

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

MARIA S.	X	
as next friend for	X	
E.H.F., S.H.F., and A.S.G., minors,	X	
	X	
Plaintiffs,	X	
	X	Cause of Action No. _____
v.	X	
	X	
FOUR UNKNOWN NAMED AGENTS OF	X	JURY DEMANDED
UNITED STATES CUSTOMS AND	X	
BORDER PROTECTION AND/OR	X	
IMMIGRATION AND CUSTOMS	X	
ENFORCEMENT : "JOHN DOE",	X	
"MARK MOE", "ROBERT ROE" and	X	
"JAMES LOE", in their individual capacities,	X	
	X	
Defendants	X	

COMPLAINT

I. INTRODUCTION:

1. The Plaintiffs in this case are the minor sons of Laura S.. Their mother long endured extreme physical abuse at the hands of their biological father, Sergio H.. In 2008, she sought police assistance and was granted an emergency order of protection by an Hidalgo county magistrate. Sergio H. then returned to Mexico, where he reportedly worked with a notorious drug

cartel. On June 9, 2009, Laura S. was wrongfully returned to Mexico by the Defendant United States officials, despite her repeated statements that Sergio H. would kill her there. The Defendants violated her procedural due process rights and failed and refused to consider her clear eligibility for relief from removal. Within days of her arrival in Mexico, Sergio H. abducted, battered and strangled her, leaving her body in a burning vehicle.

2. Plaintiffs bring this civil rights suit against the four unknown agents of the United States Customs and Border Protection and/or Immigration and Customs Enforcement, pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The Defendants are sued in their individual capacities.

II. JURISDICTION:

3. This court has federal question jurisdiction pursuant to 28 U.S.C. §1331 because the claims presented are based on the United States laws and constitution.

4. Venue is proper pursuant to 28 U.S.C. § 1391. Key events and omissions giving rise to the claims presented in this case occurred in Harlingen, Cameron County, Texas.

III. PARTIES:

5. Plaintiff A.S.G. is the twelve year old son of Laura S.. He resides with, and is in the legal custody of, his maternal grandmother, Maria S., in Hidalgo County, Texas. Mary S. acts as next friend to Plaintiff A.S.G. in this case.¹

6. Plaintiff S.H.F. is the seven year old son of Laura S.. He resides with, and is in the legal custody of, his maternal grandmother, Maria S., in Hidalgo County, Texas. Maria S. acts as next friend to Plaintiff S.H.F. in this case.

7. Plaintiff E.H.F. is the six year old son of Laura S.. He resides with, and is in the legal custody of, his maternal grandmother, Maria S., in Hidalgo County, Texas. Maria S. acts as next friend to Plaintiff E.H.F. in this case.

8. Maria S. is the mother of Laura S., and the grandmother of Plaintiffs A.S.G., S.H.F. and E.S.F.. She has legal custody of the three Plaintiff children and they reside with her in Hidalgo County, Texas. Maria S. acts as next friend to all three Plaintiffs in this case.²

9. The four unknown Defendants in this case, are listed here as “John Doe”, “Mark Moe”, “Robert Roe”, and “James Loe” until their true identities are disclosed. During the time period relevant to this case, all four were agents of the United States Department of Homeland Security,

¹ Plaintiff A.S.G. and Next Friend Maria S. are represented in this case by Joseph Martin, Attorney at Law, of the Texas Civil Rights Project.

² Plaintiffs are the only children of Laura S., who died intestate. They are her only heirs. There is no estate administration pending and none is necessary.

Customs and Border Protection ("CBP") and/or Immigration and Customs Enforcement ("ICE").

All or some of the Defendants are residents of and/or work in Cameron County, Texas.

IV. FACTS:

10. Laura S. was born in Mexico in 1986.

11. At a very young age, Laura S. became involved with Sergio H..

12. At all times relevant to this lawsuit, Sergio H. was physically abusive to Laura S..

13. At the age of fourteen Laura S. gave birth to their first son, Plaintiff A.S.G., in 2001.

14. Plaintiff A.S.G. suffers from certain learning and other disabilities.

15. Laura S. became a resident of Hidalgo County, Texas.

16. Laura S. gave birth to two other sons by Sergio H. , Plaintiffs E.H.F. and S.H.F., in 2007 and 2005, respectively.

17. Sergio H. became increasingly violent to Laura S., and she came to fear for her life and the safety of her children.

18. In March 2008, Sergio H. assaulted Laura S. with a knife.
19. Laura S. obtained protection from the local police and courts of law.
20. Sergio H. continued to confront and threaten her.
21. A magistrate's order of emergency protection was entered against Sergio H. in April 2008, (Municipal Court of McAllen, Texas) on behalf of Laura S. and her children.
22. Enraged Sergio H. later returned to Reynosa, Mexico, where he reportedly worked with a notorious drug cartel.
23. On June 8, 2009, Laura S. was enjoying an evening with her cousin and two friends.
24. They were stopped near Pharr, Texas by a local Department of Public Safety ("DPS") officer at approximately midnight for a minor alleged driving infraction.
25. The DPS officer then demanded their immigration papers, which only Laura's cousin was able to produce.
26. Laura S. began to weep, begging the officer to let her go. She explained that her ex boyfriend was in Mexico with a drug cartel, was extremely violent towards her, and had threatened her life. She also said that she had obtained protective orders against Sergio H., and

that he would kill her as soon as she appeared in Mexico. She further stated that she had three small children and that one was scheduled for surgery.

27. The DPS officer nevertheless turned Laura S. and the other two passengers over to Defendant "John Doe", an agent of the Homeland Security U.S. Customs and Border Protection ("CBP") and or Immigration and Customs Enforcement, ("ICE").

28. Agent John Doe then drove the three persons to the Harlingen U.S. ICE/CBP center for processing.

29. On the way to Harlingen, Laura S. continued to weep and beg to be released. She explained to Defendant Doe that her ex-boyfriend was in Mexico with a drug cartel, was extremely violent towards her, and had threatened her life. She further stated that she had obtained protective orders against Sergio H., and that he would kill her as soon as she appeared in Mexico. She also stated that she had three small children and that one was scheduled for surgery.

30. When the group arrived in the Harlingen immigration center, they were taken to a small office for fingerprinting and paperwork.

31. The Defendants "Mark Moe", "Robert Roe", and "James Loe" then entered the room as well. All were agents of Homeland Security, U.S. CBP and/or U.S. Immigration and Customs

Enforcement, ("ICE"). John Doe remained in the room with them and assisted with the processing.

32. Laura S. was weeping and trembling and spoke with the Defendants. Once again she explained that her ex boyfriend was in Mexico with a notorious drug cartel, was extremely violent towards her, and had threatened her life. She also told them that she had obtained protective orders against Sergio H. and that he would kill her as soon as she appeared in Mexico. She repeated that she had three small children and that one was scheduled for surgery.

33. None of the Defendants asked her any questions or attempted to verify or evaluate her risk of harm in any way.

34. None of the Defendants explained any of her legal rights to her, such as her right to an attorney, or her right to a hearing before an immigration Judge to present the various grounds for relief available to her.

35. Laura S. was in fact eligible for many forms of relief from removal, including but not limited to the following: withholding of removal, political asylum, a u-visa, and/or deferral of removal in order to avoid the risk of serious harm, including torture and cruel and degrading treatment.

36. Given the clear and serious dangers Laura S. faced in Mexico, a grant of such withholding and/or political asylum would have been mandatory and non-discretionary.

37. Instead of providing her with a hearing before an immigration Judge, the Defendants decided on their own to immediately remove Laura S. to Mexico, thus depriving her of any opportunity to obtain an attorney, prepare her defense, and present her grounds for relief in a fair and meaningful hearing.

38. The Defendants intimidated and coerced Laura S. and insisted that she return to Mexico immediately.

39. Laura S. never willingly accepted any voluntary departure, and instead continued to plead that she not be sent to Mexico.

40. The Defendants were required to provide Laura S. with the hearing before an immigration Judge, and in the interim, to either temporarily detain her in the United States, or, given her ties to the community, simply release her on her own recognizance.

41. Laura S. was afforded no such proper processing. Instead, she and her two companions were returned to the CBP van and driven by Defendant John Doe to the Hidalgo/Reynosa international bridge.

42. Laura S. wept and begged John Doe not to send her to Mexico all the way to the bridge.

43. Laura S. was forced to cross the bridge into Mexico in the early hours of June 9, 2009.

44. The Defendants' personal decision to immediately and forcibly return Laura S. to Mexico was arbitrary, irrational and capricious.

45. The Defendants' failure to place Laura S. in removal proceedings was also arbitrary, irrational and capricious.

46. Within days, Sergio H. learned of Laura S.' return to Mexico. He promptly accosted and beat her, biting her ear until it bled profusely.

47. On June 14, 2009 Sergio H. forcibly abducted Laura S. and took her to a hotel, where he brutally murdered her and left her body in a burning car.

48. Maria S., the mother of Laura S., gave her testimony to the Mexican police. Although Sergio H. was imprisoned in Mexico, he later escaped.

49. But for the Defendants' wrongful and arbitrary decision to forcibly return Laura S. to Mexico without permitting her to obtain an attorney or present her grounds for relief to an immigration Judge, she would not have been battered and murdered by Sergio H..

50. The Defendants' acts and omissions in this case shock the conscience.

51. As a result of the Defendants' wrongful acts and omissions, Laura S. suffered extreme mental anguish.

52. As a result of the Defendants' wrongful acts and omissions, Laura S. was subjected to extreme physical pain and suffering, and death.

53. At all times relevant to this case, the Defendants were acting in agreement and in joint concert or enterprise, to forcibly and wrongfully return Laura S. to Mexico without the due process of the law.

54. At all times relevant to this lawsuit, the Defendants acted knowingly, intentionally, recklessly, and/or with deliberate indifference in returning Laura S. to Mexico without the due process of the law, and despite the clear and extreme risks of harm to her person.

55. The Defendants knowingly or with deliberate indifference placed Laura S. in extreme danger, resulting in her battery and death.

V.

CAUSE OF ACTION: DUE PROCESS

56. Plaintiffs hereby incorporate paragraphs 1-55 above herein.

57. Pursuant to the Due Process clause of the Fifth Amendment and/or the Fourth Amendment of the United States Constitution, Laura S. had a constitutional life, liberty and/or property interest in remaining in the United States. She therefore had a right to a fair hearing and decision on her right to relief from removal. Due process also required that she be notified of her right to an attorney and to such hearing.

58. The Defendants were expressly and repeatedly informed of the grave dangers facing Laura S. if she were to be returned to Mexico.

59. The Defendants failed to properly notify Laura S. of her right to seek an attorney to assist her, and her right to present her claims for relief from removal in a hearing before an immigration Judge.

60. Instead, the Defendants decided on their own to forcibly return Laura S. to Mexico without even considering the dangers awaiting her there, and without permitting her a hearing before an immigration Judge.

61. The Defendants deprived Laura S. of her right to meaningful hearing before an immigration Judge on her eligibility for relief from removal.

62. The clear and obvious dangers awaiting Laura S. in Mexico made her eligible for and entitled to withholding of removal and other forms of relief.

63. The Defendants' decision to forcibly return Laura S. to Mexico despite the clear and obvious dangers to her was arbitrary, irrational and capricious.

64. But for the Defendants' wrongful actions in forcibly returning Laura S. to Mexico without the benefit of counsel or a hearing, she would not have been battered and murdered by Sergio H..

65. The Defendants' actions violated the Fifth Amendment due process rights and/or Fourth Amendment rights of Laura S.

66. The Defendants' actions shock the conscience.

67. The Defendants at all times acted intentionally and/or knowingly, and/or recklessly, and/or with deliberate indifference in forcibly returning Laura S. to Mexico without the required hearing, despite her repeated notification to them of the grave dangers she faced there.

68. At all relevant times, the Defendants acted in agreement, joint concert, and/or joint enterprise to remove Laura S. to Mexico without a hearing, and despite the clear danger to her.

69. The Defendants' actions caused the emotional anguish, physical pain and suffering, and death of Laura S. for which Plaintiffs, as her only heirs, are entitled to recover.

70. The Plaintiffs bring this claim pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

72. The Plaintiffs seek damages for all such harms to Laura S. from the Defendants in their personal capacities.

VI. PRAYER FOR RELIEF:

WHEREFORE Plaintiffs pray that this Court:

AWARD the Plaintiffs damages from the Defendants in their personal capacities,

AWARD the Plaintiffs costs, and

AWARD the Plaintiffs any other relief which this Court deems just and necessary.

Respectfully Submitted,

/S/Jennifer K. Harbury

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