

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**MARIA DE BELEM MARTINEZ-CASTRO, )  
JULIO BASALDUA-NUEVA, ROSA MARIA )  
SIFUENTES, AND JOSE RAFAEL PUENTES, )**

**Plaintiffs,**

**v.**

**No. 3:12-cv-3264-JZ**

**VILLAGE OF WAKEMAN, OHIO; )  
CHIEF TIM HUNKER, WAKEMAN OHIO )  
POLICE DEPARTMENT, individually and )  
in his official capacity; WAYNE JAMESON, )  
Wakeman Ohio Police Department officer, )  
individually and in his official capacity; )  
MATHEW RICHARDSON, United States )  
Border Patrol Agent, individually and in his )  
official capacity; A. MORGAN, United States )  
Border Patrol Agent, individually and in his )  
official capacity; and, UNITED STATES OF )  
AMERICA, )**

**Judge Jack Zouhary**

**Defendants.**

**FIRST AMENDED COMPLAINT**

**INTRODUCTION**

1. This civil rights lawsuit seeks to vindicate the rights of individual Plaintiffs who have been unreasonably seized and interrogated in violation of the Fourth, Fifth and Fourteenth Amendments of the United States Constitution by the Village of Wakeman, the Village of Wakeman Police Department, and two United States Border Patrol Agents.

2. Plaintiffs seek damages, declaratory relief and injunctive relief from the Defendants under 42 U.S.C. § 1983, *Bivens* and the Federal Tort Claims Act for violations of the Fourth, Fifth and Fourteenth Amendments and for the torts of false arrest/false imprisonment, assault, deprivation of civil rights through intimidation, negligence, and intentional infliction of emotional distress.

In support of this relief, Plaintiffs assert and allege as follows:

### **PARTIES**

3. Plaintiff Maria de Belem Martinez-Castro is a Hispanic female resident of Norwalk, Huron County, Ohio. She was restrained, interrogated and arrested by a Village of Wakeman Police Office and Border Patrol Agents, on February 23, 2011.
4. Plaintiff Julio Basaldua-Nueva is a Hispanic male resident of Norwalk, Huron County, Ohio. He was restrained, interrogated and arrested by a Village of Wakeman Police Office and Border Patrol Agents, on February 23, 2011.
5. Plaintiff Rosa Maria Sifuentes is a Hispanic female resident of Sandusky, Erie County, Ohio. She was restrained, interrogated and arrested by a Village of Wakeman Police Office and Border Patrol Agents, on February 23, 2011.
6. Plaintiff Jose Rafael Puentes is a Hispanic male resident of Sandusky, Erie County, Ohio. He was restrained, interrogated and arrested by a Village of Wakeman Police Office and Border Patrol Agents, on February 23, 2011.
7. Defendant Village of Wakeman ("Wakeman") is a political subdivision of the State of Ohio that can sue and be sued in its own name. Upon information and belief, Defendant Wakeman includes, operates, governs, and is responsible for the Wakeman Police Department pursuant to the laws of the State of Ohio.

8. Defendant Police Chief Tim Hunker ("Hunker") is the Police Chief of the Village of Wakeman Ohio Police Department in Huron County, Ohio, and is responsible for the policies, practices, and customs of the Wakeman Police Department. The Police Chief also directs the hiring, screening, training, retention, supervision, discipline, counseling, and control of the police officers under his supervision and command. At all relevant times Defendant Police Chief was acting under color of law. He is sued in his individual and official capacities.
9. Defendant Wayne Jameson ("Jameson") is a police officer of the Wakeman, Ohio Police Department. At all relevant times, Officer Jameson was acting under color of law. At all relevant times, Defendant Jameson was acting under color of law, as an agent, employee, and/or representative of the Wakeman Ohio Police Department. Defendant Jameson is sued in his individual and official capacities.
10. Defendant Mathew Richardson ("Richardson") is a Border Patrol Agent assigned to or working out of the Sandusky Bay Border Patrol Station, Ohio. At all relevant times, Richardson was acting under color of law, as agent, employee, and/or representative of the United States. He is sued in his individual and official capacities.
11. Defendant A. Morgan ("Morgan") is a Border Patrol Agent assigned to or working out of the Sandusky Bay Border Patrol Station, Ohio. At all relevant times, Morgan was acting under color of law, as agent, employee, and/or representative of the United States. He is sued in his individual and official capacities.
12. Defendant United States of America ("United States") is the proper defendant for claims brought under the Federal Tort Claims Act.

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343, 1346(b), and *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).
14. On September 21, 2011, the Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes submitted individual administrative claims for damages to the Office of the Chief Counsel, U.S. Customs and Border Protection, and to the Office of the General Counsel, U.S. Department of Homeland Security. *See* 28 U.S.C. §2675. As of the date of this filing no response to the four Plaintiffs' complaints have been received from CBP or DHS. This Complaint is filed less than one year from the filing of those administrative complaints, and is therefore timely under 28 U.S.C. § 2401(b).
15. Venue is proper under 28 U.S.C. § 1402(b) and 28 U.S.C. § 1391(b) and (e)(1) because this is the district where Plaintiffs reside and where a substantial part of the acts or omissions giving rise to the claims occurred.

#### **FACTUAL ALLEGATIONS**

16. On February 23, 2011, at approximately 6:00 a.m., five individuals, including the four Plaintiffs, were traveling west on Ohio State Route 20 in a car and had just entered the Village of Wakeman, Huron County, Ohio.
17. Plaintiff Maria de Belem Martinez-Castro ("Maria") was the driver of the vehicle. Plaintiff Julio Basaldua-Nueva, Maria's husband, ("Julio") was the front-seat passenger. In the rear sat Plaintiff Rosa Maria Sifuentes ("Rosa") and her husband, Plaintiff Jose Rafael Puentes ("Jose"). Also in the rear sat a friend named Omar.

18. Plaintiffs' vehicle had passed a sign to reduce speed ahead to 35 miles per hour, but they had not yet reached the speed limit sign when a Village of Wakeman Police Department vehicle pulled out behind them.
19. The Wakeman police department officer, Defendant Jameson, turned on the flashing colored lights on the roof of his car and Maria pulled her vehicle over and stopped.
20. On information and belief, the Village of Wakeman Police Department lacked reasonable suspicion to justify this stop and interrogation. On information and belief, it is alleged that the Wakeman Police Department selected this vehicle for this stop and interrogation solely because Plaintiffs appeared to the Wakeman Police Department Officer to be Hispanic based on their complexion and hair color.
21. Defendant Jameson was in full uniform and had a holstered gun.
22. Jameson asked Maria, the driver, for her driver's license and other documents.
23. Maria responded that all of her documents were at home.
24. Jameson went back to his car, and then he re-approached Maria's car in which the five occupants had remained.
25. Jameson asked Maria where she was from and Maria said she was from Norwalk. After another trip to his police car, the officer asked if anyone in the vehicle had a driver's license and the passengers said they did not have licenses.
26. Jameson then told everyone to wait in the car.
27. On information and belief, the Village of Wakeman Police Department lacked reasonable suspicion to justify this prolonged detention. On information and belief, it is alleged that the Wakeman Police Department prolonged this detention and contacted the United States Border Patrol solely because Plaintiffs appeared to the Wakeman Police

Department Officer to be persons of Hispanic origin based on their complexion and hair color.

28. Alternatively, on information and belief, the United States Border Patrol lacked reasonable suspicion to justify this prolonged detention at the Border Patrol's direction to Jameson.
29. Approximately thirty to forty minutes after Jameson told the Plaintiffs to wait in their car, two United States Border Patrol Agents arrived at the scene in two United States Border Patrol vehicles.
30. Both Border Patrol Agents were in full uniform and had guns.
31. One of the Border Patrol Agents who was very tall, Defendant Richardson, approached the passenger side of Plaintiffs' vehicle and told Julio to roll down his window.
32. In Spanish Richardson told Julio that he was an immigration officer and asked Julio where he was from. Julio told Richardson he was from Norwalk.
33. Richardson then asked Julio what country he was from and Julio again told Richardson he was from Norwalk.
34. At this point, Richardson visibly became angry.
35. When Maria tried to tell the Agent that they had small children at home expecting them Richardson yelled at her repeatedly to shut up.
36. Richardson continued to ask Julio where he was from and Julio continued to answer that he was from Norwalk.
37. Suddenly and without warning or any request to Julio to exit the vehicle, Richardson opened the front passenger car door, grabbed Julio's arm, and violently yanked Julio out of the car.

38. Richardson slammed Julio against the car, and aggressively twisted Julio's arms to handcuff him.
39. Richardson put the handcuffs on Julio tightly.
40. Julio's arm has continued to hurt because of the force Richardson used.
41. At the time there were also marks on Julio's wrists because the handcuffs were so tight.
42. Richardson patted Julio down and grabbed Julio's wallet from his pants.
43. Richardson took a document out of Julio's wallet, and held it closely to Julio's face.
44. While Julio's head was against the car, Richardson moved his own head closer to Julio's and yelled repeatedly at Julio asking Julio where he was from.
45. Julio was very scared that Richardson was going to hurt him more.
46. Richardson then put Julio into the locked rear of the Border Patrol vehicle.
47. Richardson then re-approached the Plaintiffs' vehicle and went to Jose, who was sitting in the rear on the passenger side.
48. Jose was on the phone with a friend from church.
49. Without any notice or request, Richardson opened the car door, grabbed Jose's arm, and pulled him out of the car.
50. Richardson asked Jose where he was from and Jose answered that he was from Norwalk.
51. Jose also told Richardson that he wanted to talk to a lawyer.
52. Richardson, already visibly angry, became even angrier.
53. Richardson slammed Jose against the car, and he took the cell phone from Jose's hand and hit the cell phone on the trunk of the car.
54. Richardson then handcuffed Jose and then patted him down.
55. Richardson put the handcuffs on Jose tightly.

56. Richardson then placed Jose in the locked rear of the Border Patrol vehicle next to Julio and threw Jose's cell phone at him.
57. Richardson then approached Omar, who was sitting in the rear on the driver side. Omar was arrested and placed in the Border Patrol vehicle.
58. Defendant Morgan approached Maria and then Rosa. They were both arrested and placed in the second Border Patrol vehicle.
59. The Border Patrol Agents then transported the five individuals to the Sandusky Border Patrol Station.
60. Julio, Jose, and Omar were in Richardson's vehicle and Maria and Rosa were in Morgan's vehicle.
61. On the way to Sandusky, Jose sat in between Julio and Omar.
62. During the car ride, Richardson adjusted his rear-view mirror to look at Jose and repeatedly asked Jose in Spanish while smirking and yelling did Jose want a lawyer.
63. Richardson was driving very fast on the road.
64. Even though Morgan's Border Patrol vehicle transporting the women left Wakeman before the vehicle transporting the men, the vehicle transporting the men arrived first to Sandusky.
65. Richardson did not put seat belts on Julio, Jose, or Omar before leaving Wakeman and driving to the Sandusky Bay Border Patrol Station.
66. At the Sandusky Border Patrol Station, the Plaintiffs and Omar repeatedly asked to speak with a lawyer before answering any questions.
67. The Border Patrol Agents told the Plaintiffs and Omar that they did not need a lawyer, and that lawyers were for people with crimes.

68. The Agents told the Plaintiffs and Omar that they were just illegals, and lawyers were not for illegals.
69. Jose and Julio were placed in a room together at the Border Patrol Station.
70. Throughout the day, approximately ten to twelve different Sandusky Bay Station Border Patrol Agents came in and out of the room where Jose and Julio were and yelled at Jose and Julio.
71. The Border Patrol Agents continually asked the Plaintiffs where they were from and if they were from Mexico.
72. The Agents threatened that if Jose and Julio did not tell them where they were from, bad things would happen to them.
73. Maria and Rosa were placed in a room together at the Border Patrol Station, separated from their husbands.
74. The Border Patrol Agents asked Maria and Rosa the same questions that they had asked Jose and Julio – where they were from and if they were from Mexico.
75. Maria told the Agents she was from Norwalk and Rosa told the Agents she was from Sandusky.
76. After hearing Rosa's response of Sandusky, one of the Agents shouted in her face, "Bullshit!"
77. The Agents continued to yell at Maria and Rosa.
78. At one point, the shouting was so loud and intense, and the Agents were so furious and in the face of Maria that Maria shouted in response, asking if the Agents were going to hurt her.

79. At another point, one of the Border Patrol Agents told Maria that she would not see her children again if she did not tell the Agents where she was from.
80. An Agent threatened Maria that a judge would see the interview notes and take her children away.
81. The Agents told the Plaintiffs that they needed to help themselves by answering the Agents' questions and threatened that otherwise the Plaintiffs would never get out of the Station.
82. The Agents repeatedly told the individuals that they did not need a lawyer.
83. The Agents eventually brought all four of the individuals into a central room at the Border Patrol Station.
84. One Agent told the individuals in Spanish, "I did not invite you to my house. You all came without an invitation. So you're fucked."
85. A different Agent then said in English, "I do not want to play this fucking game for another four hours. Get them out of here."
86. At no time on February 23, 2011, did any Border Patrol Agent read or advise the four Plaintiffs of any *Miranda* rights.
87. At no time on February 23, 2011, did any Border Patrol Agent allow Plaintiffs to call or contact a lawyer even after repeated requests from the Plaintiffs.
88. At no time on February 23, 2011, did the Border Patrol Agents stop questioning the Plaintiffs because Plaintiffs had requested to speak to a lawyer.
89. Plaintiffs suffered extreme emotional distress as a result of the treatment by Defendants Morgan and Richardson.

90. The four Plaintiffs were transported to the Seneca County Jail in Tiffin, Ohio, for immigration detention. Plaintiffs arrived at the Seneca County Jail between 8:00 and 9:00 p.m. on February 23, 2011.
91. The Wakeman Police Department has engaged in a pattern or practice of profiling Hispanics for traffic stops in Wakeman.
92. On information and belief, the Border Patrol Agents at the Sandusky Bay Station have never apprehended an alien attempting to enter the United States without inspection.
93. The Wakeman Police Department calls the Sandusky Bay Station of the United States Border Patrol for assistance in Spanish language interpretation and translation.
94. Defendants Village of Wakeman and Chief Hunker receive federal funding for law enforcement activities or assistance from federal law enforcement agencies.
95. Upon information and belief the Wakeman Defendants will attribute the prolonged detention on the roadside for an alleged traffic violation to the Border Patrol.
96. Upon information and belief the Border Patrol will attribute the prolonged detention on the roadside to the Wakeman Defendants.
97. Upon information and belief, the Border Patrol Agents stationed at the Sandusky Bay Station of the United States Border Patrol do not have in place a practice and procedure requiring the completion of paperwork that sets forth the bases of reasonable suspicion for apprehensions. The lack of an established policy and procedure encourages or at least allows the Border Patrol's participating in vehicle stops that are based on nothing other than the ethnic and/or racial appearance of a vehicle's occupants.
98. Many Hispanics living in Norwalk, Ohio, routinely travel through Wakeman on U.S. 20 on their way to work at Green Circle Growers in Oberlin, Ohio. Green Circle Growers in

Oberlin provides plants to area stores such as Home Depot, Heinen's, Wal-Mart, Sam's Club and Giant Eagle.

99. Defendant Jameson intentionally detained the Plaintiffs at the side of the road without lawful justification.
100. The Plaintiffs were detained at the side of the road without their consent at the direction of Defendant Jameson or by the U.S. Border Patrol Sandusky Bay Station.
101. The Plaintiffs were ordered to stay in a confined area by Defendant Jameson, i.e., their car.
102. The Plaintiffs were detained for an appreciable time, approximately 30 to 40 minutes, but well past the time necessary for Defendant Jameson to issue any contemplated traffic citations.
103. The conduct of Defendants Morgan and Richardson toward Plaintiffs was willful and caused Plaintiffs to reasonably believe Defendants Morgan and Richardson would assault them.
104. Defendants Morgan and Richardson knew that their conduct towards Plaintiffs was harmful or offensive.
105. Defendants Morgan and Richardson knew or should have known that their conduct towards Plaintiffs was extreme and outrageous.

**FIRST CLAIM FOR RELIEF**

**Fourth Amendment (42 U.S.C. § 1983) Claims for Violation of the Right To Be Free Of Unreasonable Searches and Seizures**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against Defendants Wakeman, Wakeman Ohio Police Chief Tim Hunker, and Wakeman Police Officer W. Jameson.**

106. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.
107. Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes seek injunctive and declaratory relief against Defendants Wakeman, Wakeman Ohio Police Chief Tim Hunker and Wakeman Police Officer W. Jameson in their official capacities, enjoining them from continuing to engage in the above-described policies, practices and conduct violating the Plaintiffs' rights to be free of unreasonable searches and seizures under the Fourth Amendment of the United States Constitution, including but not limited to:
- a. Stopping person and vehicles without reasonable suspicion of criminal activity or traffic infraction;
  - b. Using race as a motivating factor to stop, detain, interrogate and/or search persons who appear to be Hispanic; and,
  - c. Using race as a motivating factor in deciding to unreasonably prolong detentions in order to contact the United States Border Patrol and have them come to the scene of traffic stops.
108. Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes seek compensatory damages against Defendant Wakeman and compensatory and punitive damages against Defendants Wakeman Police Chief Tim Hunker and Wakeman Police Officer W. Jameson in their personal capacities for violations of their rights to be free from unreasonable searches and seizures according to proof, including but not limited to:

- a. Stopping persons and vehicles without reasonable suspicion of criminal activity or traffic infraction;
- b. Using race as a motivating factor to stop, detain, interrogate and/or search persons who appear to be Hispanic;
- c. Using race as a motivating factor in deciding to unreasonably prolong detentions in order to contact the United States Border Patrol and have them come to the scene of traffic stops; and,
- d. Engaging in the enforcement of the civil provisions of federal immigration law, an activity for which the Wakeman Defendants are not authorized.

### **SECOND CLAIM FOR RELIEF**

#### **Fourteenth Amendment (42 U.S.C. § 1983) Claims for Violation of the Right To Equal Protection of Law**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against Defendants Wakeman, Wakeman Ohio Police Chief Tim Hunker, and Wakeman Police Officer W. Jameson.**

109. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.
110. Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes seek injunctive and declaratory relief against Defendants Wakeman, Wakeman Ohio Police Chief Tim Hunker and Wakeman Police Officer W. Jameson in their official capacities, enjoining them from continuing to engage in the above-described policies, practices and conduct violating the Plaintiffs' rights to equal protection of law under the Fourteenth Amendment of the United States Constitution, including but not limited to:

- a. Stopping person and vehicles without reasonable suspicion of criminal activity or traffic infraction;
  - b. Using race as a motivating factor to stop, detain, interrogate and/or search persons who appear to be Hispanic; and,
  - c. Using race as a motivating factor in deciding to unreasonably prolong detentions in order to contact the United States Border Patrol and have them come to the scene of traffic stops.
111. Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes seek compensatory damages against Defendant Wakeman and compensatory and punitive damages against Defendants Wakeman Police Chief Tim Hunker and Wakeman Police Officer W. Jameson in their personal capacities for violations of their rights to equal protection, including but not limited to:
- a. Stopping persons and vehicles without reasonable suspicion of criminal activity or traffic infraction;
  - b. Using race as a motivating factor to stop, detain, interrogate and/or search persons who appear to be Hispanic;
  - c. Using race as a motivating factor in deciding to unreasonably prolong detentions in order to contact the United States Border Patrol and have them come to the scene of traffic stops; and,
  - d. Engaging in the enforcement of the civil provisions of federal immigration law, for which the Wakeman Defendants are not authorized and selectively engage in only as to Hispanics they encounter.

**THIRD CLAIM FOR RELIEF**

**Claim for Violation of Title VI of the 1964 Civil Rights Act, 42 U.S.C §§ 2000d - 2000d-7**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against Defendants Wakeman and Wakeman Ohio Police Chief Tim Hunker.**

112. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.
113. Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes seek injunctive and declaratory relief against Defendants Wakeman and Wakeman Ohio Police Chief Tim Hunker in their official capacities, enjoining them from continuing to engage in the above-described policies, practices and conduct of failing to provide interpretation services through the Village of Wakeman or its Police Department and instead using the United States Border Patrol to provide Spanish-language interpretation.

**FOURTH CLAIM FOR RELIEF**

**Bivens Claims for Violation of the Fifth Amendment Right to Equal Protection Of Law**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against Defendants Border Patrol Agents Richardson and Morgan Individually**

114. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
115. Defendants restrained Plaintiffs' liberty. Accordingly, under the Fifth Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
116. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.

117. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their Fifth Amendment rights to equal protection of the law.
118. Plaintiffs request monetary damages against Richardson and Morgan in their individual capacities.

#### **FIFTH CLAIM FOR RELIEF**

#### **Bivens Claims for Violation of the Fourth Amendment Prohibition Of Unreasonable Searches And Seizures**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against Defendants Border Patrol Agents Richardson and Morgan Individually**

119. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
120. Defendants restrained Plaintiffs' liberty. Accordingly, under the Fourth Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
121. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
122. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their Fourth Amendment rights prohibiting unreasonable searches and seizures.
123. Plaintiffs request monetary damages against Richardson and Morgan in their individual capacities.

#### **SIXTH CLAIM FOR RELIEF**

#### **Federal Tort Claims Act Claims For Assault**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against the United States of America**

124. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
125. Border Patrol Agent Defendants Richardson and Morgan intentionally and nonconsensually treated the Plaintiffs in a manner with the intent to cause injury or the intent to create fear of apprehension in the Plaintiffs.
126. The force and behaviors used by Border Patrol Agent Defendants Richardson and Morgan were unreasonable in relation to any legitimate law enforcement objective.
127. The actions of Border Patrol Agent Defendants Richardson and Morgan constitute the tort of assault under the laws of Ohio.
128. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

**SEVENTH CLAIM FOR RELIEF**

**Federal Tort Claims Act Claims For Battery**

**Plaintiffs Julio Basaldua-Nueva and Jose Rafael Puentes against the United States of America**

129. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
130. Border Patrol Agent Defendants Richardson and Morgan intentionally and nonconsensually touched the Plaintiffs. Defendants acted with the intent to cause injury or the intent to create fear of apprehension in the Plaintiffs.

131. The force used by Border Patrol Agent Defendants Richardson and Morgan was unreasonable in relation to any legitimate law enforcement objective.
132. The actions of Border Patrol Agent Defendants Richardson and Morgan constitute the torts of assault and battery under the laws of Ohio.
133. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

### **EIGHTH CLAIM FOR RELIEF**

#### **Federal Tort Claims Act Claims For False Arrest And False Imprisonment**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against the United States of America**

134. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
135. Border Patrol Agent Defendants Richardson and Morgan had neither reasonable suspicion to detain the Plaintiffs nor probable cause to arrest them. Border Patrol Agent Defendants Richardson and Morgan did not have any justification for confining the Plaintiffs.
136. The force used by Border Patrol Agent Defendants Richardson and Morgan was unreasonable in relation to any legitimate law enforcement objective.
137. The actions of Border Patrol Agent Defendants Richardson and Morgan constitute the torts of false arrest and false imprisonment under the laws of Ohio.
138. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

### **NINTH CLAIM FOR RELIEF**

**Federal Tort Claims Act Claims For Intentional Infliction of Emotional Distress**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against the United States of America**

139. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
140. Border Patrol Agent Defendants Richardson and Morgan engaged in extreme and outrageous conduct, acted intentionally and /or recklessly, and thereby caused severe emotional distress to the Plaintiffs.
141. The actions of Border Patrol Agent Defendants Richardson and Morgan constitute the tort of intentional infliction of emotional distress under the laws of Ohio.
142. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

**TENTH CLAIM FOR RELIEF**

**Federal Tort Claims Act Claims For Negligent Infliction of Emotional Distress**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against the United States of America**

143. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
144. Border Patrol Agent Defendants Richardson and Morgan engaged in negligent conduct, acted negligently, and thereby caused severe emotional distress to the Plaintiffs.
145. The actions of Border Patrol Agent Defendants Richardson and Morgan constitute the tort of negligent infliction of emotional distress under the laws of Ohio.

146. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

### **ELEVENTH CLAIM FOR RELIEF**

#### **Federal Tort Claims Act Claims For Deprivation of Civil Rights Through Intimidation**

**Plaintiffs Maria de Belem Martinez-Castro, Julio Basaldua-Nueva, Rosa Maria Sifuentes, and Jose Rafael Puentes against the United States of America**

147. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

148. Border Patrol Agent Defendants Richardson and Morgan intentionally and nonconsensually treated the Plaintiffs in an intimidating manner seeking to deprive the Plaintiffs of their civil rights.

149. The force and behaviors used by Border Patrol Agent Defendants Richardson and Morgan was unreasonable in relation to any legitimate law enforcement objective.

150. The actions of Border Patrol Agent Defendants Richardson and Morgan constitute the tort of deprivation of civil rights through intimidation.

151. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Assert jurisdiction over this matter;
2. Declare that the Plaintiffs' rights were violated by the Defendants;
3. Award compensatory damages as to all Defendants;
4. Award punitive damages as to Defendants Richardson and Morgan;

5. Provide declaratory and injunctive relief against Wakeman and Wakeman Police Department Chief Tim Hunker prohibiting their:
  - a. profiling of Hispanics;
  - b. using the United States Border Patrol for interpretation services and requiring Wakeman and its Police Department to provide such interpretation services;
  - c. enforcing the civil provisions of federal immigration law:  
and,
  - d. enforcing the civil provisions of federal immigration law  
only against Hispanics;
6. Award reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 2412; and,
7. Grant any other relief the Court deems appropriate.

Respectfully submitted,

By: /s/ Mark Heller  
Mark Heller (0027027)

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Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 2012, a copy of the foregoing First Amended Complaint was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system.

/s/ Mark R. Heller

Mark R. Heller

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