

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CW 13 - 1241

LEONEL RUIZ, on behalf of his daughter,
E.R., a Minor,

Plaintiff,

- against -

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Civil No. _____

MATSUMOTO, J.

GOLD, M.J.

Plaintiff Leonel Ruiz ("Plaintiff" or "Mr. Ruiz"), on behalf of his minor daughter,

E.R. ("E.R."), through his undersigned counsel, Cleary Gottlieb Steen & Hamilton LLP and the American Immigration Council, alleges the following upon information and belief:

BACKGROUND

1. Plaintiff brings this action against the United States under the Federal Tort Claims Act ("FTCA") for damages resulting from intentional torts committed by law enforcement officers employed by Defendant United States and United States Customs and Border Protection ("CBP").

2. With more than 60,000 employees, CBP is the largest uniformed federal law enforcement agency in the United States. CBP's principal responsibilities include securing our nation's borders by regulating the entry of noncitizens. To this end, the agency may exercise authority granted by federal statutes and regulations, which must be construed in accordance with the U.S. Constitution.

3. CBP has very limited authority to detain U.S. citizens and no authority to

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U.S. DISTRICT COURT
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OF NEW YORK

deport them. On March 11, 2011, however, CBP agents without authority and in violation of the law, both detained and effectively deported E.R., a four-year-old U.S. citizen, at Dulles International Airport (“Dulles”) following her arrival from Guatemala.

4. CBP agents unlawfully detained E.R. for more than twenty (20) hours under difficult conditions, deprived her of any contact with her parents, and then, based on their belief that E.R.’s parents were unlawfully present in the United States, effectively deported her to Guatemala. As a result of the CBP agents’ wrongful actions, E.R. has suffered significant psychological harm.

5. For nearly fourteen (14) hours, CBP agents did not even inform E.R.’s parents of her whereabouts or detention. Ultimately, they coerced her father into acquiescing to E.R.’s unlawful deportation by threatening that she would otherwise be sent to an “adoption center” in Virginia.

6. Plaintiff seeks monetary damages to remedy the tortious detention, treatment and effective deportation of E.R.

JURISDICTION AND VENUE

7. This action arises under the FTCA, 28 U.S.C. § 2671 *et seq.*

8. This Court has jurisdiction over Plaintiff’s FTCA claims under 28 U.S.C. § 1346(b). Plaintiff has exhausted the administrative remedies prescribed by 28 U.S.C. § 2675 by timely presenting claims on E.R.’s behalf for false imprisonment, intentional infliction of emotional distress, and negligence to CBP on April 20, 2012, which claims were denied by letter dated October 19, 2012. A copy of that denial is attached hereto as Exhibit A. This complaint is filed within six months of the date of the denial notice.

9. Venue is proper in the United States District Court for the Eastern District

of New York pursuant to 28 U.S.C. § 1402(b), because Plaintiff and his minor daughter, E.R., reside within this district.

THE PARTIES

10. Plaintiff Leonel Ruiz currently resides in Long Island, New York. Pursuant to Rule 17(c) of the Federal Rules of Civil Procedure, he brings this suit on behalf of his minor daughter, E.R., who is a six-year-old United States citizen born in Long Island on June 7, 2006, and who currently resides in Long Island with her parents. At the time of the events alleged herein, E.R. was four years old.

11. Defendant United States of America (“Defendant” or the “United States”) is a sovereign sued under the FTCA, under which the United States has waived its sovereign immunity for claims of false imprisonment, intentional infliction of emotional distress, and negligence arising from the wrongful acts or omissions of its agents, including CBP agents, acting within the scope of their employment.

STATEMENT OF FACTS

Background

12. On October 22, 2010, E.R.’s mother and her father, Plaintiff Leonel Ruiz, sent E.R. to Guatemala for a winter vacation with her relatives. E.R. was accompanied on her trip by her maternal grandfather, Luis Dubon (“Mr. Dubon”). The purpose of the trip was for E.R. to spend time with her extended family and practice her Spanish. In addition, E.R.’s parents believed that the warmer Guatemalan climate would provide significant health benefits to E.R., who suffers from asthma. Although this was E.R.’s first trip to Guatemala, Mr. Dubon had previously traveled to and from Guatemala approximately five times without incident.

E.R. Is Unlawfully Detained By CBP Agents

13. On March 10, 2011, E.R. and Mr. Dubon boarded a TACA Airlines (“TACA”) flight at Aurora International Airport in Guatemala City, Guatemala, en route to their ultimate destination, New York’s John F. Kennedy International Airport (“JFK”). Due to inclement weather, E.R. and Mr. Dubon’s flight to JFK was diverted to Dulles in Virginia.

14. After deplaning at Dulles between approximately 2:00 and 3:00 A.M. on March 11, 2011, E.R. and Mr. Dubon were required to clear immigration and customs by submitting their documents for inspection by CBP agents. Mr. Dubon presented a notarized letter from E.R.’s parents, authorizing him to travel with E.R. from and to the United States, and containing E.R.’s parents’ contact information.

15. E.R. was traveling on a valid U.S. passport, and, at approximately 3:45 A.M., the examining CBP agent authorized her admission to the United States and stamped her passport. Thus, at this time, all federal agents knew or should have known that E.R. was a U.S. citizen not subject to immigration detention or to deportation.

16. Said CBP agent then found what he believed was an irregularity in Mr. Dubon’s documentation and directed Mr. Dubon to an area under CBP control, believed to be CBP’s “secondary inspection” area, where Mr. Dubon would be detained pending further investigation to determine if he was admissible to the United States.

17. Mr. Dubon immediately asked the CBP agent for the opportunity to call E.R.’s parents in New York, and presented the CBP agent with the contact information for E.R.’s parents. Said CBP agent refused Mr. Dubon’s request to contact E.R.’s parents, and instead chose to have E.R. detained with Mr. Dubon.

18. E.R. and Mr. Dubon were then sent to CBP’s secondary inspection area at

Dulles, where they spent most of approximately the next twenty (20) hours, under guard by CBP agents.

19. During the course of his and E.R.'s detention, Mr. Dubon repeated on multiple occasions his request that the CBP agents allow him to call E.R.'s parents, but on each occasion the CBP agents refused.

20. For nearly fourteen (14) hours the CBP agents failed to contact E.R.'s parents – despite having the phone number for E.R.'s parents from the notarized letter presented to them by Mr. Dubon – and made no other attempt to reunite E.R. with her parents or a custodian designated by her parents. CBP policy, per Directive No. 3340-030B, requires that agents afford noncitizens detained for more than three (3) hours under similar circumstances an opportunity to contact those waiting for them at their destination. Yet, the CBP agents here failed to do so, despite the fact that they had detained not only Mr. Dubon, but also E.R., a U.S. citizen. Consequently, E.R.'s parents were unaware of what had happened to her.

21. During the morning of March 11, a few hours after E.R. was first detained, the other passengers on E.R.'s diverted TACA flight were permitted to board a shuttle flight to JFK, which arrived at approximately 8:00 A.M. on March 11. Although CBP agents had inspected E.R.'s passport and thus knew of her U.S. citizenship, and although E.R. had a paid and valid ticket entitling her to travel to JFK, CBP agents did not attempt to reunite E.R. with her parents or another custodian designated by her parents.

22. Instead, CBP agents continued to detain E.R. without contacting her parents. Throughout the course of this detention, neither Mr. Dubon nor E.R. were free to leave of their own will. Mr. Dubon, as a noncitizen not admitted to the United States, was not free to leave the secondary inspection area and enter the United States. E.R., as a minor, could not leave on her

own. In addition, throughout some or all of this time, they were under CBP guard.

Plaintiff Waits For E.R. In New York

23. Meanwhile, Mr. Ruiz had arrived at JFK in the early morning hours of March 11 to await E.R.'s arrival. Eventually, he learned that the TACA flight on which E.R. and Mr. Dubon were travelling had been diverted to Dulles, and that the passengers would be arriving at JFK at about 8:00 A.M.

24. Mr. Ruiz then departed JFK and later returned at approximately 8:00 A.M., on the assumption that E.R. would arrive with the remaining TACA flight passengers. Because of the CBP agents' failure to contact Mr. Ruiz or to permit Mr. Dubon to do so, Mr. Ruiz had no information whatsoever regarding his daughter's detention.

25. When E.R. did not arrive on the 8:00 A.M. flight with the other TACA passengers, Mr. Ruiz became very alarmed.

26. After several hours spent trying to ascertain E.R.'s whereabouts, including by speaking to various TACA employees, Mr. Ruiz finally learned at around noon from a TACA employee that E.R. was being held by CBP agents at Dulles. Mr. Ruiz still had not been contacted by any agent of CBP or any other government official.

CBP Agents Tell Mr. Ruiz That They Will Return E.R. To New York

27. Finally, at approximately 5:30 P.M. on March 11, some fourteen (14) hours after E.R. had been detained, a CBP agent contacted Mr. Ruiz on his cell phone to notify him that Mr. Dubon would not be permitted to enter the United States and would be sent back to Guatemala. The CBP Agent did not explain why.

28. Said CBP agent also told Mr. Ruiz that E.R. was being held by CBP. He did not explain why E.R. had not been allowed to return home.

29. The CBP agent asked for Mr. Ruiz's name and for other identifying information about him and his wife, including Mr. Ruiz's date of birth.

30. Mr. Ruiz asked the CBP agent if E.R. could be put on a flight to JFK, and confirmed that he was ready, willing, and able to return to the airport to meet E.R.

31. In response, the CBP agent assured Mr. Ruiz that he would send E.R. to JFK as soon as he located a suitable flight. Said CBP agent agreed to contact Mr. Ruiz with the flight number and arrival time when he obtained the information. The CBP agent's call originated from a blocked number, and Mr. Ruiz was not given a number at which he could reach the agent. The CBP agent did not ask Mr. Ruiz to designate a custodian other than Mr. Dubon for E.R.

CBP Agents Induce E.R. And Mr. Dubon To Believe E.R. Would Be Put Up For Adoption

32. At some point after the CBP agent had spoken on the phone with Mr. Ruiz, a CBP agent summoned Mr. Dubon and E.R. from the area in which they were being held, and informed them that because E.R.'s parents were undocumented, E.R. could not be sent to them and would be put up for adoption.

33. Mr. Dubon and E.R. were then returned to the area where they previously had been held.

34. Sometime later, the CBP agent guarding the area where Mr. Dubon and E.R. were being held allowed a young woman, who did not give her name or provide her affiliation, access to the area.

35. The woman, speaking directly to E.R. in Spanish, attempted to induce E.R. to leave her grandfather by using phrases to the effect of "what kind of toys do you like?" and "we will buy you toys." These words caused E.R. to fear that she was being taken from her family and brought her to tears.

36. E.R. was very frightened, continued to cry, and refused to accompany the woman.

37. After approximately ten (10) minutes, the woman desisted and left the area where Mr. Dubon and E.R. were detained. She spoke to the CBP agent guarding the door on her way out.

38. After the incident, Mr. Dubon, who had been feeling unwell earlier in the day, became sick and distressed, feeling as though he could not breathe. Eventually, a CBP agent summoned Washington Airport Authority Emergency Medical Services, and Mr. Dubon was taken to the Reston Hospital Center emergency room at approximately 6:30 P.M. CBP still had made no effort to reunite E.R. with her parents; nor had CBP requested that Mr. Ruiz designate a custodian other than Mr. Dubon for E.R.

39. Mr. Dubon had requested that E.R. be brought with him to the hospital, but the CBP agents refused. E.R. instead was left with another unknown woman, who on information and belief was a TACA employee, until Mr. Dubon was returned to Dulles from the hospital at approximately 9:30 P.M.

CBP Agents Coerce Mr. Ruiz Into Acquiescing To The Unlawful Deportation Of E.R.

40. At approximately 8:00 P.M. on March 11, Mr. Ruiz received a second call from a CBP agent. Although the agent did not identify himself, Mr. Ruiz believes it was the same agent with whom he had previously spoken.

41. Although said CBP agent had promised approximately two-and-a-half hours earlier to find E.R. a flight home and convey her itinerary to Mr. Ruiz, he now told Mr. Ruiz that he could not find the names and birthdates of Mr. Ruiz and his wife "in the system." He told Mr. Ruiz that he could not send E.R. on a flight to New York because he was not allowed

to return E.R. to “illegals.”

42. The CBP agent did not ask Mr. Ruiz to designate a custodian to pick up E.R. Had the CBP agent done so, Mr. Ruiz would have designated such a custodian and made arrangements for E.R. to be picked up at the CBP office at Dulles Airport. In fact, a friend of Mr. Ruiz was willing and able to pick up E.R. from the CBP office and Mr. Ruiz would have designated him as a custodian.

43. Instead, the CBP agent demanded that Mr. Ruiz permit CBP to return E.R. to Guatemala, threatening that otherwise CBP would send E.R. to an “adoption center” (using those words, in English) in Virginia.

44. Mr. Ruiz reasonably feared that if E.R. was sent to an adoption center, she would be forever lost to him and his wife.

45. Further, the CBP agent forced Mr. Ruiz to make a decision quickly by stating that the return flight to Guatemala on which they planned to send Mr. Dubon and E.R. would be leaving in one hour.

46. Desperate to prevent his daughter from being put up for adoption, Mr. Ruiz quickly consulted with his wife, and then acquiesced to CBP’s demand that E.R. be returned to Guatemala.

47. Said CBP agent gave Mr. Ruiz a phone number to call if he had any questions. After completing the call with the CBP agent, Mr. Ruiz realized he did not have E.R.’s flight information, which he needed to relay to his relatives in Guatemala so they could meet E.R. at the airport. He called the number he had been given in order to get this information, but the woman who answered the phone was unable to answer any of his questions and refused his request to speak with E.R.

The Conditions Of E.R.'s Unlawful Detention

48. E.R. was detained in the Dulles secondary inspection area for approximately twenty (20) hours.

49. E.R. was not given adequate food or drink during her detention. She was fed only a cookie and a soda during the entire twenty-hour period.

50. Although she had been awake for most of the previous night, E.R. was barely able to sleep in the cold room where she and her grandfather were held. Her only option was to try to nap on the floor. CBP agents failed to provide her with even a blanket or a pillow.

51. Throughout the day, E.R. constantly asked Mr. Dubon about her parents and often cried.

52. CBP is bound by the Flores v. Reno Settlement Agreement (the "Flores Agreement"), which requires that noncitizen children in CBP's control be provided with food and drinking water and that they be detained in an adequately heated location. Although E.R. is a U.S. citizen, the Flores Agreement constitutes the required standard of care for minors held in immigration-related detention.

53. CBP internal policies, including the Office of Border Protection's "Hold Room and Short Term Custody" policy and the Office of Field Operations' "Secure Detention, Transport and Escort Procedures at Ports of Entry," require that noncitizen children be offered meals every six hours, and that they be given regular snacks and beverages. A U.S. citizen child such as E.R. cannot be afforded a lesser standard of care.

54. In any event, CBP's treatment of E.R. violated applicable standards of care because she was not provided with adequate food or water, and was kept in a room that was far too cold.

E.R. Is Unlawfully Sent Back To Guatemala

55. Early in the morning on March 12, 2011, two CBP agents took E.R. and Mr. Dubon to board a TACA flight on which they were returned to Guatemala.

56. E.R., to whom CBP agents had given extremely little to eat during her detention, finally received a sandwich on the airplane but threw up after eating it.

57. Mr. Ruiz sought help from his community in the days after his family's ordeal. Eventually, he was able to secure the assistance of a local attorney, who arranged to travel to Guatemala to retrieve E.R.

58. On March 29, 2011—nearly three weeks after she was wrongfully and unlawfully deported—E.R. flew back to the United States accompanied by the local attorney. E.R. arrived at JFK in the early morning hours of March 30, 2011. Neither the United States, the Department of Homeland Security, CBP, nor any other government agency compensated E.R. for the cost of her return to the United States.

The Psychological Harm Caused To E.R. By Defendants' Unlawful Acts

59. E.R.'s unlawful detention and effective deportation to Guatemala have severely affected her.

60. During her forced stay in Guatemala after March 11, 2011, E.R. did not want to speak with her father over the telephone. When she did speak with him, she called him a liar, saying he had promised to pick her up at the airport but had not come. She believed that his failure to meet her was the reason she was back in Guatemala.

61. In addition, during her stay in Guatemala, E.R. had bouts of hysterical and prolonged crying.

62. After returning to the United States, E.R. developed symptoms related to

the stress of her ordeal. She began to overeat, throw tantrums, and soil her pants during the day; she hid whenever people knocked on the front door; she refused to let go of her father's hand when outside the home; and she became frightened whenever the lights were left off at night, among other behaviors that she had not previously exhibited.

63. E.R. met with a child psychologist who determined that she had been traumatized and diagnosed her with Posttraumatic Stress Disorder ("PTSD"). The psychologist concluded that the PTSD was a result of her detention, her perception of the reasons for her deportation, and her forced separation from her parents.

64. E.R.'s parents had planned to send E.R. to Guatemala every year during her school vacations to visit her relatives and relieve her asthma. However, since the events described herein, they have not allowed E.R. to travel internationally, and they remain afraid to do so.

CLAIMS FOR RELIEF

65. The Claims for Relief listed below are brought pursuant to the Federal Tort Claims Act. Plaintiff has exhausted his administrative remedies as required by the FTCA. On April 20, 2012, Plaintiff filed an administrative claim with CBP on E.R.'s behalf for the injuries suffered by E.R. as a result of the conduct of the CBP agents described herein. That administrative claim was denied on October 19, 2012.

66. The United States is liable to a plaintiff in an action under the FTCA for the acts and omissions of its employees while acting within the scope of their employment, under circumstances where the United States, if a private person, would be liable under the laws of the place where such acts or omissions occurred. The United States is liable to a plaintiff for the intentional tort of false imprisonment when committed by its "investigative or law enforcement

officers,” which include CBP agents.

67. All acts and omissions that give rise to the FTCA claims described below were committed by investigative or law enforcement officers employed by CBP, an agency of the United States government, while acting within the scope of their employment. At all relevant times, the CBP agents, were “law enforcement officers” within the meaning of 28 U.S.C. § 2680(h). The acts and omissions complained of occurred in the Commonwealth of Virginia, and are tortious under the law of the Commonwealth.

68. The CBP agents did not have any legal authority to carry out the activities alleged herein. Neither an Act of Congress nor probable cause authorized the detention of E.R., a U.S. citizen, beyond the time necessary to complete a customs inspection and make arrangements to reunite her with her parents. CBP agents have no authority—statutory or otherwise—to remove or deport a U.S. citizen. Further, the CBP agents’ actions violated E.R.’s constitutional rights, including her right to be free from unreasonable searches and seizures, her right to family integrity, her right to due process, her right to equal protection under the law, and her right to travel.

69. Defendant United States is not entitled to any defense, statutory or otherwise, in that the acts and omissions of the CBP agents were not discretionary functions and were not performed in good faith.

FIRST CLAIM FOR RELIEF

Federal Tort Claims Act — False Imprisonment (28 U.S.C. § 1346(b) & Tort Law of The Commonwealth of Virginia)

70. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

71. CBP agents by their acts and omissions committed the tort of false

imprisonment under the laws of the Commonwealth of Virginia because:

(i) The CBP agents directly, intentionally, and unlawfully restrained E.R.'s physical liberty by, among other things: detaining her for more than twenty (20) hours; refusing to permit Mr. Dubon to contact her parents; refusing to contact her parents themselves for an extended period; otherwise refusing to permit her to return to New York; failing to provide Mr. Ruiz an opportunity to make other arrangements or designate a custodian to pick up E.R.; intimidating and threatening her parents; and effectively deporting her from the United States.

(ii) The CBP agents' conduct was without legal excuse because, among other things: E.R. was at all times known to be a U.S. citizen and thus entitled to enter and travel within the United States; the CBP agents had no reason to believe there was probable cause that E.R. had committed a crime; the CBP agents had actual knowledge of E.R.'s parents' contact information from the start of her detention; the CBP agents had either actual or constructive knowledge that E.R.'s parents were willing and able to take custody of her in New York; the CBP agents had no good-faith basis to question the fitness of Emily's parents; CBP is not empowered to make custody determinations; CBP deported E.R. without obtaining effective consent from E.R.'s parents; and any mistake of fact or law as to whether E.R. could properly be detained was not reasonable.

(iii) As a direct and proximate result of the CBP agents' conduct, E.R. has suffered and continues to suffer damages, including but not limited to emotional distress, psychological injury, and damage to the parent-child relationship.

SECOND CLAIM FOR RELIEF

Federal Tort Claims Act — Intentional Infliction Of Emotional Distress (28 U.S.C. § 1346(b) & Tort Law of The Commonwealth of Virginia)

72. Plaintiff repeats and incorporates by reference each and every allegation

contained in the preceding paragraphs as if fully set forth herein.

73. The CBP agents by their acts and omissions committed the tort of intentional infliction of emotional distress under the laws of the Commonwealth of Virginia because:

(i) The CBP agents acted in an outrageous and intolerable manner, offending generally accepted standards of morality and decency, by detaining E.R. for more than twenty (20) hours, depriving her of contact with her parents, attempting to separate her from her grandfather, threatening to put her up for adoption, refusing to reunite her with her parents, depriving her of adequate food and water, holding her under conditions otherwise unsuitable for a four-year-old child, and effectively deporting her from her country of citizenship.

(ii) The CBP agents specifically intended to cause emotional harm and/or showed a reckless disregard for E.R.'s emotional well-being.

(iii) As a direct and proximate result of the CBP agents' conduct, E.R. suffered severe emotional distress in the form of Posttraumatic Stress Disorder.

THIRD CLAIM FOR RELIEF

Federal Tort Claims Act — Negligence (28 U.S.C. § 1346(b) & Tort Law of The Commonwealth of Virginia)

74. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

75. The CBP agents by their acts and omissions committed the tort of negligence under the laws of the Commonwealth of Virginia because:

(i) The CBP agents breached their duty of reasonable care of E.R. by negligently acting or failing to act such that E.R. was detained under unsuitable conditions in violation of standards required for the treatment of children. In particular, CBP agents failed to

provide E.R. with adequate food and water; held her in an unsuitably cold room; gave her nowhere other than the floor to rest during her twenty (20) hour detention; prevented her from communicating with her parents; and obstructed her reunion with her parents.

(ii) As a direct and proximate result of the CBP agents' negligent conduct, E.R. suffered injury in the form of emotional distress, psychological injury, and damage to the parent-child relationship.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter judgment for Plaintiff and against Defendant on Plaintiff's claims for relief;
- B. Award Plaintiff compensatory damages against Defendant resulting from Defendant's unlawful conduct, in an amount to be proven at trial; and
- C. Grant such further relief as this Court deems just and equitable.

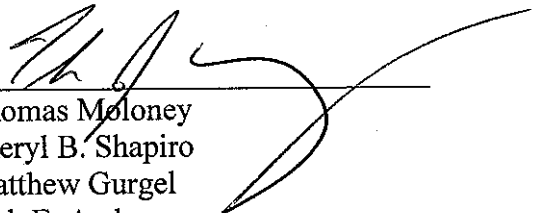
Dated: New York, New York
March 8, 2013

Respectfully submitted,

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