

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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ALBA QUIÑONEZ FLORES,
Plaintiff,

v.

SECOND AMENDED COMPLAINT

UNITED STATES OF AMERICA;
DOES 1-10,

Civil Action No. 14-CV-3166

Defendants.

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Plaintiff Alba Quiñonez Flores (“Plaintiff” or “Ms. Quiñonez Flores”), through her undersigned counsel, sues Defendant United States of America and Does 1-10, and alleges as follows:

BACKGROUND

1. Plaintiff brings this action against the United States under the Federal Tort Claims Act (“FTCA”) and *Bivens v. Six Unknown Named Agents* for damages resulting from torts and constitutional violations committed by law enforcement officers employed by Defendant United States and United States Customs and Border Protection (“CBP”).

2. The torts and constitutional violations Plaintiff suffered arose from CBP’s negligent and careless operation of holding facilities located within stations falling under CBP’s Rio Grande Valley Sector. The facilities, which are designed as temporary holding rooms, have come to be known as “*hieleras*,” the Spanish word for “freezers.” CBP agents and detainees

alike have come to call these facilities *hieleras* because of the frigid temperatures at which the holding facilities are maintained.

3. CBP operates its *hieleras* in a manner its agents know or have reason to know places the detainees kept therein at unreasonable risk of physical and psychological harm. Apart from the frigid temperatures, detainees in the *hieleras* are routinely denied adequate meals, access to clean drinking water, and to basic hygiene products such as soap, toothbrushes, toothpaste, and sanitary napkins. The *hieleras* are often so crowded that the detainees have no space to lie down when kept overnight. Detainees are denied mattresses and bedding, and are left to sleep on the cold concrete floor with bright overhead lights left on throughout the night. Moreover, detainees with serious medical conditions are denied adequate treatment, and those with chronic conditions are denied access to medically-necessary prescription medications they carry with them at the time of their apprehension.

4. Though the *hieleras* are designated for short-term custody, CBP routinely detains individuals for days and sometimes weeks in substandard conditions.

5. This case arises out of Plaintiff Alba Quiñonez Flores's detention and mistreatment in CBP *hieleras*, and seeks damages under the FTCA and *Bivens* for the physical and psychological injury she suffered as a result of CBP agents' tortious acts and omissions and constitutional violations.

JURISDICTION AND VENUE

6. This case is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 and the authority of *Bivens v. Six Unknown Defendants of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for compensatory and punitive damages for violations of rights under the Fifth

Amendment to the United States Constitution. This Court has jurisdiction under 28 U.S.C. §§ 1331; 1343; and 1346.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1)(C) as this is an action against the United States, and this is the district in which Plaintiff resides and no property is involved.

PARTIES

8. Plaintiff Alba Quiñonez Flores (“Ms. Quiñonez Flores”) is a resident of the State of New York, residing in the area of jurisdiction encompassed by the United States District Court for the Eastern District of New York. She is a survivor of domestic violence and sexual assault in her native El Salvador. She is currently in the process of seeking asylum in the United States.

9. Defendant United States of America is a sovereign sued under the Federal Tort Claims Act, under which the United States has waived its sovereign immunity for the tortious acts or omissions of its agents, including agents acting within the scope of their employment with U.S. Customs and Border Protection (“CBP”), a component of the United States Department of Homeland Security (“DHS”).

10. Defendants “Does 1-10” are individuals whose identities are not currently known to Plaintiff. Upon information and belief, they were at all relevant times agents, employees, officers or otherwise representatives of CBP. Plaintiff sues Does in their individual capacities.

STATEMENT OF FACTS

11. CBP has authority to secure the borders of the United States. In furtherance of this mission, CBP officers routinely admit or exclude individuals seeking entry to the United States, make arrests, issue charging documents, and detain suspected noncitizens. Some noncitizens who

are arrested by CBP are held in CBP-operated facilities known as “holding stations” comprised of numerous cells or “hold rooms.”

12. On or about January 31, 2008, CBP issued an internal directive, entitled “Hold Rooms and Short Term Custody.” *See* U.S. Border Patrol Policy (Jan. 31, 2008), attached hereto at **Exhibit A** (hereinafter “CBP Short Term Custody Policy” or “Policy”). The express purpose of the CBP Short Term Custody Policy is stated as follows:

This directive establishes national policy for the short-term custody of persons arrested or detained by Border Patrol Agents and detained in hold rooms at Border Patrol Stations, checkpoints, processing facilities, and other facilities that are under the control of U.S. Customs and Border Protection (CBP).

CBP Short Term Custody Policy provides that:

All persons arrested or detained by the Border Patrol will be held in facilities that are safe, secure, and clean. Detainees will be provided food, water, properly equipped restrooms and hygiene supplies as set forth in this directive.

Id. ¶ 5.1.

Whenever possible, a detainee should not be held for more than 12 hours. Every effort will be made to promptly process, transfer, transport, remove, or release those in custody as appropriate and as operationally feasible.

Id. ¶ 6.2.1.

The Patrol Agent in Charge (“PAIC”) or the senior shift supervisor will be notified of all detentions at the station level that reached or exceed 24 hours, and they shall make every effort to promptly move the detainee(s).

Id. ¶ 6.2.2.

The Sector Staff Duty Officer must be notified when the detention period reaches or exceeds 72 hours, and the Staff Duty Officer or their designee shall make every effort to promptly move the detainee(s).

Id. ¶ 6.2.3.

Detainees needing medical attention or showing signs of serious infectious disease or contagion . . . will be handled as set forth in this section.

Id. ¶ 6.7.1.

A supervisor will be notified as soon as possible of detainees needing medical attention.

Id. ¶ 6.7.4.

Medications. . . . Administration of prescribed medication, medical assistance, or refusal of the same will be noted on the Alien Booking Record.

Id. ¶ 6.7.5.

Meals. Detainees will be provided snacks and juice every four hours. Detainees whether in a hold room or not, will be provided a meal if detained more than 8 hours or if their detention is anticipated to exceed 8 hours. . . . When an adult detainee requests a snack or meal before the next meal service, the processing agent may grant the request on the basis of the circumstances.

Id. ¶ 6.8

Drinking Water. Potable drinking water will be available to detainees. The supervisor is responsible for ensuring that drinking water is available.

Id. ¶ 6.9.

Restrooms. Restrooms will be available to detainees. Detainees using the restrooms will have access to toilet items, such as soap, toilet paper, and sanitary napkins.

Id. ¶ 6.10.

Bedding. Detainees requiring bedding will be given clean bedding. Only one detainee will use this bedding between cleanings. This bedding will be changed every three days and cleaned before it is issued to another detainee.

Id. ¶ 6.11.

Showers. Agents will make reasonable efforts to provide a shower for any detainee held more than 72 hours. Detainees that are showering will be provided a clean towel and basic toiletries.

Id. ¶ 6.14.

Cleaning and Sanitation. Supervisors will ensure that detention cells are regularly cleaned and sanitized. Employees will not be expected nor required to perform such tasks.

Id. ¶ 6.16.

Hold rooms will be kept clean and free of contraband and other potentially hazardous and dangerous materials.

Id. ¶ 7.1.3.

Performance Measurement 2: All detainees will be held under humane conditions of confinement that provide for their well being and general good health.

Id. ¶ 7.2.

Detainees have access to sanitary facilities and restrooms.

Id. ¶ 7.2.1.

Detainees have access to appropriate medical services, prescriptions, medications, and emergency medical treatment.

Id. ¶ 7.2.3.

Detention spaces are appropriately maintained and provide detainees with appropriate comfort items – housekeeping and clean bedding.

Id. ¶ 7.2.4.

13. In February 2013, Border Patrol agents apprehended Ms. Quiñonez Flores in the desert near Falfurrias, Texas. Falfurrias is located in a region of Texas classified by CBP as the “Rio Grande Valley Sector,” an operational division of CBP. Upon information and belief, CBP operates ten holding stations in its Rio Grande Valley Sector. Many detainees detained in *hieleras* located in the Rio Grande Valley Sector described prolonged periods of detention — as long as two weeks for some individuals — in inhumane and unlawful conditions.

14. At the time she was taken into CBP custody, Ms. Quiñonez Flores had not eaten for two days. Upon her apprehension, a CBP agent informed Ms. Quiñonez Flores that she was being taken to the *hieleras*.

15. CBP officers transported Ms. Quiñonez Flores to a hold facility operated by CBP, which upon information and belief was CBP's Falfurrias Station, located at 933 County Road 300 in Falfurrias, Texas.

16. At the time, Ms. Quiñonez Flores was carrying prescription medications and medical supplies to treat numerous health conditions, including hypertension, cardiac problems, depression, anxiety disorder, and diabetes. The medications she carried on her person at the time of her apprehension included: Co-Aprovel and Enalapril, to treat her hypertension; Topiramate to treat convulsions; Fluoxetine, Trazodone, and Clonazepam to treat depression and anxiety; Tramadol to treat her severe migraines; and Glibenclamide, insulin, and syringes to treat her diabetes.

17. Upon her arrival at the Falfurrias Station, a CBP agent confiscated all of Ms. Quiñonez Flores's medications, and in front of Ms. Quiñonez Flores, discarded all of them except the Enalapril, which was confiscated and made inaccessible to Ms. Quiñonez Flores along with Ms. Flores' jacket, shoelaces, headband, belt, and bag during the period of her detention in CBP custody. When Ms. Quiñonez Flores protested and told the agent that the medications that were being taken from her were medically necessary, the agent responded: "this is not a hospital." Throughout her many days in CBP custody, Ms. Quiñonez Flores was denied access to the Enalapril, and was provided no replacements for the medications the CBP agent discarded. At no point during her detention by CBP was Ms. Quiñonez Flores administered any of the medication necessary to treat her medical conditions.

18. After she arrived at Falfurrias Station, Ms. Quiñonez Flores informed the CBP agent who conducted her intake that she felt dizzy and had pain in her right ankle as a result of a

sprain while she was walking through the desert. The agent, however, ignored her complaints and offered her no medical attention.

19. Ms. Quiñonez Flores was then placed in a small, overcrowded cell in which there were approximately twenty (20) other female detainees.

20. The cell was so cold that Ms. Quiñonez Flores' fingers turned blue and her lips split. She shivered constantly. The officers provided no blankets to Ms. Quiñonez Flores or the other women detained with her, and she was given no additional clothing despite CBP's confiscation of her jacket.

21. Throughout her time detained in the facility, she heard CBP agents refer to the detention facility as a "hielera." The *hielera* was so cold that on numerous occasions, Ms. Quiñonez Flores and the other women in the cell attempted to huddle together for warmth. On each such occasion, CBP guards ordered Ms. Quiñonez Flores and the other women to stop huddling for warmth, because such action was allegedly prohibited.

22. Upon information and belief, Ms. Quiñonez Flores was held in six different cells during the many days she was detained in CBP custody.

23. The first cell where she was held, and where she spent the majority of her time in CBP detention, had large glass windows, panoptically positioned around a space in the Station's center where the CBP agents were on guard. The crowded cell was equipped with a single toilet and sink for Ms. Quiñonez Flores and the approximately twenty (20) other female detainees. The toilet and sink were not screened or walled off, and instead were clearly visible not only to the other detainees in the cell, but also to the CBP guards and detainees in other cells. Whenever Ms. Quiñonez Flores used the toilet, she was visible to male CBP guards and male detainees in other

cells. As a result of her open exposure, Ms. Quiñonez Flores felt deeply humiliated and ashamed each time she used the toilet.

24. Numerous times during her detention by CBP, the supply of toilet paper ran out, leaving Ms. Quiñonez Flores and her approximately 20 fellow detainees without any means to clean themselves. Apparently, the guards found this condition amusing and would only provide a resupply of toilet paper after the women in the cell pleaded for more toilet paper.

25. The bright overhead lights in the cell where Ms. Quiñonez Flores was detained were kept on throughout the night. Ms. Quiñonez Flores and the other detainees in the cell were not provided mattresses, blankets, or any other form of bedding. She and the other detainees were left to sleep on the frigid cement floor of the cell where, absent complete exhaustion, they could not sleep. Many stood up during the evenings until they simply collapsed on the floor.

26. CBP agents provided the women inside the cell with a single container of water, which the women were forced to share. The water was replaced only once per day. The water smelled like bleach, had a foul taste, and burned Ms. Quiñonez Flores's throat when she drank it.

27. During her first week in CBP custody, Ms. Quiñonez Flores began to menstruate. The only supply of feminine hygiene products available to the detainees consisted of approximately 4-5 sanitary napkins placed at the entrance of the cell each morning. This supply was woefully insufficient for the approximately twenty (20) women in the cell.

28. On the first day of her period, Ms. Quiñonez Flores was able to secure one of the sanitary napkins distributed by the guards. By the next morning, however, the napkin was soaked. Because her ankle was injured and because of her dehydration and the fact she was suffering from debilitating dizziness and had a severe migraine headache, Ms. Quiñonez Flores was physically unable to jockey for position near the front of the cell where the sanitary napkins

were distributed. As a result, she was forced to improvise by placing toilet paper on the dirty napkin in an effort to extend its use. The toilet paper quickly became soaked with blood, however, and despite her improvisation, Ms. Quiñonez Flores' undergarments and pants became bloody.

29. Ms. Quiñonez Flores was provided with neither a change of clothing nor an opportunity to bathe, and she was thus left in the cell with blood-soaked underwear and pants.

30. Throughout Ms. Quiñonez Flores's time in CBP custody, agents failed to provide Ms. Quiñonez Flores or the other detainees with basic personal hygiene products, including soap, combs, toothbrushes, and toothpaste. At no time was Ms. Quiñonez Flores or the other detainees with whom she was detained provided an opportunity to shower or otherwise bathe.

31. The cell where Ms. Quiñonez Flores was detained was never thoroughly cleaned given the large number of women kept in each cell for days or weeks. Used toilet paper and sanitary napkins accumulated in a pile adjacent to the toilet as no garbage can was provided, and a putrid stench thus enveloped the cell where Ms. Quiñonez Flores was detained.

32. During Ms. Quiñonez Flores's time in CBP custody, CBP agents served meals consisting of a single partially-frozen sandwich made with white bread and a processed meat product. Identical sandwiches were served for breakfast, lunch, and dinner. CBP agents distributed the sandwiches on a large tray, and insisted that each detainee take her own directly from the tray. As a result of Ms. Quiñonez Flores's dehydration and untreated ankle pain, dizziness, and headaches, she was often unable to make her way to the CBP officer distributing the sandwiches at mealtime. On one occasion, she asked the agent distributing the sandwiches in Spanish if one of the other detainees could take an extra sandwich from the tray and bring it to her. The agent refused, telling her she needed to get her own sandwich if she wanted to eat. On

this occasion, Ms. Quiñonez Flores was unable to make her way to the tray, and so she missed her meal. On another occasion, Ms. Quiñonez Flores attempted to speak to a guard in the little English she could muster, begging for him to help her and pointing to her ankle as the reason why she could not move to physically pick up the sandwich. The agent again refused.

33. As a result of the CBP agents' insistence that Ms. Quiñonez Flores physically take her own sandwich from the tray during mealtime, and Ms. Quiñonez Flores' inability to do so, Ms. Quiñonez Flores sometimes received as little as one sandwich during an entire day of detention. As a result of the caloric deprivation occasioned by the poor quality of the meals and Ms. Quiñonez Flores' inability to secure a sandwich, Ms. Quiñonez Flores was constantly hungry, lightheaded, and experienced headaches throughout her time in CBP custody.

34. On her first day in CBP custody, Ms. Quiñonez Flores developed a fever. The other women told the CBP officers that she needed medical attention, but they were ignored. Despite the other detainees' efforts to seek assistance from CBP guards on Ms. Quiñonez Flores' behalf, the officers refused to check on Ms. Quiñonez Flores or determine whether she was suffering from any illness or medical condition.

35. Ms. Quiñonez Flores – feeling dizzy and nauseous – collapsed in her cell after attempting to make her way to the toilet to vomit. She lost consciousness and collapsed atop a pile of used toilet paper. When Ms. Quiñonez Flores regained consciousness, she was surrounded by three CBP agents. Ms. Quiñonez Flores asked to be taken to the hospital.

36. Upon information and belief, approximately forty-five (45) minutes later, agents transported Ms. Quiñonez Flores to the Emergency Department of the Edinburg Regional Medical Center in Edinburg, Texas. At the hospital, Ms. Flores received no medical treatment for her collapse, or for the numerous chronic conditions from which she suffered and continues to

suffer. Though the CBP agents who drove her to the hospital and accompanied her throughout her time in the hospital knew or should have known of her numerous medical conditions for which she carried prescription medications at the time of her apprehension, the agents did not alert the hospital to this fact.

37. Ms. Quiñonez Flores was transferred back to Falfurrias Station without any medical treatment.

38. In the early morning some days after Ms. Quiñonez Flores was hospitalized, CBP agents transferred Ms. Quiñonez Flores along with approximately five other detainees to a separate holding facility. This second facility was located approximately one hour by car from the first *hielera* where Ms. Quiñonez Flores was detained. Ms. Quiñonez Flores was placed in one of the eight (8) small concrete cells. The cell had only a small window, from which Ms. Quiñonez Flores could see the hallway and the other cell across the hallway.

39. Ms. Quiñonez Flores received no food while she was detained inside this second facility. Once in this second facility, Ms. Quiñonez Flores and the other detainees' only access to drinking water was via the sink. Since they were not provided cups, they had to drink water with their hands. No soap was provided to wash their hands before using them to drink. Ms. Quiñonez Flores and her fellow detainees were provided no food.

40. Sometime after she was detained in the cell, Ms. Quiñonez Flores was taken from the cell to an office with computer terminals. At this terminal, her fingerprints were taken and she was asked a series of questions regarding her identity and family background. This was the first time Ms. Quiñonez Flores had been asked about any personal identity information. She was also told to sign a number of papers, most of which were in English. Initially, she refused to sign the documents, but was told that she would receive "federal criminal charges" and be sent to a

“prison for delinquents, not immigrants” if she refused to sign. At no point was Ms. Quiñonez Flores asked if she feared return to her country of origin. Ms. Quiñonez Flores was then returned to the cell.

41. That evening, Ms. Quiñonez Flores was returned to the first holding facility, upon information and belief the Falfurrias Station.

42. Approximately one day after her return to Falfurrias, Ms. Quiñonez Flores was transferred to a third facility, which upon information and belief, is operated by CBP. This facility was larger than the first facility where Ms. Quiñonez Flores was initially detained. The detention conditions, however, were similar, except that the cell was maintained at an ever colder temperature than the Falfurrias Station *hielera*.

43. Ms. Quiñonez Flores shared this cell with approximately thirty-five (35) other women.

44. The meals served in this facility were identical to the ones served in the Falfurrias Station. However, there were insufficient sandwiches for each woman to receive one. Ms. Flores was one among approximately ten (10) women who missed meals as a result of the inadequate supply of food.

45. As was true at the Falfurrias Station, Ms. Quiñonez Flores and her fellow detainees were not provided with any bedding, and bright overhead lights were kept on throughout the night. The cell was so crowded that Ms. Quiñonez Flores and the other detainees did not have sufficient space to lie down flat on the ground. As a result, Ms. Quiñonez Flores and the other detainees attempted to sleep in sitting or crouched positions on the floor of the cell.

46. During her time in CBP-operated *hieleras*, Ms. Quiñonez Flores felt desperate and depressed, and repeatedly broke down in tears. The deprivation of her medication and

prolonged detention in unsafe and substandard conditions has, moreover, substantially exacerbated her existing serious physical and mental health conditions.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Negligence

47. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 46 of this Complaint.

48. The CBP officers and supervisors breached their duty of reasonable care to Ms. Quiñonez Flores by negligently placing her in detention conditions that Defendants knew or should have known posed a substantial risk of physical and psychological harm.

49. The CBP officers were negligent in performing their duties and neglected to properly and fully discharge their responsibilities by, among other things:

- a. Maintaining the detention cell where Ms. Quiñonez Flores was held at an unreasonably cold temperature that the officers knew or should have known would cause extreme discomfort and pose a health risk to Ms. Quiñonez Flores and those with whom she was detained;
- b. Depriving Ms. Quiñonez Flores of sufficient basic hygiene products, including sanitary napkins, toothbrush, toothpaste, and toilet paper;
- c. Depriving Ms. Quiñonez Flores of an opportunity to shower or bathe throughout her extended time in CBP custody;
- d. Providing Ms. Quiñonez Flores with nutritionally and calorically inadequate meals, and causing Ms. Quiñonez Flores to miss meals when transferring her to and from CBP facilities;

- e. Failing to make clean and safe drinking water available to Ms. Quiñonez Flores, exacerbating her dehydration and numerous medical conditions;
- f. Refusing to provide Ms. Quiñonez Flores with timely medical attention after other detainees attempted to alert them to Ms. Quiñonez Flores' deteriorating condition;
- g. Discarding or otherwise depriving Ms. Quiñonez Flores of access to duly-prescribed medications she carried on her person at the time of her apprehension, while also failing to provide Ms. Quiñonez Flores with any replacements or even to provide her a medical screening to determine what treatment she required during her time in CBP custody.

50. The CBP agents were acting within the scope of their employment when they committed these acts and omissions, and the officers knew or should have known that these acts and omissions would pose a danger to Ms. Quiñonez Flores's health, safety, and well-being.

51. Ms. Quiñonez Flores filed a claim with the Department of Homeland Security based on these injuries in accordance with the Federal Tort Claims Act. More than six (6) months passed since Ms. Quiñonez Flores filed her FTCA claim with the Department of Homeland Security, and Ms. Quiñonez Flores has received no response.

52. As a direct and proximate result of the CBP agents' negligent conduct, Ms. Quiñonez Flores has suffered irreparable injury, including severe lasting emotional distress, humiliation, anxiety, and psychological injury resulting in past and future mental anguish, past and future pain and suffering, aggravation of preexisting injury, future medical expenses, and other compensatory damages in an amount to be proven at trial. Ms. Quiñonez Flores will also experience economic losses consisting of future medical health care expenses because during the course of her detention, her medical conditions were aggravated.

SECOND CLAIM FOR RELIEF

Negligent Supervision

53. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 46 of this Complaint.

54. The CBP facilities where Ms. Quiñonez Flores was detained all fall within the Rio Grande Valley Sector, an administrative division of CBP.

55. Responsibility for supervising the CBP agents who effectuated the detention conditions in the *hieleras* where Ms. Quiñonez Flores was detained falls on supervisory border patrol agents, Patrol Agents in Charge, and the Chief Patrol Agent for the Sector, Rosendo Hinojosa.

56. The CBP agents and officers in these supervisory positions were responsible for overseeing the actions and practices of the agents who managed the day-to-day operations of the facilities where Ms. Quiñonez Flores was detained during her time in CBP custody. Written CBP guidance on detention conditions in hold rooms and short term custody outlines these agents' responsibilities with respect to managing implementation of detention condition standards at the Sector level, at the station level, and within each CBP station where individuals are held in CBP custody. These supervisors, including the Chief Patrol Agent, Patrol Agents in Charge, and Supervisory Border Patrol Agents, were responsible for ensuring that the facilities' operation met minimum hygiene and conditions standards and that the actions of line agents complied with CBP's written guidelines for detention practices and conditions.

57. CBP's Short Term Custody Policy expressly prohibits many of the conditions Ms. Quiñonez Flores faced during her time in CBP custody. The conditions of Ms. Quiñonez Flores' detention were in clear violation of the Policy which provides that:

- All detainees will be held in appropriate conditions of confinement that ensure their safety and security;
- A supervisor will be notified as soon as possible of detainees needing medical attention and that detainees will have access to appropriate medical services, prescriptions, medications, and emergency medical treatment;
- Potable drinking water will be available to all detainees. A supervisor is responsible for ensuring that drinking water is available;
- Detainees using the restrooms will have access to toilet items, such as soap, toilet paper, and sanitary napkins;
- Detainees requiring bedding will be given clean bedding;
- Detention space capacity will not be exceeded.

58. The actions of the CBP agents operating the detention facilities at which Ms. Quiñonez Flores was detained repeatedly violated CBP's own directives regarding detention standards. Proper application of these CBP detention policies would have mitigated and/or eliminated the torturous conditions to which Ms. Quiñonez Flores was subjected during her time in CBP custody. The failure on the part of CBP supervisors to provide adequate supervision and training to the CBP agents charged with managing the detention facilities and to fulfill their duty to ensure proper execution of the agency's own detention standards led directly to the substandard conditions Ms. Quiñonez Flores faced during her time in CBP custody. The failure on the part of these officials to provide training and supervision to line agents in the face of repeated complaints regarding the detention conditions in CBP facilities registered by human and immigrants' rights organizations fostered an agency culture of undercutting the rights of immigrant detainees.

59. On May 24, 2013, Ms. Quiñonez Flores filed a claim with the Department of Homeland Security based on these injuries in accordance with the Federal Tort Claims Act. More than six (6) months passed since Ms. Quiñonez Flores filed her FTCA claim with the Department of Homeland Security, and Ms. Quiñonez Flores has received no response.

60. As a direct and proximate result of the CBP agents' negligent supervision, Ms. Quiñonez Flores has suffered irreparable injury, including severe lasting emotional distress, humiliation, anxiety, and psychological injury resulting in past and future mental anguish, past and future pain and suffering, aggravation of preexisting injury, future medical expenses, and other compensatory damages in an amount to be proven at trial. Ms. Quiñonez Flores will also experience economic losses consisting of future medical health care expenses because during the course of her detention, her medical conditions were aggravated.

THIRD CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

61. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 46 of this Complaint.

62. The CBP agents by their acts and omissions committed the tort of intentional infliction of emotional distress because:

- a. The CBP agents acted in an outrageous and intolerable manner, going beyond all possible bounds of decency, by knowingly or recklessly: (i) providing a woefully inadequate supply of sanitary napkins to Ms. Quiñonez Flores and other menstruating female detainees while allowing them to bleed into their clothing without providing a change of clothing or opportunity to shower; (ii) confiscating the outerwear of detainees and denying them access to such clothing while maintaining the holding cells at uncomfortable and dangerously low temperatures with no legitimate law enforcement purpose; (iii) ignoring the pleas of Ms. Quiñonez Flores' fellow detainees that she required medical attention when she fell ill; (iv) maintaining the holding cells where detainees are housed at dangerously low temperatures calculated to cause the detainees, including Ms.

Quiñonez Flores, extreme discomfort; (v) refusing to provide basic sanitary and living conditions including sufficient soap, toilet paper, and sleeping arrangements when defendants knew that Ms. Quiñonez Flores would remain in detention far beyond the 12 hours where limited access to hygienic products might plausibly be considered acceptable; (vi) acting with deliberate indifference to Ms. Quiñonez Flores's numerous medical conditions by denying her access to the prescription medications she carried on her person while also refusing to provide her with adequate medical attention.

- b. The CBP agents specifically intended to cause emotional and psychological harm and/or showed a reckless disregard for Ms. Quiñonez Flores's emotional well-being.
- c. As a direct and proximate cause of the CBP agents' conduct, Ms. Quiñonez Flores has suffered irreparable injury, including severe lasting emotional distress, humiliation, anxiety, and psychological injury resulting in past and future mental anguish, past and future pain and suffering, aggravation of preexisting injury, future medical expenses, and other compensatory damages in an amount to be proven at trial. Ms. Quiñonez Flores will also experience economic losses consisting of future medical health care expenses because during the course of her detention, her medical conditions were aggravated.

FOURTH CLAIM FOR RELIEF

Violation of the Fifth Amendment: Deprivation of Reasonable Medical Care

63. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 46 of this Complaint.

64. Plaintiff has a clearly established constitutionally protected right under the Fifth Amendment of the United States Constitution to receive reasonable medical care during the time she spent in CBP detention.

65. CBP officers acted with deliberate indifference to Ms. Quiñonez Flores' serious medical needs by, among other things:

- a. Willfully discarding Ms. Quiñonez Flores' numerous prescription medications upon her arrival at the Falfurrias Station and thereby depriving her access to any medications, despite Ms. Quiñonez Flores' protestations that the drugs were medically necessary;
- b. Depriving Ms. Quiñonez Flores of any medical screening despite the CBP agents' knowledge that she suffered from serious and chronic medical conditions;
- c. Refusing to provide timely medical attention to Ms. Quiñonez Flores after her collapse in the CBP holding cell.

66. CBP's policies, practices, acts, and omissions with respect to Ms. Quiñonez Flores' serious medical needs constitute deliberate indifference.

67. Plaintiff's medical need was so obvious that even a layperson would easily recognize the necessity for medical intervention.

68. Depriving civil immigration detainees of reasonable medical care does not advance any legitimate governmental purpose and constitutes *de facto* punishment without due process of law. *Bell v. Wolfish*, 441 U.S. 520, 538-39 (1979). The CBP officers' conduct created and maintained punitive conditions of confinement for Ms. Quiñonez Flores.

69. Defendants' policies, practices, acts, and omissions with respect to reasonable medical care violate the Due Process Clause of the Fifth Amendment of the United States Constitution.

70. As a direct and proximate result of CBP Officers' unconstitutional acts and omissions, Ms. Quiñonez Flores has suffered irreparable injury, including severe lasting emotional distress, humiliation, anxiety, and psychological injury resulting in past and future mental anguish, past and future pain and suffering, aggravation of preexisting injury, future medical expenses, and other compensatory damages in an amount to be proven at trial. Ms. Quiñonez Flores will experience economic losses consisting of future medical health care expenses because during the course of her detention, her medical conditions were aggravated.

71. The conduct of each of the Defendants constitutes a reckless indifference or callous disregard of Ms. Quiñonez Flores' clearly established constitutional right under the Fifth Amendment to reasonable medical care, entitling Ms. Quiñonez Flores to punitive damages. Despite Ms. Quiñonez Flores' protestations that the prescription medications she carried on her person at the time of her apprehension were medically necessary, CBP agents knowingly discarded those medications, made other inaccessible to her, and failed to provide Ms. Quiñonez Flores with any medical screening or replacement medications during her time in CBP custody.

72. Additionally, when Ms. Quiñonez Flores informed the officers that she needed medical attention, CBP agents ignored her complaints. CBP officers were also informed by other detainees that Ms. Quiñonez Flores had a fever and that she needed medical attention, but the agents disregarded their pleas, even though they knew the severity of Ms. Quiñonez Flores' conditions. All of these intentional, willful, reckless and, at the least, grossly negligent actions by defendant CBP officers requires that punitive damages be awarded. Punitive damages are

appropriate in this case because the purpose of *Bivens* is to deter individual federal officers from violating the constitutional right of others. *FDIC v. Meyer*, 510 U.S. 471, 485 (1994).

FIFTH CLAIM FOR RELIEF

Violation of the Fifth Amendment: Inhumane Conditions of Confinement

73. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 46 of this Complaint.

74. The Fifth Amendment Due Process Clause prohibits housing detainees in conditions that deprive detainees of basic human needs.

75. As a result of the inhumane conditions of confinement, Ms. Quiñones Flores was deprived of:

- a. Adequate nutrition;
- b. Adequate drinking water;
- c. Personal hygiene products;
- d. Sanitary conditions of confinement;
- e. Clean clothing;
- f. Adequate sleeping conditions.

76. In addition, CBP agents maintained the *hieleras* in which Ms. Quiñonez Flores was kept at extremely cold temperatures, while simultaneously denying Ms. Quiñonez Flores clothing or other means to escape the frigid conditions.

77. Failure to provide detainees with adequate nutrition, drinking water, personal hygiene products and sanitary conditions of confinement, clean clothing, and adequate bedding constitutes a deprivation of basic human needs, and exposing a detainee to extreme cold

temperatures without the means to keep warm likewise constitutes deprivation of a basic human need.

78. CBP officers acted with deliberate indifference to Ms. Quiñonez Flores's basic human needs by:

- a. serving meals that consisted solely of a single partially-frozen sandwich made with white bread and processed meat product;
- b. serving identical sandwiches for breakfast, lunch, and dinner;
- c. depriving Ms. Quiñonez Flores of adequate nutrition by insisting that she pick up her own sandwich from the agent distributing them on a tray, when the agents knew or should have known that Ms. Quiñonez Flores was physically incapable of doing so, thereby causing her to miss meals;
- d. depriving Ms. Quiñonez Flores of food for extended periods of time by distributing an inadequate supply of food, such that the weakest detainees – including Ms. Quiñonez Flores – were physically incapable of securing their own meal;
- e. providing the detainees with tainted water that smelled like bleach, had a foul taste, and burned Ms. Quiñonez Flores' throat when she drank it;
- f. maintaining the holding rooms at extremely cold temperatures while failing to provide Ms. Quiñonez Flores any blankets, additional clothing, or any other means to keep warm, including prohibiting them from huddling together for warmth;
- g. failing to provide Ms. Quiñonez Flores with adequate basic personal hygiene products, despite their knowledge that the supply provided was woefully insufficient;
- h. failing to provide Ms. Quiñonez Flores any change of clothes during her time in CBP detention, even after the agents knew or should have known that her clothes had

become soiled as a result of her menstruation as a result of the insufficient supply of feminine hygiene products;

- i. failing to provide detainees with sanitary conditions of confinement;
- j. failing to provide Ms. Quiñonez Flores with a mattress, a blanket, or any form of bedding, leaving Ms. Quiñonez Flores to sleep on the rigid cement floor of the holding room.

79. Depriving a civil immigrant detainee of her basic human needs does not advance any legitimate governmental purpose and constitutes *de facto* punishment without due process of law.

80. CBP's policies, practices, acts, and omissions with respect to the inhumane conditions of confinement violate the Due Process Clause of the Fifth Amendment to the United States Constitution.

81. As a result of CBP officers' failure to provide human conditions of confinement, Ms. Quiñonez Flores was deprived of her basic human needs throughout her time in CBP custody.

82. As a proximate result of CBP officers' unconstitutional policies, practices, acts and omissions, Ms. Quiñonez Flores has suffered irreparable injury, including severe lasting emotional distress, humiliation, anxiety, and psychological injury resulting in past and future mental anguish, past and future pain and suffering, aggravation of preexisting injury, future medical expenses, and other compensatory damages in an amount to be proven at trial. Ms. Quiñonez Flores will also experience economic losses consisting of future medical health care expenses because during the course of her detention, her medical conditions were aggravated.

83. The conduct of each of the Defendants constitutes a reckless indifference or callous disregard of Ms. Quiñonez Flores' clearly established constitutional right under the Fifth Amendment to humane conditions of confinement, entitling Ms. Quiñonez Flores to punitive damages. CBP agents failed to provide Ms. Quiñonez Flores with adequate nutrition, adequate drinking water, personal hygiene products, sanitary conditions of confinement, clean clothing, and adequate sleeping conditions. CBP officers were also aware that the detention facilities were extremely cold because they referred to the cells as *hieleras*. In addition to observing and creating the inhumane conditions of confinement, CBP officers were amused by the suffering of the detainees. All of these intentional, wilfull, reckless and, at the least, grossly negligent actions by defendant CBP officers requires that punitive damages be awarded. Punitive damages are appropriate in this case because the purpose of *Bivens* is to deter individual federal officers from violating the constitutional right of others. *FDIC v. Meyer*, 510 U.S. 471, 485 (1994).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Judgment be entered in favor of Plaintiff Ms. Quiñonez Flores on all claims for relief;
- B. Award Plaintiff actual and compensatory damages against Defendants in the amount to be determined at trial for claims arising under the Federal Torts Claims Act;
- C. Award Plaintiff actual, compensatory, and punitive damages in an amount to be determined at trial, against Defendants Does 1-10 for violating the Constitution of the United States;
- D. Award Plaintiff attorney's fees and costs pursuant to 28 U.S.C. § 2412 and any other applicable provisions, common law, or Constitutional provisions;

E. Award Plaintiff Ms. Quiñonez Flores any other relief that this Court deems just and proper.

Dated: August 13, 2014

Respectfully submitted,

/s/ Ira J. Kurzban
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