

basic hygiene, and sleep, agents pressed them to give up their asylum claims and threatened to separate their family.

4. Plaintiffs seeks damages for the injuries they suffered as a result of CBP agents' tortious acts and omissions in operating the *hielera* where they were detained.

JURISDICTION AND VENUE

5. This Court has federal question jurisdiction over the subject matter of Plaintiffs' FTCA claims brought under 28 U.S.C. § 2671, *et seq.* pursuant to 28 U.S.C. §§ 1331, 1343, and 1346.

6. Plaintiff Doe has exhausted his administrative remedy under the FTCA by filing an administrative tort claim on July 22, 2016, which the agency denied on November 5, 2015. He brought his claim within six months of the CBP's denial, in accordance with the FTCA. Plaintiff Roe has exhausted her administrative remedy under the FTCA by filing an administrative tort claim on July 22, 2016, which the agency denied on November 12, 2015. She brought her claim on behalf of herself and her minor child within six months of the CBP's denial, in accordance with the FTCA.

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

PARTIES

8. Plaintiff John Doe is a native and citizen of Honduras who fled for his life with his pregnant wife and small child in July 2013 following repeated attempts by transnational criminal organizations and their associates to murder him and his family. He currently resides in Nashville, Tennessee.¹

¹ By separate, sealed filing, Plaintiffs intend to move to proceed pseudonymously, offering detailed testimony and documentation of the specific harms they suffered in

9. Plaintiff Roe is a native and citizen of Honduras who fled for her life with her husband and small child in July 2013 following repeated attempts by transnational criminal organizations and their associates to murder her and her family. She resides in Nashville, Tennessee.

10. Defendant United States of America is a sovereign sued under the FTCA, under which the United States has waived its sovereign immunity for the tortious acts or omissions of its agents, including law enforcement agents acting within the scope of their employment at CBP, which is an agency component of the U.S. Department of Homeland Security (“DHS”).

FACTUAL ALLEGATIONS

11. CBP is the nation’s largest, most geographically diverse law enforcement agency. Part of its mission is to secure the borders of the United States. In furtherance of this mission, CBP officers are empowered to arrest, detain, admit, and exclude non-citizens.

12. In the course of their duties, CBP agents in the RGV Sector detain tens of thousands of noncitizens in short-term holding facilities comprised of numerous “hold rooms” each year.

13. 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

Honduras, and the death that befell their relatives immediately prior to their flight to the United States.

other facilities that are under the control of U.S. Customs and Border Protection (CBP).

CBP Short Term Custody Policy, ¶ 1.

14. The Policy provides in pertinent part 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. at ¶ 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. at 6.2.1.

15. In 2009, CBP promulgated a Security Policy and Procedures Handbook containing an Appendix setting forth binding space and use requirements governing CBP hold rooms. See CBP 2009 Security Policy and Procedures Handbook (“Handbook”) attached hereto as Exhibit B.

16. CBP’s policies set forth in the Handbook “implement[] security policies and standards published in a number of relevant source documents including numerous Public Laws, Presidential Directives, regulations, rules, Interagency Security Committee security design criteria, and U.S. Department of Homeland Security (DHS) Management Directives (MD) regarding integrating, managing, and governing various Security functions.” (2009 CBP Handbook, Foreword by Acting Commissioner Jayson Ahern.)

17. CBP defines a holding cell (also referred to as a “hold room”) as an area such as a detention cell, a search room, or an interview room in which detained persons are temporarily held pending processing or transfer. Holding cells vary in dimension but are generally rectangular, concrete, and minimally furnished. They are equipped with

concrete, metal, or wooden benches affixed to the floors and walls, but have no beds or other furniture. Toilets and sinks are located within the cells and only partially shielded from view by short metal or concrete partitions.

18. According to CBP's policies, the minimum square footage for multiple occupancy rooms is thirty-seven square feet for the first occupant and seven square feet of unencumbered space for each additional occupant. "(Unencumbered is usable space that is not encumbered by fixtures or furnishings)." (2009 CBP Handbook at pp.492-93.) On information and belief, signs displaying maximum hold room capacity are posted in many, if not all, holding cells.

19. CBP officers in the RGV Sector regularly violate this policy by detaining unreasonably large numbers of individuals in these holding cells, in violation of CBP's own guidelines and despite available alternatives.

20. On the evening of Friday, July 26, 2013, Plaintiffs entered the United States near Hidalgo, Texas with their two year-old son. Plaintiff Roe was approximately 6-7 months pregnant.

21. After crossing the U.S.-Mexico land border, Plaintiffs sought out the nearest border patrol station to turn themselves in and seek asylum. They eventually located CBP Border Patrol officers with the Weslaco Station in the RGV Sector.

22. CBP officers took Plaintiffs into custody and placed them on a series of trucks that would eventually transport them to a detention center referred to by everyone—CBP officers and detainees alike—as the *hielera*.

23. Upon arriving at the *hielera*, Plaintiffs were stripped of extra layers of clothing, hair clips, shoelaces, and other items. CBP officers confiscated their diapers and other baby supplies. Then CBP officers ordered Plaintiff Roe and her son to sit on a cement

bench in a small, windowless cell with dozens of other detainees. The cell was frigid. Many of the detainees in the cell had not eaten and appeared to suffer from respiratory illnesses. When one six year-old child who had not eaten all day cried to his mother, a CBP officer ignored him and ordered the mother to “control your child.”

24. CBP failed to provide Plaintiffs and their child, and the rest of the women, men and children in their cells with a bed, warm clothes, blankets, or edible food and water.

25. There was no private place to use the toilet, but rather, a single toilet in the corner of the cell separated only by a half wall.

26. The detainees, including Plaintiffs and their child, ran out of toilet paper. There was no soap, towels, toothbrush, or toothpaste available.

27. During the entire time Plaintiffs were detained, CBP officials never turned the lights off in their detention cells.

28. The cells were filthy and overrun by the stench of human sweat and excrement. Those who requested even the slightest accommodation from CBP officials were ridiculed, mocked, and even yelled at in full view of Plaintiffs and their child.

29. As a result of these conditions, Plaintiffs and their son were unable to sleep more than a few minutes at a time. Children cried incessantly about the cold and lack of food and water.

30. Plaintiff Roe became very ill after holding her son on the concrete bench for hours. She experienced severe stomach pain. She felt she was beginning to dilate or have contractions, feared that her water might break, and that the lack of potable liquid could cause an infection or cause her to deliver her child in an unsafe environment.

31. Plaintiff Roe cried out in pain and begged for medical treatment for an extended period of time. CBP officials gave Plaintiffs’ son to Plaintiff Doe, who was detained in a

different cell in the *hielera*. Then CBP officials rushed Plaintiff Roe wife to a nearby hospital, Knapp Medical Center, where it was determined that she was in the process of dilation. Dr. Rory Minck and his medical staff informed Border Patrol officials in writing that Plaintiff Roe was not medically able to travel.

32. Medical personnel informed Plaintiff Roe, and, upon information and belief, CBP officials, that she should be released from detention immediately so as to prevent preterm labor and minimize the health risk to Plaintiff Roe and their unborn child. As soon as the hospital staff wrote down the order, a CBP official confiscated it and returned Plaintiff Roe to detention in the same *hielera*.

33. During the hours that followed, Plaintiffs desperately attempted to ascertain any substantive information regarding their release from custody. In response, one CBP official threatened Plaintiff Roe that if she went into labor, she and her two children would have to remain in detention for three months, and that Plaintiff Doe would be deported to Honduras.

34. As their time in detention continued, Plaintiffs' son grew more visibly ill and dehydrated from the diarrhea. When Plaintiffs inquired about medical treatment for their child—they had heard the sickest children may be taken to the hospital to receive antibiotics—a CBP official told Plaintiff Doe, approximately, “all these kids keep getting sick, and every time we take one to the hospital, it slows everything down for everyone. We can take him if you want it to take longer [to be released].”

35. After nearly 72 hours in the *hielera* without access to adequate food, water, hygiene necessities, beds, blankets, bedding, warmth, sleep, and medical care, CBP officials drove Plaintiffs and their son to a Greyhound bus station and left them there alone at approximately 12:45 a.m. on Monday, July 29, 2013.

**CLAIMS FOR RELIEF
COUNT I – NEGLIGENCE**

36. All previous paragraphs are incorporated as though fully set forth herein.

37. CBP officers breached their duty of reasonable care to Plaintiffs by negligently placing in detention conditions which they knew or should have known posed a substantial risk of physical or psychological harm.

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

- a. Maintaining hold rooms where Plaintiffs were held at unreasonably cold temperatures that officers knew or should have known would cause extreme pain and discomfort to Plaintiffs and their child;
- b. Failing to provide beds, bedding, or adequate limitation of the sources of light in the hielera that would have allowed Plaintiffs to sleep during their three days in detention;
- c. Failing to provide Plaintiffs adequate access to toilet paper, soap, and hygiene products;
- d. Failing to provide Plaintiffs adequate nutrition and access to potable water during their detention;
- e. Failing to afford Plaintiffs the opportunity to shower or bathe while in detention;
- f. Failing to promptly provide Plaintiff Roe and her son prompt and adequate medical attention;
- g. Failing to head medical orders from providers at the Knapp Medical Center that Plaintiff Roe should not be detained any further;

- h. Failing to make prompt arrangements for Plaintiffs' release in accordance with CBP's binding policies and procedures.

39. CBP officers were acting within the scope of their employment when they committed these acts and omissions, and the officers knew or should have known their acts or omissions would pose a threat to Plaintiffs' health, safety, and well-being.

40. As a direct and proximate result of CBP officers' tortious conduct, Plaintiffs suffered damages, including, but not limited to, severe physical pain and suffering, humiliation, emotional distress, loss of enjoyment, and loss of liberty.

COUNT II – NEGLIGENT SUPERVISION

41. All previous paragraphs are incorporated as though fully set forth herein.

42. The hielera where CBP detained Plaintiffs falls within the RGV Sector, an administrative subdivision of CBP.

43. Responsibility for supervising the CBP agents who effectuated the detention conditions in the hieleras where Plaintiffs were detained falls on supervisory border patrol agents, Patrol Agents in Charge, and the Chief Patrol Agent for the Sector.

44. 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 Plaintiffs were detained. 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.

45. 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.

46. CBP's Short Term Custody Policy expressly prohibits many of the conditions Plaintiff faced in the hielera. The conditions of Plaintiffs' detention were in clear violation of the Policy, which provides that:

- a. All detainees will be held in appropriate conditions of confinement that ensure their safety and security;
- b. Potable drinking water will be available to all detainees. A supervisor is responsible for ensuring that drinking water is available;
- c. Detainees using the restrooms will have access to toilet items, such as soap, toilet paper, and sanitary napkins;
- d. Detainees requiring bedding will be given clean bedding;
- e. Detention space capacity will not be exceeded.

47. CBP's failure to supervise and implement the agency's own binding policies caused Plaintiffs to suffer inhumane and deplorable conditions while in the RGV Sector's hielera.

48. As a direct and proximate result of CBP officials' failure to supervise and train their agents regarding the agency's binding policies, Plaintiffs suffered damages, including, but not limited to, nominal damages, severe physical pain and suffering, humiliation, emotional distress, loss of enjoyment, and loss of liberty.

COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

49. All previous paragraphs are incorporated as though fully set forth herein.

50. CBP officers by their acts and omissions committed the tort of intentional infliction of emotional distress by threatening Plaintiffs with continued detention or

summary expulsion to probable death in Honduras in retaliation for seeking medical attention for Plaintiff Roe, and by subjecting Plaintiffs to the deplorable, unsanitary, and overcrowded conditions in the RGV Sector's *hieleras*.

51. As a direct and proximate result of CBP officials intentional and outrageous acts, Plaintiffs suffered severe physical and mental pain and suffering, mental anguish, humiliation, loss of enjoyment, and loss of liberty.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully seek the following relief:

- A. Enter judgment for Plaintiffs and against Defendant on all of Plaintiffs' claims;
- B. Award Plaintiffs nominal damages;
- C. Award Plaintiffs compensatory damages in an amount to be determined at trial;
- D. Award Plaintiffs pre-judgment and post-judgment interest as allowed by law;
- E. Award Plaintiffs reasonable costs, expenses and attorneys' fees pursuant to the Equal Access to Justice Act upon finding that the Government's position in litigation is substantially unjustified; and
- F. Grant such further relief as this Court deems just and appropriate.

Date: May 12, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on today's date a copy of the foregoing was served upon the following counsel via U.S. mail, postage pre-paid:

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