

Exhibit A

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

Jane Doe,

Plaintiff,

v.

United States Customs and Border Protection
Agent Michael Brady; United States Customs
and Border Protection Agent Arnoldo Gomez;
United States Customs and Border Protection
Agent Hector Mancha; United States Customs
and Border Protection Agent Juan Quiñones;
United States Customs and Border Protection
Agent Felix Castro; United States Customs and
Border Protection Agent Gilbert Arciero;
United States Customs and Border Protection
Agent Alicia Portillo; United States Customs
and Border Protection Agent Veronica Herrera;
United States Customs and Border Protection
Agent Juan Lujan; and the United States,

Defendants.

**Civil Action No. 3:13-cv-
00406 (DCG)**

THIRD AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This action concerns constitutional limits on the government’s ability to invade a person’s most intimate bodily spaces to search for drugs without any judicial oversight or even reasonable suspicion. Government agents brutally probed Plaintiff Jane Doe’s¹ body cavities against her will in multiple, redundant and increasingly intrusive searches even though none of the searches uncovered any evidence of internal drug smuggling. After enduring approximately six hours of demeaning and highly invasive searches, Ms. Doe was released without any charge.

¹ On account of the highly personal and sensitive nature of the events set forth in this Complaint, on April 1, 2015, the Court granted Plaintiff’s Motion to Proceed Anonymously.

2. Ms. Doe, a 54-year-old United States citizen, returned to the United States from Mexico via the Cordova Bridge in El Paso, Texas, on December 8, 2012. Upon Ms. Doe's entering the United States, a drug sniffing dog jumped on her, setting off a sequence of searches conducted by United States Customs and Border Protection ("CBP") agents and employees of the University Medical Center of El Paso ("Medical Center").

3. Over the course of the next six hours, Defendants subjected Ms. Doe to a series of highly invasive searches, any one of which would have been humiliating and demeaning. First, government agents striped searched Ms. Doe and made a visual and manual inspection of her genitals and anus. Finding nothing, Defendants next subjected her to an observed bowel movement. When that procedure yielded no evidence of drugs, Defendants directed Ms. Doe to be X-rayed. Having found nothing, Defendants next shackled Ms. Doe to an examining table and directed the insertion of a speculum into her vagina, the performance of a rectal exam on her, and the execution of a bimanual cavity search of her vagina. Still not satisfied, Defendants subjected Ms. Doe to a CT scan and again found no evidence of drugs.

4. Though Defendants conducted these searches against the will of Ms. Doe and without her consent, the Defendants directed the Medical Center to send the bill to Ms. Doe, who was invoiced more than \$5,000.00 for the hospital's services.

5. The searches conducted by Defendants traumatized Ms. Doe physically and emotionally. She seeks relief from this Court for her injuries.

PARTIES

6. Defendant Michael Brady is an employee, with the rank of Chief, of the United States Customs and Border Protection. At all times relevant to this Complaint, he was acting in the course and within the scope of his employment. He is sued in his individual capacity.

7. Defendant Arnoldo Gomez is an employee, with the rank of Watch Commander, of the United States Customs and Border Protection. At all times relevant to this Complaint, he was acting in the course and within the scope of his employment. He is sued in his individual capacity.

8. Defendant Hector Mancha is an employee, with the rank of Director of Field Operations, of the United States Customs and Border Protection. On December 8, 2012, he was an employee, with the rank of Port Director, of the United States Customs and Border Protection. At all times relevant to this Complaint, he was acting in the course and within the scope of his employment. He is sued in his individual capacity.

9. Defendant Juan Quiñones is an employee, with the rank of Chief, of the United States Customs and Border Protection. At all times relevant to this Complaint, he was acting in the course and within the scope of his employment. He is sued in his individual capacity.

10. Defendant Felix Castro is a Supervisory United States Customs and Border Protection Agent and an employee of the United States Customs and Border Protection. At all times relevant to this Complaint, he was acting in the course and within the scope of his employment. He is sued in his individual capacity.

11. Defendant Gilbert Arciero is a Supervisory United States Customs and Border Protection Agent and an employee of the United States Customs and Border Protection. At all times relevant to this Complaint, he was acting in the course and within the scope of his employment. He is sued in his individual capacity.

12.

13. Defendant Alicia Portillo is an employee of the United States Customs and Border Protection. At all times relevant to this Complaint, she was acting in the course and within the scope of her employment. She is sued in her individual capacity.

14. Defendant Veronica Herrera² is an employee of the United States Customs and Border Protection. At all times relevant to this Complaint, she was acting in the course and within the scope of her employment. She is sued in her individual capacity.

15. Defendant Juan Lujan is a Canine Enforcement Officer for the United States Customs and Border Protection. At all times relevant to this Complaint, he was acting in the course and within the scope of her employment. He is sued in his individual capacity

16. Defendant United States is liable pursuant to the Federal Tort Claim Act for the tortious conduct of federal employees while acting within the scope of their employment. 28 U.S.C. §2671, *et seq.*

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 because Ms. Doe's claims arise under the Constitution and laws of the United States of America.

18. This Court has subject matter jurisdiction over Defendant the United States for the tortious actions of federal employees pursuant to 28 U.S.C. §1346(b)(1).

19. Plaintiff exhausted her administrative remedies under the Federal Torts Claims Act. She filed an administrative complaint with the United States Customs and Border Patrol on May 5, 2014. CBP denied this complaint on June 30, 2014.

20. Venue is proper in this judicial district under 28 U.S.C. §1391(b)(2) because the incident giving rise to this action occurred in this district.

² Since the filing of the initial Complaint, Defendant Herrera's name changed to Veronica Perez. She is referred to as Defendant Herrera throughout this Complaint.

FACTS

21. The Cordova Bridge (“Bridge”) in El Paso, Texas, connects the City of El Paso and Ciudad Juarez, Mexico. CBP’s El Paso Service Port operates and staffs CBP agents at the Bridge.

22. All individuals entering the United States from Ciudad Juarez via the Bridge must present themselves for inspection by a CBP agent at the Bridge.

Ms. Doe Entered the United States Without Any Contraband or Drugs

23. Jane Doe is a petite 54-year-old United States citizen. She resides with her husband in Lovington, New Mexico.

24. Ms. Doe recently obtained a passport and looked forward to traveling outside of the United States. In particular, she was eager to visit a close family friend in Ciudad Juarez whom she considers, and refers to as, her uncle. This friend resided in the United States but was deported to Mexico. Since his deportation, Ms. Doe makes an effort to visit him about once a month.

25. On December 8, 2012, Ms. Doe briefly visited her family friend. She returned to the United States without any contraband in her possession and crossed the Bridge at approximately 2:00 p.m.

26. Upon presenting herself for inspection at the Bridge, Ms. Doe had her passport swiped by a CBP agent. The CBP agent then informed her that she was randomly picked for additional screening and ordered her to secondary inspection.

27. Ms. Doe complied and walked to secondary where Defendant CBP agents Portillo and Herrera frisked Ms. Doe through her clothing. One of the agents ran her finger over Ms. Doe’s genital area during the frisk.

28. One of the agents instructed Ms. Doe to squat; she complied. An agent put her finger in the waistband of Ms. Doe's pants and inserted her finger in the crevice of Ms. Doe's buttocks.

29. The invasive frisk did not produce any evidence of contraband or of internal drug smuggling.

30. Ms. Doe did not consent to this frisk. She was embarrassed and upset by it.

31. Ms. Doe was then directed to stand in a line with other people. While she was standing in line, Juan Lujan, a CBP Canine Enforcement Officer, walked by Ms. Doe and hit the ground by her feet, but did not hit the ground by any of the others in the line. The dog responded by lunging onto Ms. Doe and landing its front paws on her torso. Ms. Doe was startled and frightened by the dog.

32. Because Ms. Doe did not possess any contraband, the dog either did not alert or the response was not a proper alert.

33. On information and belief, the actions of Agent Lujan and the dog indicate that Agent Lujan cued the alert or knew or should have known that the dog's response was not a proper alert

Additional Searches Did Not Produce Any Evidence of Internal Drug Smuggling

34. Supervisory CBP Officer Felix Castro mandated additional searches. CBP agents Portillo and Herrera grabbed Ms. Doe and led her to a private room. There, they ordered Ms. Doe to pull down her pants and crouch. She followed the order. One of the agents examined her anus with a flashlight.

35. Ms. Doe was commanded to lean backwards in her crouched position. She again complied. One of the agents then parted Ms. Doe's vulva with her hand, pressed her fingers into Ms. Doe's vagina and visually examined her genitalia with a flashlight.

36. Ms. Doe did not consent to this strip search nor to having her body touched in so intimate a way by government agents. Ms. Doe was understandably humiliated and she began crying.

37. Agent Herrera then informed Supervisor Castro about the results of the strip search. Supervisor Castro ordered Agent Herrera to ask Ms. Doe if she would consent to an X-ray search.

38. Ms. Doe told Agent Herrera that she would not consent to an X-ray search.

39. The agents instructed Ms. Doe to get dressed. The strip search did not produce any evidence of contraband or of internal drug smuggling. Still, agents Portillo and Herrera sealed the cuffs of Ms. Doe's pants by taping her pants to her legs.

40. Agent Herrera then informed Supervisor Castro that Ms. Doe did not consent to an X-ray search.

41. After speaking with Agent Herrera about the strip search, Supervisor Castro informed Chief Brady about the search and that Ms. Doe did not consent to an X-ray.

42. Chief Brady then contacted Watch Commander Gomez about the searches of Ms. Doe.

43.

44. Watch Commander Gomez then spoke with Port Director Mancha and an Assistant Port Director about the searches of Ms. Doe.

45. Despite the fact that none of the searches at the port had yielded any evidence of contraband or internal drug smuggling, Port Director Mancha nevertheless ordered that Ms. Doe be taken to the University Medical Center of El Paso for a medical search. Port Director Mancha conveyed this order to Watch Commander Gomez, who in turn

46. ordered Chief Brady to arrange for Ms. Doe to be transported by CBP to the University Medical Center for a medical search.

47. Chief Brady advised Supervisor Castro of Port Director Mancha's order that Ms. Doe be transported to the University Medical Center of El Paso for a medical search, an order which Supervisor Castro executed.

48. Before Supervisor Castro departed from work at approximately 4:00 p.m., he briefed Supervisor Arciero about the ongoing searches of Ms. Doe, including Port Director Mancha's order for a medical search of Ms. Doe at the University Medical Center.

***The Searches Continued Without Consent, a Warrant,
or Even Sufficient Suspicion of Criminal Activity***

49. Chief Brady ordered Agent Herrera to call the University Medical Center to advise the Center that CBP would be bringing Ms. Doe for a medical search.

50. At approximately 4:00 p.m., CBP agents Portillo and Herrera forcibly transported Ms. Doe in handcuffs to the University Medical Center of El Paso. One of the agents informed Ms. Doe that they needed to monitor her bowel movement.

51. During the car ride to the Medical Center, Ms. Doe asked if the agents had a warrant. One of them responded that they did not need a warrant.

52. Ms. Doe arrived at the Medical Center at approximately 4:29 p.m. Agents Portillo and Herrera led her to a room and handcuffed her to the examination table in the room. From the time of her arrival until she was released from the Medical Center, Ms. Doe did not present any symptoms consistent with internal drug smuggling nor did she exhibit any symptoms of feeling sick or unwell.

53. Without obtaining consent or obtaining a detailed medical history, Doctor Christopher Cabanillas and Doctor Michael Parsa (collectively, “Doctors”) continued the search for drugs along with agents Portillo and Herrera.

54. Medical Center staff wheeled a portable toilet into the room and directed Ms. Doe to ingest a laxative. CBP agents Portillo and Herrera removed the tape from Ms. Doe’s pants and remained in the room with her while the laxative took effect. The agents observed Ms. Doe have a bowel movement. No evidence of internal drug smuggling was found as a result of this search.

55. Doctor Cabanillas, in consultation with Doctor Parsa and at the direction of Defendants, ordered an X-ray of Ms. Doe’s abdomen. Medical Center staff X-rayed Ms. Doe, subjecting her to unnecessary radiation. According to medical records, the exam produced “[n]o evidence of radiopaque foreign bodies.”

56. One of the nurses informed Agent Herrera that the x-ray results showed no evidence of internal drug smuggling. Agent Herrera, in turn, notified Supervisory Agent Arciero of the x-ray results.

***Ms. Doe’s Anus and Vagina Were Probed Without a Warrant,
Consent or Any Suspicion of Internal Drug Smuggling***

57. Even though prior searches resulted in no evidence of internal drug smuggling, CBP agents caused the Doctors to continue the intrusion on Ms. Doe’s body without her consent and without a warrant.

58. After the X-ray, Ms. Doe was again handcuffed to the examination table. CBP agents Portillo and Herrera and Medical Center personnel were present in the room. Defendants left the door to the examining room open, and Ms. Doe could see hospital personnel at the nurses’ station in the hallway. She was angry that CBP had not released her and scared about what would happen next.

59. Doctor Parsa entered the examination room and barked an order that Ms. Doe spread her legs. She complied.

60. Ms. Doe was mortified. Defendants did not even have the decency to close the door to the examining room so that Ms. Doe would not also be subjected to being observed by passersby as she endured a forced gynecological exam.

61. Doctor Parsa then conducted a series of examinations at the direction of Defendants. While agents Portillo and Herrera and other Medical Center staff watched, he inserted a speculum into Ms. Doe's vagina and observed the interior cavity. According to medical records, Doctor Parsa did not see any foreign objects or evidence of internal drug smuggling.

62. Doctor Parsa also stuck his fingers into Ms. Doe's vagina while palpating her abdomen. This bimanual cavity search was negative: according to medical records, Doctor Parsa did not feel any foreign objects or evidence of internal drug smuggling.

63. Doctor Parsa also conducted a rectal examination: he inserted his fingers into Ms. Doe's rectum and probed the orifice for foreign bodies. According to medical records, Doctor Parsa did not feel any or find evidence of internal drug smuggling.

64. While her rectum was being probed, agents Portillo and Herrera and Medical Center staff watched. Ms. Doe felt that she was being treated less than human, like an animal.

65. Ms. Doe was shocked and humiliated by these exceedingly intrusive searches. That an audience of CBP agents and Medical Center staff observed her being probed compounded her feeling of degradation.

The Government Continued Searching Ms. Doe Even After Visual and Physical Inspections of Her Vaginal and Rectal Cavities Produced No Evidence of Internal Drug Smuggling

66. Still not satisfied, CBP and the Medical Center employees subjected Ms. Doe to yet another procedure.

67. Doctor Cabanillas, in consultation with Doctor Parsa and at the direction of Defendants, ordered a CT exam of Ms. Doe's abdomen and pelvis. During the CT scan, Medical Center staff barraged Ms. Doe's body to create a three dimensional image with more detail than a typical X-ray. In so doing, they forcibly exposed her to "between 150 and 1,100 times the radiation of a conventional x-ray, or around a year's worth of exposure to radiation from both natural and artificial sources in the environment."³ According to medical records, the exam resulted in "[n]o . . . evidence of ingested radiopaque objects."

68. After the CT scan, a CBP agent presented Ms. Doe with a choice: she could either sign a medical consent form, despite the fact that she had not consented, in which case CBP would pay for the cost of the searches; or if she refused to sign the consent form, she would be billed for the cost of the searches. She refused. The Medical Center consent form reflects that Ms. Doe withheld consent: "Refusal to Sign" is written in the patient signature line, a refusal witnessed by Jessica R.

Ms. Doe Was Traumatized by the Approximately Six Hours of Degrading Searches

69. Ms. Doe was released from custody without any charges at approximately 8:00 p.m., only after enduring roughly six hours of dehumanizing, invasive and degrading searches.

70. Throughout the unreasonable searches of Ms. Doe's body cavities, she continually denied the accusations that she was smuggling drugs internally and refused consent for each search.

³ Carina Storrs, *How Much Do CT Scans Increase the Risk of Cancer*, Scientific American, July 9, 2013, available at <http://www.scientificamerican.com/article.cfm?id=how-much-ct-scans-increase-risk-cancer>.

71. At no point during the searches of Ms. Doe did CBP agents obtain a warrant authorizing a search of her body.

72. The searches conducted by Defendant CBP agents and the Doctors injured Ms. Doe physically, mentally and emotionally. Her labia, vaginal opening, and anus were left raw and sore and she felt violated, demeaned and powerless as a result of the searches.

73. Ms. Doe continues to suffer mentally and emotionally. Since her ordeal, Ms. Doe has not been able to be physically intimate with her husband. When she is in public, she feels as if everyone is staring at her, so she avoids public spaces and stays at home whenever possible. She still cries when she thinks about this incident.

74. True to CBP's word, shortly after these searches were conducted, the Medical Center and Texas Tech University Health Sciences Center invoiced Ms. Doe over \$5,000.00 for the cost of the searches conducted on her. She refuses to pay.

75. Throughout the searches of Ms. Doe's body cavities, Supervisory CBP Officer Gilbert Arciero and Chief Juan Quiñones communicated over the phone with CBP officers Portillo and Herrera and relayed instructions about the searches. Those instructions were executed by CBP officers and Medical Center staff.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unreasonable Seizure, False Arrest, and False Imprisonment in Violation of the Fourth Amendment to the U.S. Constitution Against Defendants Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera (*Bivens* Claim)

76. Plaintiff incorporates the preceding paragraphs as set forth above.

77. As a direct result of their actions set forth in this Complaint, Defendants Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera acted under the color of

federal law to deprive Plaintiff of her right to be free from unreasonable seizures, by seizing, arresting and detaining her without reasonable suspicion or probable cause that she was committing a crime, in violation of the Fourth Amendment to the U.S. Constitution.

78. This cause of action for the violation of Plaintiff's Fourth Amendment right is brought pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

SECOND CAUSE OF ACTION

Unreasonable Search in Violation of the Fourth Amendment to the U.S. Constitution Against Defendants Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera (*Bivens* Claim)

79. Plaintiff incorporates the preceding paragraphs as set forth above.

80. As a direct result of their actions set forth in this Complaint, Defendants Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera acted under the color of federal law to deprive Plaintiff of her right to be free from unreasonable search in violation of the Fourth Amendment to the U.S. Constitution by 1) searching her person without reasonable suspicion or probable cause that she was committing a crime; and/or 2) searching her person in a highly unreasonable manner that invaded her right to bodily integrity and privacy.

81. This cause of action for the violation of Plaintiff's Fourth Amendment right is brought pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

THIRD CAUSE OF ACTION

Deprivation of Due Process in Violation of the Fifth Amendment to the U.S. Constitution Against Defendants Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera (*Bivens* Claim)

82. Plaintiff incorporates the preceding paragraphs as set forth above.

83. As a direct result of their actions set forth in this Complaint, Defendants Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera acted under the color of

federal law to deprive Plaintiff of her right to due process by acting in a manner that shocks the conscience in violation of the Fifth Amendment to the U.S. Constitution.

84. This cause of action for the violation of Plaintiff's Fifth Amendment right is brought pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

FOURTH CAUSE OF ACTION
Assault and Battery Claim Against the United States for the Tortious
Actions of its Federal Agents
(Federal Tort Claims Act)

85. Plaintiff incorporates the preceding paragraphs as set forth above.

86. Defendant Federal Agents Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera intentionally and knowingly caused physical contact with Plaintiff when they knew or should have reasonably believed that Plaintiff would regard the contact as offensive or provocative by conducting invasive searches of Plaintiff and by directing invasive searches of Plaintiff.

87. Defendant Federal Agents committed these acts as employees of the United States while acting in the scope of their employment: they acted within the scope of the general authority granted to them, in furtherance of their employer's business, and for the accomplishment of the objectives for which they were hired.

88. Pursuant to the Federal Tort Claims Act, Defendant United States is liable for the Defendant Federal Agents' actions.

FIFTH CAUSE OF ACTION
False Arrest Claim Against the United States for the Tortious
Actions of its Federal Agents
(Federal Tort Claims Act)

89. Plaintiff incorporates the preceding paragraphs as set forth above.

90. Defendant Federal Agents Brady, Gomez, Mancha, Quiñones, Castro, Arciero, Portillo, Lujan and Herrera intentionally, knowingly and forcibly restrained Plaintiff against her will by subjecting her and directing that she be subjected to approximately six hours of invasive searches while in handcuffs.

91. Defendant Federal Agents committed these acts as employees of the United States while acting in the scope of their employment: they acted within the scope of the general authority granted to them, in furtherance of their employer's business, and for the accomplishment of the objectives for which they were hired.

92. Pursuant to the Federal Tort Claims Act, Defendant United States is liable for the Defendant Federal Agents' actions.

JURY TRIAL DEMANDED

93. Plaintiff respectfully demands a jury trial.

PRAYER FOR RELIEF

94. WHEREFORE, Jane Doe respectfully asks this Court to:

- a. declare that the actions of Defendants violated the U.S. Constitution;
- b. award compensatory damages in an amount to be determined at trial;
- c. award punitive damages in an amount to be determined at trial;
- d. award attorney's fees and costs pursuant to 42 U.S.C. §1988; and
- e. grant such other and further relief as this Court deems proper.

Respectfully Submitted,

/s/ Adriana Piñon

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Dated: June 1, 2015