
SF-95 Continuation Form
Estate of Roxsana Hernandez Rodriguez

I. Submit to Appropriate Federal Agency:

Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528-0485

U.S. Customs & Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue
N.W. Washington, D.C. 20229

U.S. Immigration & Customs Enforcement
Office of the Principal Legal Advisor
500 12th Street, S.W.
Mail Stop 5902
Washington, D.C. 20536

II. INTRODUCTION

On November 22, 2019, claimants, Jenny Margoth Hernandez Rodriguez, the sister of Roxsana Hernandez, on behalf of Roxsana's surviving siblings, and Joleen K. Youngers, the Personal Representative of Roxsana's Wrongful Death Estate, submitted an administrative tort claim for damages arising out of Roxsana's arrest, detention, gross mistreatment in custody, and death as a result of the tortious acts and omissions of CBP and ICE employees. The complaints were received by all three agencies on November 25, 2018. Claimants, now submit the following supplemental facts and claims and amend their prior administrative complaint to include the following:

III. SUPPLEMENTAL FACTS

All records within the possession of ICE, CBP and DHS pertaining to Roxsana Hernandez including those received by our offices through the FOIA lawsuit TLC et. al v. ICE et. al, Case 3:19-cv-03032-SK (N.D.C.A. 2019) (2019—ICLI—000053 1 through 1543) are incorporated by reference in the instant complaint.

A. CBP's Interference With Roxsana's Medical Care At Scripps:

When CBP took Roxsana to Scripps Mercy Hospital in Chula Vista, California on May 11, 2018, two CBP officers from the Ice Box interfered with the medical providers' examination and treatment of Roxsana. They brought Roxsana in to rule out the possibility that she had a tuberculosis infection. These officers remained present and kept Roxsana shackled throughout the cursory exam. Rather than provide her with interpretation so she could speak directly to the

SF-95 Continuation Form
Estate of Roxsana Hernandez Rodriguez

medical providers, Beverly Harrell Bruder, M.D. and Brian Reed, R.N., the officers primarily communicated with them. One of the officers spoke broken Spanish but was not fluent. The medical records alone clearly show that there was little to no communication between Roxana and the treating providers.

This explains why much of the information provided to Scripps was incomplete or untimely, including the fact that the Scripps nurses and physician completed and signed off on the entire visit without discovering Roxsana was HIV-positive. That note came only after ER physician signed her original note.

However, by that time, Roxsana had already been “medically cleared” for transport and detention based on the incomplete information CBP provided. Dr. Bruder wrote in Roxana’s medical records from the visit: “No clinical evidence of TB normal chest Xray.[...] I explained to the customs agent that there is no clinical or radiographic appearance of tuberculosis, although that does not completely rule it out and [the patient] is cleared for travel and incarceration from that standpoint. However, if they want full evaluation for tuberculosis, they were going to be needing to do a blood test, but that is not done here in the emergency department.”

An addendum to the exam notes by the Dr. Bruder states: “I was just told by the immigration customs agent that they were told by Mr. Hernandez-Rodrigue that he has HIV, although he is on no medication for it, so he will definitely need to follow up with the Jail/customs Medical for this.”¹÷

An X-ray is an insufficient diagnostic tool to rule out tuberculosis within patients living with HIV; a blood or sputum test is needed to accurately rule out tuberculosis. In other words, the clearance by Scripps to transport and detain Roxsana was based on misinformation rendering their initial clearance invalid. Neither CBP nor ICE performed a diagnostic blood or sputum test on Roxsana and neither “followed up with Jail/customs Medical” for HIV medication for Roxsana.

Furthermore, Roxsana’s vital signs were highly alarming during this visit and despite this Roxsana was not admitted to the hospital nor provided any follow up medical care by CBP. Roxsana’s medical records of the visit indicate her blood pressure was initially 91/61, and her heart rate 120, making her tachycardic—an elevated heart rate. Her temperature was 100.6. Despite her concerning vital signs, Roxsana was not admitted to the hospital for supportive care or treatment for HIV. Additionally, the medical provider did not take Roxsana’s weight, did not assess her level of dehydration, and did not document any information about the length of time Roxsana had been coughing—the stated reason she was sent to the emergency room. These records even erroneously state that Roxsana had not experienced any weight loss, which is patently false; even the onsite doctor that Roxsana had seen earlier the same day noted that she appeared emaciated in her medical records from that exam.

i. Standards of Care:

¹ This quote from Roxsana’s medical records misgendered her, incorrectly using masculine, rather than feminine pronouns.

SF-95 Continuation Form
Estate of Roxsana Hernandez Rodriguez

Based upon standards of care within the medical community anyone presenting with the concerning vital signs exhibited by and with the medical history of Roxsana during an Emergency Department visit should be admitted to the hospital. According to prevailing medical guidelines for the care of people diagnosed with HIV: “Every patient with HIV entering into care should have a complete medical history, physical examination, and laboratory evaluation and should be counseled regarding the implications of HIV infection” to assess the patient’s baseline health and monitor the effectiveness of treatment.² This is critical because of the high prevalence of co-infections found within patients diagnosed with HIV. “The Panel on Antiretroviral Guidelines for Adults and Adolescents recommends initiating ART immediately (or as soon as possible) after HIV diagnosis in order to increase the uptake of ART and linkage to care, decrease the time to viral suppression for individual patients, and improve the rate of virologic suppression among persons with HIV.”³

After her return from Scripps, Roxsana was not seen by a medical professional. She was never provided with a comprehensive evaluation to determine her baseline health and screen for any co-infections by any CBP, DHS or ICE personnel nor their contractors. No CBP, ICE, or DHS personnel nor their contractors ever completed a laboratory evaluation for Roxsana including measuring her CD4 count or viral load, nor a complete blood count; nor did they complete a comprehensive medical/social/family history, nor screen her for co-infections, all of which are recommended for patients diagnosed with HIV under prevailing medical standards of care.

Neither CBP nor ICE ever provided Roxsana with antiretroviral medication to treat her HIV before she died, as instructed by the treating doctor at Scripps and as recommended by standards of treatment.

B. Unlawful Detention:

Because Dr. Bruder did not have complete and accurate information about Roxsana’s medical condition, due to the CBP officers’ interference with the medical exam she performed, her clearance for CBP/ICE to detain and transport Roxsana was erroneous. Under CBP’s own standards, CBP should not have transferred Roxsana to ICE custody. CBP knew Roxsana was unfit for travel and incarceration because the onsite physician found her to be medically unfit. Subsequently, the screening by Scripps may as well have not happened because the providers at Scripps did not know Roxsana was living with untreated HIV and the method they used to determine her fitness for detention and TB status was insufficient for people living with HIV, rendering their medical findings and clearance, useless. CBP officers knew that the clearance was invalid because it states in Roxsana’s medical records that the X-ray performed was insufficient to rule out tuberculosis. Nevertheless, CBP continued to detain Roxsana and transferred to ICE ERO’s custody on May 13, 2018.⁴

² Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents with HIV Developed by the DHHS Panel on Antiretroviral Guidelines for Adults and Adolescents – A Working Group of the Office of AIDS Research Advisory Council (OARAC) at B1.

³ *Id.* At E-1.

⁴ Claimants complaint submitted on November 22, 2019, states Roxsana entered ICE ERO’s custody on May 14, 2018. However, ICE’s records are inconsistent. It appears that on paper

SF-95 Continuation Form
Estate of Roxsana Hernandez Rodriguez

While CBP's detention of Roxsana was initially lawful pursuant to section 235(b)(1)(B)(iii)(IV) of the INA⁵ it became unlawful as soon as Roxsana was found medically unfit for detention and transportation.

C. Unlawful Transportation:

On May 13, 2018, after ICE ERO approved transfer of Roxsana and the other caravanners to CCCC because of its dedicated transgender housing unit, ICE employee, Jaimee Doe,⁶ wrote in an intra-agency email chain: "They will be transferred from the SYS POE [San Ysidro Port of Entry] directly to the ELP AOR, [El Paso Area of Responsibility] arrangements have been made with the receiving office to have a complete medical evaluation upon arrival. *Therefore they will not need certain medication at the time of transport i.e. HIV medication.*"⁷

CBP's Transfer and Escort standards 2.0 requires: "When transferring a detainee, officers/agents must ensure that all appropriate documentation accompanies the detainee including all appropriate medical records and medication as required by the operational office's policies and procedures."

The medical summary that accompanied Roxsana failed to mention the conditions noted at Scripps and by the physician who screened her on May 11, 2018 and the medications prescribed to her.

D. ELSPC

When Roxsana and the other caravanners arrived at El Paso Service Processing Center, ("ELSPC") Roxsana asked ICE officers to see a doctor.⁸ The officer responded that the doctor was not onsite until the next morning and because they were only staying one-night Roxsana would not be able to see the doctor.⁹ A group of caravan members also asked ICE officers for medical attention for Roxsana and received the same response. Despite her severe and visible illness, and her documented medication vulnerability, ICE did not provide Roxsana with any medical help.¹⁰ In its investigation after her death OPR ERAU's staff noted that ELSPC was obligated to provide a medical screening for Roxsana because she was in their care for longer than 12 hours and failed to.¹¹

Roxsana was transferred to ICE ERO's custody on May 13, 2014 however she was not taken into the agency's physical custody until May 14, 2018.

⁵ provides that an alien in expedited removal "shall be detained pending a final determination of credible fear of persecution"

⁶ The person's name is redacted in the email that ICE produced in response to undersigned counsel's FOIA request.

⁷ 2019—ICLI—00053 9 [emphasis added].

⁸ See Exhibit of Kristal Zambrano Aguilera annexed hereto as **Exhibit U**.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 2019—ICLI—00053 731.

i. PBNDS Standards

According to the applicable Performance Based National Detention Standards: “As soon as possible, but no later than 12 hours after arrival, all detainees shall receive, by a health care provider or a specially trained detention officer, an initial medical, dental and mental health screening and be asked for information regarding any known acute or emergent medical conditions.”

In its review of Roxsana’s death, Correct Care solutions noted “no explanation for the two-day delay in medical screening and tuberculosis screening can be offered.”¹² Furthermore, these PBNDS require that: “Detainees shall receive continuity of care from the time of admission to time of transfer, release or removal. Detainees, who have received medical care, released from custody or removed shall receive a discharge plan, a summary of medical records, any medically necessary medication and referrals to community-based providers as medically-appropriate.”

Neither ICE nor CBP conducted a medical screening within 12 hours of assuming custody of Roxsana. Despite multiple attempts to receive adequate medical care by both herself and by the caravanners who advocated for her, Roxsana was not provided meaningful medical care despite her alarming vital signs and clearly apparent severe illness until she was experiencing early stages of multiple organ failure.

Roxsana’s medical summary required to ensure continuity of care did not reflect the medical conditions recorded or medications prescribed to her during her visit to Scripps on May 11th in violation of these standards.

E. CBP’s Demonstrated Animus Towards Roxsana

There is in indicia that CBP officers who screened Roxsana for immigration options improperly demonstrated animus towards her and recommended her expedited removal as a result. Roxsana entered the United States on May 9, 2018 seeking asylum because she was targeted by MS-13 gang members as a transgender woman. They raped and tried to kill her approximately five to six months before entering the U.S. and Roxsana fled because she feared for her life. Roxsana explained this to the CBP officer who apprehended her when she entered the U.S. and during her credible fear interview on May 11, 2018. Yet, the CBP officer who apprehend her recommended expedited removal of her and the officer’s supervisor approved the recommendation. In the Discretionary Authority Checklist for Alien Applicants this officer wrote under the section entitled “remarks”: “likely to add to illegal population.”¹³ This is not a reason to recommend expedited removal under the INA and exhibits anti-immigrant sentiment.

Furthermore, during Roxsana’s credible fear interview—an interview that that asylum seekers are entitled to assess the asylum seekers’ fear of persecution or torture—the CBP officer conducting the interview, Jose Llanes, asked multiple questions about Roxsana’s involvement with the migrant caravan and whether she received legal counseling about how to answer

¹² 2019—ICLI—00053 677.

¹³ 2019—ICLI—00053 1466.

SF-95 Continuation Form
Estate of Roxsana Hernandez Rodriguez

questions during the interview, rather than questions about her asylum claim and the violence she fled from. Despite the fact that Roxsana told the officer that gang members raped and tried to kill her months prior and that she feared for her life, the officer did not ask a single follow up question but asked several questions about whether she had ever received legal advice. Furthermore, he failed to ask all required questions during the interview to establish a prima facie asylum claim, including whether there was a place in Honduras where she would be safe. This is also indicia of the CBP officer's animus towards Roxsana as a migrant and part of the highly publicized caravan. In fact, one CBP officer in the ICE box, Bosch, called the caravanners "troublemakers" when they requested medical care for Roxsana.¹⁴

CBP officers also demonstrated their animus towards Roxsana and the other caravan members through their treatment of them while they were detained in the ice box. CBP officers called them "fucking queers," disregarded Roxsana's dire need for medical care, threw food at them at one point, and punitively increased the air conditioning when they requested to have it turned down, in violation of CBP's own rules.¹⁵

Roxsana did not receive a determination on her asylum claim when she died despite the fact that it was clearly meritorious. Had Roxsana been able to bring her asylum claim before an immigration judge, she most likely would have either been granted asylum or withholding of removal and been granted a waiver of inadmissibility. As a transgender woman living with HIV who was raped by one of the most dangerous gangs in Central America telling her they did it so she would "learn to be a man"¹⁶ an immigration judge most likely would find Roxsana had a very well founded and credible fear of persecution.

These CBP officers abused their authority and discretion by recommending Roxsana be placed in expedited removal for reasons motivated by animus without giving her a meaningful opportunity to establish her claim. They relied upon improper considerations, namely discriminatory intent, as evidenced by both aforementioned forms as well as their disparaging and unlawful treatment of Roxsana while she was in custody.

F. Loss of Chance of Survival

Had Roxsana received the proper health care screening within 12 hours of entering custody as required by agency policy and prevailing standards of medical care she, more likely than not, would have survived. Because Multi-Centric Castleman disease (MCD), the disease Roxsana

¹⁴ See **Exhibit U**.

¹⁵ CBP Transport, Escort, Detention and Search standard 4.6, which provides: "When it is within CBP control, officers/agents should maintain hold room temperature within a reasonable and comfortable range for both detainees and officers/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner."

¹⁶ See **Exhibit G** of Administrative Complaint filed November 22, 2018.

SF-95 Continuation Form
Estate of Roxsana Hernandez Rodriguez

was diagnosed with, is an aggressive disease, prognosis of patients diagnosed with MCD improves the sooner MCD patients begin treatment.

IV. SUPPLEMENTAL LIABILITY OF THE UNITED STATES

Based on the facts set forth above, Claimants contend the United States of America is liable for the acts and omissions of its officers based on, at minimum, the following theories:

1. Loss of chance of survival under New Mexico state law. As a direct and proximate cause of CBP and ICE employees' unlawful acts and omissions including failure to provide her with timely and adequate medical care, Roxsana lost her chance to survive. By the time she received care her disease was too far progressed. Had Roxsana received a proper health care screening within 12 hours of entering CBP's custody she would more likely than not would have survived.

2. False Imprisonment California Law Cal.Civ.Code § 43 for unlawfully keeping Roxsana in detention after she was found medically unfit for detention and transportation on May 11, 2018 through the time of her death on May 25, 2018. Because CBP officers intervened in the medical care Roxsana received at Scripps hospital by failing to provide interpretation services and controlling the information that the treating medical providers received, Roxsana was erroneously cleared for detention based upon false information. Roxsana's detention, while initially lawful, became unsanctioned and unauthorized by law. The undisturbed finding that Roxsana was not medically fit for incarceration or transportation rendered her continued detention and transportation by CBP and ICE unlawful.

As a direct and proximate cause of their discriminatory treatment of Roxsana and CBP and ICE's unlawful detention and transportation of her, Roxsana lost her chance to live and experienced severe pain and suffering and mental anguish from May 9, 2018 until May 25, 2018.

V. SUPPLEMENTAL WITNESSES

Kathleen Raquel Page, M.D. Infectious Disease Specialist Associate Professor of Medicine at John Hopkins University.

Jose Llanes CBP Officer

VI. SUPPLEMENTAL EXHIBITS

Affidavit of Kristal Zambrano AguileraExhibit U
Documents from CoreCivic.....Exhibit V
Available at: <https://tcenter.box.com/s/1pfo8j5p7jjxrb5usx9fej0l4ho51f6c>

SF-95 Continuation Form
Estate of Roxsana Hernandez Rodriguez
