

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

P.R.,
an individual,

Plaintiff

v.

United States of America,

Defendant.

Case No. _____

1. Plaintiff P.R., a transgender woman, brings this Complaint against the United States of America under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b).

2. Plaintiff has exhausted her administrative claims by filing the required forms with the Defendant and having her claims constructively denied.

INTRODUCTION

3. This action seeks damages for injuries that Plaintiff suffered as a result of being in solitary punitive confinement while an immigrant detainee at Irwin County Detention Center (“ICDC”) in Ocilla, Georgia. Despite the Department of Homeland Security’s regulations that demand the care of transgender detainees and prohibit the indefinite and discriminatory use of administrative segregation, punitive segregation, and/or solitary confinement, employees and agents of the United States failed to appropriately house Plaintiff and respond to her psychological distress that resulted from Defendant’s conduct. By housing P.R. in a facility that houses transgender individuals in punitive segregation and solitary confinement and keeping her there despite repeated harassment and assault, Defendant’s employees and agents’ conduct directly led to P.R.’s pain and suffering. These employees and agents of the United States, who were acting within the scope of their federal employment at the times of the acts complained of herein, were negligent, reckless, intentional, and wrongful and Defendant, if a private person,

would be liable to Plaintiff under Georgia law. Plaintiff seeks damages and any other relief available to Plaintiff by law.

JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 1331 in that this action arises under the laws of the United States and is premised on the acts and omissions of the Defendant acting under color of federal law. Further, this Court has jurisdiction over this matter under 28 U.S.C. § 1346(b)(1) in that this claim is against the Defendant United States, for money damages for personal injury caused by the negligent and wrongful acts and omissions of employees of the Government while acting within the course and scope of their office or employment, under the circumstances where the Defendant, if a private person, would be liable to the Plaintiff.

5. Jurisdiction founded upon federal law is proper in that this action is premised upon federal causes of action under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671, *et seq.*

EXHAUSTION

6. On or about June 12, 2020, P.R. submitted an administrative tort claim to U.S. Department of Homeland Security (“DHS”), Immigration Customs Enforcement (“ICE”) under 28 U.S.C. § 2675(a), requesting \$1,000,000.

7. ICE failed to respond to Plaintiff’s claim by December 15, 2020; therefore, ICE constructively denied P.R.’s claim. This action is timely under 28 U.S.C. § 2401(b) in that it was presented to the appropriate federal agency within two years of accrual and this action was filed within six months of the Defendant’s constructive denial of P.R.’s claim. Plaintiff has exhausted all available administrative remedies and is filing this complaint in accordance with the FTCA.

VENUE

8. Venue is proper in this district under 28 U.S.C. § 1402(b) and M.D.L.R. 3.4 because the United States is the Defendant and a substantial part of the events or omissions giving rise to the claims occurred in Irwin County, Georgia, which is situated within the district

and divisional boundaries of the Valdosta Division of the Middle District of Georgia. *See* 32 C.F.R. § 750.32(a).

PARTIES

9. Plaintiff is a 26-year-old transgender woman and native of Mexico who was detained by Defendant at the ICDC under civil immigration laws. P.R. was held in punitive segregation and/or solitary confinement from on or around June 15, 2018 for approximately seven months before she was ultimately transferred to the Cibola Detention Center, where she remained until in or around September 2019. As a direct result of P.R.'s punitive segregation and solitary confinement and Defendant's failure to provide her adequate and safe housing, she has suffered and continues to suffer emotional distress.

10. Defendant United States of America is subject to suit for personal injury caused by the negligent and wrongful acts or omissions of its employees or agents. Those employees or agents were acting within the scope of their office or employment where the United States, if a private person, would be liable to Plaintiff in accordance with the laws of the State of Georgia. *See* 28 U.S.C. § 1346(b).

11. At all relevant times, Defendant United States of America acted through its agency, the DHS, ICE.

12. ICE is a law enforcement agency charged with the enforcement of federal immigration law. Under this responsibility, ICE has authority to detain certain individuals. ICE is also responsible for providing adequate and appropriate custody management to support the immigration adjudication process. This includes providing traditional and alternative custody arrangements for those in removal proceedings, providing immigrants access to legal resources and representatives of advocacy groups, and facilitating the appearance of detained immigrants at immigration court hearings.

13. ICE is responsible for providing and maintaining appropriate conditions of confinement, providing required medical and mental healthcare, housing detainees in the least

restrictive setting commensurate with a detainee's behavior, ensuring appropriate conditions for all detainees, employing fiscal accountability, increasing transparency, and strengthening critical oversight, including efforts to ensure compliance with applicable detention standards through inspection programs.

14. ICE is also responsible for determining and enforcing rules, policies, and standards regarding the housing and care of transgender detainees and the overall operation of detention centers in the United States.

15. On July 25, 2007, ICE, along with the U.S. Marshal Service and the Federal Bureau of Prisons entered into an Intergovernmental Service Agreement ("IGSA") with Irwin County ("Local Government") to house federal detainees at ICDC. Under the contract, the Local Government agreed to "accept and provide for the secure custody, safekeeping, housing, subsistence and care of federal detainees in accordance with state and local laws, standards and procedures, or court orders applicable to the operations of the facility, consistent with federal law, policies and regulations."

16. The Local Government is "required, in units housing federal detainees, to perform in accordance with the most current versions of the mandatory standards...and the Federal Performance-Based Detention Standards []. In addition, where ICE federal detainees are housed, the ICE federal detainees are to be housed in accordance with ICE Standards. In cases where other standards conflict with DOJ/DHS/ICE policy or standards, DOJ/DHS/ICE policy and standards prevail." The agreement also states that "[a]t all times, the Federal Government shall have access to the facility and to the federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period not less than 3 years."

17. ICE reserved the power and authority to control ICDC employees on segregated housing determinations, monitoring, and oversight for transgender people housed at ICDC.

FACTS

18. P.R. was born in Mexico. P.R. is a transgender woman, which means that she was assigned the sex of male at birth, but her gender identity is female and she identifies as a

woman. As a child, P.R. knew she was a woman and has since made progressive efforts to align her gender expression with her gender identity, rather than the sex she was assigned at birth. As an adult, P.R. has carried herself as a woman, has insisted that others see her as a woman, and has taken hormone medication for purposes of developing female physical features. Despite her best efforts to be seen as a woman, throughout her life, P.R. has experienced discrimination.

19. On or about June 12, 2018, P.R. was arrested in Monroe, North Carolina by the Monroe Police Department after being involved in a car accident. Thereafter, ICE issued an ICE detainer and took custody of P.R. The Monroe Police Department took P.R. into custody, and pursuant to an ICE detainer, transferred her to ICE custody.

20. P.R. was first taken to an ICE office in Charlotte, North Carolina before she was processed at the Atlanta Field Office. During P.R.'s initial processing, she was classified as a low-level detainee under ICE's Performance-Based National Detention Standards ("PBNDS") guidelines. ICE also identified her as transgender. On or about June 15, 2018, ICE transferred her to ICDC.

ICE'S Initial Decision to Place Plaintiff at ICDC.

21. At all relevant times, Sean Gallagher was employed by ICE as its Atlanta Field Office Director ("FOD"). FOD Gallagher was responsible for the decision to place P.R. at ICDC.

22. Under ICE guidelines, in determining a transgender detainee's initial placement at a facility, ICE should consider:

- a. Facilities within the FOD's Area of Responsibility ("AOR") that have incorporated the "ICE Detention Facility Contract Modification for Transgender Care," and, therefore, maintain a functioning Transgender Classification and Care Committee ("TCCC");
- b. Facilities within the AOR that operate a Protective Custody Unit ("PCU") for transgender detainees; or

- c. Facilities within the AOR that demonstrate best practices in the care of Lesbian, Gay, Bi-sexual, Transgender, or Intersex (“LGBTI”) detainees, to include, but not limited to: (1) the availability of medical personnel who have experience providing care and treatment to transgender detainees (to include the delivery of hormone therapy) and (2) detention facility staff who have received LGBTI Sensitivity and Awareness Training.

23. If placement into a facility described above is not practicable, the FOD shall ensure the facility chosen for placement within his AOR is able to appropriately care for the individuals.

24. Unlike cisgender¹ men and women, ICDC houses transgender people like P.R. indefinitely in segregated, solitary confinement. Solitary confinement is the “housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action.” In practice, solitary confinement or segregated housing is the placing of a prisoner or detainee alone in a cell for 22 to 24 hours a day with little human contact or interaction; reduced or no natural light; restriction or denial of reading material, television, radios, or other property; severe limits on visitation; or the inability to participate in group activities.

25. Under ICE guidelines, policies and directives, placement into segregation should occur only when necessary and in compliance with applicable detention standards. In particular, placement into administrative segregation due to a detainee’s identification as transgender should be used only as a last resort, when no other temporary housing option exists, and should not exceed 30 days. Discrimination or harassment of any kind based on a detainee’s actual or perceived sexual orientation or gender identity is strictly prohibited. Indeed, the FOD shall ensure sensitive information, such as a detainee’s gender identity, is not used to the detainee’s detriment by ICE personnel or detention facility staff.

¹ The term “cisgender” refers to people whose gender identity and expression matches the biological sex they were assigned at birth.

26. Once at the facility, a detainee shall not be housed in a location away from general population, including in a medical unit or in protective custody, for longer than 72 hours to assess classification, housing, and other needs. After a detainee spends seven days in segregated housing, ICE must conduct a review to determine whether segregation is still warranted. Further review must occur every week thereafter for the first 30 days, and every 10 days thereafter.

27. ICDC has no specialized unit or protocols for transgender individuals. ICE employees, including FOD Gallagher, knew or should have known that ICDC places transgender individuals in punitive segregation and solitary confinement as a matter of course.

Plaintiff Was Placed in Restrictive Punitive Solitary Confinement Because She is Transgender.

28. Upon her arrival at ICDC, P.R. was placed in punitive solitary confinement in the segregated housing unit (the “SHU”) at ICDC because she is transgender.

29. P.R. was subjected to restrictive conditions of confinement that were devoid of mental stimulation, extreme, inhumane, and punitive. “There is no universal definition for solitary confinement since the degree of social isolation varies with different practices.”² Based on the circumstances of her confinement, and unlike the conditions found in general population, P.R. had very limited physical and mental stimulation and was deprived of any meaningful human interaction.

30. As the result of her punitive confinement, P.R. had very limited physical and mental stimulation, and P.R.’s basic freedoms were restricted. P.R. was confined to a single cell for approximately twenty-two hours a day during the week and twenty-three hours a day on weekends. Guards escorted her in and out of her cell to a shower located in the medical unit. They also escorted her to and from the recreation area, which ICE limited to one hour per

² UN News, *Solitary confinement should be banned in most cases, UN expert says*, Oct. 11, 2018, available at <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

weekday. She relied upon guards for every practical need, including access to the television, the microwave, her meals, the telephone, and medical care or commissary requests.

31. Because P.R. was detained in solitary confinement in the SHU, a punitive segregated unit reserved for problem and/or violent detainees, any human interaction that P.R. did experience was threats and harassment by cisgender male detainees whose cells were in close proximity to her cell.

32. P.R.'s cell had bars that provided no privacy. She was forced to change clothes and use the toilet in view of other detainees and guards, who mocked her, used highly offensive and mentally disturbing language, directed sexually explicit conduct at her, and threatened her with violence.

33. P.R. was detained in punitive segregation and solitary confinement for more than 30 days with no meaningful human interaction. P.R.'s experience is unlike cisgender detainees who were held in the SHU for a few days or weeks at most, but less than 30 days.

34. The psychological toll of solitary confinement can tax even healthy individuals to the breaking point. Prolonged isolation can greatly exacerbate many symptoms for those with existing mental illnesses. Transgender people who are subjected to this form of cruelty are made to feel punished because of their gender identity and expression.

35. Prolonged solitary confinement is considered torture by a number of authorities. According to the United Nations Special Rapporteur on Torture, after just 15 days, some of these harmful psychological effects can be irreversible.³ The Inter-American System on Human Rights deems prolonged solitary confinement "cruel and inhumane treatment, harmful to the

³ U.N. Comm'n on Human Rights, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.”⁴

36. ICE’s decision to house P.R. in punitive solitary confinement, an area intended to discipline cisgender male detainees, caused her mental injury. She felt stigmatized, depressed, anxious, and fearful. P.R. has gone to great lengths for much of her life to identify and be seen as a woman. When she experiences discrimination because of her transgender status or her identity as a woman is not respected, she experiences distress, anxiety, and depression. ICE’s discriminatory, punitive, and degrading conduct in knowingly placing P.R. at ICDC where she was housed in punitive solitary confinement solely because of her transgender identity exacerbated her mental health issues and caused her to relive past traumatic experiences.

37. ICE policies and directives require Defendant and its agents to maintain safe and sanitary conditions at ICDC, including a duty to ensure the safe and legally-appropriate housing for transgender individuals, and Defendant’s decision to house P.R. at ICDC, and its failure to monitor her housing conditions, breached that duty.

38. Upon information and belief, ICE and its employee, FOD Gallagher, knew or should have known that ICDC had no infrastructure to care for transgender detainees and that P.R. would be placed in punitive segregation and solitary confinement at ICDC, as a matter of course, because she is transgender.

39. Upon information and belief, ICDC regularly placed transgender detainees in punitive segregation and solitary confinement and ICE and its employee, FOD Gallagher, knew or should have known that transgender detainees, including P.R., would be housed in punitive segregation and solitary confinement at ICDC.

40. At all times, ICE and FOD Gallagher reserved the power and authority to control ICDC employees on segregated housing determinations, monitoring, and oversight.

⁴ *Velázquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights, Series C, No. 4, para. 156 (1988).

41. ICE guidelines, policies and directives prohibit the reliance on sex or gender alone as the basis to hold a detainee in restricted housing. The use of solitary confinement is prohibited except as a last resort after efforts to locate less restrictive housing are exhausted.

42. ICE guidelines, policies and directives require that a transgender detainee's health or wishes be considered before they are placed in punitive segregation and solitary confinement. Detainees in punitive segregation and solitary confinement must have access to programs, visitation, counsel and other services available to the general population to the maximum extent practicable.

43. ICE and FOD Gallagher knew or should have known that the ICE guidelines, policies and directives governing the care of transgender detainees would not be implemented at ICDC, that P.R. would be placed in punitive segregation and solitary confinement because she is transgender, and that she would suffer reasonably foreseeable harm as result of her placement at ICDC.

44. ICE's practice of assigning transgender individuals to facilities known to hold them indefinitely in punitive segregation and solitary confinement solely on the basis of their transgender identity is unlawful and inconsistent with Defendant's own standards and regulations.

Plaintiff was Kept in Punitive and Solitary Confinement Indefinitely.

45. P.R. was kept in punitive segregation and solitary confinement indefinitely from her arrival at ICDC on or about June 15, 2018 until her transfer to the transgender female pod at the Cibola Detention Center in or around January 2019.

46. ICE guidelines, policies and directives prohibit the indefinite use of punitive and solitary confinement. The use of punitive and solitary confinement must be a last resort, after efforts to locate less restrictive housing are exhausted, and must not exceed 30 days.

47. ICE guidelines, policies and directives require that the FOD be notified when a transgender detainee is placed and held continuously in solitary confinement and the FOD must determine if the continued placement is warranted, whether any appropriate alternatives are

available, and whether the placement is only a last resort. The FOD is also required to notify and prepare written reports for ICE headquarters when transgender detainees are placed in segregated housing.

48. Upon her arrival at ICDC, P.R. was immediately placed in solitary and punitive confinement, away from the general population in the SHU – an area designed and intended to hold cisgender male detainees (immigration and federal marshal’s detainees) for punitive reasons – and kept there for approximately seven months.

49. P.R. was subjected to punitive and solitary confinement that far exceeded the 30-day limit mandated by ICE’s own guidelines, policies and directives. She endured approximately seven months of punitive and solitary confinement with little to no meaningful environmental stimulation or human interaction, and when she did have any human interaction it was in the form of degrading, abusive, hostile, and/or sexual harassment. As a result, P.R. suffered severe emotional distress.

50. Upon information and belief, neither FOD Gallagher nor any other ICE employee or agent attempted to determine whether P.R.’s continued placement in punitive and solitary confinement was warranted, whether any appropriate alternatives were available, and whether the placement was only a last resort.

51. Upon information and belief, neither FOD Gallagher nor any other ICE employee or agent notified or prepared written reports to ICE headquarters regarding P.R.’s placement in punitive and solitary confinement.

52. Upon information and belief, FOD Gallagher and other ICE employees and agents deliberately interfered with attempts by P.R. to have ICE officials investigate complaints concerning the treatment of transgender detainees at ICDC.

53. As a result of Defendant’s negligent placement of P.R. in a facility Defendant knew or should have known houses transgender detainees indefinitely in punitive segregation and solitary confinement, Defendant’s failure to monitor and reduce the restrictions that accompany punitive and solitary confinement, Defendant’s continued detention of P.R. in

punitive and solitary confinement beyond 30 days, P.R. suffered, and continues to suffer emotional distress, including, but not limited to, sleeplessness, loss of appetite, stress, anxiety, insult, embarrassment, and humiliation, as well as mental injury. Defendant's employees' and agents' conduct subjected P.R. to unlawful discrimination, punishment, and substandard medical care. ICE's and its agent(s)'s negligence caused P.R.'s civil and constitutional rights to be free from unlawful discrimination and punishment to be violated. Defendant's employees and agents also failed to provide P.R. with an opportunity to challenge the punitive segregation and solitary confinement.

FIRST CLAIM FOR RELIEF

Federal Tort Claims Act - Negligence

54. Plaintiff P.R. re-alleges and incorporates by reference each and every allegation contained above as though fully set forth herein.

55. ICE officials and agents acted within the scope of their office or employment under circumstances where the United States, if it were a private person, would be liable to Plaintiff in accordance with the law of the State of Georgia.

56. Under Georgia law, to establish negligence, the plaintiff must show (1) a legal duty to conform to a standard of conduct; (2) a breach of this duty; (3) a causal connection between the conduct and the resulting injury; and (4) damage to the plaintiff.

57. Defendant and its agent(s) had a duty to maintain safe and sanitary conditions at ICDC, including a duty to ensure the safe and legally-appropriate housing for transgender individuals like P.R.. Defendant and its agent(s) also had a duty to prohibit the use of unconstitutional, discriminatory, or punitive confinement against transgender individuals such as P.R.

58. The acts and omissions alleged herein constitute breaches of that duty of care with respect to P.R. by federal employees and/or agents while acting in the scope of their office or employment.

59. ICE officials knew or should have known about ICDC's practice of holding transgender detainees in segregated housing, including P.R.'s placement in punitive, segregated, solitary confinement.

60. As alleged above, P.R. suffered significant emotional, physical, and psychological distress under the conditions caused by the negligence of federal employees acting within the scope of their employment.

61. Defendant's employees' and agents' breach of their duty of care was a direct and proximate cause and a substantial factor in P.R.'s injuries, pain, and suffering.

62. As a further direct and proximate result of the conduct described herein, P.R. suffered and continues to suffer from emotional distress and will incur expenses for the mental health treatment required to treat the mental injuries she incurred while in ICE's custody and care.

63. The actions or omissions by federal employees and agents described herein constitute the tort of negligence and negligence per se under the laws of the State of Georgia.

64. Under the Federal Torts Claims Act, Defendant United States of America is liable for these actions or omission.

SECOND CAUSE OF ACTION

Federal Tort Claims Act – Intentional Infliction of Emotional Distress

65. Plaintiff P.R. re-alleges and incorporates by reference each and every allegation contained above as though fully set forth herein.

66. ICE officials and agents acted within the scope of their office or employment under circumstances where the United States, if it were a private person, would be liable to Plaintiff in accordance with the law of the State of Georgia.

67. Under Georgia law, intentional infliction of emotional distress exists where (1) the conduct was intentional or reckless; (2) the conduct was extreme and outrageous; (3) the wrongful conduct caused the emotional distress; and (4) the emotional harm was severe.

68. ICE employees and agents knowingly, intentionally, and/or recklessly caused P.R. severe emotional distress by placing her at a facility where ICE employees knew or should have known she would be subjected to discriminatory, cruel, and unusual punishment.

69. ICE's conduct of placing transgender individuals, such as P.R., at a facility known to engage in conduct that is tantamount to torture was extreme and outrageous. ICE employees took these actions in furtherance of a policy or practice enacted by Defendant, and intentionally created to inflict extreme emotional distress on P.R., so that she would serve as an example to other immigrants who would be deterred from taking similar action after learning or observing such suffering.

70. ICE employees' knowing or reckless conduct caused P.R. to suffer extreme emotional distress that continued for an extended period of time. The harm suffered by Plaintiff due to ICE employees' conduct was severe, and will in all likelihood continue into the future.

PRAYER FOR RELIEF

71. Plaintiff therefore respectfully requests a judgment against Defendant for:
- a. Compensatory damages in an amount to be proven at trial;
 - b. Costs and reasonable attorneys' fees;
 - c. Such other relief as the Court deems just and equitable.

This 11th Day of June, 2021.

ESHMAN BEGNAUD, LLC

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