

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TAMEIKA LOVELL

Amended Complaint

18 cv 1867 (KAM)

Plaintiff,

-against-

JOHN DOE 1, as Director, Field Operations, United States Customs and Border Protection; JOHN DOE 2, as Chief Officer, United States Customs and Border Protection; JOHN DOE 3, as Supervisory Officer, United States Customs and Border Protection; PARKER Shield No.: 24750, as Officer, United States Customs and Border Protection and MUNOZ Shield No.: 21455, as Officer, United States Customs and Border Protection each sued individually and in their official capacities as employees of the United States of America

Defendants'
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The plaintiff TAMEIKA LOVELL through her attorney The Sanders Firm, P.C., files this complaint against defendants' JOHN DOES 1-3; PARKER and MUNOZ, respectfully set forth and allege that:

INTRODUCTION

This action concerns constitutional limits on the government employees' ability to detain, seize then search a person's most intimate bodily spaces for alleged 'drugs' without judicial oversight or even reasonable suspicion. Plaintiff a United States citizen, alleges that on or about November 27, 2016, she returned to the United States from Jamaica, West Indies through the John F. Kennedy Airport Port of Entry. Plaintiff TAMEIKA LOVELL alleges defendants' JOHN DOES 1-3; PARKER and MUNOZ subjected her to an unlawful 'body cavity' search against her will resulting in no arrest.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 because plaintiff's claims arise under the United States Constitution.

2. Venue is proper in this judicial district under 28 U.S.C. §1391(b)(2) because the incident giving rise to this action occurred within the Eastern District of New York.

PROCEDURAL REQUIREMENTS

3. Plaintiff alleges that on or about May 10, 2017, she filed a federal tort claim within the Federal Tort Claim Act with the United States Customs and Border Protection.

4. Plaintiff alleges that on or about on March 15, 2108, she received notice the United States Customs and Border Protection denied her federal tort claim.

5. Plaintiff files this federal complaint within the applicable statute of limitations period.

PLAINTIFF

6. Plaintiff TAMEIKA LOVELL is a female citizen of the United States of America, over twenty-one (21) years of age and resident of Nassau County.

DEFENDANTS'

7. Defendant JOHN DOE 1, as Director, Field Operations United States Customs and Border Protection.

8. Defendant JOHN DOE 2, as Chief Officer, United States Customs and Border Protection.

9. Defendant JOHN DOE 3, as Supervisory Officer, United States Customs and Border Protection.

10. Defendant PARKER, as Officer, United States Customs and Border Protection.

11. Defendant MUNOZ, as Officer, United States Customs and Border Protection.

BACKGROUND

12. Plaintiff that in or around October 2015, under Former Commissioner R. Gil Kerilkowske, the United States of America through the United States Customs and Border Protection and the Department of Homeland Security created the U.S. Customs and Border Protection – National Standards on Transport, Escort, Detention, and Search (TEDS).

13. Plaintiff alleges specifically under TEDS Rule 1.4, CBP employees must treat all individuals with dignity and respect.

14. Plaintiff alleges specifically under TEDS Rule 1.4, CBP employees will perform their duties in a non-discriminatory manner, with respect to all forms of protected status under federal law, regulations, Executive order, or policy, with full respect for individual rights including equal protection under the law, due process, freedom of speech, and religion, freedom from excessive force, and freedom from unreasonable searches and seizures.

15. Plaintiff alleges specifically under TEDS Rule 1.8, every effort must be made to promptly transfer, transport, process, release, or repatriate detainees as appropriate according to each operational office's policies and procedures and is operationally feasible.

16. Plaintiff alleges specifically under TEDS Rule 3.1, all searches must be conducted under the appropriate legal authority and standards.

17. Plaintiff alleges specifically under TEDS Rule 3.1, Officers/Agents must be diligent in their efforts to protect a detainee's legal rights and treat detainees with respect, dignity, and an appropriate level of privacy.

18. Plaintiff alleges specifically under TEDS Rule 3.1, Officers/Agents must consider the totality of the circumstances and articulable factors when making a decision to search.

19. Plaintiff alleges specifically under TEDS Rule 3.1, recognizing the potential

intrusiveness of these searches on an individual's sense of privacy, searches must be conducted only with the proper legal authority and justification, with due recognition and deference for the human dignity of those being searched, and in accordance with the operational office's policies and procedures.

20. Plaintiff alleges specifically under TEDS Rule 3.1, each operational office determines search documentation requirements.

21. Plaintiff alleges specifically under TEDS Rule 3.1, however, all strip searches, x-ray searches, body cavity searches, and monitored bowel movements (MBM) must be recorded in the appropriate electronic system(s) of record.

22. Plaintiff alleges specifically under TEDS Rule 3.1, the report must contain the reason for the search, results of the search, a description of any contraband recovered, who conducted the search, and who authorized the search.

23. Plaintiff alleges specifically under TEDS Rule 3.6, an immediate pat-down or Terry frisk is an external search necessary to ensure officer safety but, not for the purpose of checking for contraband.

24. Plaintiff alleges specifically under TEDS Rule 3.7, a strip search requires a person to remove or arrange some or all clothing to permit a visual inspection of the person's breasts, buttocks, or genitalia related to searches for contraband.

25. Plaintiff alleges specifically under TEDS Rule 3.7, Officers/Agents must obtain supervisory approval authorized by the operational office's policies and procedures before conducting a strip search.

26. Plaintiff alleges specifically under TEDs Rule 3.7, all strip searches, the reason for the search, and the authorizing supervisor must be documented in the appropriate electronic

system(s) of record.

27. Plaintiff alleges specifically under TEDS Rule 3.8, a body cavity search is any internal search consisting of the visual or physical intrusion into the rectal or vaginal cavity.

28. Plaintiff alleges specifically under TEDS Rule 3.8, Officers/Agents are PROHIBITED from conducting physically intrusive body cavity searches.

29. Plaintiff alleges specifically under TEDS Rule 3.8, this type of body cavity search should be conducted under the most exceptional circumstances, and only by medical practitioners at a medical facility.

30. Plaintiff alleges specifically under TEDS Rule 3.8, body cavity searches will be conducted only after being approved by a supervisor authorized by the operational office's policies and procedures and after obtaining consent or a search warrant.

31. Plaintiff alleges specifically TEDS Rule 3.8, all body cavity searches, the reason for the search, and the authorizing supervisor must be documented in the appropriate electronic system(s) of records.

32. Plaintiff alleges specifically TEDS Rule 3.8, in the case of more physically intrusive body cavity searches, the name of the medical facility where the search was performed must also be documented in the appropriate electronic system(s) of record.

33. Plaintiff alleges that the United States of America through the United States Customs and Border Protection created and maintains a checkpoint for U.S. Citizens at the John F. Kennedy Airport Port of Entry into the United States.

34. Plaintiff alleges that defendants' JOHN DOES 1-3; PARKER and MUNOZ unlawfully use 'race' as an impermissible factor to seize and search U.S. Citizens in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States

Constitution.

35. Plaintiff alleges that defendants' JOHN DOES 1-3; PARKER and MUNOZ unlawfully use 'random searches' as an impermissible factor to seize and search U.S. Citizens in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States Constitution.

36. Plaintiff alleges that 'random searches' are in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States Constitution.

37. Plaintiff alleges that on or about November 27, 2016, she passed through the checkpoint for U.S. Citizens at the John F. Kennedy Airport Port of Entry into the United States maintained by the United States Customs and Border Protection and defendants' JOHN DOES 1-3; PARKER and MUNOZ.

38. Plaintiff alleges while passing through the checkpoint, defendants' JOHN DOES 1-3; PARKER and MUNOZ subjected her to a 'random' stop using 'race' as an impermissible factor in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States Constitution.

39. Plaintiff alleges defendants' JOHN DOES 1-3; PARKER and MUNOZ subjected her to a 'random' stop using 'race' as an impermissible factor in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States Constitution.

40. Plaintiff alleges although she carried no drugs or violated any laws, defendants' JOHN DOES 1-3; PARKER and MUNOZ subjected her to an unlawful 'body cavity search' in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States Constitution.

41. Plaintiff alleges while retrieving her luggage inside of Terminal 4, defendants'

PARKER and MUNOZ approached her for a 'random search.'

42. Plaintiff alleges this isn't the first time she's been subjected to a 'random search.'

43. Plaintiff alleges defendants' PARKER and MUNOZ ordered her to follow them to a secured area of Terminal 4.

44. Plaintiff alleges prior to going to the secure area of Terminal 4, defendants'

PARKER and MUNOZ'S supervisor interacted with her.

45. Plaintiff alleges defendants' PARKER and MUNOZ'S supervisor asked her, "Why do you travel so much?"

46. Plaintiff responded, "I'm a school counselor and I travel during the holidays."

47. Plaintiff alleges defendants' PARKER and MUNOZ'S supervisor said, "Don't you think you're spending too much money traveling?"

48. Plaintiff responded, "I travel when I can."

49. Plaintiff then followed defendants' PARKER and MUNOZ into the secure area of Terminal 4.

50. Plaintiff alleges while searching her luggage, defendant PARKER asked her if she had a tampon inside of her vagina or maxi pad.

51. Plaintiff responded, "No."

52. Plaintiff alleges she was afraid of defendants' PARKER and MUNOZ.

53. Plaintiff alleges defendant MUNOZ stood nearby with her hand placed on her firearm.

54. Plaintiff alleges defendants' PARKER and MUNOZ ordered her to place her hands against the wall and spread her legs.

55. Plaintiff alleges defendant PARKER began touching her body from head to toe.

56. Plaintiff alleges defendant PARKER did not articulate why she was being searched although she violated no laws.

57. Plaintiff alleges defendant MUNOZ stood nearby with her hand on her firearm.

58. Plaintiff alleges shortly thereafter defendants' PARKER and MUNOZ ordered her to squat in front of them in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States Constitution.

59. Plaintiff alleges defendant MUNOZ ordered her to hold her hands up higher above her head and spread her legs wider.

60. Plaintiff alleges defendant MUNOZ did not articulate why she was being treated in this manner although she violated no laws.

61. Plaintiff alleges defendant PARKER then physically squeezed her breasts hard.

62. Plaintiff alleges defendant PARKER then placed her right hand into her pants 'forcibly' inserting four (4) gloved fingers into plaintiff's vagina.

63. Plaintiff alleges defendant PARKER then swiped her hand between both buttocks opening them for viewing.

64. Plaintiff alleges defendant PARKER and MUNOZ'S actions are in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, and the Fourth and Fifth Amendments of the United States Constitution.

65. Plaintiff while defendants' PARKER and MUNOZ subjected her to this conduct, she felt violated, shocked and afraid.

66. Plaintiff alleges sometime later defendants' PARKER and MUNOZ'S supervisor entered the secure area.

67. Plaintiff alleges defendants' PARKER and MUNOZ's supervisor told her

paraphrase “This was a ‘random search’ and because you frequently travel, you may be subjected to another ‘random search.’ We’re the federal government and we have the right to search you.”

68. Plaintiff alleges defendants’ PARKER and MUNOZ’S supervisor’s comments are in violation of TEDS Rule 1.4, 1.8, 3.1, 3.6 – 3.8, the Fourth and Fifth Amendments of the United States Constitution.

69. Plaintiff alleges shortly thereafter, she and her father traveled to the North Shore Long Island Jewish – Syosset to receive medical treatment.

70. Plaintiff alleges the hospital attempted to prepare a Vitullo Kit (Rape Kit) but, she was too traumatized for the examination.

71. Plaintiff alleges the hospital then performed an external examination of her body including the breasts, vagina and buttocks.

72. Plaintiff alleges the hospital notified the Port Authority of New York/New Jersey Police Department (PAPD).

73. Plaintiff alleges hours later, PAPD Detective Albert Corradina, Criminal Investigations Bureau responded to the hospital.

74. Plaintiff alleges shortly thereafter, PAPD Detective Corradina prepared a criminal complaint and filed it, Case No.: 16 K 75162.

75. Plaintiff alleges shortly thereafter, the hospital discharged her referring her to a rape counseling service.

76. Plaintiff alleges the rape counselor worked with her for approximately 10 months referring her to a psychologist or psychiatrist to treat her anxieties.

77. Plaintiff alleges shortly thereafter, she met with the Queens District Attorney’s Office but, they failed to file criminal charges against defendants’ JOHN DOES 1-3; PARKER and

MUNOZ.

78. Plaintiff alleges defendants' JOHN DOES 1-3; PARKER and MUNOZ'S actions caused her to sustain extreme emotional distress, substantial pain about the body, contusions to her breasts, discomfort inside of her vaginal cavity and buttocks.

79. Plaintiff alleges defendants' JOHN DOES 1-3; PARKER and MUNOZ'S actions caused to become celibate.

80. Plaintiff alleges defendants' JOHN DOES 1-3; PARKER and MUNOZ'S actions caused to suffer intermittent panic attacks, anxieties, fits of crying, etc., that are enhanced while traveling through ports of entries maintained by the United States of America through the United States Customs and Border Protection.

VIOLATIONS AND CLAIMS ALLEGED

COUNT I VIOLATION OF THE FOURTH AMENDMENT ILLEGAL SEIZURE OF THE PERSON IN VIOLATION OF BIVENS

81. Plaintiff re-alleges Paragraphs 1 through 80 and incorporates them by reference as Paragraphs 1 through 80 of Count I of this Complaint.

82. Plaintiff alleges that defendants' JOHN DOES 1-3; PARKER and MUNOZ acted under the color of federal law to deprive her right to be free from unreasonable governmental intrusion by seizing her without an articulable legal basis that she was committing a crime, in violation of the Fourth Amendment of the United States Constitution.

83. Plaintiff alleges that this cause of action is brought pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388 (1971).

COUNT II VIOLATION OF THE FOURTH AMENDMENT ILLEGAL SEARCH OF THE PERSON IN VIOLATION OF BIVENS

84. Plaintiff re-alleges Paragraphs 1 through 83 and incorporates them by reference as Paragraphs 1 through 83 of Count II of this Complaint.

85. Plaintiff alleges that defendants' JOHN DOES 1-3; PARKER and MUNOZ acted under the color of federal law to deprive her right to be free from unreasonable governmental intrusion by searching her without an articulable legal basis that she was committing a crime, in violation of the Fourth Amendment of the United States Constitution.

86. Plaintiff alleges that this cause of action is brought pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388 (1971).

**COUNT III
VIOLATION OF THE FIFTH AMENDMENT
PROCEDURAL DUE PROCESS
IN VIOLATION OF BIVENS**

87. Plaintiff re-alleges Paragraphs 1 through 86 and incorporates them by reference as Paragraphs 1 through 86 of Count III of this Complaint.

88. Plaintiff alleges that defendants' JOHN DOES 1-3; PARKER and MUNOZ acted under the color of federal law to deprive her right to procedural due process by acting in a manner that 'shocks the conscience' in violation of the Fifth Amendment of the United States Constitution.

89. Plaintiff alleges that this cause of action is brought pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388 (1971).

**COUNT IV
VIOLATION OF THE FIFTH AMENDMENT
SUBSTANTIVE DUE PROCESS
IN VIOLATION OF BIVENS**

90. Plaintiff re-alleges Paragraphs 1 through 89 and incorporates them by reference as Paragraphs 1 through 89 of Count IV of this Complaint.

91. Plaintiff alleges that defendants' JOHN DOES 1-3; PARKER and MUNOZ acted under the color of federal law to deprive her right to substantive due process by acting in a manner that 'shocks the conscience' in violation of the Fifth Amendment of the United States Constitution.

92. Plaintiff alleges that this cause of action is brought pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388 (1971).

JURY TRIAL

93. Plaintiff demands a trial by jury of all issues in this action that are so triable.

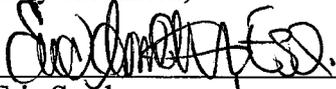
PRAYER FOR RELIEF

Wherefore, plaintiff demands compensatory and punitive damages from defendants' JOHN DOES 1-3; PARKER and MUNOZ jointly and severally, in an amount of \$35 million dollars plus available statutory remedies, both legal and equitable, and interests and costs.

Dated: September 28, 2018
New York, N.Y.

Respectfully submitted,

By:


Eric Sanders

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