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15 **IN THE UNITED STATES DISTRICT COURT**

16 **DISTRICT OF ARIZONA**

17 ASHLEY CERVANTES, a single woman,

18 Plaintiff

19 v.

20 UNITED STATES OF AMERICA; UNITED
21 STATES CUSTOMS AND BORDER
22 PROTECTION AGENT SHAMEKA
23 LEGGETT and "JOHN DOE" LEGGETT;
24 UNKNOWN UNITED STATES CUSTOMS
25 AND BORDER PROTECTION AGENTS;
26 HOLY CROSS HOSPITAL, INC;
27 ASCENSION ARIZONA, INC.; PATRICK
28 F. MARTINEZ AND "JANE DOE"
MARTINEZ; JOHN DOES 1-5; JANE DOES
1-5; XYZ CORPORATIONS 1-5; ABC
PARTNERSHIPS 1-5

Defendants

COMPLAINT

JURY TRIAL DEMANDED

For her Complaint, Plaintiff Ashley Cervantes ("Ashley") allege as follows:

Parties, Jurisdiction and Venue

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2
3 1. Ashley is a resident of Santa Cruz County, Arizona.

4 2. This action arises, in part, under 28 U.S.C. § 2671, *et. seq.*, the Federal Tort
5 Claims Act (“FTCA”) and is against Defendant United States of America through its
6 agency, the United States Customs and Border Protection (“CBP”).
7

8 3. Defendant United States is liable pursuant to the FTCA for the tortious
9 conduct of federal employees while acting within the scope of their employment. 28 U.S.C.
10 §2671, *et seq.* Defendants Unknown United States Customs and Border Protection Agents
11 are employees of CBP. At all times relevant to this Complaint, these agents were acting in
12 the course and within the scope of their employment. They are sued in their individual
13 capacities. Those federal agents are referred to herein as the “CBP Agents” and will be
14 named as their true identities become known.
15
16

17 4. Defendant United States Customs and Border Protection Agent Shameka
18 Leggett (“CBP Agent Leggett”) is an employee of CBP. At all times relevant to this
19 Complaint, she was acting in the course and within the scope of her employment. She is
20 sued in her individual capacity. Defendant “John Doe” Leggett is her spouse and CBP
21 Agent Leggett was, at all times material, acting on behalf of her marital community. CBP
22 Agent Leggett is included in the group of CBP Agents described and referred to in ¶ 3,
23 above.
24
25

26 5. Defendant Holy Cross Hospital, Inc. is an Arizona Corporation doing
27 business in Santa Cruz County, Arizona.
28

1 6. Defendant Ascension Arizona, Inc. is an Arizona Corporation doing business
2 in Santa Cruz County, Arizona. At all times material to this lawsuit, Ascension Arizona was
3 known as Carondelet Health Network, Inc. On or around October 13, 2015, Carondelet
4 Health Network changed its corporate name to Ascension Arizona, Inc.
5

6 7. Defendants Holy Cross Hospital, Inc. and Ascension Arizona, Inc. are
7 collectively referred to herein as Holy Cross and, in fact, do business as Holy Cross
8 Hospital. To the extent other parent companies and/or affiliate entities are discovered to
9 also do business as Holy Cross, those entities are included in this lawsuit as XYZ
10 defendants and Ashley will seek leave to substitute those entities' true identity, if necessary.
11

12 8. Defendant Patrick Martinez, MD ("Dr. Martinez") is a medical doctor
13 employed by Holy Cross and who, at all times material, practiced medicine at Holy Cross.
14 At all times relevant to this Complaint, he was acting in the course and within the scope of
15 his employment and/or as Holy Cross' agent/servant. He is sued in his individual capacity.
16 Defendant "Jane Doe" Martinez is his wife and Dr. Martinez was, at all times material,
17 acting on behalf of his marital community.
18

19 9. The Defendants who are fictitiously designated are so designated because
20 their true identities are currently unknown to Ashley. John Does 1-5 and Jane Does 1-5 are
21 individuals who may be doing business in Santa Cruz County, Arizona, and may have
22 caused events to occur out of which Plaintiff's claims arise. XYZ Corporations 1-5 and/or
23 ABC Partnerships 1-5 are corporations and/or partnerships and/or other business entities
24 that may be doing business in Arizona and may have caused events to occur out of which
25 Plaintiff's claims arise. The fictitiously designated individual Defendants were acting for
26
27
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1 and on behalf of their respective marital communities, and all of the fictitious Defendants
2 were acting in their capacities and/or were acting as agents, servants and/or employees of
3 other named and/or fictitiously named Defendants. Ashley requests leave to amend her
4 Complaint, if necessary, to allege the true names of the Defendants once their identities
5 have been accurately ascertained.
6

7
8 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331
9 because Ashley's claims arise under the Constitution and laws of the United States of
10 America.

11
12 11. This Court has subject matter jurisdiction over Defendant United States for
13 the tortious actions of federal employees pursuant to 28 U.S.C. §1346(b)(1).

14
15 12. This Court has supplemental subject matter jurisdiction over Defendants Holy
16 Cross and Dr. Martinez pursuant to 28 U.S.C. §1367(a) because the claims asserted against
17 those Defendants are so related to claims in the action within such original jurisdiction that
18 they form part of the same case or controversy under Article III of the United States
19 Constitution.

20
21 13. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2) and 28
22 U.S.C. § 1402(b) because the incident giving rise to this action occurred in this district and
23 Ashley resides in the same.

24
25 **Ashley Entered the United States without Any Contraband or Drugs**

26
27 14. On the morning of Saturday, October 14, 2014, Ashley, a natural-born U.S.
28 Citizen, crossed the international border at the Nogales Port of Entry on foot.

1 15. At that time, Ashley crossed from Nogales, AZ into Nogales, Sonora to have
2 breakfast at a restaurant she frequented.

3
4 16. After enjoying her breakfast, Ashley returned to the Port of Entry and, again
5 on foot, crossed back into Nogales, AZ.

6
7 17. Ashley did not possess any contraband at the time she left or re-entered the
8 United States. She identified herself as a U.S. citizen and presented the border official with
9 her Birth Certificate and her State of Arizona identification card.

10
11 18. Upon Ashley's re-entering the United States, she was approached and
12 confronted by a CBP Agent who accused her of possessing illegal drugs. Ashley denied the
13 same.

14
15 19. The CBP Agent became more aggressive in his questions and accusations.
16 That CBP Agent directed Ashley to follow him to a "detention" room, ostensibly for
17 additional questioning. Over the course of the next few hours, Ashley:

- 18 a. was handcuffed to a chair;
- 19
20 b. had a number of CBP K9's sniff her person (a violation of CBP policy, which
21 prohibits the use of K9's on a person); and,
22
23 c. was taken into a separate room, patted down, and asked to squat so female
24 investigators could visually inspect her.

25
26 20. Ashley, an extremely petite eighteen-year-old, was not "mirandized" or
27 advised of her rights as a U.S. citizen during that lengthy custodial detention and
28 interrogation for which she did not provide a knowing and/or willful consent. Moreover, her

1 request to call her mother was denied. In addition, the scope and length of the custodial
2 detention exceeded the “border search exception” to the extent such exception even applied.

3
4 21. The invasive pat-downs and searches conducted by the CBP Agents at the
5 Nogales Port of Entry did not produce any evidence of contraband or internal drug
6 smuggling.

7
8 22. Because Ashley did not possess any contraband, the K9’s that sniffed her
9 either did not alert or the response was not a proper alert.

10
11 23. After no contraband of any kind was found on Ashley’s person, the CBP
12 Agents escalated the method and manner of their searches by requesting authority to
13 transport Ashley to a medical facility.

14
15 24. As set out in the United States Public Health Services Division of
16 Immigration Health Services’ Treatment Authorization Request (“TAR”), which was signed
17 by CBP Agent Leggett, Ashley was “diagnosed” as an alleged “potential internal carrier of
18 foreign substance” and the “course of treatment” was identified as “request for X-Ray”. It is
19 unclear what possible basis existed for CBP to use an Immigration Health Services’ form or
20 procedure on a citizen of the United States.

21
22 **The Searches Continued Without Consent, a Warrant, or Sufficient Suspicion of**
23 **Criminal Activity**

24
25 25. Ashley was then taken, in custody and without her consent or any legal basis,
26 to Defendant Holy Cross Hospital to allegedly undergo X-Rays.

27
28 26. Ashley was transported in handcuffs and was lead into Holy Cross cuffed.

1 27. From the time of her arrival until she was released from Holy Cross, Ashley
2 did not present any symptoms consistent with internal drug smuggling nor did she exhibit
3 any symptoms of feeling sick or unwell. She was, however, in the midst of her menstrual
4 cycle.
5

6 28. Without obtaining a knowing or willful consent, or obtaining an accurate
7 detailed medical history, agents/servants/employees of Holy Cross, including Dr. Martinez,
8 searched Ashley for contraband.
9

10 29. The Holy Cross records from Ashley's time at the facility include a number of
11 factual inaccuracies, including inaccurately setting out that Ashley was accompanied by her
12 mother and arrived in a private vehicle. In reality, Ashley was transported in a CBP vehicle.
13 Her handcuffs were not removed until she changed into a hospital gown for the alleged
14 purpose of undergoing an X-Ray.
15

16 30. Ashley was never X-rayed, despite that being the only "course of treatment"
17 authorized by the TAR.
18

19 **Ashley's Anus and Vagina Were Probed without a Warrant, Consent or Any**
20 **Suspicion of Internal Drug Smuggling**
21

22 31. Even though prior searches resulted in no evidence of internal drug
23 smuggling, the CBP Agents and Dr. Martinez continued the intrusion on Ashley's body
24 without her knowing, willful consent and without a warrant.
25
26
27
28

1 32. In fact, Dr. Martinez, a male physician, entered Ashley's room and, after
2 asking a few cursory questions, brutally invaded her body on a warrantless and unjustified
3 search for contraband.
4

5 33. Dr. Martinez forcefully and digitally probed Ashley's vagina and anus.
6

7 34. Ashley had never before been to a gynecologist and, for the remainder of her
8 life, will always remember that her first pelvic and rectal exams were under the most
9 inhumane circumstances imaginable to a U.S. citizen at a hospital on U.S. soil.
10

11 35. Ashley was shocked and humiliated by these exceedingly intrusive searches.
12 That an audience of CBP Agents and Holy Cross staff observed her being probed
13 compounded her feeling of degradation.
14

15 36. No drugs were found inside Ashley, who was then discharged from Holy
16 Cross and transported, by CBP, back to the Port of Entry.
17

18 37. Ashley was released from custody without any charges at approximately 8:00
19 p.m., only after enduring roughly seven hours of dehumanizing, invasive and degrading
20 searches.
21

22 38. Throughout the unreasonable searches of Ashley's body cavities, she
23 continually denied smuggling drugs internally and continually refused consent for each
24 search.
25

26 39. At no point during the searches of Ashley did the CBP Agents obtain a
27 warrant authorizing a search of her body.
28

1 40. The searches conducted by the CBP Agents, Holy Cross and Dr. Martinez
2 injured Ashley physically, mentally and emotionally. Her labia, vaginal opening, and anus
3 were left raw and sore and she felt violated, demeaned and powerless as a result of the
4 searches.
5

6 **The Searches That Injured Ashley Were the Inevitable Result of Holy Cross' Custom**
7 **and Practice of Handling Patients Brought by CBP Agents**

8
9 41. Upon information and belief, Holy Cross' policies on searches by hospital
10 personnel does not permit an invasion of a person's body for purposes of a search without
11 either consent or a search warrant. However, upon information and belief, Holy Cross and
12 CBP agents routinely conduct invasive cavity searches without a warrant, consent or
13 sufficient suspicion to justify the searches.
14

15 42. Upon information and belief, Holy Cross' doctors and nurses are not trained
16 on conducting law enforcement searches nor on the constraints the Fourth Amendment
17 places on those searches. Upon information and belief, Holy Cross' staff have no process in
18 place to ensure that searches performed by hospital staff comport with constitutional limits.
19 As a result, Holy Cross' personnel, who are untrained in the law, inevitably conduct
20 invasive, unreasonable law enforcement searches without sufficient justification and violate
21 the constitutional rights of the persons searched.
22
23

24 43. Given Holy Cross' proximity to the border, its emergency room personnel
25 predictably confront situations where CBP officials bring individuals in for law
26 enforcement searches without a warrant. Consequently, Holy Cross' failure to train its
27 personnel on the constitutional limits constraining law enforcement searches amounts to a
28

1 deliberate indifference to the violation of individuals' constitutional rights, including
2 Ashley's rights.

3
4 44. Upon information and belief, these searches are not conducted by the doctors
5 alone but also routinely involve supervising CBP agents. Upon information and belief, Holy
6 Cross' personnel and CBP agents' routine invasion of a person's body for law enforcement
7 purposes in an unreasonable manner and without a warrant or sufficient suspicion amounts
8 to a pattern and practice.

9
10 45. Holy Cross and CBP's pattern and practice of jointly conducting law
11 enforcement searches in an unreasonable manner and without a warrant or sufficient
12 suspicion, and without training Holy Cross' employees on the constitutional limits
13 constraining those searches, injured Ashley and violated her constitutional rights.

14
15
16 **Compliance with FTCA Administrative Claim Requirement**

17 46. A timely written Notice of Claim was presented to CPB on June 12, 2015.

18
19 47. CPB acknowledged receiving that Notice of Claim but did not respond in any
20 substantive manner. As such, the Claim was deemed denied six months after it was
21 received, or on December 12, 2015.

22
23 **COUNT ONE**

24 **Unreasonable Seizure, False Arrest and False Imprisonment in Violation of the Fourth
Amendment to the U.S. Constitution Against the CBP Agents**

25 ***(Bivens Claim)***

26 48. Ashley incorporates and realleges each and every previous allegation as
27 though fully set forth herein.
28

1 49. As a direct result of their actions set forth in this Complaint, the Defendant
2 CBP Agents acted under the color of federal law to deprive Ashley of her right to be free
3 from unreasonable seizures, by seizing, arresting and detaining her without reasonable
4 suspicion or probable cause that she was committing a crime, in violation of the Fourth
5 Amendment to the U.S. Constitution.
6

7
8 50. This cause of action for the violation of Ashley's Fourth Amendment right is
9 brought pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

10 **COUNT TWO**

11 **Unreasonable Search in Violation of the Fourth Amendment to the U.S. Constitution**
12 **Against the CBP Agents**

13 ***(Bivens Claim)***

14
15 51. Ashley incorporates and realleges each and every previous allegation as
16 though fully set forth herein.

17 52. As a direct result of their actions set forth in this Complaint, the Defendant
18 CBP Agents acted under the color of federal law to deprive Ashley of her right to be free
19 from unreasonable search in violation of the Fourth Amendment to the U.S. Constitution by
20 1) searching her person without reasonable suspicion or probable cause that she was
21 committing a crime; and/or 2) searching her person in a highly unreasonable manner that
22 invaded her right to bodily integrity and privacy.
23

24
25 53. This cause of action for the violation of Ashley's Fourth Amendment right is
26 brought pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).
27
28

1 **COUNT THREE**

2 **Deprivation of Due Process in Violation of the Fifth Amendment to the U.S.**
3 **Constitution Against the CBP Agents**
4 ***(Bivens Claim)***

5 54. Ashley incorporates and realleges each and every previous allegation as
6 though fully set forth herein.
7

8 55. As a direct result of their actions set forth in this Complaint, the Defendant
9 CBP Agents acted under the color of federal law to deprive Plaintiff of her right to due
10 process by acting in a manner that shocks the conscience in violation of the Fifth
11 Amendment to the U.S. Constitution.
12

13 56. This cause of action for the violation of Ashley's Fifth Amendment right is
14 brought pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).
15

16 **COUNT FOUR**

17 **Unreasonable Seizure, False Arrest and False Imprisonment in Violation of the Fourth**
18 **and Fourteenth Amendments to the U.S. Constitution Against**
19 **Defendant Martinez and Holy Cross**
20 ***(Bivens Claim / 42 U.S.C. §1983 Claim)***

21 57. Ashley incorporates and realleges each and every previous allegation as
22 though fully set forth herein.

23 58. As a direct result of his actions set forth in this Complaint and at the request
24 and direction of the CBP Agents, Dr. Martinez acted under the color of state and federal law
25 to deprive Ashley of her right to be free from unreasonable seizures by seizing, arresting
26 and detaining her without reasonable suspicion or probable cause that she was committing a
27
28

1 crime, in violation of the Fourth Amendment to the U.S. Constitution, as incorporated by
2 the Fourteenth Amendment.

3
4 59. The custom and practice of Holy Cross caused the violation of Ashley's right
5 to be free from unreasonable seizures.

6
7 60. This cause of action for the violation of Ashley's Fourth and Fourteenth
8 Amendment right is brought pursuant to 42 U.S.C. §1983 and/or *Bivens v. Six Unknown*
9 *Agents*, 403 U.S. 388 (1971).

10
11 **COUNT FIVE**

12 **Unreasonable Search in Violation of the Fourth and Fourteenth Amendments to the**
13 **U.S. Constitution Against Defendant Martinez and Holy Cross**
14 **(Bivens Claim / 42 U.S.C. §1983 Claim)**

15 61. Ashley incorporates and realleges each and every previous allegation as
16 though fully set forth herein.

17 62. As a direct result of his actions set forth in this Complaint and at the request
18 and direction of the CBP Agents, Dr. Martinez acted under the color of state and federal law
19 to deprive Ashley of her right to be free from unreasonable search in violation of the Fourth
20 Amendment to the U.S. Constitution, as incorporated by the Fourteenth Amendment, by 1)
21 searching her person without reasonable suspicion or probable cause that she was
22 committing a crime; and/or 2) searching her person in a highly unreasonable manner that
23 invaded her right to bodily integrity and privacy.

24
25 63. The custom and practice of Holy Cross caused the violation of Ashley's right
26 to be free from unreasonable searches.
27
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1 64. This cause of action for the violation of Ashley’s Fourth and Fourteenth
2 Amendment right is brought pursuant to 42 U.S.C. §1983 and/or *Bivens v. Six Unknown*
3 *Agents*, 403 U.S. 388 (1971).
4

5 **COUNT SIX**
6 **Deprivation of Due Process in Violation of the Fifth Amendment to the U.S.**
7 **Constitution Against Defendant Martinez and Holy Cross**
8 **(Bivens Claim / 42 U.S.C. §1983 Claim)**

9 65. Ashley incorporates and realleges each and every previous allegation as
10 though fully set forth herein.

11 66. As a direct result of his actions set forth in this Complaint, and at the request
12 and direction of the CBP Agents, Dr. Martinez acted under the color of state and federal law
13 to deprive Ashley of her right to due process by acting in a manner that shocks the
14 conscience in violation of the Fourteenth Amendment to the U.S. Constitution.
15

16 67. The custom and practice of Holy Cross caused the violation of Ashley’s right
17 to due process.
18

19 68. This cause of action for the violation of Ashley’s Fifth and Fourteenth
20 Amendment right is brought pursuant to 42 U.S.C. §1983 and/or *Bivens v. Six Unknown*
21 *Agents*, 403 U.S. 388 (1971).
22

23 **COUNT SEVEN**
24 **Negligent Hiring, Training and Supervision against Holy Cross**

25 69. Ashley incorporates and realleges each and every previous allegation as
26 though fully set forth herein.
27
28

1 70. Holy Cross hired, trained and supervised the employees/agents/servants who
2 dealt with Ashley while she was in Holy Cross' care.
3

4 71. Holy Cross was negligent in hiring, training and supervising their
5 agents/employees who dealt with Ashley in that those agents/employees were not trained on
6 conducting law enforcement searches nor on the constraints the Fourth Amendment places
7 on those searches.
8

9 72. As a direct and proximate cause of Holy Cross' negligence, Ashley suffered
10 injuries and damages.
11

12 **COUNT EIGHT**
13 **Assault and Battery Claim Against the United States for the Tortious Actions**
14 **of its Federal Agents**

15 73. Ashley incorporates and realleges each and every previous allegation as
16 though fully set forth herein.

17 74. The CBP Agents intentionally and knowingly caused physical contact with
18 Ashley when they knew or should have reasonably believed that she would regard the
19 contact as offensive or provocative by conducting invasive searches of her and by directing
20 invasive searches of her.
21

22 75. The CBP Agents committed these acts as employees of the United States
23 while acting in the scope of their employment: they acted within the scope of the general
24 authority granted to them, in furtherance of their employer's business, and for the
25 accomplishment of the objectives for which they were hired.
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- b. award compensatory damages in an amount to be determined at trial;
- c. award punitive damages in an amount to be determined at trial;
- d. award attorney's fees and costs pursuant to 42 U.S.C. §1988; and
- f. grant such other and further relief as this Court deems proper

Filed this 8th day of June, 2016

MARCHETTI LAW, PLLC

By: /s/ Brian Marchetti
Brian Marchetti
Attorney for Plaintiff