

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**SALAS, et al.,
Plaintiffs,**

v.

**UNITED STATES OF AMERICA,
Defendant.**

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EP-24-CV-00009-DB

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case arises out of a single-vehicle rollover involving a United States Customs and Border Protection-employed driver that resulted in the death of a Texas Department of Public Safety officer. Plaintiffs Lizzett Salas, *Individually, as Representative of the Estate of Anthony Salas, Deceased, as Heir of the Estate of Anthony Salas, Deceased, as Dependent Administrator of the Estate of Anthony Salas, Deceased, and in her capacity as Next Friend of A.S., I.S., and L.A.S., three Minor children*, Teresa Salas, and Juan Salas (collectively “Plaintiffs”) are the family of the decedent DPS Special Agent Anthony Salas (“SA Salas”). Plaintiffs brought this action against Defendant United States of America (“Defendant”) pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2674 (28 U.S.C. Section 2671, *et seq*), raising negligence and wrongful death claims among others. Am. Compl.1, ECF No. 17.

The Court presided over a seven-day bench trial beginning on June 24, 2025. Attorneys Daniel J.T. Sciano and Aaron Valadez appeared on behalf of Plaintiffs and Attorneys Manuel

Romero and Darryl Vereen appeared on behalf of Defendant. The parties submitted post-trial proposed findings of fact and conclusions of law¹ in accordance with the Court's order to do so. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1346(b)(1), 1367. In preparing these findings of fact and conclusions of law, this Court carefully considered the record, made determinations as to relevance, materiality, and credibility of witnesses, and ultimately ascertained the probative significance of the evidence presented. As required under Rule 52(a) of the Federal Rules of Civil Procedure, this Court articulates the following findings of fact and conclusions of law to provide a "sufficiently definite predicate for appellate review." *Century Marine Inc. v. United States*, 153 F.3d 225, 231 (5th Cir. 1998). In following Rule 52(a), this Court need not "parse or declaim every fact and each nuance and hypothesis," but rather, this Court may limit its discussion to those facts and legal issues that form the basis of its decision. *Id.*

The Court finds the following facts by a preponderance of the evidence, and in applying the applicable law to such factual findings, the Court makes the following conclusions of law. To the extent any findings of fact may also be deemed to be conclusions of law, they shall also be considered conclusions of law; similarly, to the extent any conclusions of law as stated may be deemed findings of fact, they shall also be considered findings of fact. *See Compaq Computer Corp. & Subsidiaries v. C.I.R.*, 277 F.3d 778, 781 (5th Cir. 2001).

As required by Rule 52(a), the Court articulates the following findings of fact and conclusions of law:

¹ See "Defendant's Proposed Post-Trial Findings of Fact and Conclusions of Law", ECF No. 105; "Plaintiffs' Proposed Findings of Fact and Conclusions of Law," ECF No. 108.

FINDINGS OF FACT

1. The occurrence in question occurred on January 21, 2022, in Maverick County, Texas. Stipulation 1.

2. When Texas Department of Public Safety Special Agent was injured, he was being transported in a Government-Owned Vehicle (GOV) – a 2018 Chevrolet Silverado Pick-Up Truck – under the use, operation, and control of U.S. Customs & Border Protection Border Patrol Agent Marvin Martinez. Stipulation 12.

3. Defendant owned the GOV (a 2018 Chevrolet Silverado Pick-Up Truck) at the time of the occurrence in question. Stipulation 4.

4. Border Patrol Agent Marvin Martinez (“BPA Martinez”) was in the course and scope of his employment at the time of the occurrence in question. Stipulation 3.

5. At the time of the occurrence in question, BPA Martinez rolled the GOV injuring SA Salas and 4 of the 6 Undocumented Aliens (“UDAs”), all of whom were ejected from the bed of the GOV.

6. SA Salas sustained personal physical injuries as a result of the occurrence in question on January 21, 2022. *See* Stipulation 12.

7. SA Salas succumbed to his injuries on January 22, 2022 at approximately 11:16 a.m. from injuries sustained in the occurrence in question. Stipulation 18.

8. Plaintiffs brought these claims under the Federal Tort Claims Act, 28 U.S.C. § 2674 (28 U.S.C. Section 2671, *et seq*) against the United States of America (Defendant). Am. Compl. 1, ECF No. 17.

9. Plaintiff Lizzett Salas, in her individual capacity, is the surviving spouse of SA Salas, Deceased. Stipulation 19.

10. Plaintiff Lizzett Salas and Anthony Salas legally married on June 3, 2003. *See* P-100.

11. At all material times hereto, including on January 21, 2022 and January 22, 2022, Plaintiff Lizzett Salas was married to and was the lawful spouse of Anthony Salas, now deceased.

12. Plaintiff Lizzett Salas timely presented her claim through a written Form 95 to the appropriate federal agency and had exhausted her administrative remedies prior to the filing of the Original Complaint. *See* Stipulation 24; Mem. Opinion and Order, ECF No. 81.

13. Plaintiff Lizzett Salas in her individual capacity as the spouse of Anthony Salas at the time of his death, is a wrongful death beneficiary as that term is defined under Texas law. *See* Tex. Civ. Prac. & Rem. Code § 71.004.

14. On March 21, 2024, Plaintiff Lizzett Salas was duly appointed by Probate Court 2 of El Paso County, Texas as Dependent Administrator of the Estate of Anthony Salas, Deceased. *see* P-135.

15. Plaintiff Lizzett Salas in her capacity as duly appointed representative / dependent administrator of the Estate of Anthony Salas, Deceased, timely presented the Estate's claim through a written Form 95 to the appropriate federal agency and had exhausted administrative remedies prior to the filing of the Original Complaint. *See* Stipulation 24, 26; Mem. Opinion and Order, ECF No. 81.

16. Plaintiff Lizzett Salas had and has standing and capacity as Next Friend and

biological mother to bring claims on behalf of each of her three minor children, Plaintiffs, A.S., I.S., and L.A.S. *See* testimony of Lizzett Salas.

17. Plaintiff A.S., a minor, is the surviving biological daughter of Decedent Anthony Salas. *See* Stipulation 22.

18. Plaintiff A.S., a minor in her individual capacity, is a wrongful death beneficiary as that term is defined under Texas law. *See* Tex. Civ. Prac. & Rem. Code § 71.004.

19. Minor Plaintiff A.S. timely presented her claim through a written Form 95 to the appropriate federal agency and had exhausted her administrative remedies prior to the filing of the Original Complaint. *See* Stipulation 24, 26.

20. Plaintiff I.S., a minor, is the surviving biological daughter of Decedent Anthony Salas. *See* Stipulation 22.

21. Plaintiff I.S., a minor in her individual capacity, is a wrongful death beneficiary as that term is defined under Texas law. *See* Tex. Civ. Prac. & Rem. Code § 71.004.

22. Minor Plaintiff I.S. timely presented her claim through a written Form 95 to the appropriate federal agency and had exhausted her administrative remedies prior to the filing of the Original Complaint. *See* Stipulation 24, 26.

23. Plaintiff L.A.S., a minor, is the surviving biological son of Decedent Anthony Salas *See* Stipulation 22.

24. Plaintiff L.A.S., a minor in his individual capacity, is a wrongful death beneficiary as that term is defined under Texas law. *See* Tex. Civ. Prac. & Rem. Code § 71.004.

25. Minor Plaintiff L.A.S. timely presented his claim through a written Form 95 to the

appropriate federal agency and had exhausted his administrative remedies prior to the filing of the Original Complaint. *See* Stipulation 24, 26.

26. Plaintiff Teresa Salas is the surviving biological mother of Decedent Anthony Salas, her first-born son. *See* Stipulation 21.

27. Plaintiff Teresa Salas is a wrongful death beneficiary as that term is defined under Texas law. *See* Tex. Civ. Prac. & Rem. Code § 71.004.

28. Plaintiff Teresa Salas timely presented her claim through a written Form 95 to the appropriate federal agency and had exhausted her administrative remedies prior to the filing of the Original Complaint. *See* Stipulation 24, 26.

29. Plaintiff Juan Salas is the surviving biological father of Decedent Anthony Salas, his first-born son. *See* Stipulation 21.

30. Plaintiff Juan Salas is a wrongful death beneficiary as that term is defined under Texas law. *See* Tex. Civ. Prac. & Rem. Code § 71.004.

31. Plaintiff Juan Salas timely presented his claim through a written Form 95 to the appropriate federal agency and had exhausted his administrative remedies prior to the filing of the Original Complaint. *See* Stipulation 24, 26.

32. Defendant is the Federal Government whose Executive Branch oversees, manages, controls, and operates the U.S. Department of Homeland Security which, in turn, oversees, manages, controls, operates, and is responsible for U.S. Customs and Border Protection. U.S. Customs and Border Protection is an agency within the United States of America. Def.'s Answer 4, ECF No. 20.

33. CBP National Standards on Transport, Escort, Detention, and Search (TEDS 2015) was in place at the time of the incident on January 21, 2022. *See* Stipulation 29; P-5, and trial testimony of Marvin Martinez, Robert “Bobby” Lopez (also known as and referred to herein as “Robert Lopez” or “Roberto Lopez”), Michael Brian Jackson, Francisco Santillan, Monica Sanchez, Timothy Hay, and Victor Manjarrez.

34. TEDS is a mandatory and prescriptive federal policy that directed or prescribed a course of action to be followed or taken by BPA Marvin Martinez and the other CBP employees involved in the transport of the six undocumented aliens and those within CBP’s charge on January 21, 2022, which resulted in the occurrence in question. *See* P-5, P-83, P-85, P-92 and testimony of Marvin Martinez, Roberto Lopez, Michael Brian Jackson, Francisco Santillan, Timothy Hay, Monica Sanchez, Tony Barker, and Victor Manjarrez.

35. BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit had no choice but to adhere to the mandatory directives of TEDS; BPA Martinez was not free to operate the GOV and transport the detainees in his own way. *See* P-5, P-6, P-7, P-8, P-83, P-85, P-92 and trial testimony of Marvin Martinez (T-3 and T-3-A and live testimony), Roberto Lopez (T-1 and T-1-A), Michael Brian Jackson (T-2 and T-2-A and live testimony), Francisco Santillan (T-7 and T-7-A), Timothy Hay (T-5 and T-5-A), Monica Sanchez (T-6 and T-6-A), Tony Barker, and Victor Manjarrez.

36. BPA Marvin Martinez and the other CBP employees including BPA Michael Brian Jackson, and supervisory Border Patrol Agents Robert Lopez and Luke Dougherty, conduct violated and failed to comply with specific mandatory and prescriptive directives in a federal policy: TEDS. *See* P-5, P-6, P-7, P-8, P-83, P-85, P-92 and trial testimony of Marvin Martinez (T-

3 and T-3-A and live testimony), Roberto Lopez (T-1 and T-1-A), Michael Brian Jackson (T-2 and T-2-A and live testimony), Francisco Santillan (T-7 and T-7-A), Timothy Hay (T-5 and T-5-A), Monica Sanchez (T-6 and T-6-A), Tony Barker, and Victor Manjarrez and his report, P-15, including at pages 15-17 and 111-112.

37. Monica Sanchez was the Branch Chief of Security, Policy & Compliance of the Del Rio Sector of CBP and as part of her stated job description (P-91 and T-6 at P173 L 4-21), speaks authoritatively on in-depth knowledge of the USBP policies and was described as a subject matter expert by Acting Division Chief of Law Enforcement Operations, Juan Bernal (P-34 and his trial testimony).

38. The Branch Chief of Security, Policy & Compliance testified the BPAs involved in the transport that caused the occurrence in question should not have transported the detainees in the back of the pick-up truck bed stating: “I don’t think that’s right”, it was “endangering everyone” and it was “turning a blind eye to safety”. *See* T-6, P 155, L12-18.

39. The U.S. CBP Motor Vehicle Management Handbook (MVMH) was in place at the time of the incident on January 21, 2022. *See* stipulation number 25 of the parties and the MVMH itself at P-6.

40. The most recent MVMH was specifically incorporated into TEDS under Section 2.5, Transporting and Escorting Officer/Agent Responsibilities and mandated prescriptively that agents must comply with all operational office’s policies and procedures pertaining to the use of government vehicles articulated in the most recent MVMH. It was a specific compliance requirement of TEDS. *See* page 5 of P-5.

41. The MVMH applied to all CBP operations and personnel utilizing or managing CBP

motor vehicles and required the most current copy of the handbook to be retained and reviewed by every CBP manager and employee responsible for CBP motor vehicles. P-6 at page 10/bates US000463. It established minimum requirements for the use of CBP motor vehicles. *Id.* CBP managers could establish additional requirements and internal controls as long as the additional requirements did not conflict with the policies and procedures established in the MVMH. *Id.*

42. The MVMH mandated that CBP employees like BPA Martinez, when using mobile assets including the 2018 pick-up truck he was operating on the date of the incident, had responsibilities to operate the vehicle in accordance with applicable Federal, State, and local laws, regulations, policies, procedures, and requirements of the MVMH; have the seatbelt properly fastened at all times when the vehicle is in motion if the seat is equipped with a seatbelt; and complying with the manufacturer's manuals and instructions on the operation and maintenance of CBP – owned or leased vehicles. *See* P-6 including Section B title Scope on page 10 and Section L titled CBP Employees Operating CBP Mobile Assets on page 19.

43. MVMH contained mandatory prescriptive policies and directives that directed or prescribed a course of action to be taken by BPA Marvin Martinez and the other CBP employees involved in the occurrence in question when operating a government-owned vehicle. *See* P-5 at section 2.5, P-6, P-7, P-8, P-83, P-85, P-92 and testimony of Marvin Martinez (T-3 and T-3-A and live testimony), Roberto Lopez (T-1 and T-1-A), Michael Brian Jackson (T-2 and T-2-A and live testimony), Francisco Santillan (T-7 and T-7-A), Timothy Hay (T-5 and T-5-A), Monica Sanchez (T-6 and T-6-A), Tony Barker, and Victor Manjarrez.

44. BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit had no choice but to adhere to the mandatory directives in the MVMH. *See* P-

5, P-6, P-7, P-8, P-83, P-85, P-92 and Marvin Martinez (T-3 and T-3-A and live testimony), Roberto Lopez (T-1 and T-1-A), Michael Brian Jackson (T-2 and T-2-A and live testimony), Francisco Santillan (T-7 and T-7-A), Timothy Hay (T-5 and T-5-A), Monica Sanchez (T-6 and T-6-A), Tony Barker, and Victor Manjarrez.

45. BPA Marvin Martinez and the other CBP employees, including supervisory Border Patrol Agents, conduct violated and failed to comply with specific directives in a federal policy: MVMH. *See* P-5, P-6, P-7, P-8, P-83, P-85, P-92 and Marvin Martinez (T-3 and T-3-A and live testimony), Roberto Lopez (T-1 and T-1-A), Michael Brian Jackson (T-2 and T-2-A and live testimony), Francisco Santillan (T-7 and T-7-A), Timothy Hay (T-5 and T-5-A), Monica Sanchez (T-6 and T-6-A), Tony Barker, and Victor Manjarrez and his report, P-15, including at pages 17-19 and 111-112.

46. U.S. CBP Occupational Safety and Health Handbook (OSHH) was in place at the time of the incident on January 21, 2022. *See* P-15 including at pages 19-20.

47. OSHH is a mandatory policy that directed or prescribed a course of action to be taken by BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit. *See* P-15 including at pages 19-20.

48. BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit had no choice but to adhere to the mandatory directives of OSHH. *See* P-15 including at pages 19-20.

49. BPA Marvin Martinez and the other CBP employees, including supervisory Border Patrol Agents, conduct violated specific directives in a federal policy: OSHH. *See* P-15 including at pages 19-20 and 111-112.

50. U.S. CBP Standards of Conduct (SOC) was in place at the time of the incident on January 21, 2022. *See* P-15 including at pages 20-21.

51. SOC is a mandatory policy that directed or proscribed a course of action to be taken by BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit. *See* P-15 including at pages 20-21.

52. BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit had no choice but to adhere to the mandatory directives of SOC. *See* P-15 including at pages 20-21.

53. BPA Marvin Martinez and the other CBP employees' (including supervisory Border Patrol Agents) conduct violated specific directives in a federal policy: SOC. *See* P-15 including at pages 19-20 and 111-112.

54. The Spring of 2020 Memorandum instructed and directed the Del Rio Sector of U.S. Customs & Border Protection to utilize only designated transport vehicles for the movement of detainees. *See* P-15, including at pages 27. *See* also judicial admission, Def.'s Answer, paragraph 109, ECF 20 ("Defendant admits Del Rio Sector BPAs were instructed to utilize only these designed vehicles (absent emergency) for the movement of detainees").

55. The Spring of 2020 Memorandum was in place at the time of the incident on January 21, 2022. *See* P-15, including at pages 27. *See* also judicial admission of the Government at paragraph 109 of ECF 20 ("Defendant admits Del Rio Sector BPAs were instructed to utilize only these designed vehicles (absent emergency) for the movement of detainees"). There was no evidence presented that an emergency required the movement of the detainees. In fact, the credible testimony was the polar opposite that there was no emergency.

56. The Spring of 2020 Memorandum is a mandatory policy that directed or prescribed a course of action to be taken by BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit. *See* P-15, including at pages 27.

57. BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit had no choice but to adhere to the mandatory directives set out in the Spring of 2020 Memorandum. *See* P-15, including at pages 27.

58. BPA Marvin Martinez and the other CBP employees including supervisory Border Patrol Agents' conduct violated specific directives in a federal policy: the Spring of 2020 Memorandum. *See* P-15, including at pages 27.

59. The Manufacturer's Manuals and Instructions on the Operation for the 2018 Chevrolet Silverado Pick-Up Truck (Subject Vehicle), including the Owner's Manual that was located in the glove box of the 2018 pick-up truck, contained warnings and instructions for safe use that directed or prescribed a course of action to be taken by BPA Marvin Martinez. *See* P-7, P-8, and P-15 at pages 21-23; P-19 including at pages 33-35, video and live trial testimony of Marvin Martinez, Michael DiTallo, Michael Brian Jackson, Robert Lopez.

60. BPA Marvin Martinez and the other CBP employees involved in the incident made the basis of this lawsuit had no choice but to adhere and comply with the warnings and instructions for safe use in the Owner's Manual for the 2018 Chevrolet Silverado Pick-Up Truck. *See* P-5, P-6, P-7, P-8, P-83, P-85, P-92; testimony of Marvin Martinez, Roberto Lopez, Michael Brian Jackson, Francisco Santillan, and Timothy Hay; *See also* testimony of Victor Manjarrez and P-15, including at pages 21-23 and 111-112 and testimony of Michael DiTallo and P-18 at page 55.

61. BPA Martinez at trial ultimately conceded that certain safety rules also contained in the

owner's manual (P-7) regarding driving on hills were not complied with, including using "good judgment" and that "if the terrain ahead cannot be seen, get out of the vehicle and walk the hill before driving further." P-7 page 232. P-7 also contained a specific warning "[d]riving to the top of the hill at high speed can cause an accident. There could be a drop-off, embankment, cliff, or even another vehicle. You could be seriously injured or killed. As you near the top of the hill slow down and stay alert." *Id.* at page 233.

62. BPA Martinez and other CBP agents including BPAs Michael Brian Jackson and Robert Lopez acknowledged that specific warnings and instructions for use were violated including "be sure everyone in your vehicle is in a seat and using a seat belt properly"; "it is extremely dangerous to ride in a cargo area, inside or outside a vehicle in a collision passengers riding in these areas are more likely to be seriously injured or killed. Do not allow passengers to ride in any area of the vehicle that is not equipped with seats and seat belts. Always wear a seat belt and check that all passenger(s) are restrained properly too." P-8.

63. BPA Marvin Martinez and the other CBP employees, including supervisory Border Patrol Agents conduct violated and were not in compliance with the specific directives of the warnings and instructions for safe use contained in the Owner's Manual for the 2018 Chevrolet Silverado Pick-Up Truck which were required to be complied with pursuant to federal policy. *See* P-5, P-6, P-7, P-8, P-83, P-85, P-92; testimony of Marvin Martinez, Roberto Lopez, Michael Brian Jackson, Francisco Santillan, Monica Sanchez, and Timothy Hay; *See also* testimony of Victor Manjarrez and P-15, including at pages 21-23 and 111-112 and testimony of Michael DiTallo and P-18 at page 55.

64. BPA Marvin Martinez and other CBP agents were using their personal mobile phones

and an “app” called Glympse that provided both a mapping and agent tracking system which BPA Martinez conceded he was using to locate other agents and identify roadways. Trial Testimony of Marvin Martinez. It was undisputed that the Government never downloaded the personal phone BPA Marvin Martinez was using at the Hydro Plant or the Government issued phone he was using to determine whether either of the phones played any part in BPA Martinez’s failure to stay within the confines of a well-defined and maintained main ranch road.

65. BPA Marvin Martinez did not have discretion to operate the Subject Vehicle in an unsafe manner, to not act as a reasonably prudent driver, or to drive off the well-maintained roadway. *See* testimony of Michael DiTallo and P-18 and testimony of Victor Manjarrez and P-15.

66. Section 1.1. of TEDS (P-5) states: “The Safety of CBP employees, detainees, and the public is paramount during all aspects of CBP operations.” P-5 at page 4/bates US001869.

67. At trial BPA Martinez testified he was required to use heightened vigilance and extreme care when transporting detainees and those in his charge. *See* trial testimony of Marvin Martinez.

68. On August 5, 2021, approximately five months prior to the tragedy made the basis of this lawsuit, Defendant required its Del Rio Sector personnel, including BPA Marvin Martinez, to receive, read, and understand TEDS. *See* P-83 and P-85.

69. Each CBP employee, including BPA Marvin Martinez was required to sign a Tracking Roster for submission on or before August 10, 2021. The Tracking Roster had a suspense date of August 10, 2021. *See* P-85. ECF #20 Page 20 P.10 paragraph 59 & 63

70. The Tracking Roster contained the following language in bold letters: “I acknowledge that I have received, read, and understand the DRT TEDS.” *See* P-85. *See also*, Defendant admits that, a part of TEDS refresher training, the TEDS policy was to be briefed during muster meetings.

See ECF #20 page 10, paragraph 56.

71. BORTAC BPA Marvin Martinez did not execute the Tracking Roster prior to the mandatory deadline.

72. The 2018 Chevrolet Silverado Pick-Up Truck was controlled by Defendant at the time of the incident made the basis of this lawsuit. *See* Stipulation 2.

73. The 2018 Chevrolet Silverado Pick-Up Truck was being used in the furtherance of the business of Defendant at the time of the incident made the basis of this lawsuit. *See* Stipulation 3.

74. The 2018 Chevrolet Silverado Pick-Up Truck was assigned to BPA Marvin Martinez. *See* T-3 page 2 of 8 (V. 1), and T-3-A.

75. BPA Marvin Martinez never read the Owner's Manual for the 2018 Chevrolet Silverado Pick-Up Truck prior to January 21, 2022 acknowledging he just never took the time. *See* T-3 P 109 L 12-21, P 110 L 3-5, P 111 L 19-21, and T-3-A. BPA Martinez acknowledged he was obligated to read and understand the owner's manual as part of standard operating procedure.

76. BPA Martinez knew or by the exercise of reasonable care should have known about the warnings and instructions for safe use contained within the operator's manual (P-7 and P-8).

77. On August 29, 2019, a 32-inch LED Light Bar was installed on the 2018 Chevrolet Silverado Pick-Up Truck. *See* Stipulation 8; *see also* P-18 pages 5 and 56.

78. The 32-inch LED Light Bar on the 2018 Chevrolet Silverado Pick-Up Truck was functioning at the time of the occurrence in question. *See* Stipulation 8; *see also* P-18 pages 5 and 56.

79. The 32-inch LED Light Bar on the 2018 Chevrolet Silverado Pick-Up Truck was not activated at the time of the occurrence in question or prior thereto. *See* Stipulation 8; *see also* P-18 pages 5 and 56.

80. Light bars provide an overwhelming amount of light; it provides more light, both in a forward direction and side directions, more than the brights and the dims of a normal pick-up truck. *See* testimony of Michael Brian Jackson at page T-2 at page 2 of 10 and T-2-A.

81. The 2018 Chevrolet Silverado Pick-Up Truck, when started/turned on, provided a visual warning related to distracted driving on the monitor in the center. *See* P-81.

82. While moving or in “drive”, the 2018 Chevrolet Silverado Pick-Up Truck would provide a visual warning if seatbelts were not utilized for persons in seats. *See* P-77 bates P000582.

83. BPA Marvin Martinez was a member of Border Patrol Tactical Unit (BORTAC) at the time of the incident. *See* T-3 (V. 1) page 2 of 8 and T-3-A.

84. BPA Marvin Martinez was a member of Special Operations Detachment (SOD) Del Rio Sector at the time of the incident made the basis of this lawsuit. *See* P-15 pages 5-6.

85. Supervisory Border Patrol Agent Frank Santillan was BPA Marvin Martinez’s direct supervisor (in his chain of command) at the time of the occurrence in question and confirmed that BPA Martinez and all management personnel including Lopez and Dougherty were responsible for either complying with or ensuring compliance with the Motor Vehicle Management Handbook (MVMH) which incorporated the manufacturer’s warnings and instructions for safe use related to the 2018 Chevrolet Silverado Pick-Up Truck. *See* T-7 P 183 L 16-22 and P183 L 24 – P 185 L2; *see also* P-15 page 75-79.

86. Supervisor Francisco Roel Santillan indicated the occurrence could have been avoided by multiple ways by the use of reasonable care by the Border Patrol Agents that night. *See* T-7 P 198 L 23 – P 199 L 3. He confirmed the supervisors themselves independent of the Border Patrol agents should have been enforcing those safety rules. *See* T-7 P 203 L 2-7.

87. Supervisor Santillan confirmed there was a violation of policy for ease of mission execution and that this was not an emergency where undocumented aliens or personnel needed quick medical attention but was unfortunately simply trying to expedite or ease the mission execution by getting out of there quick and back into the field. Santillan stated he was unaware of any reasons – other than ease of mission – for why they were being transported in violation of TEDS policy. *See* T-7 P 207 L 5-9; P 207 L 17 – P 208 L 1; P 208 L 3-6; P 208 L 8-9; P 220 L 10 – 14 (Martinez “was not in compliance with the 2018 Owner’s Manual warnings and instructions for safe use there were also mandatory and prescriptive...”).

88. BPA Marvin Martinez was the driver of the 2018 Chevrolet Silverado Pick-Up Truck at the time of the occurrence in question (*See* Stipulation 2) and knew, or by the exercise of reasonable care, should have known, and complied with the warnings and instructions for safe use that indicated the manner he was operating the motor vehicle was unsafe and could result in serious injury or death to the occupants. *See* T-3 (V. 2) page 142 line 15 - page 143 line 1 and T-3-A; *see also* T-7 P 220 L 10-14; P 239 L 9 - 15.

89. BPA Marvin Martinez transported the UDAs and Salas in the 2018 Chevrolet Silverado Pick-Up Truck in direct violation of the warnings that came with the vehicle warning of the very danger that ultimately occurred. *See* T-3 (V. 2) page 126 line 17-23; page 129 line 12-

16 and T-3-A.

90. BPA Marvin Martinez had been to the Hydro Plant at least, or at a minimum of 20 times prior to January 21, 2022. *See* T-1 page 160 line 10-16; page 160 line 19-24.

91. U.S. Customs and Border Protection employed Border Patrol Agents Michael Brian Jackson, Roberto “Bobby” Lopez, Warren Becker, Luke Dougherty, Francisco Santillan at all times pertinent to this suit, as well as all other Border Patrol Agents whose acts or omissions led to or were the relevant conduct that gave rise to the untimely death and further, each were in the course and scope of their employment with Defendant at the time of the incident and at all times relevant to this matter. *See* P-41. *See also* stipulation number 3 of the parties and oral stipulation dictated into the record and accepted by the Court just prior to Plaintiffs resting. *See also* paragraph 12 of ECF 20 (Defendant United States’ Answer to Plaintiffs’ First Amended Complaint).

92. January 21, 2022 was the very first time BPA Marvin Martinez met SA Salas.

93. The Del Rio Special Operations Detachment of CPB was conducting a special operation from approximately January 17, 2022, to January 28, 2022. Included in the Area of Responsibility was the Maverick County Hydro Electric Power Plant. *See* P-36 and testimony of Victor Manjarrez.

94. The iteration for “Operation Dragon” specifically addressed as the first item under “Risk Assessment” the following: “Vehicle Accidents: Use caution, utilize seatbelts”. *See* P-36 and testimony of Victor Manjarrez.

95. BPA Marvin Martinez was teamed with SA Salas. *See* P-42 and T-2 page 24 lines 5-10 and T-2-A.

96. BPA Brian Jackson was teamed with TX DPS Agent Michelle Montoya. *See* P-42 and T-2 page 24 lines 5-10 and T-2-A.

97. Supervisory BPA Robert Lopez was teamed with TX DPS Agent Kevin Wilcox. *See* P-42 and T-2 page 24 lines 5-10 and T-2-A.

98. Supervisory BPA Luke Dougherty was the highest-ranking official present at the time of the incident. *See* trial testimony of Luke Dougherty, Victor Manjarrez and G-153 page 184 lines 7-9.

99. BORTAC Agents responded to the Hydro Plant, after the “Buckeye Camera” captured two Migrants/Undocumented Aliens at approximately 6:16 p.m. *See* P-43.

100. The injury occurred at the Hydro Plant in Maverick County, Texas. *See* stipulation number 5 of the parties.

101. The Hydro Plant was a well-known area to CBP agents confirmed by both BPA Lopez and Jackson. *See* Roberto Lopez T-1 page 160 line 10-16 and T-1-A (“20-25 times”); page 160 line 19-24. *See also* T-2, page 111 line 20 -112 line 2 and T-2-A (“more than 20 times”).

102. The Hydro Plant has well-maintained and serviced dirt roads, and the Border Patrol provides, if necessary, or at the request of the landowner, maintenance activities on the roads to ensure that they have safe passage. *See* P-70 and P-80; *See also* the testimony of Michael DiTallo and the testimony of Victor Manjarrez; T-2, page 66 line 25 – page 67 line 12; page 69 line 13-18 and T-2-A.

103. In order to get the location of where the 6 UDAs were apprehended, BPA Marvin Martinez drove over the irrigation ditch which he ultimately drove into. *See* the testimony of Michael DiTallo and the testimony of Victor Manjarrez. *See* P-22-L and P-22-P and P-47.

104. At the time of the incident, BPA Marvin Martinez was operating his assigned Government Owned Vehicle (GOV), the 2018 Chevrolet Silverado Pick-Up Truck. *See* Stipulation 2,4.

105. At the time BPA Marvin Martinez arrived at the Hydro Plant, it was not yet dark. *See* T-3, page 128 line 16-21.

106. BPA Marvin Martinez, after driving over the irrigation ditch, made the first right turn and drove along the irrigation ditch which was located on the right side until he parked the 2018 Chevrolet Silverado Pick-Up Truck on what CBP employees have described as a “well-maintained ranch road” and a “main road”. *See* T-3, page 106 line 21- 107 line 10; page 107 line 24 - page 108 line 13, page 114 lines 3-18, page 116 lines 13-18, page 121 line 20 – 122 line 12, page 123 lines 1-11, page 126 lines 15-24, page 127 lines 4-8, page 128 lines 16-21, page 129 line 16 – page 130 line 6. *See also* P-56 and G-32.

107. This well-maintained main ranch road where BPA Martinez initially parked is the same well-maintained main road he drove off of and rolled the subject vehicle into the irrigation ditch. *See* T-3, page 106 line 21- 107 line 10; page 107 line 24 - page 108 line 13, page 114 lines 3-18, page 116 lines 13-18, page 121 line 20 – 122 line 12, page 123 lines 1-11, page 126 lines 15-24, page 127 lines 4-8, page 128 lines 16-21, page 129 line 16 – page 130 line 6. *See also* P-56 and G-32.

108. BPA Marvin Martinez initially parked the subject vehicle close to / near the irrigation ditch which he ultimately drove into. *See* T-3, page 106 line 21- 107 line 10; page 107 line 24 - page 108 line 13, page 114 lines 3-18, page 116 lines 13-18, page 121 line 20 – 122 line 12, page 123 lines 1-11, page 126 lines 15-24, page 127 lines 4-8, page 128 lines 16-21, page 129

line 16 – page 130 line 6. *See also* P-56 and G-32.

109. At the time he parked the 2018 Chevrolet Pick-Up Truck, it was daylight conditions, or alternatively, the conditions in combination with his artificial lights of his vehicle made the illumination of the manmade ditch he would eventually drive into readily apparent. *See* T-3, page 106 line 21- 107 line 10; page 107 line 24 - page 108 line 13, page 114 lines 3-18, page 116 lines 13-18, page 121 line 20 – 122 line 12, page 123 lines 1-11, page 126 lines 15-24, page 127 lines 4-8, page 128 lines 16-21, page 129 line 16 – page 130 line 6. *See also* P-56 and G-32.

110. After parking, BPA Martinez exited the subject vehicle and began to walk on foot along with SA Salas to help apprehend what was ultimately 6 UDAs. BPA Marvin Martinez walked along the very well-maintained road that paralleled the irrigation ditch he ultimately drove into. *See* T-3, page 106 line 21- 107 line 10; page 107 line 24 - page 108 line 13, page 114 lines 3-18, page 116 lines 13-18, page 121 line 20 – 122 line 12, page 123 lines 1-11, page 126 lines 15-24, page 127 lines 4-8, page 128 lines 16-21, page 129 line 16 – page 130 line 6. *See also* P-56 and G-32.

111. The six UDAs were apprehended and there is a photograph documenting the 6 restrained UDAs. *See* P-52.

112. There was not a medical emergency, exigent circumstance, criminal component, or a refusal to cooperate by any of the UDAs. *See* G-153, page 207 line 17 - page 208 line 1, page 208 lines 3-6, page 208 lines 8-9.

113. After the 6 UDAs were apprehended, BPA Marvin Martinez walked back to the Subject Vehicle and again walked on the same well-maintained ranch road he ultimately drove off of. *See* T-3, page 106 line 21- 107 line 10; page 107 line 24 - page 108 line 13, page 114 lines 3-

18, page 116 lines 13-18, page 121 line 20 – 122 line 12, page 123 lines 1-11, page 126 lines 15-24, page 127 lines 4-8, page 128 lines 16-21, page 129 line 16 – page 130 line 6. *See also* P-56 and G-32. At trial BPA Martinez testified he used his flashlight to provide artificial light as he walked back up the road to where he parked the GOV. *See* trial testimony of Marvin Martinez.

114. After reaching the Subject Vehicle, BPA Marvin Martinez got in the driver's seat and then drove down the same well-maintained ranch road he ultimately drove off of and tipped the pick-up truck over into the irrigation ditch. *See* T-3, page 106 line 21- 107 line 10; page 107 line 24 - page 108 line 13, page 114 lines 3-18, page 116 lines 13-18, page 121 line 20 – 122 line 12, page 123 lines 1-11, page 126 lines 15-24, page 127 lines 4-8, page 128 lines 16-21, page 129 line 16 – page 130 line 6. *See also* P-56 and G-32. At trial BPA Marvin Martinez confirmed he manually turned on his lights illuminating the road that ran along the irrigation ditch before driving along it and taking a left to go to the apprehension site. *See* trial testimony of Marvin Martinez.

115. A 15-passenger secure designated transport van was readily available to transport the 6 UDAs. *See* P-44 and T-4 page 36 lines 4-9; page 32 lines 2-6 and T-4-A.

116. Julio Cardenas, the driver of the 15-passenger secure designated transport van, was specifically assigned to this operation. *See* P-44 and T-4 page 36 lines 4-9; page 32 lines 2-6; page 22 line 7 – page 23 line 23, and T-4-A.

117. The 15-passenger secure designated transport van arrived at the Hydro Plant at approximately 6:30 p.m. *See* P-44 and testimony of Victor Manjarrez.

118. The 15-passenger secure designated transport van had seat belts for each of the 6 UDAs. *See* P-44 and T-4 page 36 lines 4-9; page 32 lines 2-6; page 22 line 7 – page 23 line 23, and T-4-A. *See also* P-44 and testimony of Victor Manjarrez.

119. The 15-passenger secure designated transport van could drive to the location of apprehension of the 6 UDAs. *See* P-44; T-4 page 160 lines 18 – 161 line 2; page 163 line 7-16, line 18; page 163 line 21 - 164 line 1; page 270 line 2-13; and testimony of Victor Manjarrez.

120. The 15-passenger secure designated transport van could drive to the location where the incident occurred (and actually did so to transport the 6 UDAs following the rollover event). *See* T-4 page 22 lines 7-13.

121. BPA Michael Brian Jackson acknowledged that if you have a choice, the only choice according to policy, is not to transport in the cargo bed of a pick-up and avoid the very incident that was caused in this case. *See* T-2 P129 L 17-23 and P 131 L 5-15.

122. SBPA Francisco Santillan testified “if you have a choice, the only reasonable choice is to use the transport vans that are readily available.” He confirmed this incident could have been prevented by apprehending, stopping at one of the major roads, and waiting until the transport van came down and picked them up and that’s what should have been done. *See* T 7 P 195 L 1 – 6; P 195 L 8 – 17; P 195 L 19 23.

123. SBPA Timothy Hay testified if a secured transport van was readily available to be used it should have been used. T-5 P 91 L 8-15; P 91 L 17 – P 92 L 4; P 98 L 13-20; P 99 L 24 – P 100 L 10; and P 100 L 14 – P 101 L6.

124. The 6 UDAs were handcuffed – one pair of hand cuffs for 2 UDAs. *See* P-52 and the testimony of Victor Manjarrez.

125. The 6 restrained UDAs were loaded into the bed of the BPA Marvin Martinez’s assigned 2018 Chevrolet Silverado Pick-Up Truck. *See* undisputed trial testimony.

126. The bed of the 2018 Chevrolet Silverado Pick-Up Truck had a large gun box. *See*

P-78 and P-79.

127. In addition to the 6 UDAs, BPA Jackson and Supervisory BPA Lopez and Troopers Montoya and Wilcox also rode in the 2018 Chevrolet Silverado Pick-Up Truck. (*See* G-153 page 184 lines 12-16). BPA Jackson was sitting on the top of the cab (*See* T-2 page 75 lines 2-10, page 76 lines 5-12, page 78 line 19-page 79 line 6) of the 2018 Chevrolet Silverado Pick-Up Truck. Supervisory BPA Lopez and the two Troopers rode on the tailgate of the 2018 Chevrolet Silverado Pick-Up Truck. *See* T-1 page 118 lines 4-8.

128. Prior to the roll over event, 9 persons were in the bed of the 2018 Chevrolet Silverado Pick-Up Truck, 1 person was seated on top of the cab, and none of the ten people were utilizing seatbelts. The combined weight of the persons and property being transported in the 2018 Pick-up exceeded the manufacturer's safe load limit. *See* G-153 page 184 lines 12-16. *See* T-2 page 75 lines 2-10, page 76 lines 5-12, page 78 line 19-page 79 line 6. *See also* the testimony of Michael DiTallo.

129. BPA Jackson and Supervisory BPA Lopez each had CBP vehicles at the scene (Chevy Tahoe SUV and Chevy Silverado Truck) with back seats with seatbelts. *See* the testimony of Victor Manjarrez and Michael DiTallo. *See also* T-2 page 34 lines 12-16. *See also* P-42.

130. Prior to the rollover event, BPA Jackson, Supervisory, BPA Lopez, and Troopers Wilcox and Montoya were dropped off. *See* undisputed trial testimony.

131. SA Salas exited the front passenger seat and went to the rear of the 2018 Chevrolet Silverado Pick-Up Truck to provide security over the UDAs. *See* undisputed trial testimony.

132. Had BPA Marvin Martinez followed safe practices and mandatory policies, no UDAs would have been located in the bed of the Pick-Up Truck and SA Salas would not have been

required to perform security responsibilities as was occurring on the date of the incident.

133. Texas DPS Personnel were not using their vehicles and CBP were responsible for transporting UDAs after apprehension. *See* trial testimony of Tony Barker and P-83.

134. SA Salas and six detainees were riding in the open bed of the GOV (2018 Chevrolet Silverado Pick-Up Truck) when the occurrence in question happened. *See* Stipulation 12; *see also* judicial admission of Defendant at paragraph 18 at ECF 20.

135. No witness at trial contended that SA Salas did or failed to do anything that was unreasonable given he was pulling security. BPA Marvin Martinez himself testified he was not contended SA Salas did or failed to anything that caused his own death because he was performing a duty that he was hired to do. BPA Martinez testified he was telling the Judge there was nothing SA Salas was doing that was unsafe based on the training he was provided. *See* T-3 P 152 L 5-14. SBPA Lopez testified “I don’t think he [Salas] was in the wrong for being where he was at.” SBPA Lopez further confirmed whether he was in the pick-up truck or the cab based on his personal observations SA Salas did not act unreasonably. *See* T-1 P 192 L 24 – P 193 L 5; P 193 L 7-18.

136. BPA Marvin Martinez did not activate the 32-inch LED Light Bar on the 2018 Chevrolet Silverado Pick-Up Truck prior to and at the time of the occurrence in question. *See* Stipulation 8.

137. BPA Marvin Martinez had two cellular telephones in his possession in the cab of the 2018 Chevrolet Silverado Pick-Up Truck at the time of the occurrence in question, as well as two other forms of communication (handheld microphone for a radio and portable mobile radio). *See* trial testimony of Marvin Martinez.

138. BPA Marvin Martinez had his personal cellular telephone with him at the time of

the occurrence in question and often used it during operations to communicate with other agents, and was using the phone with an application called Glympse to pinpoint the other agents and locations on or near the roads.

139. BPA Marvin Martinez was situationally distracted.

140. BPA Marvin Martinez was inattentive.

141. BPA Marvin Martinez operated the subject vehicle in an unsafe manner.

142. BPA Marvin Martinez failed to act as a reasonably prudent driver.

143. BPA Marvin Martinez failed to follow the clearly defined, serviced, and well-maintained main ranch road.

144. BPA Marvin Martinez drove completely off the clearly defined, well-serviced, and well-maintained path of travel of the main ranch road, and into the irrigation ditch.

145. BPA Marvin Martinez failed to follow and comply with mandatory directives in TEDS, the MVMH, the OSHH, the COS, the Spring of 2020 Memorandum, and the Manufacturer's Warnings and Instructions for Use.

146. BPA Martinez drove off the well-maintained 17 plus foot main ranch roadway and rolled the Subject Vehicle.

147. BPA Marvin Martinez should never have allowed the vehicle to be operated with persons not properly in seats and not properly secured by a seatbelt.

148. BPA Marvin Martinez and the other CBP employees "violated policy for ease of mission execution".

149. BPA Marvin Martinez failed to exercise due care by making an unsafe turn.

150. BPA Marvin Martinez never applied his brakes timely based on the forensic evidence and from the airbag control module of the Subject Vehicle.

151. BPA Marvin Martinez failed to wear his seat belt.

152. BPA Marvin Martinez failed to stop and get out of the vehicle to see his path ahead.

153. The incident was avoidable or preventable by the exercise of reasonable care on the part of BPA Marvin Martinez.

154. BPA Martinez himself acknowledged by the exercise of reasonable care he could have avoided the occurrence by: getting out and checking the roadway; walking them out; or using the secured transport van. *See* T-3 P 255 L 1-9; P 279 L 25 – P 280 L 6.

155. SPBA Lopez stated by the exercise of reasonable care BPA Martinez could have avoided injuring the UDAs and Officer Salas by taking a closer angle and avoid the wide angle that took his truck into the ditch. SBPA Lopez stated BPA Martinez should have stayed in the confines of the road and not got off the roadway into the ditch. Further, BPA Martinez should have complied with the MVMH and not loaded the UDAs in the back of a Pick-Up Truck bed. Further, SBPA Lopez confirmed they should have used the 4-wheel drive van and have it come to the UDAs rather than trying to drive them out in the back of a pick-up truck bed of an unsecured vehicle. T-1 P 200 L 22 – P 201 L 15 and P 201 L 17 – P 202 L 4.

156. BPA Jackson acknowledged transporting for ease of mission violated the operator's manual and policies that expressly prohibited doing what they were doing and ultimately gave rise to DPS officer Salas. T-2 P 126 L 16 -25. BPA Jackson stated the only reasonable choice was not to transport people in the cargo bed because it could result in serious injury or death. T-2 P 127 L

2-8; P 127 L 10-14; P 127 L 16; and P129 L 17-23. BPA Jackson stated if they were doing it safely they should have been doing it a different way and should not have been transporting them in the back of a pick-up truck. *See* T-2 P 131 L 5-15.

157. The incident was avoidable or preventable by the exercise of reasonable care on the part of Supervisory BPAs Dougherty, Lopez, and BPA Jackson.

158. Texas DPS Trooper Michelle Montoya stated “I heard Special Agent Salas yell, and as I looked up, I observed the truck taillights rotate, as the vehicle rolled into the canal.” *See* G-31. This and other circumstantial evidence establishes SA Salas appreciated the danger and the possibility, if not the certainty, of his impending death, as the vehicle entered into the ditch, slowly began to overturn, and ultimately trapped SA Salas’ shoulder and head under the C pillar of the pick-up truck cab.

159. BORTAC Agent Marvin Martinez went into a man-made ditch and the 2018 Chevrolet Silverado Pick-Up Truck tipped on its left side, seriously injuring Anthony Salas and others, including at least 4 of the 6 UDAs that were thrown and ejected from the bed of the pick-up truck while hand cuffed. SA Salas and 1 of the UDAs were pinned under the bed of the pick-up truck. *See* trial testimony from Michael DiTallo.

160. Defendant judicially admitted that while BPA Martinez was operating the GOV on January 21, 2022, he was involved in an accident in which the vehicle rolled into a canal injuring SA Salas. *See* ECF 20 at Paragraph 20.

161. CBP personnel waited approximately 12 minutes prior to beginning CPR on SA Salas. *See* P-59 (the body worn camera footage of DPS Trooper Kevin Wilcox)

162. The body worn camera footage of Maverick County Sheriff's Deputy Cesar Juarez captured the moment SA Salas is placed into an ambulance for transport to Maverick County Hospital. *See* P-62.

163. The body worn camera of Deputy Cesar Juarez also captured the 15-passenger designated transport van safely operating, navigating, including turning and backing up, on the very road BPA Marvin Martinez drove off of. *See* P-62

164. Agent Martinez's Government Cellular Telephone was never examined or downloaded following this fatality, nor was BPA Marvin Martinez's personal cellphone which he had been using examined at the scene or thereafter to determine whether either of these devices acted as a distraction or caused inattention. Martinez, for more than 3 years, refused consent to allow his personal phone to be downloaded. The government phone was also never downloaded despite the fact that it was and still is in the possession of the government.

165. SA Salas' reasonable expense of necessary medical and hospital care prior to his death was \$68,184.00. *See* Stipulation 27: "\$68,184.00 is the reasonable amount for the decedent Anthony Salas's medical care for injuries sustained in the occurrence in question prior to his death".

166. SA Salas was transported from the Hydro Plant by EMS to Fort Duncan Regional Medical Center in Maverick County, Texas. Anthony Salas was then transported by air flight to University Hospital, a Level I Trauma Center in San Antonio, Texas. *See* trial testimony of the Lizzett, Juan, and Teresa Salas.

167. Anthony Salas was pronounced dead at 11:16 a.m. on Saturday January 22, 2022, at University Hospital, a Level I Trauma Center in San Antonio, Texas. *See* Stipulation 18; *see also*

P-128 (Death Certificate of Anthony Salas).

168. Plaintiffs Lizzett Salas, Juan Salas, and Teresa Salas were present at the time Anthony Salas was removed from life support. *See* trial testimony of the Lizzett, Juan, and Teresa Salas.

169. The testimony from Lizzett Salas is that in the presence of her father-in-law and mother-in-law, Juan and Teresa Salas, for approximately 2 hours, they wiped blood that wept from the eyes, ears, and nose of Anthony Salas as they were trying to decide whether to remove him from life support. *See* trial testimony of Lizzett Salas.

170. Prior to removing Anthony Salas from life support, a chaplain read Anthony Salas his last rights and prayed with the family. *See* trial testimony of Teresa Salas.

171. At 9:17 a.m. on Saturday January 22, 2022 (prior to the passing of Anthony Salas), Tony Barker, Acting Chief Law Enforcement Operations Directorate US Customs and Border Protection Headquarters (B3 = Third Highest Ranking Official at CBP) sent an email to all “BP Field Chiefs” and “BP Field Deputies” wherein he stated: “*we cannot violate policy for ease of mission execution. We must follow the policies associated with the transportation and detention of those we have in our custody and under our charge.*” *See* P-83. The subject of the email read: TEDS.

172. Tony Barker, Acting Chief Law Enforcement Operations Directorate US Customs and Border Protection Headquarters (B3 = Third Highest Ranking Official at CBP) testified live at trial and confirmed that what the CBP Agents were doing was in violation of policy then and the many times the Del Rio Sector and other Sectors had done similar acts before. Chief Barker testified it was his opinion now, as it was then, that safety policies were violated. He also testified that, prior to the date of the occurrence in question, Border Patrol Agents had placed handcuffed

detainees on the hoods of pick-up trucks while transporting them out of locations in violation of TEDS which was also prohibited.

173. Within 24 hours of the incident made the basis of this lawsuit, the Del Rio Sector Security, Policy & Compliance Branch Chief issued a memorandum re-affirming that mandatory policies related to transportation (TEDS) must be followed and these mandatory policies (TEDS) could not be violated for ease of mission execution like occurred in this unfortunate tragedy. *See* P-85.

174. Plaintiffs have demonstrated and produced more than ample and sufficient evidence demonstrating that they have each suffered mental anguish, loss of companionship and society, and pecuniary loss in the past and will, in all reasonable probability, continue to suffer mental anguish, loss of companionship and society and pecuniary loss in the future.

175. In addition to the damage exhibits and oral testimony from the Plaintiffs, Plaintiffs' family members, and friends, the Court heard testimony from highly qualified specialists skilled in their respective fields regarding the mental anguish, loss of companionship and society, and pecuniary loss suffered by the Plaintiffs. With regard to the retained experts Doctors Feltoon and Martinez, the Court received evidence regarding their review of medical records, treatment, personal evaluations and examinations, and objective tests given and taken by all of the named Plaintiffs. The Court notes there was no contrary evidence offered by the Government to contradict the testimony of subject matter experts and lay witnesses regarding the nature, duration, and severity of the injuries and damages sustained by the Plaintiffs. At the time this case was tried, it was more than 3 years and 5 months since the untimely death of Anthony Salas, and the Court witnessed daily, the significant and severe emotional trauma exhibited by the family members

associated with having to re-live the circumstances surrounding the injury and death of a loved one. The Court observed clear evidence of physical manifestation of emotional trauma throughout the trial by the biological parents and spouse of Mr. Salas, as both liability and damage witnesses were presented to this Court.

176. Plaintiff Lizzett Salas meets the criteria for Major Depressive Disorder and Post Traumatic Stress Disorder as a result of the death of her spouse, Anthony Salas. *See* P-29 and P-24. The Court heard evidence that the nature, extent, and duration of this condition was chronic, permanent, and likely to affect Lizzett Salas for the rest of her life. The Court agrees with that evidence and finds that it has and will continue to substantially affect her activities of daily living.

177. Plaintiff Juan Salas meets the criteria for Major Depressive Disorder as a result of the death of his son and first-born child, Anthony Salas. *See* P-30. The Court heard evidence that the nature, extent, and duration of this condition was chronic, permanent, and likely to affect Juan Salas for the rest of his life. The Court agrees with that evidence and finds that it has and will continue to substantially affect his activities of daily living.

178. Plaintiff Teresa Salas meets the criteria for Major Depressive Disorder as a result of the death of her son and first-born child, Anthony Salas. *See* P-31. The Court heard evidence that the nature, extent, and duration of this condition was chronic, permanent, and likely to affect Teresa Salas for the rest of her life. The Court agrees with that evidence and finds that it has and will continue to substantially affect her activities of daily living.

179. Plaintiff A.S., a minor, meets the criteria for Major Depressive Disorder as a result of the death of her father, Anthony Salas. *See* P-25. The Court heard evidence that the nature, extent, and duration of this condition was chronic, permanent, and likely to affect minor Plaintiff

A.S. for the rest of her life. The Court agrees with that evidence and finds that it has and will continue to substantially affect her activities of daily living.

180. Plaintiff I.S., a minor, meets the criteria for Major Depressive Disorder as a result of the death of her father, Anthony Salas. *See* P-26. The Court heard evidence that the nature, extent, and duration of this condition was chronic, permanent, and likely to affect minor Plaintiff I.S. for the rest of her life. The Court agrees with that evidence and finds that it has and will continue to substantially affect her activities of daily living.

181. Plaintiff L.A.S., a minor, meets the criteria for Major Depressive Disorder as a result of the death of his father, Anthony Salas. *See* P-27. The Court heard evidence that the nature, extent, and duration of this condition was chronic, permanent, and likely to affect minor Plaintiff L.A.S. for the rest of his life. The Court agrees with that evidence and finds that it has and will continue to substantially affect his activities of daily living.

182. The Court finds that each of the Plaintiffs have produced more than ample and sufficient evidence of suffering a high degree of mental pain and distress and a substantial disruption in daily routine.

183. The magnitude of mental anguish of Plaintiffs is heightened, given the close and loving relationship each had with Anthony Salas.

184. Plaintiffs have demonstrated a rational connection, grounded in the evidence, between the injuries they have suffered and the amount of damages awarded below by this Court.

185. Plaintiffs have rationally connected the evidence to the amount of damages sought and amounts awarded below by this Court.

186. The amounts awarded to each of the Plaintiffs below are fair and reasonable

compensation and represent what sum of money, if paid now in cash, would compensate each of them for their separate elements of damages resulting from the injury and death of Anthony Salas.

187. The Court is not awarding any sum of money on any element of damages otherwise awarded under another element for the same loss.

188. Based upon a preponderance of the evidence, Plaintiff Lizzett Salas sustained pecuniary loss in the past, defined as loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Plaintiff Lizzett Salas, in reasonable probability, would have received from Anthony Salas, had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-24), Travis Fisher, Joanne Fisher, and Richard Carrillo.

189. Based upon a preponderance of the evidence, in reasonable probability, Plaintiff Lizzett Salas will sustain pecuniary loss in the future, defined as loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Plaintiff Lizzett Salas, in reasonable probability, would have received from Anthony Salas, had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-24), Travis Fisher, Joanne Fisher, and Richard Carrillo.

190. The Court finds that, although the *average* work life expectancy of a Hispanic male is 61 years of age based on the testimony of Keith Fairchild, PhD, the Court heard testimony that numerous witnesses and participants in the trial were working and providing services substantially and in excess of the age of 61, and more probable than not, Anthony Salas would have worked and

provided services in excess of the age of 61. A.C. was physically fit, took good care of himself, and was particularly hard-working and industrious. There was no evidence presented that Anthony had any physical conditions that would result in a reduction of life expectancy or his ability to work until as long as he wanted. As an example, Juan Salas, father of Anthony Salas, is still working at the age of 64. Full retirement age at which a person can seek unreduced Social Security Benefits is now 67. Further, the Court received testimony from Keith Fairchild, PhD that his projected pecuniary loss significantly understated the amount of future loss of pecuniary value if Salas continued to work past age 61 like his father (64), like Plaintiffs' Counsel (68), like some of the experts retained by Plaintiffs that were still working (Fairchild, 71; Feltoon, 81), and like the Court that is still providing service to the community at age 82. The methodology for increasing future pecuniary loss to a higher amount fully supported by the evidence, was contained within the testimony and report of Keith Fairchild, PhD, and corroborated by evidence presented, and common sense. Further, the Court notes that the projections for pecuniary loss associated with loss of services, which included counseling and support was based upon a mathematical formula of hours of service of the average weekly services contributed by a man at various ages throughout his life expectancy multiplied by a minimum wage rate \$7.25. The Court heard testimony however the *actual replacement costs* for similar services would be *substantially higher*. Some services, based on the evidence, were projected at over \$30.00/hour. The Court finds that, in combination with the other evidence and common sense, the projections for loss of services as presented in the spreadsheets and trial testimony, represent a floor or minimum amount.

191. Based upon a preponderance of the evidence, Plaintiff Lizzett Salas sustained mental anguish in the past resulting from the death of Anthony Salas, "mental anguish" defined as

emotional pain, torment and suffering experienced by Lizzett Salas because of the death of her husband of 18 years, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-24), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. *See also* all other damages exhibits including P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

192. Based upon a preponderance of the evidence, Plaintiff Lizzett Salas will sustain in reasonable probability in the future, mental anguish resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by Lizzett Salas because of the death of her husband of 18 years, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-24), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also* all other damages exhibits including P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

193. Based upon a preponderance of the evidence, Plaintiff Lizzett Salas sustained loss

of companionship and society in the past resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that Lizzett Salas in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-24), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress) and all other damages exhibits, including photographs and videos P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

194. Based upon a preponderance of the evidence, Plaintiff Lizzett Salas will, in reasonable probability, sustain a loss of companionship and society in the future resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that Lizzett Salas in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-24), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress) and all other damages exhibits, including photographs and videos at P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138,

140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

195. Based upon a preponderance of the evidence, minor Plaintiff A.S. sustained mental anguish in the past resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by minor Plaintiff A.S. because of the death of her father, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

196. Based upon a preponderance of the evidence, minor Plaintiff A.S. will sustain in reasonable probability in the future, mental anguish resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by minor Plaintiff A.S. because of the death of her father, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See*

also P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

197. Based upon a preponderance of the evidence, minor Plaintiff A.S. sustained loss of companionship and society in the past resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that minor Plaintiff A.S. in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

198. Based upon a preponderance of the evidence, minor Plaintiff A.S. will, in reasonable probability, sustain a loss of companionship and society in the future resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that minor Plaintiff A.S. in

reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress) and *see also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

199. Based upon a preponderance of the evidence, minor Plaintiff A.S. sustained pecuniary loss in the past, defined as loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that minor Plaintiff A.S., in reasonable probability, would have received from Anthony Salas, Deceased had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. The Court finds that Anthony Salas was an exemplary father who was extremely active in his children's life providing care, maintenance, support, services, advice, and counsel. The Court heard compelling evidence regarding Anthony Salas' active involvement in each of his children's activities of daily living, including at home, at school, and in extracurricular activities.

200. Based upon a preponderance of the evidence, in reasonable probability, minor Plaintiff A.S. will sustain pecuniary loss in the future, defined as loss of care, maintenance, support,

services, advice, counsel, and reasonable contributions of a pecuniary value that minor Plaintiff A.S., in reasonable probability, would have received from Anthony Salas, Deceased had he lived. See trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo.

201. Based upon a preponderance of the evidence, minor Plaintiff I.S. sustained mental anguish in the past resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by minor Plaintiff I.S. because of the death of her father, Anthony Salas. See trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. See also P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). See also Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. See also all other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

202. Based upon a preponderance of the evidence, minor Plaintiff I.S. will sustain in reasonable probability in the future, mental anguish resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by minor Plaintiff I.S. because of the death of her father, Anthony Salas. See trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry

(P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. See also P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

203. Based upon a preponderance of the evidence, minor Plaintiff I.S. sustained loss of companionship and society in the past resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that minor Plaintiff I.S. in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

204. Based upon a preponderance of the evidence, minor Plaintiff I.S. will, in reasonable probability, sustain a loss of companionship and society in the future resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits

flowing from the love, comfort, companionship, and society that minor Plaintiff I.S. in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress) and *see also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

205. Based upon a preponderance of the evidence, minor Plaintiff I.S. sustained pecuniary loss in the past, defined as loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that minor Plaintiff I.S., in reasonable probability, would have received from Anthony Salas, Deceased had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. The Court finds that Anthony Salas was an exemplary father who was extremely active in his children's life providing care, maintenance, support, services, advice, and counsel. The Court heard compelling evidence regarding Anthony Salas' active involvement in each of his children's activities of daily living, including at home, at school, and in extracurricular activities.

206. Based upon a preponderance of the evidence, in reasonable probability, minor

Plaintiff I.S. will sustain pecuniary loss in the future, defined as loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that minor Plaintiff I.S., in reasonable probability, would have received from Anthony Salas, Deceased had he lived. See trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo.

207. Based upon a preponderance of the evidence, minor Plaintiff L.A.S. sustained mental anguish in the past resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by minor Plaintiff L.A.S. because of the death of his father, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

208. Based upon a preponderance of the evidence, minor Plaintiff L.A.S. will sustain in reasonable probability in the future, mental anguish resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by minor Plaintiff L.A.S. because of the death of his father, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan

Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. See also P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

209. Based upon a preponderance of the evidence, minor Plaintiff L.A.S. sustained loss of companionship and society in the past resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that minor Plaintiff L.A.S. in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress). *See also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

210. Based upon a preponderance of the evidence, minor Plaintiff L.A.S. will, in reasonable probability, sustain a loss of companionship and society in the future resulting from the

death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that minor Plaintiff L.A.S. in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* P-138, P-140, P-141, P-143, P-145 (Counseling Medical Records and Prescription Medications associated with the emotional distress) and *see also all* other damage exhibits including P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

211. Based upon a preponderance of the evidence, minor Plaintiff L.A.S. sustained pecuniary loss in the past, defined as loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that minor Plaintiff L.A.S., in reasonable probability, would have received from Anthony Salas, Deceased had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. The Court finds that Anthony Salas was an exemplary father who was extremely active in his children’s life providing care, maintenance, support, services, advice, and counsel. The Court heard compelling evidence regarding Anthony Salas’ active involvement in each of his children’s activities of daily living, including at home, at school, and in extracurricular activities.

212. Based upon a preponderance of the evidence, in reasonable probability, minor Plaintiff L.A.S. will sustain pecuniary loss in the future, defined as loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value minor Plaintiff L.A.S., in reasonable probability, would have received from Anthony Salas, Deceased had he lived. See trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Keith Fairchild, PhD (P-32, 33, 33A), Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28-29), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo.

213. Based upon a preponderance of the evidence, Plaintiff Teresa Salas sustained mental anguish in the past resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by Teresa Salas because of the death of her first-born son, Anthony Salas. See trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. See also Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. See also all other damages exhibits including P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

214. Based upon a preponderance of the evidence, Plaintiff Teresa Salas will sustain in reasonable probability in the future, mental anguish resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by Teresa Salas because of the death of her first-born son, Anthony Salas. See trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry

(P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* all other damages exhibits including P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

215. Based upon a preponderance of the evidence, Plaintiff Teresa Salas sustained loss of companionship and society in the past resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that Teresa Salas in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* all other damages exhibits, including photographs and videos P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

216. Based upon a preponderance of the evidence, Plaintiff Teresa Salas will, in reasonable probability, sustain a loss of companionship and society in the future resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that Teresa Salas in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and

Forensic Psychiatry (P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* all other damages exhibits, including photographs and videos at P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

217. Based upon a preponderance of the evidence, Plaintiff Juan Salas sustained mental anguish in the past resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by Juan Salas because of the death of his first-born son, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. *See also* all other damages exhibits including P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

218. Based upon a preponderance of the evidence, Plaintiff Juan Salas will sustain in reasonable probability in the future, mental anguish resulting from the death of Anthony Salas, “mental anguish” defined as emotional pain, torment and suffering experienced by Juan Salas because of the death of his first-born son, Anthony Salas. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard

Carrillo. *See also* all other damages exhibits including P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

219. Based upon a preponderance of the evidence, Plaintiff Juan Salas sustained loss of companionship and society in the past resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that Juan Salas in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and Richard Carrillo. *See also* all other damages exhibits, including photographs and videos P-100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

220. Based upon a preponderance of the evidence, Plaintiff Juan Salas will, in reasonable probability, sustain a loss of companionship and society in the future resulting from the death of Anthony Salas, “Loss of companionship and society” defined as loss of the positive benefits flowing from the love, comfort, companionship, and society that Juan Salas in reasonable probability would have received from Anthony Salas had he lived. *See* trial testimony of Lizzett Salas, Juan Salas, Teresa Salas, Azalia Martinez M.D., Board Certified in Psychiatry and Forensic Psychiatry (P-28, 30, and 31), David Feltoon, PhD (P-23-27), Travis Fisher, Joanne Fisher, and

Richard Carrillo. *See also* all other damages exhibits, including photographs and videos at P100-101, 103 – 114, 117-118, 120, 123, 127-132, 136-138, 140-141, 143, and 145-151. *See also* Michael Brian Jackson testimony at T-2 P 132 L 15-22, P 133 L 25 – P 134 L 15 and testimony of Robert Lopez at T-1 P 282 L 22 – P 283 L 3. The amount of the loss found by the Court is set out in the attached spreadsheet of damages incorporated herein by reference.

221. In determining damages for mental anguish and loss of companionship and society for each Plaintiff separately, the Court considered the relationship between Anthony Salas and each of the Plaintiffs separately, their living arrangements, any extended absences from one another, the harmony of their family relationships, and their common interests and activities.

222. Based on a preponderance of the evidence, the Court finds that Anthony Salas suffered conscious physical pain and emotional pain, torment, and suffering prior to his untimely death from the moment the pick-up truck began to enter the ditch and began to enter its slow roll as described by the Government's Accident Reconstructionist and according to DPS Officer Montoya, the moment she heard Anthony Salas yell as the vehicle was overturning into the ditch. Although eventually rendered unconscious as a result of his head and chest being crushed by the vehicle against the ground of the irrigation ditch, Mr. Salas clearly suffered grave mental and physical pain prior to losing consciousness. The Court finds that direct and circumstantial evidence supports an award of damages based on consciousness of approaching death as set out below in the attached spreadsheet of damages incorporated herein by reference.

223. The Court finds that the Government, by and through its agents, servants, and employees in the course and scope of their employment was negligent and that such negligence was the proximate cause of the occurrence in question and the resulting injuries and damages

discussed above and set out below in the attached spreadsheet of damages incorporated herein by reference.

Wrongful Death Damages:

Definitions: As used herein

“Pecuniary loss” means the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that surviving Plaintiff, in reasonable probability, would have received from Anthony Salas, Deceased had he lived. *See* Texas Pattern Jury Charge Chapter 29.

“Loss of companionship and society” means the loss of the positive benefits flowing from the love, companionship, and society that Plaintiff, in reasonable probability would have received from Anthony Salas, Deceased had he lived. *See* Texas Pattern Jury Charge Chapter 29

“Mental anguish” in the wrongful death context means sustained the emotional pain, torment and suffering experienced by Plaintiff because of the death of Anthony Salas, Deceased.

<u>Plaintiff Lizzett Salas’ Wrongful Death Damages for the Death of Her Husband Anthony Salas</u>	
<u>Element</u>	<u>Amount</u>
Pecuniary loss in the past	\$1,000,000
Pecuniary loss that, in reasonable probability, will be sustained in the future	\$3,000,000
Loss of companionship and society sustained in the past	\$1,000,000
Loss of companionship and society that, in reasonable probability, will be sustained in the future	\$3,000,000
Mental anguish sustained in the past	\$1,000,000
Mental anguish that, in reasonable probability, will be sustained in the future	\$3,000,000

See Tex. Civ. Jury Instr. Gen. Neg. § 29.3 (Wrongful Death Damages – Claim of Surviving Spouse)

<u>Plaintiff Teresa Salas’ Wrongful Death Damages for the Death of Her Son Anthony Salas</u>	
<u>Element</u>	<u>Amount</u>
Loss of companionship and society sustained in the past	\$500,000
Loss of companionship and society that, in reasonable probability, will be sustained in the future	\$1,000,000
Mental anguish sustained in the past	\$500,000
Mental anguish that, in reasonable probability, will be sustained in the future	\$1,000,000

See Tex. Civ. Jury Instr. Gen. Neg. § 29.6. (Wrongful Death Damages – Claim of Surviving Parents of Adult Child)

<u>Plaintiff Juan Salas’ Wrongful Death Damages for the Death of His Son Anthony Salas</u>	
<u>Element</u>	<u>Amount</u>
Loss of companionship and society sustained in the past	\$500,000
Loss of companionship and society that, in reasonable probability, will be sustained in the future	\$1,000,000
Mental anguish sustained in the past	\$500,000
Mental anguish that, in reasonable probability, will be sustained in the future	\$1,000,000

See Tex. Civ. Jury Instr. Gen. Neg. § 29.6. (Wrongful Death Damages – Claim of Surviving Parents of Adult Child)

<u>Minor Plaintiff A.S.' Wrongful Death Damages for the Death of her Father Anthony Salas</u>	
<u>Element</u>	<u>Amount</u>
Loss of companionship and society sustained in the past	\$1,000,000
Loss of companionship and society that, in reasonable probability, will be sustained in the future	\$2,000,000
Mental anguish sustained in the past	\$1,000,000
Mental anguish that, in reasonable probability, will be sustained in the future	\$2,000,00
Pecuniary loss in the past	\$1,000,000
Pecuniary loss that, in reasonable probability, will be sustained in the future	\$2,000,000

See Tex. Civ. Jury Instr. Gen. Neg. § 29.4 (Wrongful Death Damages – Claim of Surviving Child)

<u>Minor Plaintiff I.S.' Wrongful Death Damages for the Death of her Father Anthony Salas</u>	
<u>Element</u>	<u>Amount</u>
Loss of companionship and society sustained in the past	\$1,000,000
Loss of companionship and society that, in reasonable probability, will be sustained in the future	\$2,000,000
Mental anguish sustained in the past	\$1,000,000
Mental anguish that, in reasonable probability, will be sustained in the future	\$2,000,000
Pecuniary loss in the past	\$1,000,000
Pecuniary loss that, in reasonable probability, will be sustained in the future	\$2,000,000

See Tex. Civ. Jury Instr. Gen. Neg. § 29.4 (Wrongful Death Damages – Claim of Surviving Child)

<u>Minor Plaintiff L.A.S.' Wrongful Death Damages for the Death of his Father Anthony Salas</u>	
<u>Element</u>	<u>Amount</u>
Loss of companionship and society sustained in the past	\$1,000,000
Loss of companionship and society that, in reasonable probability, will be sustained in the future	\$2,000,000
Mental anguish sustained in the past	\$1,000,000
Mental anguish that, in reasonable probability, will be sustained in the future	\$2,000,000
Pecuniary loss in the past	\$1,000,000
Pecuniary loss that, in reasonable probability, will be sustained in the future	\$2,000,000

See Tex. Civ. Jury Instr. Gen. Neg. § 29.4 (Wrongful Death Damages – Claim of Surviving Child)

Survival Damages Awarded to the Representative of the Estate:

Definitions: As used herein

“Pain and mental anguish” means the conscious physical pain and emotional pain, torment, and suffering experienced by Anthony Salas before his death as a result of the occurrence in question. *See Texas Pattern Jury Charge Chapter 30.3.*

“Medical Expenses” means the reasonable expenses of the necessary medical and hospital care received by Anhtony Salas for treatment of injuries sustained by him as a result of the occurrence in question. *See Texas Pattern Jury Charge Chapter 30.3*

<u>Survival Damages of Lizzett Salas as Dependent Administrator of the Estate of Anthony Salas, Deceased</u>	
<u>Element</u>	<u>Amount</u>
Pain and mental anguish	\$600,000
Medical expenses	\$0

See Tex. Civ. Jury Instr. Gen. Neg. § 30.3 (Survival Damages – Compensatory Damages)

CONCLUSIONS OF LAW

224. Any finding of fact that may also be deemed a conclusion of law is so deemed. Any conclusion of law that may also be deemed a finding of fact is so deemed.

The Court has subject matter jurisdiction over this case.

225. “In 1946, Congress passed the Federal Tort Claims Act (FTCA), which waived sovereign immunity of the United States for certain torts committed by federal employees acting within the scope of their employment.” *Brownback v. King*, 592 U.S. 209, 209 (2021) (quoting *FDIC v. Meyer*, 510 U.S. 471, 475-76, (1994)).

226. The Federal Tort Claims Act waives sovereign immunity and permits suit against the United States for claims sounding in state tort law for money damages. *Spotts v. United States*, 613 F.3d 559, 567 (5th Cir. 2019) (citing 28 U.S.C. § 2674).

227. The Federal Tort Claims Act provides trial courts with jurisdiction over monetary claims against the Government for the negligent or wrongful acts of its employees “where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1).

228. Here, Plaintiffs brought these claims under the Federal Tort Claims Act, 28 U.S.C. § 2674 (28 U.S.C. Section 2671, *et seq*) against the United States of America.

229. This Court has original and exclusive jurisdiction with regard to this Federal Tort Claim action pursuant to the Provisions of 28 U.S.C. § 1346 (b)(1) and § 1367.

230. This Court has subject matter jurisdiction as the amount in controversy exceeds the sum of \$100,000.00 exclusive of interest, costs, and attorney's fees.

231. This Court has jurisdiction to hear this case under the Federal Tort Claims Act. *See* 28 U.S.C. §§ 1346(b), 2671 *et seq.*

232. Each and all of the Plaintiffs have complied with the administrative claims requirements of the Federal Tort Claims Act.

233. Plaintiffs have established a waiver of Defendant's sovereign immunity and that the discretionary-function exception does not apply as articulated by this Court in its "Memorandum Opinion and Order," ECF No. 81.

234. Under the FTCA, issues of liability causation, and damages are tried to the court without a jury. 28 U.S.C. § 2402. Pursuant to 28 U.S.C. § 2402, Plaintiffs are not entitled to a jury for their claims against the United States of America. *Moyer v. Martin Marietta Corp.*, 481 F.2d 585, 587 (5th Cir. 1973).

235. This Court held a seven-day bench trial beginning on June 24, 2025.

236. The FTCA requires a court to look at the state law liability of private entities, not public entities, when assessing liability under the FTCA. *United States v. Olson*, 546 U.S. 43, 46, (2005).

237. To determine the substantive legal rules applicable to an this FTCA Plaintiffs' claims, state law applies since the United States is to be held liable for allegedly tortious conduct "in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1); *see Edwards v. United States*, 519 F.2d 1137, 1139 (5th Cir. 1975) ("State law controls the issue of liability under the [FTCA]."). The negligence and wrongful acts occurred in Texas. Therefore, Texas law applies. *See Ayers v. United States*, 750 F.2d 449, 452 n.1 (5th Cir. 1985).

238. Plaintiffs had the burden of proof by a preponderance of the evidence in this civil trial. Burden of Proof: Preponderance of the Evidence 3.2, Fifth Circuit Pattern Jury Instruction (2020).

Defendant is liable under Texas law.

239. Under Texas law, to prove an action for negligence, the plaintiff must establish that the defendant had a legal duty, a breach of that duty and damages proximately caused by that breach. *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 404 (Tex. 2009). Texas recognizes that each individual has a duty to exercise reasonable care to avoid a foreseeable risk of injury to others. *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987).

240. “Liability is grounded in the public policy behind the law of negligence which dictates every person is responsible for injuries which are the reasonably foreseeable consequence of his act or omission.” *El Chico Corp.*, 732 S.W.2d at 315. In other words, even in the absence of a specific legally prescribed duty, there exists a general duty applicable to all to exercise reasonable care to avoid foreseeable injury to others. *Id.*

241. There is nothing burdensome in placing a duty on those who participate in the loading and transport of individuals to do so in a manner that does not place them or others tasked with transporting them in danger. *Cf. United Rentals N.A., Inc. v. Evans*, 608 S.W.3d 449 (Tex. App.--Dallas 2020), *rev'd*, 668 S.W.3d 627 (Tex. 2023) (“In this case, the overwhelming evidence showed that placing a boom lift on a flatbed trailer--thus rendering it over height--could create a risk of foreseeable injury to other motorists on the road. We see nothing burdensome in placing a duty on those who participate in the loading and transportation of equipment to do so in a manner

that does not place other motorists in danger.”).

242. The Court agrees with Defendant that CBP’s internal policies alone did not create a duty of care. *FFE Transp. Servs., Inc. v. Fulgham*, 154 S.W.3d 84, 92 (Tex. 2006) (noting a company’s “self-imposed policy. . . *taken alone*, does not establish the standard of care that a reasonably prudent operator would follow.”) (emphasis added).

243. Plaintiffs allege BPA Martinez owed SA Salas a general duty to exercise reasonable care to avoid foreseeable risk of injury to others and to exercise the degree of care a reasonably prudent person would use to avoid harm to others under similar circumstances. Am. Compl. 23, ECF No. 17.

244. This Court finds that BPA Martinez had a duty to exercise reasonable care to avoid a foreseeable risk of injury to others.

245. This Court finds that BPA Michael Brian Jackson had a duty to exercise reasonable care to avoid a foreseeable risk of injury to others.

246. This Court finds that SBPA Robert “Bobby” Lopez had a duty to exercise reasonable care to avoid a foreseeable risk of injury to others.

247. This Court finds that SBPA Luke Dougherty had a duty to exercise reasonable care to avoid a foreseeable risk of injury to others.

248. The question of whether a defendant acted with ordinary care or breached his duty is a question of fact. *Caldwell v. Curioni*, 125 S.W.3d 784, 793 (Tex. App.—Dallas 2004, pet. denied); *see Brown v. Goldstein*, 685 S.W.2d 640, 641-42 (Tex.1985); *Borden, Inc. v. Price*, 939 S.W.2d 247, 251 (Tex. App.—Amarillo 1997, writ denied). To establish a failure to exercise

reasonable care, Plaintiff must establish that a reasonable actor in the Government employee's position would recognize that his conduct posed a foreseeable risk of harm to others and failed to take any action to prevent the harm. *Bujnoch v. Nat'l Oilwell Varco, L.P.*, 542 S.W.3d 2, 10-11 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). Plaintiffs must prove that the Government employee failed to do that which a person of ordinary prudence would have done under the same or similar circumstances. *Irika Shipping S.A. v. Henderson*, No. 09-13-00237-CV, 2014 Tex. App. LEXIS 13550, at *24-25 (Tex. App.—Beaumont May 29, 2014, no pet.).

249. Failure to follow internal policies may be suggestive, but not dispositive, of a breach of a duty that is otherwise owed to an individual. *Cf. Keen v. Miller Environmental Group*, 702 F.3d 239, 247–48 (5th Cir. 2012) (“non-compliance with an internal policy is evidence simply suggestive of breach of duty”).

250. To prove an action for negligence, the Plaintiff must establish that the Government's breach of duty proximately caused the Plaintiff's injury. *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 404 (Tex.2009); *Kroger Co. v. Milanes*, 474 S.W.3d 321, 338 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Proximate cause is usually a question of fact unless the evidence is undisputed and only one reasonable inference can be drawn. *Ambrosio v. Carter's Shooting Ctr., Inc.*, 20 S.W.3d 262, 266 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

251. Plaintiffs allege the duty to exercise reasonable care to avoid a foreseeable risk of injury to others was breached because, among other things, BPA Martinez failed to comply with mandatory internal CBP policies. Am. Compl. 24, ECF No. 17.

252. The Court finds sufficient evidence in this record to support a finding that BPA

Martinez violated the internal policies of CPB in the loading and transport of UDAs on the date of the incident made the basis of this suit.

253. There is sufficient evidence in this record to support the finding of breach and proximate cause because CBP officers loaded migrants in the bed of the pick-up to transport them, even though officers knew or should have known that detainees should not be transported without seatbelts and CBP had a policy preventing it. The accident occurred *in part* because CBP employees mishandled the transport of detainees that required SA Salas to also ride in the bed of the GOV to provide security.

254. The Court finds that BPA Martinez breached his duty of care by failing to operate the Government-Owned Vehicle (GOV) with the ordinary care of a reasonable person / failing to act as a reasonably prudent driver and proximately caused the occurrence in question, the injury to SA Salas, the wrongful death of SA Salas, and the resulting injuries and damages to Plaintiffs.

255. The failure to use ordinary care exhibited by BPA Martinez in the manner in which he operated the pick-up truck causing him to go into the irrigation ditch, and failing to comply with the manufacturer's warnings and instructions for safe use, is not a unique governmental function for which a sufficient state analog does not exist under Texas law. The transportation of passengers in a pick-up truck is not a uniquely governmental function, and the failure to drive prudently and comply with manufacturer's warnings and instructions for safe use is color blind and not restricted to private or public operator's safe operation of a motor vehicle.

256. The Court finds that BPA Martinez breached his duty of care by failing to comply with and/or violating mandatory directives in policies which proximately caused the occurrence

in question, the injury to SA Salas, and the resulting injuries and damages to Plaintiffs.

257. This incident was also preventable by the exercise of ordinary care on the part of the Defendants and its employees, including BPA Martinez, BPA Lopez, BPA Dougherty, and BPA Jackson.

258. To hold a defendant vicariously liable under *respondeat superior*, a plaintiff must prove the tortfeasor was an employee of the defendant. *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 131 (Tex.2018); *Baptist Mem. Hosp. Sys. v. Sampson*, 969 S.W.2d 945, 947 (Tex.1998).

259. Here, BPAs Martinez and Michael Brian Jackson, and SBPAs Robert “Bobby” Lopez and Luke Dougherty were in the course and scope of their employment with Defendant at the time of the negligent acts and/or omissions. *See* Stipulation 3, and oral stipulation dictated into the record and accepted by the Court just prior to Plaintiffs resting.

260. A negligent defendant is liable for all damages proximately caused by its negligent conduct.

261. This Court finds that the Government is vicariously liable for BPA Martinez’s negligent acts and omissions which the Court finds proximately caused the injuries to SA Salas that ultimately resulted in his untimely death.

262. This Court finds that the Government is vicariously liable for BPA Martinez’s negligent acts and omissions which the Court finds proximately caused the injuries and damages to each of the individual wrongful death beneficiaries (Plaintiffs Lizzett Salas, A.S., I.S., L.A.S., Teresa Salas, and Juan Salas).

263. The Court finds that under these particular circumstances, SA Salas was not contributorily negligent for not wearing a seatbelt and riding in the bed of the truck. Nothing SA Salas did or failed to do caused or contributed to cause the occurrence in question. Further, the testimony of all witnesses who testified by video and/or live testimony unequivocally stated nothing SA Salas did or failed to do contributed to cause the occurrence in question.

264. SA Salas was not contributorily negligent as a matter of fact or law based on the evidence and the applicable Texas substantive case law. Texas Courts have rejected a finding of contributory negligence merely as a result of an individual riding in the bed of a truck. *See Goldberg v. Dicks*, 2004 Tex. App. LEXIS 1258, *45-46, 2004 WL 253250 (“We cannot say that James’ act of riding in the back of Gary’s truck was contributory negligence as a matter of law.”).

265. If the United States were a private person, it would be liable for the actions of its employee under the theory of Respondeat Superior. *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 131 (Tex. 2018), *cited by Lister v. United States*, No. 4:21-CV-3087, 2023 U.S. Dist. LEXIS 112710, at 13 (S.D. Tex. June 29, 2023). Additionally, although not required as discussed, private companies are frequently used in the state of Texas to transport prisoners, a situation directly analogous to the transportation of detainees. Similarly, evidence in the record shows third party private entities were also contracted to transport detainees. These companies are not controlled by any governmental entities and thus are subject to the same liability under the Texas law.

266. The discretionary function exception set out in 28 USCS § 2680(a) is not applicable.

267. BPA Martinez committed negligent and wrongful acts and/or omissions, including negligence in the use, operation, and maintenance of a motor vehicle, violating specific directives in a federal policy which proximately caused the incident made the basis of this lawsuit.

268. At the time of the incident made the basis of this lawsuit, BPA Martinez had multiple mandatory duties and was required to comply with the specific directives in TEDS, the MVMH, the OSHH, the COS, the Spring of 2020 Memorandum, and the Manufacturer's Warnings and Instructions for Use which he violated.

269. BPA Martinez was negligent in his use and operation of a motor vehicle.

270. Additionally, BPA Martinez was negligent in using his pick-up to transport UDAs in the pickup truck bed and authorizing and allowing SA Salas and others to ride in bed/storage compartment, of his truck, solely for convenience to avoid walking the UDAs up to the hard top road or calling for a designated secure 4x4 transport van to travel down the improved and maintained ranch road to pick the UDAs up and properly transport them safely.

271. The other Border Patrol Agents present equally should have stopped or reported the unsafe transport and demanded that mandatory safety rules were complied with that would have prevented the negligent death of Trooper Salas and were also negligent in this regard.

272. BPA Martinez's negligence in his use and operation of a motor vehicle, proximately caused the incident made the basis of this lawsuit, the wrongful death of SA Salas, and the resulting damages to Plaintiffs.

273. BPA Martinez's negligence and wrongful acts and/or omissions and those of others who failed to stop or enforce mandatory safety rules occurred within the course and scope of their employment.

274. Defendant United States of America is variously liable for the negligent / wrongful acts and/or omissions of its employees, including Marvin Martinez, Robert Lopez, and Brian Jackson. At all times material hereto, BPA Martinez and other Border Patrol personnel at the Hydro Plant were employed by and were acting within the course and scope of their employment with the Defendant United States of America, through its agency U.S. Customs & Border Protection. Defendant United States of America, as BPA Martinez's employer and the employer of the other Border Patrol Personnel present on the date of the incident made the basis of this lawsuit, is liable under the doctrine of respondeat superior in that the acts and/or omissions of Border Patrol Agents were performed in the course and scope of employment with Defendant United States of America, and/or the acts or omissions of Border Patrol Agents were authorized and/or ratified and/or condoned by Defendant United States of America. Therefore, Defendant United States of America is vicariously liable for the negligent acts and/or omissions and wrongful acts and/or omissions of Border Patrol Agents, including BPA Martinez under the doctrine of *respondeat superior*.

275. This case was commenced and prosecuted against the United States of America in compliance with Title 28 U.S.C. §§ 1346(b)(1) and the Federal Tort Claims Act 28 USC §§ 2671-2674. Liability of the United States is predicated specifically on 28 U.S.C. § 2674 because the death of SA Salas and resulting damages of the Plaintiffs of which the complaint is made were proximately caused by the negligence and wrongful acts or omissions of employees or agents of the United States of America working for the U.S. Customs and Border Protection and/or Department of Homeland Security, while acting within the scope of their office, employment, or agency under circumstances where the United States of America, if a private person, would be

liable to the Plaintiffs in the same manner and to the same extent as a private individual.

Plaintiffs are entitled to damages from Defendant under Texas law.

276. District courts enjoy “wide discretion” in awarding damages. *Wheat v. United States*, 860 F.2d 1256, 1259 (5th Cir.1988).

277. The fact finder is granted significant discretion in determining noneconomic damages because . . . there is no objective measure to determine the adequacy of such compensation.” *Holcombe v. United States*, 584 F. Supp. 3d 225, 287 (W.D. Tex 2022); *Gen’l Motors Corp. v. Grizzle*, 642 S.W.2d 837, 845 (Tex. App.—Waco 1982, writ diss’d) (non-pecuniary damages “are not susceptible of exact proof, and the amount is left largely to the sound discretion and common sense” of the finder of fact).

278. A court’s damages award is a finding of fact reviewed for clear error. *Le v. United States*, 138 F.4th 264, 278 (5th Cir. 2025).

279. Under the clear error standard, the Fifth Circuit will defer to this Court’s damages awards and will reverse for excessiveness only “on the strongest of showings.” *See Lebron*, 279 F.3d at 325.

280. In an FTCA case, the elements of damages, and the measure of those damages, are matters of state law. *See Lebron v. United States*, 279 F.3d 321, 327 n.4 (5th Cir. 2002).

281. “Consciousness of approaching death is a proper element to be considered in evaluating mental suffering.” *Ruiz v. Guerra*, 293 S.W.3d 706, 723 (Tex. App.—San Antonio 2009, no pet.) (allowing recovery of pain and suffering damages even though there was no evidence that the decedent, Daniel Guerra Jr., was conscious after the vehicles came to a stop after

a crash, there was some evidence that he was conscious while his truck careened out of control and that he was panicked, and presumably aware of his impending death). The Fourth Court of Appeals affirmed an award of \$400,000.00 for panic and consciousness of approaching death. The evidence of SA Salas' consciousness and panic as the vehicle began to roll before he was ultimately trapped and his head and body were crushed under the weight of the pick-up truck is undisputed and supports an award of damages to the Estate of SA Salas for his mental suffering.

282. A finder of fact may award damages for physical pain consciously suffered and experienced. *S. Pac. Transp. Co. v. Luna*, 730 S.W.2d 36, 38 (Tex. App.—Corpus Christi 1987). The evidence supports an award of such damages to the Estate of SA Salas.

283. The Court incorporates herein by reference an analytical analysis of historical case law concerning damages. *See* excel sheet attached hereto incorporated by reference.

284. In a wrongful death action, wrongful death beneficiaries may be awarded damages for mental anguish, loss of companionship and society, and pecuniary loss. *See Moore v. Lillebo*, 722 S.W.2d 683, 687 (Tex. 1986). The evidence supports awards of these elements of damages to the Plaintiffs.

285. Texas state courts do not review damages awards for excessiveness using the maximum recovery rule but instead conduct “a more holistic assessment.” *Longoria v. Hunter Express, Ltd.*, 932 F.3d 360, 365 (5th Cir. 2019); *and see Atchison, Topeka and Santa Fe Ry Co. v. Cruz*, 9 S.W.3d 173, 182-83 (Tex. App.—El Paso 1999) (refusing to adopt federal maximum recovery rule to replace “well-established legal and factual sufficiency standards”).

286. Texas appellate courts determine whether damages awards are unreasonable or

excessive by examining whether there is factually sufficient evidence to support them. *See Pope v. Moore*, 711 S.W.2d 622, 624 (Tex. 1986).

287. Just as Texas courts review a damages award for excessiveness using the standard of sufficiency of the evidence, they use the same standard to determine when an award of damages for pain and mental anguish is “manifestly wrong and unjust” because it is too low. *Farley v. M M Cattle Co.*, 549 S.W.2d 453, 459 (Tex. Civ. Appl 1977), writ ref’d n.r.e. (Oct. 5, 1977).

288. Texas appellate courts will set aside a damages award “only where the record clearly indicates that the award was based on passion, prejudice, or improper motive, or is so excessive so as to shock the conscience.” *Sanchez v. Balderrama*, 546 S.W.3d 230, 237 (Tex. App.—El Paso, 2017, no pet.).

289. The maximum recovery rule is not operative unless the award exceeds 133% of the highest previous recovery in the state adjusted for inflation. *Le v. United States*, 138 F.4th 264, 278 (5th Cir. 2025). The Court’s award of damages in the instant case does not implicate the maximum recovery rule.

290. Even under the maximum recovery rule, departure from prior awards is merited if unique facts are presented that are not reflected within the controlling case law. *Id.* The unique circumstances of the death of a Texas hero and undisputed objective and subjective evidence of extreme emotional distress and substantial impairment to the activities of daily living caused to each of the Plaintiffs as a result of the untimely death of SA Salas was considered by this Court in awarding the damages set out in the spreadsheet of damages incorporated herein by reference.

291. The Court is legally justified in declining to invoke the maximum recovery rule

here because all of the damages awarded are not disproportionate to comparable cases applying Texas law. *Cf. Gutierrez v. Exxon Corp.*, 764 F.2d 399, 403 (5th Cir. 1985). The amount of the loss found by the Court is supported by cases set out in the Plaintiffs' spreadsheet of damages incorporated herein by reference. *See* Ex. 1, Pl.s' Post-Trial Proposed Findings of Fact and Conclusions of Law, ECF No. 108.

292. The Court is "not conclusively bound by a previous [damages] award because the facts of a given case may justify a higher award." *Wackenhut Corrections Corp. v. de la Rosa*, 305 S.W.3d 594, 642 (Tex. App.—Corpus Christi-Edinburg 2009).

293. Texas Courts have recognized for decades that the deceased's services to the beneficiary, such as nurture, care, education, and guidance, have a monetary value in addition to any financial contributions. *Samco Props., Inc. v. Cheatham*, 977 S.W.2d 469, 480 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (emphasis added). The definition of pecuniary loss specifically allows the factfinder to consider and award damages for "pecuniary loss" not just for financial contributions made, alone. Instead the Court as the factfinder is to consider the evidence and award damages to wrongful death beneficiaries like each of the minor children to compensate each of them for the loss of the care, maintenance, support, services, advice, and counsel, that their loving father provided, and more likely than not based on his habits and character would have provided, that have a monetary value distinctly different from, and in addition, to any actual cash contributions or objects that have pecuniary value. All of those categories of items (care, maintenance, support, services, advice, and counsel) were proven by a preponderance of evidence to have been part of what was provided in the close loving and caring relationship that existed

between the children and their father, SA Salas. Care, maintenance, support, services, advice, and counsel, all of which were established to have been provided, without any contrary proof by the government, fall under the umbrella of the type of compensatory damages for “pecuniary loss” a fact finder (this Court) should award. The probability of this father providing emotional advice, the costs of quinceaneras, weddings, helping with repairs and purchases related to transportation, and educational needs of his children was reasonably to be expected given the character of SA Salas.

294. The United States Court of Appeals for the Fifth Circuit has held that a person is entitled to an instruction that remarriage is not a factor to consider in assessing damages and the Court has followed that instruction. *Conway v. Chemical Leman Tank Lines*, 525 F.2d 927, 930 (5th Cir. 1976); *see also Bailey v. Southern Pacific Transportation Co.*, 613 F.2d 1385, 1388 (5th Cir. 1980).

295. Under Texas law, Plaintiffs Lizzett Salas, Juan Salas, Teresa Salas, A.S., I.S., L.A.S. are wrongful death beneficiaries and have standing to bring a cause of action for their damages arising from the death of SA Salas. Tex. Civ. Prac. & Rem. Code. Section 71.002, 004 et seq (Texas Wrongful Death Statute).

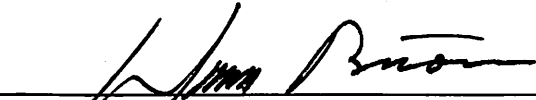
296. Plaintiff Lizzett Salas is the authorized and duly appointed Dependent Administrator of the Estate of Anthony Salas and has standing to bring a claim for survival damages on behalf of the estate of Anthony Salas, Deceased. Tex. Civ. Prac. & Rem. Code. Section 71.021 (Texas Survival Statute).

297. The Court finds that each of the Plaintiffs sustained damages based upon a

preponderance of the evidence that were proximately caused by the negligent acts or omissions of Defendant.

IT IS SO ORDERED.

SIGNED this 11th day of August 2025.



HONORABLE DAVID BRIONES
SENIOR UNITED STATES DISTRICT JUDGE