1404(a). Under Section 1404(a), the district court has broad
7 discretion to transfer cases based on “an individualized, case-by-case consideration of
8 convenience and fairness.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir.
9 2000) (internal quotations and citation omitted); see also *Commodity Futures Trading*
10 *Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979) (holding that “[w]eighing of the
11 factors for and against transfer involves subtle considerations and is best left to the
12 discretion of the trial judge”).

13 In determining whether transfer is appropriate, a court considers the following
14 factors: (1) the location where the relevant agreements were negotiated and executed, (2)
15 the state that is most familiar with the governing law, (3) the plaintiff’s choice of forum,
16 (4) the parties’ contacts with the forum, (5) the contacts relating to the plaintiff’s claims
17 in the chosen forum, (6) the difference between the costs of litigation in the two forums,
18 (7) the availability of compulsory process to compel attendance of unwilling non-party
19 witnesses, and (8) the ease of access to sources of proof. *Jones*, 211 F.3d at 498–99.
20 “[T]here is ordinarily a strong presumption in favor of the plaintiff’s choice of forum.”
21 *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). Courts may also consider the relative
22 capacity of the parties to pay for litigation. See *Hong v. Recreational Equip., Inc.*, No.
23 19-0951JLR, 2019 WL 5536406, at *6 (W.D. Wash. Oct. 25, 2019). The party who
24 moves for transfer carries the burden of showing that another venue is warranted. See
611 F.2d at 279.

25 The Court finds that it would not be “in the interest of justice” to transfer the case
26 to a forum wherein Plaintiffs would be unable to litigate. See *Luna*, 2021 WL 673534 at

1 *3. The Government itself notes that “Plaintiffs deserve to have their arguments heard,”
2 and its motion “is not meant to preclude Plaintiffs from seeking relief for the harms they
3 allegedly suffered” as a result of the United States’ prior practice of separating children
4 from their families, which has since been denounced. Dkt. # 21 at 2. Plaintiffs have
5 confirmed that they would, in fact, be financially and logistically precluded from
6 litigating their claims if forced to do so in Texas or New York. Having determined that
7 venue is proper in the Western District of Washington, the Court finds that transfer is
8 neither convenient to Plaintiffs nor in the interest of justice under Section 1404(a). The
9 strong presumption in favor of the plaintiff’s choice of forum and relative costs the
10 parties will bear in a different venue weigh heavily against transfer. Because the
11 Government has not met its burden of demonstrating that the “balance of convenience
12 clearly favors a transfer,” the Court declines to transfer the case. *Lax v. Toyota Motor*
Corp., 65 F. Supp. 3d 772, 776 (N.D. Cal. 2014).

13 **B. Partial Motion to Dismiss**

14 Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint
15 for failure to state a claim. The court must assume the truth of the complaint’s factual
16 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*
17 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court “need not accept as true conclusory
18 allegations that are contradicted by documents referred to in the complaint.” *Manzarek v.*
19 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Instead, the
20 plaintiff must point to factual allegations that “state a claim to relief that is plausible on
21 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). The complaint avoids
22 dismissal if there is “any set of facts consistent with the allegations in the complaint” that
23 would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S. 662, 678
24 (2009).

25 The Government here moves to dismiss Plaintiffs’ Second and Third Claims for
26 Relief regarding abuse of process and negligence based on family separation. Dkt. # 15

1 at 18. The Government argues that Plaintiffs’ abuse of process claim should be
2 dismissed with prejudice because Plaintiffs fail to allege that the Government improperly
3 charged ELA under 8 U.S.C. § 1325. *Id.* The Government next contends that Plaintiffs’
4 negligence claim should be dismissed without prejudice because Plaintiffs fail to allege
5 any specific facts to support the claim. *Id.* The Court will address each in turn.

6 1. Abuse of Process

7 It is undisputed that Plaintiffs’ abuse of process claim is governed by Texas law.
8 *See Richards v. United States*, 369 U.S. 1, 10 (1962). Under Texas law, “[a]buse of
9 process is the malicious misuse or misapplication of process in order to accomplish an
10 ulterior purpose.” *Liverman v. Payne-Hall*, 486 S.W.3d 1, 5 (Tex. App. 2015)
(quotations and citation omitted). To state a claim, a party must show the following:

- 11 (1) that the defendant made an illegal, improper or perverted use of the process, a
12 use neither warranted nor authorized by the process;
- 13 (2) that the defendant had an ulterior motive or purpose in exercising such illegal,
14 perverted or improper use of the process; and
- 15 (3) that damage resulted to the plaintiff as a result of such illegal act.

16 *Id.*

17 An abuse of process claim requires a showing of “an improper use of the process
18 after its issuance.” *RRR Farms, Ltd. v. Am. Horse Prot. Ass’n, Inc.*, 957 S.W.2d 121, 134
19 (Tex. App. 1997). The term “process” is defined as “[a] summons or writ, esp. to appear
20 or respond in court.” *Pisharodi v. Watts L. Firm, L.L.P.*, No. 13-07-665-CV, 2008 WL
21 3522119, at *2 (Tex. App. Aug. 14, 2008) (quoting BLACK’S LAW
22 DICTIONARY 1010 (8th ed.2005)). “Without a showing that the use of the process
23 itself was illegal, a claim for abuse of process must be dismissed.” *Andrade v.*
24 *Chojnacki*, 65 F. Supp. 2d 431, 469 (W.D. Tex. 1999).

The Government argues that Plaintiffs fail to allege sufficient facts to show abuse

1 of process because they do not allege that ELA’s prosecution under 8 U.S.C. § 1325 for
2 illegal entry into the United States “was unwarranted or unauthorized by law, nor can
3 they.” Because ELA was properly charged with illegal entry, the Government contends,
4 Plaintiffs cannot show an abuse of process. The Court agrees.

5 While Plaintiffs have alleged that the Government had an ulterior motive and that
6 damage resulted—the second and third elements of an abuse of process claim—they have
7 not alleged that the Government made an “illegal, improper or perverted use of the
8 process.” Dkt. # 15 at 19. Plaintiffs claim that although the Government “lawfully
9 instituted the prosecution” against ELA, the Government then “improperly used the
10 judicial process that followed as a rationale to designate O.L.C. an unaccompanied minor
11 when, in fact, he was accompanied by his father.” Dkt. # 17 at 21. This allegation
12 involves the reason for charging ELA, not the process. *See Baubles & Beads v. Louis*
13 *Vuitton, S.A.*, 766 S.W.2d 377, 378–79 (Tex. App. 1989) (holding that “[w]hen the
14 process is used for the purpose for which it is intended, even though accompanied by an
15 ulterior motive, no abuse of process occurs”). Because Plaintiffs fail to state the first
16 element of an abuse of process claim under Texas law, the claim must be dismissed.
17 *Andrade*, 65 F. Supp. 2d at 469.

18 2. Negligence – Family Separation

19 To prevail on a negligence claim under Texas law, a plaintiff must prove a legal
20 duty, a breach of that duty, and damage proximately caused by the breach. *Gann v.*
21 *Anheuser-Busch, Inc.*, 394 S.W.3d 83, 88 (Tex. App. 2012). The Government argues that
22 Plaintiffs fail to state a negligence claim related to family separation because (1) they
23 have not alleged any duty owed to Plaintiffs in the complaint, and (2) they have not
24 alleged a special relationship or physical injury resulting from the family separation,
which is required under Texas law to recover damages. Dkt. # 15 at 21. The Court
agrees that Plaintiffs did not allege that any duty was owed to Plaintiffs with respect to
the family separation. Plaintiffs have failed to identify any Texas case law to support the

1 existence of such a duty.

2 Moreover, Texas courts do not recognize “a general duty to avoid negligent
3 infliction of mental anguish.” *Aguilar v. United States*, No. 1:16-CV-048, 2017 WL
4 6034652, at *3 (S.D. Tex. June 7, 2017). Mental anguish may “be compensable in
5 limited situations, including the foreseeable result of a breach of duty arising out of
6 certain special relationships.” *Id.* But Texas courts have held that there is no such
7 special relationship between detainees and CBP guards specifically. *Id.*; *Villafuerte v.*
8 *United States*, No. 7:16-CV-619, 2017 WL 8793751, at *12 (S.D. Tex. Oct. 11, 2017).
9 Plaintiffs fail to identify any cases supporting such a relationship or a duty to protect
against mental anguish absent a special relationship. The claim is therefore dismissed.

10 IV. CONCLUSION

11 For the foregoing reasons, the Government’s motion to transfer this matter is
12 **DENIED**. Dkt. # 15. The Government’s partial motion to dismiss is **GRANTED**, and
13 Plaintiffs’ abuse of process and negligence-family separation claim are **DISMISSED**
14 without prejudice. *Id.* Within twenty-one (21) days from the date of this Order, Plaintiffs
15 may file an amended complaint addressing the deficiencies described above. If Plaintiffs
16 do not file an amended complaint within that time, the Court may dismiss the challenged
claims.

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18 DATED this 3rd day of June, 2022.

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21 The Honorable Richard A. Jones
22 United States District Judge
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