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To Whom It May Concern:

We submit this letter as an addendum to the attached Form SF-95 on behalf of [redacted] a 63 year-old woman, was unlawfully stopped and arrested by Customs and Border Protection ("CBP") agents at a Greyhound bus stop in Toledo, Ohio. [redacted] was held in a CBP vehicle for about eight hours before being transferred to a processing center. While in CBP custody at the former Sandusky Bay Processing Center, [redacted] was imprisoned and not allowed to use the restroom, causing her urinate on herself and to suffer extreme fear and embarrassment. After being transferred to Immigration and Customs Enforcement ("ICE") custody at Seneca County Jail the next day [redacted] suffered an acute, left cerebellar stroke – the direct result of treatment by CBP and ICE during her detention. Because of this, [redacted] must now walk with the assistance of a cane, has incurred

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significant medical expenses, and continues to experience the severe medical effects of injuries sustained while in CBP and ICE custody. The facts below lay out claims for false imprisonment, assault and battery, negligent and intentional infliction of emotion distress, and negligence related to [redacted] arrest and detention.

I. FACTS

[redacted] is a 63 year-old woman of [redacted]t and has dark skin. Ms. [redacted] to the United States in 2005 on a B-2 travel visa. She has since lived by herself in [redacted] Ms. [redacted] has supported herself by working as the primary care giver to a 96-year-old widow. She has made sure to pay income taxes yearly since arriving in the U.S. Ms. [redacted] is a devout Christian, extremely charitable, and has no criminal record.

On Wednesday, March 23, 2011, Ms. [redacted] was traveling home to New York on a Greyhound bus after attending her cousin's funeral in Minnesota. During a scheduled stop in Toledo, Ohio, at approximately 3:15 p.m. a Border Patrol ("BP") agent "performing a transportation check" boarded the bus and approached Ms. [redacted] *See* Ex. A (I-213). The agent asked Ms. [redacted] questions about her identity and her immigration status. Ms. [redacted] was intimidated by the agent, who spoke to her with a strong, forceful voice, and was visibly armed; she felt like she had no choice but to answer his questions. After ascertaining that she was not a U.S. citizen, the agent demanded her immediate exit from the bus.

Once outside the bus, BP agents took her handbag, carry-on bag, and luggage from her, and refused to allow her to make a phone call to her pastor in New York. Ms. [redacted] was fearful, because the agents would not let her contact anyone to let her know her whereabouts, and she was unsure about where she was going to be taken. Agents subsequently handcuffed her and placed her in a vehicle without food or water for eight hours, where she felt suffocatingly hot and had difficulty breathing. When she requested to use the bathroom, an agent escorted her to the facilities at gunpoint, and waited outside the open door. When she was placed back in the vehicle, Ms. [redacted] tapped on the shut windows and told agents stationed outside the automobile that she was getting uncomfortably hot. It was only when she repeated her request and told them that she was going to die if she did not get some fresh air that the agents opened the window.

In a response to a complaint filed on [redacted]behalf with the Department of Homeland Security's ("DHS") Office of Civil Rights and Civil Liberties ("CRCL"), CRCL incorrectly concluded that [redacted] was "transported from the place of her apprehension to a CBP processing office within a timeframe significantly less than eight hours." *See* Ex. B (CRCL Response to Complaint, p.1). A request to CRCL under the Freedom of Information Act ("FOIA") similarly yielded inaccurate information which stated that [redacted] was placed in a holding cell immediately after she was taken off the bus. *See* Ex. C (Internal DHS Email to Medical Expert, p.2) (stating that an officer "escorted her off the bus and she was placed in a holding cell for several hours."). However, [redacted] I-213 reflects that she was arrested at the bus station at 3:15 p.m.

and not processed at Sandusky Bay Processing Center until 11:31 p.m. *See* Ex. A (I-213). It was during this eight-hour period that Ms. [redacted] was detained in the vehicle.

At Sandusky Bay Processing Center,she was interrogated twice. During the second interrogation, her leg was shackled to a bench. BP agents removed the restraints only when they placed her in a closet-sized cell, in which she only had room to sit on a small seat.

It is the policy of CBP that "[o]fficers shall monitor hold rooms [redacted] . . . It's the responsibility of the supervisor to ensure that an officer is within visible or audible range of the hold room to allow detainees access to restroom facilities (if not incorporated in the detention cell) on a regular basis." *See* Ex. D (CBP Inspector's Field Manual 9.2 Detention Cell Monitoring, p.2). Additionally, "[a]ccess to restrooms shall be available to any detainees in a hold room or in the secondary inspection area." Ex. D (CBP Inspector's Field Manual 9.8 Restrooms, p.3). Ms. [redacted] asked two different agents to allow her to use the restroom. One said he would come get her, but then walked off, leaving Ms. [redacted] alone and desperately needing to use the restroom. Another agent appeared later and did not respond to Ms. [redacted] request to use the restroom. As a result of not being permitted to use a toilet, Ms. [redacted] was forced to urinate on herself. When the CBP agent finally came back to her cell, he questioned why she could not hold her bladder. The agent said she could now use the restroom, after it was clearly too late.

In their response to her complaint, DHS CRCL concluded that, "information received from ICE and CBP did not substantiate [Ms. [redacted] allegation that she was not allowed to use the restroom." *See* Ex. B (CRCL Response to Complaint, p.1). CRCL stated that "according to interviews," Ms. [redacted] "had direct communication with CBP officers" and "did not ask to use the restroom." *Id.* CRCL fails to explain, however, how officers who detain and process scores of individuals would recollect whether Ms. [redacted] in their custody almost two years ago, asked to use the bathroom. Further, it is illogical that the memory of these officers would be clearer than Ms. [redacted] this detention marked the first time she had ever been arrested, and she was the one who suffered the dehumanizing experience of being forced to urinate on herself.

After the officers failed to let her use the restroom, [redacted] was forced to spend the night in her soaked jeans, sitting upright in her closet-sized cell. She could not sleep that night. The following morning (March 24), [redacted] was transferred to ICE custody at Seneca County Jail ("SCJ") in Tiffin, Ohio. CRCL's response to her complaint stated that "SCJ confirmed that she was not soiled upon arrival." *See* Ex. B (CRCL Response to Complaint, p.1). However, CRCL did not state how they confirmed this, nor whether the jail routinely marks the status of the clothing of incoming detainees. Moreover, because [redacted] had spent the night wearing her jeans, her body heat, time or air may have substantially dried her jeans by the time she was processed at SCJ, and there is a likelihood that they visibly appeared dry. The response also noted that "SCJ hold rooms have restroom facilities." *Id.* This is irrelevant, however, to [redacted] assertion that she was forced to urinate in her jeans the prior evening at

Sandusky Bay Processing Center. Conversely and more importantly, there were no toilets in the holding cells at the former Sandusky Bay Processing Center – a converted bank building no longer in use – where Ms. [redacted] was processed and where she was forced to urinate on herself.

After arriving at SCJ, Ms. [redacted] was forced to spend the entire morning in her soiled jeans, as her first request to bathe was denied by officers at the jail. At around 1:00 p.m., a booking officer conducted a full medical screening. *See* Ex. E (Seneca County Jail Medical Screening and Intake Records for [redacted] Several hours later, Ms. [redacted] was finally able to bathe and change out of her soiled jeans after receiving a prison-issued uniform. She was placed in a cell that already housed two detainees occupying the two beds, so she was forced to sleep on a mattress on the floor of the cell.

While reading her bible in her cell the next day, March 25, Ms. [redacted] started to feel sick, and experienced stomach pains and dizziness. Her eyes spun and her hands began convulsing, causing her to drop the bible she was holding. Ms. [redacted] cell mate called for the guards. When they arrived, they told her to stand, and Ms. [redacted] immediately started vomiting. The agents told her to throw up in the toilet within the cell, so she would not vomit on the floor.

Ms. [redacted] was transported by stretcher to a van some time after the onset of her symptoms, and taken to Mercy Tiffin Hospital. The doctors treating Ms. [redacted] stated that the delay in her arrival contributed to the severity of her injuries. Moreover, CRCL stated that it "is in the process of a full review of medical care at SCJ." *See* Ex. B (CRCL Response Pg 1). According to documents received in a FOIA request to CRCL, a month before Ms. [redacted] was held at SCJ, CRCL received another complaint from an SCJ detainee who said that "he did not receive appropriate medical care for his congestive heart failure, stroke and dental problems" and that "other named detainees did not receive appropriate medical care for their conditions." *See* Ex. F (CRCL Closure Memorandum p. 3). According to CRCL, the office is "continuing to work with ICE to make improvements to the medical care at SCJ." *Id.* at p. 4.

At the hospital, doctors diagnosed [redacted] with having suffered a stroke while at SCJ. The doctors at Mercy Tiffin treated [redacted] for one day, during which time an officer stood guard at her hospital room. *See* Ex. G (St. Vincent Mercy Medical [redacted] p.5). She was transferred to St. Vincent Mercy Medical Center on March 26 for closer neurological observation. *See* Ex. G ([redacted] p.3). Throughout her time at Mercy Tiffin, and at St. Vincent's, an armed guard stood at her bedside. *Id.* at p.5. [redacted] treating physician at St. Vincent's, [redacted] confirmed [redacted] diagnosis of a left cerebellar stroke. *Id.* at p.12.

[redacted] was released back into the custody of ICE at SCJ on March 29. The doctor informed the guards tha[redacted] must receive physical therapy because of the stroke, and that if the detention facility did not have the means of providing for her care,

she must be released. Ms. [redacted] was finally released on her own recognizance on April 1, 2011 because the detention facility did not have the ability to provide the care that doctors had mandated as necessary to her rehabilitation. A friend drove from New York to Ohio to bring Ms. [redacted] home. Even after returning to New York, she was distraught and ill and, a little more than a week later, on April 5, Ms. [redacted] suffered from a second stroke, and was admitted to Lincoln Hospital. *See* Ex. H (Lincoln Medical and Mental Health Center Records for [redacted] p.1). She was diagnosed with having recurrent cerebrovascular events, stemming from her stroke in Ohio at Seneca County Jail. *Id.* at pp. 1-3.

Up until the stroke, Ms. [redacted] was an exceptionally healthy individual, exercising regularly and eating healthily. She has never had any medical problems before, nor has she shown any of the primary risk factors for strokes. *See* Ex. E (Seneca County Jail Medical Screening and Intake Records). Ms. [redacted] has never experienced high blood pressure, high cholesterol, or any sort of cardiovascular issues; she abstains completely from alcohol and smoking. *Id.* Furthermore, her family medical history does not indicate any of the risk factors for strokes. Almost all of her immediate relatives have lived well into their late 80s or early 90s, and there is no family history of chronic disease.

Ms. [redacted] treating physician in New York stated, "[e]xtensive medical workup had been performed and no apparent cause for her stroke was found. It would appear the amount of stress she was exposed during her detention increased her risk of stroke." *See* Ex. I (Letter from [redacted] M.D.).

Ms. [redacted] continues to suffer from left-sided residual hemiparesis resulting from the stroke. *See* Ex. J (Montefiore Records for [redacted] pp.1,3). This illness causes weakness in her limbs, which makes it extremely difficult for her to balance. She suffers from constant numbness and pain on her left side and now must walk with a cane. The winter months are particularly hard on Ms. [redacted] who lives alone in [redacted] The cold weather forces her muscles to tighten up, and she has extreme difficulty moving around. Her treating physician stated that she "requires strict medical follow-up and intense physical therapy to improve her strength and to maintain her balance." *See* Ex. I (Letter from [redacted] M.D.). Because of her rehabilitation needs, regular doctor appointment follow-ups and multiple medications, [redacted] has incurred and continues to incur significant medical bills.

II. APPLICABLE LAW

The Federal Tort Claims Act ("FTCA") is a limited waiver of the federal government's sovereign immunity, under which the U.S. is liable for torts committed by its employees "in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674.

Under the FTCA, the "extent of governmental tort liability is 'determined in accordance with the law of the state where the event giving rise to liability occurred.'"

Milligan v. U.S., 670 F.3d 686, 692 (6th Cir. 2012), *quoting Young v. U.S.*, 71 F.3d 1238, 1242 (6th Cir. 1995). Because the claims at issue here arose in Ohio, Ohio provides the law of decision.

The FTCA limits the United States' liability for intentional torts. See 28 U.S.C. 2680(h). However, the FTCA's law enforcement proviso provides an exception to *that exception* and waives sovereign immunity for intentional torts committed by "federal law enforcement or investigative officer[s]." *Id; see also Milligan.*, 670 F.3d at 695. Therefore, the intentional torts alleged here – false imprisonment, battery, assault, and intentional infliction of emotional distress – are proper claims under the FTCA, because border patrol officers have been uniformly recognized as federal law enforcement officers. *See Palacios v. United States*, No. 4:10CV556, 2010 WL 1873043*2 (N.D. Ohio May 10, 2010). *See also Sanchez v. Rowe*, 651 F.Supp. 571, 573 (N.D.Tex. 1986).

III. FALSE IMPRISONMENT

Ms. [redacted] was falsely imprisoned by BP agents when the agents, in a threatening manner, took her off the bus without reasonable suspicion and then arrested without probable cause. CBP's actions constitute the tort of false imprisonment under Ohio law, and under the FTCA, the United States is liable for these actions.

False imprisonment under Ohio state law is the confining of a person intentionally "without lawful privilege and against his consent within a limited area for any appreciable time, however short." *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71, 362 N.E.2d 646, 647 (1977) *quoting* 1 Harper and James, The Law of Torts, 226, Section 3.7 (1956). The courts have expounded that "[t]he gravamen of the offense is the unlawful act of the defendant. The requisites for false imprisonment are (1) the detention of the person and (2) the unlawfulness of the detention." *Mullins v. Rinks, Inc.*, 27 Ohio App.2d 45, 49, 272 N.E.2d 152, 154 (1st Dist. 1971). Furthermore, "[The Ohio Supreme Court] recognized the continuing nature of the 'confinement' element of this tort . . . when it stated that 'each day's continuance of the body of a person in custody, is a distinct trespass, and may be treated as such.'" *Bennett v. Ohio Dept. of Rehab. & Corr.*, 60 Ohio St. 3d 107, 109, 573 N.E.2d 633, 636 (1991) (*quoting State, ex rel. Kemper v. Beecher*, 16 Ohio 358, 363 (1847)).

[redacted] detention was unlawful because the BP agents who arrested her did not have reasonable suspicion that [redacted] was in the country illegally. Furthermore, [redacted] was not engaged in any kind of illegal activity, nor was she acting in a suspicious manner. Rather, she was sitting quietly on the bus reading her bible when the agent came onto the bus and, while visibly armed, commanded her to come off the bus. He told her to grab her bags as well, which the agents took from her when she disembarked. Once off the bus, the BP agent asked [redacted] whether or not she was an American citizen. [redacted] answered in the negative. Her communication with these officers was in no way consensual. *See Florida v. Bostick*, 501 U.S. 429, 436-437 (1991) ("[T]he crucial test is whether, taking into account all of the circumstances

surrounding the encounter, the police conduct would "have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business."). They did not indicate that she was free to ignore their requests to answer questions or to refuse their escort off the bus. Further, the officer being visibly armed and speaking in a threatening voice left Ms. [redacted] as it would any reasonable person, with the impression that she was required to comply *See U.S. v. Peters*, 194 F.3d 692, 697 (6th Cir. 1999) ("'Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.'") (*quoting U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980)). However, it is not a crime to be present in the United States as a non-U.S. citizen, and without more information, the BP agent had no right to arrest Ms. [redacted]

Ms. [redacted] was falsely arrested when BP agents arrested her without probable cause. "False arrest includes an intent by the authority with arrest powers to bring the detained person before the court, whereas false imprisonment is a matter between private parties. It follows that every false arrest has, at its core, a false imprisonment." *Huff v. Ohio Dept. of Adm. Serv.*, 74 Ohio Misc.2d 37, 45, 573 N.E.2d 356, 361 (Ct. Cl. 1995).

A perceived threat to use force has also been held to constitute false arrest. "False arrest consists of an unlawful and total detention or restraint upon one's freedom of locomotion, imposed by force or *threats*." *City of Toledo v. Lowenberg*, 99 Ohio App. 165, 167, 131 N.E.2d 682, 684 (6th Dist. 1955) (emphasis added). "An implied threat of the use of force to limit a person's freedom of movement is sufficient to establish a claim for false imprisonment." *Sharp v. Cleveland Clinic*, 176 Ohio App. 3d 226, 235, 2008-Ohio-1777, 891 N.E.2d 809, 816 (2008). The agent was armed when he commanded Ms. [redacted] off the bus with a threatening tone, filling her with fear. This action served to force Ms. [redacted] to submit and obey in a way that a simple request that she exit the bus would not, because she understood the danger and force of authority that the gun portrayed.

There was no lawful justification or privilege here because the BP agent lacked reasonable suspicion when he removed [redacted] from the bus, tainting her subsequent arrest. "Because of the continuing nature of the false imprisonment tort, it is clear that a person who intentionally confines another cannot escape liability by arguing that he or she was initially privileged to impose the confinement. Once the initial privilege expires, the justification for continued confinement expires and possible liability for false imprisonment begins." *Bennett*, 60 Ohio St. 3d at 109, 573 N.E.2d at 636.

[redacted] was in ICE custody after being transferred to Seneca County Jail, an ICE contract facility, and her initial detention arose out of the unconstitutional stop by CBP. Therefore CBP and ICE are liable for her false and continued imprisonment.

IV. ASSAULT AND BATTERY

Assault

Under Ohio law, the tort of assault is defined as "the willful threat or attempt to harm or touch another offensively, which threat or attempt reasonably places the other in fear of such contact." *Smith v. John Deere Co*, 83 Ohio App.3d 398, 496, 614 N.E.2d 1148, 1154 (10th Dist. 1993). Additionally this threat or attempt must coincide with a "definitive act" by someone who has the "apparent ability to do the harm or to commit the offensive touching." *Id.* Finally, the actor must know "with substantial certainty that his or her act would bring about harmful or offensive contact." *Id.* To state a cognizable claim under Ohio law, proof of physical injury is not required. *See Harris v. U.S.*, 422 F.3d 322, 330 (6th Cir. 2005).

Ms. [redacted] was assaulted in her very first interaction with CBP. The agent — armed and uniformed – boarded the bus and immediately approached Ms. [redacted] because of her dark complexion. After Ms. [redacted] gave information about her identity and citizenship, which she felt compelled to do, the officer demanded that she step off the bus and grab all of her belongings, armed throughout the encounter. Ms. [redacted] reasonably felt threatened that the officer would use physical contact or force against her, and quickly gathered her belongings. She felt like she had no choice but to leave the bus or else he would have forced her. This was coupled with the officer's obvious capability to harm or touch Ms. [redacted] the uniformed BP agent boarded the bus seemingly on his own volition, armed with a weapon and her information. Ms. [redacted] reasonably believed that he had the ability to force her physically off the bus if she did not comply immediately.

While being detained at the bus station, Ms. [redacted] suffered a second assault in CBP custody. Ms. [redacted] asked one of the agents to use the restroom. She was still handcuffed, and was led to the restroom by an agent who at *all times* was pointing a gun directly at her. Once they arrived at the restroom, the officer did not let her close the bathroom door completely. Ms. [redacted] – her liberty completely restrained – was reasonably fearful that the BP agent would harm her. The agents had already demonstrated their capacity to freeze her liberty by handcuffing her and placing her in the CBP vehicle; by following her to the bathroom with a gun pointed at her in a threatening way, [redacted] was reasonable in her belief that the officer would physically harm her.

After being transported to the station, [redacted] was assaulted by an agent who interrogated her. While her leg was shackled to a bench (a battery, as described below), a BP agent threatened her, and said "not to worry, because the government is going to buy you a plane ticket to go back home," meaning [redacted]

This coercive threat from the agent constituted a third assault, because [redacted] reasonably believed that offensive physical contact would follow this statement. *See Brooks v. Lady Footlocker*, 9th Dist. No. 22297, 2005-Ohio-2394, 2005 WL 1163018 *3 (May 18, 2005) (finding evidence did not support assault claim because there was no "statement about a future act against" the plaintiff's person). The threat was coupled with

the fact that Ms. [redacted] was shackled to a bench, and had at that point been detained for several hours at the processing station without being charged. *See Smith*, 83 Ohio App.3d at 405, 614 N.E.2d at 1154 ("The threat or attempt must be coupled with a definitive act by one who has the apparent ability to do the harm or to commit the offensive touching."). Vulnerable and detained, she could have reasonably feared contact as a result of that threat.

The United States is therefore liable, under Ohio law, for the multiple assaults committed by BP agents on Ms. [redacted] Under the state's damages jurisprudence, appellate courts have stated that, "[i]n awards based on assault and battery, 'damages are 'presumed' or the wrong is said to be damage in and of itself.' Dobbs, Remedies § 7.3 (1973). Moreover, in the absence of physical injury, compensation can be based on pain and suffering, as well as, humiliating mental suffering and anguish." (internal citations omitted) *Stokes v. Meimaris*, 111 Ohio App.3d 176, 187, 675 N.E.2d 1289, 1296 (8th Dist.1996) (*quoting Harris v. B&M Groceries*, 8th Dist., No. 45937, 1983 WL 5611 *2 (Aug. 4, 1983).

Battery

Pursuant to Ohio law, "[a] person is subject to liability for battery when he acts intending to cause a harmful or offensive contact, and when a harmful contact results." *Love v. City of Port Clinton*, 37 Ohio St.3d 98, 99, 524 N.E.2d 166, 167 (1988). *See also Harris*, 422 F.3d at 330 ("[Ohio] defines battery as an intentional uninvited contact with another.").

Ms. [redacted] suffered a battery when she was unlawfully handcuffed after being led off of the bus. Being placed in restraints was offensive contact, because "[t]he acts of 'subduing' and 'handcuffing are undoubtedly offensive to a reasonable sense of personal dignity." *Love*, 37 Ohio St.3d at 99, 524 N.E.2d at 167 (analyzing allegations of improper police procedure when police officer negligently and recklessly handcuffed plaintiff). Moreover, "[t]he contact involved is plainly intentional; one cannot accidentally handcuff or subdue another." *Id.* Because the BP agent intended to inflict offensive contact when he restrained her liberty by physically handcuffing her, Ms. [redacted] suffered a battery. The is a result warranted by Ohio tort law; the state's Supreme Court has stated that "in effecting an arrest, a police officer usually commits acts which, unless privileged, constitute battery." *Id.* at n.3. Because [redacted] arrest was not privileged, as noted in the false imprisonment section, her handcuffing and arrest effectuated a battery.

For the same reasons, [redacted] suffered a second and third battery when she was restrained inside Sandusky Bay Processing Center and then handcuffed again the following morning en route to Seneca County. [redacted] suffered a battery when her leg was handcuffed to a bench while she was interrogated by officers in the detention center. Because this intentional contact was objectively offensive, and because it was not privileged by law, it constituted a battery. Moreover, the use of the handcuffs is excessive: [redacted] earlier that night, had been questioned by officers without being restrained at all. The excessive force used by someone privileged to use force like a BP

agent can constitute battery. See *Shadler v. Double D Ventures, Inc.*, 6th Dist., No. L-03-1278, 2004 -Ohio- 4802, 2004 WL 2026412, at *3 (Sept. 10, 2004).

A third battery occurred when Ms. [redacted] was handcuffed en route to the county jail. For the same reasons described above, this unwanted offensive touching constituted a battery under Ohio law.

V. Negligence

The egregious harms suffered by Ms. [redacted] were the result of extreme negligence by CBP and ICE agents while she was in their custody. To allege negligence under Ohio law, a plaintiff must demonstrate "the existence of a duty, a breach of that duty, and that the breach of that duty proximately caused the plaintiff's injury." *See Cincinnati v. Beretta, U.S.A. Corp.*, 95 Ohio St.3d 416, 421, 2002-Ohio-2480, 768 N.E.2d 1136, 1144 (2002).

As law enforcement officials, ICE and CBP agents owed Ms. [redacted] a duty of "reasonable care and protection" from the moment they arrested Ms. [redacted] and restrained her liberty on March 23, 2011. *See Knapp v. Gurish*, 44 Ohio App.3d 57, 58, 541 N.E.2d 121, 123 (8th Dist. 1989) ("A law enforcement officer having custody of an arrestee or prisoner stands in a special relationship to that person, toward whom he owes a duty of reasonable care and protection."). *See also Clemets v. Heston*, 20 Ohio App.3d 132, 136, 485 N.E.2d 287, 291 (6th Dist. 1985) ("This special relation arises upon arrest-*i.e.*, when the officer 'takes the custody' of another, as 'required by law.'") (internal citations omitted). The duty of care owed to Ms. [redacted] continued until she was released on her own recognizance on April 1, 2011. *See id.* ("Once the custodial relationship begins, the duty continues until terminated at that point when the person in custody is free to leave.").

This duty to "provide for prisoners' health, care and well-being," *Miller v. Ohio Dept. of Rehab. & Corr.*, 10th Dist., No. 12AP–12, 2012-Ohio-3382, 2012 WL 3041183, at *3 (July 26, 2012), was breached multiple times by CBP and ICE. Ms. [redacted] was kept in conditions unsuitable for anyone, particularly a 63-year-old woman without a criminal record. These conditions included being shackled during interrogation and having a gun pointed at her while being accompanied to the restroom while at the Toledo bus station. As stated above, while [redacted] was in CBP custody at the Sandusky Bay Processing Center, the agents failed to let [redacted] use the bathroom, forcing her to urinate on herself. Moreover, the breaches by CBP and ICE proximately caused [redacted] injuries, including the mental and emotional harm from her detention, the stress-induced stroke she suffered while in custody, and the subsequent strokes. The injuries she sustained were the "natural and probable consequence" of the extreme maltreatment [redacted] received while in ICE and CBP custody, and the agents in her charge "should have foreseen or anticipated" the consequences "following [their] negligent act[s]." *See Jeffers v. Olexo*, 43 Ohio St.3d 140, 143, 539 N.E.2d 614, 617 (1989) (*quoting Ross v. Nutt*, 177 Ohio St. 113, 114, 203 N.E.2d 118, 120 (1964)).

VI. INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Intentional Infliction of Emotional Distress

Ms. [redacted] was subject to both intentional and negligent infliction of emotional distress at the hands of the BP agents. In order to state a claim for intentional infliction of emotional distress (IIED), there are four elements that a claimant must prove. The first element is that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff. *See Tschantz v. Ferguson*, 97 Ohio App.3d 693, 702, 947 N.E.2d 507, 513 (8th Dist. 1994). The second element is that the actor's conduct was so extreme and outrageous as to go "'beyond all possible bounds of decency' and was such that it can be considered as 'utterly intolerable in a civilized community.'" *Id; see also Yeager v. Local Union 20, Teamsters, Chauffeurs, Warehousemen, & Helpers of Am.*, 453 N.E.2d 666, 671 (1983), *abrogated on other grounds by Welling v. Weinfeld,* 113 Ohio St.3d 464, 2007-Ohio-2451, 866 N.E.2d 1051 (2007). The third element is that the actor's actions were the proximate cause of plaintiff's psychic injury. *Tschantz*, 97 Ohio App. 3d at 702, 947 N.E.2d at 513. The fourth, and final element, is that the mental anguish suffered by plaintiff is serious and of a nature that 'no reasonable man could be expected to endure it. *Id.*

In Ms. [redacted]s case, the first element of IIED is met. The BP agents should have known that their actions taken would result in serious emotional distress to Ms. [redacted] As BP agents, they likely have experience arresting and detaining people. The agents should have known that locking Ms. [redacted] in a vehicle on a hot day with no food or water for eight hours would have resulted in her mental anguish. Ms. [redacted] is visibly of older age. Even for a person of young age and normal health, eight hours in the heat without water would be distressing. Further, the agents should have known that keeping an older woman in a cell overnight, with no bed to sleep in, and who had not eaten would result in severe emotional distress. The agents made the decision to leave Ms. [redacted] in the cell for many hours, and violated protocol by doing so. They should have known that keeping Ms. [redacted] in the cell for so long would have cost her severe emotional distress.

As to the second element of IIED, it is clear that the agents' behavior was so extreme and outrageous that it intentionally or recklessly caused severe emotional distress. *See Yeager*, 453 N.E. 666 at 671; *see also* Restatement of the Law 2nd, Torts (1965) 71, Section 46(1). Liability for IIED has been found only when the recitation of the facts to an average person "would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" *Yeager*, 453 N.E. 666 at 703. The agents locked [redacted] in a hot vehicle for eight hours with no food, beverage, and refused to let her to use the bathroom. While [redacted] was in detention, she asked to use the bathroom several times. She was continuously denied this request to the point that she was forced to urinate on herself in the room where she was detained. It would be difficult to find that this treatment by the BP agents was not outrageous.

The third element of IIED, that the agents' conduct was the proximate cause of Ms. [redacted] injuries, is also met. There is no doubt that the agents' conduct caused Ms. [redacted]s injuries. They were the ones who locked her in the van. The agents are also the ones who locked Ms. [redacted] in a cell overnight, and refused her the ability to use the bathroom. Because they refused to allow her to use the bathroom, Ms. [redacted] had no choice but to urinate in the clothes she was wearing and then sit in her own urine all night. This conduct led to the fourth element of IIED, that Ms. [redacted] suffered mental anguish that is serious and of a nature that "no reasonable man could be expected to endure it." Ms. [redacted] suffered from a stroke the day after she was transferred to Seneca County Jail. The evaluation by a medical professional who was responsible for Ms. [redacted] care after the stroke confirms that the stroke was caused by her treatment during her arrest and detention. A stroke is a serious medical condition – indeed, no reasonable man could be expected to endure it. Therefore, all four elements needed to prove a cause of action for IIED are met, and the BP agents are liable to Ms. [redacted] for the damages.

Negligent Infliction of Emotional Distress

Courts have limited recovery for negligent infliction of emotional distress to such instances as where one was in fear of physical consequences to his own person. *See Heiner v. Moretuzzo*, 73 Ohio St. 3d 80, 86, 652 N.E.2d 664, 669 (1995). Ohio case law has recognized negligent infliction of emotional distress only where there is cognizance of a real danger, not mere fear of nonexistent peril. *See Criswell v. Brentwood Hosp.*, 49 Ohio App. 3d 163, 165, 551 N.E.2d 1315, 1318 (1989) (finding that a misdiagnosis of chlamydia in a minor child did not put the child in physical peril). *See, e.g., King v. Bogner*, 88 Ohio App.3d 564, 569, 624 N.E.2d 364, 367 (1993) (stating that Ohio case law recognizes negligent infliction of emotional distress only where the plaintiff is cognizant of a real physical danger to herself or another.); *Massie v. Dayton Power & Light Co.*, Nos. CA91–10–021 and CA91–11–025, 1992 WL 236801 *8 (Ohio Ct. App. Sept. 21, 1992) (finding no negligent infliction of emotional distress where plaintiff experienced no cognizance of danger to herself or to others); *Dawoudi v. Ullman Oil, Inc.*,No. 93–G–1782, 1994 WL 102403 *5 (Ohio Ct. App. Mar. 25, 1994) (finding no claim where plaintiff provided no evidence that he believed that there was any kind of real physical peril); and *Huston v. Morris*, No. 90AP–1009, 1991 WL 35001 *5 (Ohio Ct. App. Mar. 12, 1991) ("Under Ohio law, claims for negligent infliction of serious emotional distress are cognizable only where the plaintiff or someone closely related to the plaintiff faced actual physical peril."). Some fear of actual physical consequences to the plaintiff is a required element for a cause of action for negligent infliction of emotional distress in Ohio. *Wigfall v. Soc. Natl. Bank*, 107 Ohio App. 3d 667, 676, 669 N.E.2d 313, 319 (1995)

[redacted] was in fear of physical consequences to her person. While she was in the vehicle, she was concerned about becoming dehydrated or suffering heat stroke in the vehicle. Further, as [redacted] had a gun pointed at her while in the bathroom, she was facing actual physical peril. Additionally, while in the jail cell without the ability to

use the bathroom, Ms. [redacted] was in fear of the physical, medical consequences that could result.

Further, to maintain an action for NIED, the distress must be serious and reasonably foreseeable. *Strickland v. Tower City Mgmt. Corp.*, 8th Dist., No. 71839, 1997 WL 793133, at *7 (Dec. 24, 1997). An injury is considered serious when it is both severe and debilitating. *Id.* A reasonable person would not be able to cope adequately with the mental distress. *Id.* Examples of serious emotional distress should include traumatically induced neurosis, psychosis, chronic depression, or phobia. *See Paugh v. Hanks*, 6 Ohio St.3d 72, 77, 451 N.E.2d 759, 765 (1983). As stated above, Ms. [redacted] distress manifested in a stroke. Further, Ms. [redacted] has a fear of being arrested again at any time, and has a phobia of traveling to Ohio. The elements for a claim of NIED are met, and the CBP and ICE agents are liable to Ms. [redacted] for the damages resulting.

VII. DAMAGES

Ms. [redacted] requests damages in the amount of $600,000 for her false imprisonment, for the assault and battery committed against her, for the negligent and intentional infliction of emotional distress, and for the negligence of her care while in ICE and CBP custody. This amount includes damages for Ms. [redacted] past, present and continuing pain and suffering. She was so mentally and emotionally harmed by her unlawful arrest and detention, and so poorly treated while in CBP and ICE custody, that she has suffered multiple strokes, when she once led a perfectly healthy lifestyle. *See* Ex. E, Ex. G and Ex. H. Ms. [redacted] also requests damages for money paid for her medical treatment, future costs of medical treatment, transportation costs incurred during this incident, as well as the costs of loss of life expectancy. *See* Ex. K (Harald Hannerz, Licentiate & Martin Lindhardt Nielsen, MD, *Life Expectancies Among Survivors of Acute Cerebrovascular Disease*, 32 Stroke: Journal of the American Heart Association, 1739, 1740 (2001)). She also seeks damages for her diminished quality of life, diminished employability and earning potential as a result of her injuries.

VIII. CONCLUSION

On the way home from her cousin's funeral, [redacted] a 63-year old tax-paying, religious, hard-working immigrant, was detained by CBP, subjected to inhumane detention tactics and forced to urinate on her herself when agents failed to address her needs. An otherwise healthy individual, [redacted] later suffered a stroke while in ICE custodyCBP and ICE are liable for the expenses that [redacted] has been burdened with as a result of the stroke, including medical and transportation costs. They are further liable for the emotional damage [redacted] sustained while in their custody and the mental anguish she continues to suffer from. Additionally, CBP and ICE are liable for her diminished quality of life, diminished employability and earning potential as a result of her injuries. [redacted] therefore requests the amounts articulated herein.

Respectfully submitted,

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