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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 MARC-OLIVER LEWIS, an individual,
16 Plaintiff,
17 v.

18 UNKNOWN AGENTS OF THE
19 UNITED STATES DEPARTMENT OF
20 HOMELAND SECURITY, individuals,
21 Defendants.

Case No. 3:19-cv-0600-CAB-AHG

FIRST AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

INTRODUCTION

22 1. Regardless of one's opinion of alcohol and drug addiction, the fact remains
23 that suddenly stopping high doses of alcohol and/or heroin, without medical supervision
24 and treatment, is a life-threatening experience that can result in detox and withdrawal
25 symptoms tantamount to torture.

26 2. Plaintiff Marc-Oliver Lewis—a U.S. citizen and Gulf War combat veteran—
27 endured just such an experience from February 7 through 11, 2019, when Mr. Lewis was
28 an arrestee and pretrial detainee in the custody, and under the supervision, of currently

1 unknown, individual agents for the U.S. Department of Homeland Security (“DHS”),
2 believed to be Customs and Border Protection agents (“Defendants”).

3 3. Even though Mr. Lewis repeatedly informed Defendants, shortly after his
4 arrest near the San Ysidro Port of Entry, that he had been using high doses of alcohol and
5 heroin, and even though Mr. Lewis began experiencing objectively severe symptoms of
6 detox and withdrawal from alcohol and heroin, Defendants never provided Mr. Lewis with
7 the medical care required to treat his serious medical needs while Mr. Lewis was in
8 Defendants’ custody.

9 4. This practice of DHS agents forcing arrestees and pretrial detainees to detox
10 and withdraw from high amounts of alcohol and/or opiates in holding cells near the border,
11 has happened *with alarming frequency*. Indeed, Mr. Lewis is believed to be one of dozens
12 of other individuals forced to endure these conditions in recent months.

13 5. Bureaucratic delays and funding deficiencies are, of course, no excuse for
14 forcing human beings to endure *days* of life-threatening, torturous, and humiliating detox
15 and withdrawal symptoms. If Defendants are unable to detain individuals they suspect of
16 committing a crime in a way that does not violate the individual’s constitutional rights,
17 Defendants should release the individual and find another way to ensure the individual
18 appears at pretrial proceedings (through, e.g., the use of a GPS monitoring device).

19 6. Mr. Lewis now sues for violation of his constitutional rights, pursuant to
20 *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1999), and for negligence pursuant to the
21 Federal Tort Claims Act, for recovery of damages.

22 **JURISDICTION & VENUE**

23 7. Plaintiff asserts a cause of action for violation of his civil rights under the
24 United States Constitution pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388
25 (1999). The Court thus has subject matter jurisdiction over this action pursuant to 28
26 U.S.C. § 1331.

27 8. The events giving rise to this action occurred in the County of San Diego,
28 California, which is located within the Southern District of California. Thus, venue is

1 proper in this judicial district pursuant to 28 U.S.C. § 1391.

2 **PARTIES**

3 9. Plaintiff, Marc-Oliver Lewis, an individual, is a U.S. citizen.

4 10. Defendant, The United States of America, is the defendant to Plaintiff's
5 negligence claim under the FTCA.

6 11. Defendant, Victor Dumon (CBP ID No. ZEAGGJ8), is believed to be an
7 individual who was, at all times relevant to this pleading, acting under color of federal
8 law.

9 12. Defendant, John Bosch (CBP ID No. ZEAE58U), is believed to be an
10 individual who was, at all times relevant to this pleading, acting under color of federal
11 law.

12 13. Defendant, William Vea (CBP ID No. EDGJGRH), is believed to be an
13 individual who was, at all times relevant to this pleading, acting under color of federal
14 law.

15 14. Defendant, Andrew Ranganiban (CBP ID No. DFCJKKG), is believed to be
16 an individual who was, at all times relevant to this pleading, acting under color of federal
17 law.

18 15. Defendant, Jimmy Gutierrez (CBP ID No. EFFCI9D), is believed to be an
19 individual who was, at all times relevant to this pleading, acting under color of federal
20 law.

21 16. Defendant, Jeremy Powell (CBP ID No. BCC5EE9), is believed to be an
22 individual who was, at all times relevant to this pleading, acting under color of federal
23 law.

24 17. Defendant, Julio Corrales (CBP ID No. EFHKF4N), is believed to be an
25 individual who was, at all times relevant to this pleading, acting under color of federal
26 law.

27 18. Defendant, Gabriela Nicasio (CPB ID No. EFA3MQ6), is believed to be an
28 individual who was, at all times relevant to this pleading, acting under color of federal

1 law.

2 19. Defendant, Claudia Lopez (CBP ID No. FBE83QQ), is believed to be an
3 individual who was, at all times relevant to this pleading, acting under color of federal
4 law.

5 20. Defendant, Michael D. Mackie (CBP ID No. DFEKI9L), is believed to be an
6 individual who was, at all times relevant to this pleading, acting under color of federal
7 law.

8 21. Defendant, Josue Cordero (CBP ID No. EBD8C52), is believed to be an
9 individual who was, at all times relevant to this pleading, acting under color of federal
10 law.

11 22. Defendant, Victor Renteria (CBP ID No. EDE8MEH), is believed to be an
12 individual who was, at all times relevant to this pleading, acting under color of federal
13 law.

14 23. Defendants Dumon, Bosch, Veal, Ranganiban, Gutierrez, Powell, Corrales,
15 Nicasio, Lopez, Mackie, Cordero, and Renteria are hereinafter referred to as “CBP
16 Defendants.”

17 24. At all times relevant to this pleading, each individually named defendant was
18 acting within the scope of his or her agency and/or employment, and with the full
19 knowledge and consent, either express or implied, of their principal and/or employer, and
20 of each of the other named defendants. The named defendants were each the agents,
21 servants, and employees of each of the other named defendants. The named defendants
22 each approved and/or ratified the actions of each of the other named defendants, making
23 each of the named defendants jointly and severally liable for the acts and/or omission of
24 the each of the other named defendants.

25 **ADMINISTRATIVE EXHAUSTION**

26 25. Plaintiff has, in accordance with 28 U.S.C. § 2675, presented his negligence
27 claim for damages to the appropriate federal agencies, and CBP finally denied Plaintiff’s
28 claim on August 21, 2019.

1 **FACTS**

2 26. On or about Thursday, February 7, 2019, at approximately 10:00 a.m., Mr.
3 Lewis—a U.S. citizen and Gulf War combat veteran—was arrested at the San Ysidro Port
4 of Entry. The CBP Defendants placed Mr. Lewis in a holding cell in a DHS facility at the
5 border.

6 27. At or near the time of his arrest, Mr. Lewis repeatedly advised the CBP
7 Defendants that he had a history of using large amounts of alcohol and heroin. More
8 specifically, Mr. Lewis informed the CBP Defendants he had been drinking up to a gallon
9 of alcohol per day and using up to three grams of heroin per day. One of the CBP
10 Defendants laughed at Mr. Lewis and told him: “You’ll be fine.”

11 28. Within several hours of his arrest, Mr. Lewis started experiencing the
12 beginning effects of alcohol and heroin withdrawal, including restlessness, headache,
13 muscle aches and pains, increased tearing, runny nose, and sweating. In addition to these
14 symptoms being obvious to anyone who spent any time with Mr. Lewis, Mr. Lewis also
15 repeatedly stated to the CBP Defendants that he was experiencing these symptoms. Along
16 with the withdrawal symptoms described herein, it is important to note that suddenly
17 stopping high doses of alcohol can lead to seizures, strokes, heart attacks, hallucinations,
18 delirium tremens, and death.

19 29. At approximately 3:00 p.m. on the afternoon of his arrest, the CBP
20 Defendants transported Mr. Lewis to the Metropolitan Correction Center – San Diego
21 (“MCC”). Given Mr. Lewis’ obviously unstable medical condition, MCC officials
22 rejected Mr. Lewis and recommended that he be taken to a hospital for immediate medical
23 attention.

24 30. Rather than taking Mr. Lewis to a hospital, however, as recommended by
25 MCC officials and as (presumably) required by DHS policies and procedures, the CBP
26 Defendants returned Mr. Lewis to a DHS holding facility at or near the San Ysidro Port
27 of Entry. The CBP Defendants placed Mr. Lewis in a holding cell that measured
28 approximately twenty by fifteen feet, and which contained approximately twenty other

1 detainees. There were no beds or bedding in the cell; rather, Plaintiff was given yoga mats
2 and plastic blankets. There was one toilet and one sink in the room.

3 31. At this point, it had been more than twelve hours since Mr. Lewis had last
4 used alcohol or heroin, and Mr. Lewis was starting to experience severe (i.e., clinically
5 significant) detox and withdrawal symptoms, including: headaches, dizziness, difficulty
6 breathing, chest tightness, racing heart, palpitations, nausea, vomiting, diarrhea, stomach
7 aches, muscle pain, joint and bone pain, anxiety, restlessness, fatigue, insomnia, and
8 depression. At several points, Mr. Lewis feared he was going to have a heart attack.

9 32. The night of his arrest, Mr. Lewis was in so much pain (his arms, legs, and
10 back had essentially “locked up”), that he was unable to get up off of the ground to drink
11 water, which exacerbated his dehydration. Nor was Mr. Lewis able to make it to the toilet
12 unassisted and, as a result, he was forced to defecate in his pants. (To make matters worse,
13 the CBP Defendants then refused to provide Mr. Lewis with a change of clothes and the
14 opportunity to shower, forcing him to remain in his soiled clothing until he was eventually
15 accepted at MCC, *four days later*.)

16 33. Mr. Lewis remained in the holding cell through the following day, Friday,
17 February 8, 2019. During that time, Mr. Lewis continued to advise the CBP Defendants
18 of his medical condition and his need for immediate medical attention. And the CBP
19 Defendants continued to ignore Mr. Lewis’ pleas for help. Mr. Lewis was not seen by any
20 doctor, nurse, or other medical provider during this time. Mr. Lewis was not provided any
21 medical attention whatsoever to treat his severe and life-threatening detox and withdrawal
22 symptoms.

23 34. On Saturday, February 9, 2019, the CBP Defendants told Mr. Lewis to “get
24 up and eat.” He was, however, unable to stand due to his intense detox and withdrawal
25 symptoms. The CBP Defendants thus carried Mr. Lewis to a smaller, rubber-lined
26 isolation cell. Mr. Lewis remained in this cell for approximately ten hours. During this
27 time, Mr. Lewis’ severe detox and withdrawal symptoms persisted and Mr. Lewis
28 continued to plea for medical attention. This isolation cell did not include a toilet or sink,

1 so Mr. Lewis was forced to vomit and defecate into a drain on the floor in the middle of
2 the cell.

3 35. The following day, Sunday February 10, 2019, Mr. Lewis was transferred to
4 another cell, which contained approximately four other prisoners. That afternoon, Mr.
5 Lewis was finally seen by a non-physician medical provider, but this provider failed to
6 treat the life-threatening components of detoxing from both alcohol and heroin.

7 36. Finally, on Monday February 11, 2019, the CBP Defendants transported Mr.
8 Lewis to MCC, where he still required two additional days of medical supervision and
9 treatment.

10 37. Mr. Lewis is believed to be one of dozens of individuals over the past several
11 months whose serious medical needs have been deliberately ignored by DHS agents and
12 who, in particular, were forced to undergo a life-threatening and torturous detox in
13 temporary holding cells at the border because they were rejected by custodial officials
14 (like those at MCC) on grounds of medical instability.

15 38. It is believed this practice is in violation of DHS, CBP, and ICE policies and
16 procedures, which require arrestees experiencing detox and withdrawal symptoms to be
17 medically evaluated by a medical professional knowledgeable about addiction medicine;
18 which establish protocols for the treatment of addiction to commonly used substances like
19 alcohol, opiates, and amphetamines (each of which require a different medical approach);
20 and which provide for the transfer of arrestees to medical facilities when their serious
21 medical needs cannot be evaluated and treated in custody.

22 39. This practice has already caused substantial physical and mental/emotional
23 injury to multiple individuals, and, if it is not stopped, it is likely to result in the death of
24 an arrestee forced to undergo the same experience as Mr. Lewis and others who have been
25 forced to detox and withdraw at the border.

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27 ///

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1 **FIRST CAUSE OF ACTION**

2 ***Bivens* – Deliberate Indifference in Violation of 5th Amendment**

3 **(Against CBP Defendants)**

4 40. The foregoing paragraphs are incorporated herein by this reference.

5 41. From February 7 through 11, 2019, Plaintiff was in the custody, and under
6 the supervision, of the CBP Defendants, and other currently unknown government
7 officials. Plaintiff was *not*, in other words, being detained during this time frame because
8 he had been convicted of any crime. He was an arrestee and pretrial detainee.

9 42. From February 7 through 11, 2019, Plaintiff had serious medical needs
10 arising from the detox and withdrawal symptoms described herein. These symptoms were
11 *objectively* serious, meaning, in this instance, that any reasonable adult would know the
12 severity of these symptoms merely by seeing, hearing, and/or smelling Plaintiff during the
13 five days that he was forced to detox and withdraw from alcohol and heroin at the border.
14 The CBP Defendants were, moreover, *subjectively* aware of Plaintiff's serious medical
15 needs given Plaintiff's repeated requests for medical care to treat his detox and withdrawal
16 symptoms.

17 43. Despite the objective seriousness of his medical needs, and the CBP
18 Defendants' subjective awareness of the same, the CBP Defendants failed to provide the
19 medical care required to treat Plaintiffs' serious medical needs while Plaintiff was in the
20 custody, and under the supervision, of the CBP Defendants.

21 44. As a direct and foreseeable result of the CBP Defendants' deliberate
22 indifference to Plaintiff's serious medical needs, Plaintiff suffered physical injury, pain
23 and suffering, and emotional distress. Plaintiff thus seeks monetary damages to
24 compensate for these injuries in an amount to be determined at trial.

25 45. Further, given the intentional and reckless manner in which the CBP
26 Defendants were deliberately indifferent to Plaintiff's serious medical needs, Plaintiff also
27 seeks punitive damages against each of the CBP Defendants according to the degree to
28 which each was deliberately indifferent to Plaintiffs' serious medical needs, in an amount

1 to be determined at trial.

2 **SECOND CAUSE OF ACTION**

3 **Negligence**

4 **(Against United States)**

5 46. The foregoing paragraphs are incorporated herein by this reference.

6 47. From February 7 through 11, 2019, Plaintiff was in the in the custody, and
7 under the supervision, of the CBP Defendants, among other, currently unknown,
8 government officials.

9 48. California law imposes a duty of care on law-enforcement and custodial
10 officers to protect the health and safety of pretrial detainees, which includes a duty to
11 ensure pretrial detainees' serious medical risks and needs are properly evaluated and
12 treated.

13 49. Despite the objectively serious nature of the medical risks and needs Plaintiff
14 was facing, and the CBP Defendants' subjective awareness of the same, the CBP
15 Defendants breached their duty to protect Plaintiff's health and safety, by failing to
16 provide the medical care required to evaluate and treat Plaintiffs' serious medical risks
17 and needs while Plaintiff was in the custody, and under the supervision, of the government.

18 50. As a direct and foreseeable result of these government officials' breach of
19 their duty to protect Plaintiff's health and safety, Plaintiff suffered physical injury, pain
20 and suffering, and emotional distress.

21 51. These acts and omissions by these government officials constitute the tort of
22 negligence under the laws of the State of California.

23 52. Under the Federal Tort Claims Act, the government is liable for these acts
24 and omissions.

25 **PRAYER FOR RELIEF**

26 53. Based on the foregoing allegations and causes of action, Plaintiff hereby
27 demands:

28 a. that judgment be rendered in favor of Plaintiff and against Defendants

1 on each cause of action asserted herein;

2 b. on Plaintiff's First Cause of Action, compensatory damages in an
3 amount to be determined at trial;

4 c. on Plaintiff's First Cause of Action, punitive damages against each of
5 the CBP Defendants, individually, in an amount sufficient to punish the
6 conduct giving rise to this suit and to deter such conduct in the future;

7 d. on Plaintiff's Second Cause of action, compensatory damages in an
8 amount to be determined at trial; and

9 e. any and all other relief in law or equity to which Plaintiff may be entitled
10 and which this Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 54. Plaintiff demands, under the Seventh Amendment, a trial by jury as to his
13 *Bivens* cause of action asserted herein.

14
15 Dated: October 7, 2019

SINGLETON LAW FIRM, APC

16 By: /s/Brody A. McBride

17 Brody A. McBride

18 Attorneys for Marc-Oliver Lewis