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14 IN UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF ARIZONA  
16

17 JANE DOE #1; JANE DOE #2; NORLAN  
FLORES, on behalf of themselves and all  
18 others similarly situated,

19 Plaintiffs,

20 v.

21 Jeh Johnson, Secretary, United States  
Department of Homeland Security, in his  
22 official capacity; R. Gil Kerlikowske,  
Commissioner, United States Customs &  
23 Border Protection, in his official capacity;  
Michael J. Fisher, Chief of the United States  
24 Border Patrol, in his official capacity; Jeffrey  
Self, Commander, Arizona Joint Field  
25 Command, in his official capacity; Manuel  
Padilla, Jr., Chief Patrol Agent-Tucson Sector,  
26 in his official capacity,

27 Defendant.  
28

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**CLASS ACTION**

## INTRODUCTION

1  
2           1.       Plaintiffs are civil detainees confined in a U.S. Customs and Border  
3 Protection (“CBP”) facility within the Tucson Sector of the U.S. Border Patrol  
4 (“Border Patrol”), a division of CBP. During their confinement, Plaintiffs and many  
5 others like them—men, women, and children—have been subjected to inhumane and  
6 punitive conditions. They have been packed into overcrowded and filthy holding cells  
7 with the lights glaring day and night; stripped of outer layers of clothing and forced to  
8 suffer in brutally cold temperatures; deprived of beds, bedding, and sleep; denied  
9 adequate food, water, medicine and medical care, and basic sanitation and hygiene  
10 items such as soap, sufficient toilet paper, sanitary napkins, diapers, and showers; and  
11 held incommunicado in these conditions for days. These conditions exist in all of the  
12 short-term detention facilities that CBP currently operates and maintains in its Tucson  
13 Sector and thus Plaintiffs and putative class members are harmed no matter where they  
14 are detained within the Sector. Plaintiffs bring this action challenging these harsh and  
15 degrading conditions in Tucson Sector CBP facilities on behalf of themselves and all  
16 those similarly situated.

17           2.       Plaintiffs and putative class members have been or will be apprehended at  
18 or near the U.S. border with Mexico and detained. Border Patrol apprehended more  
19 than 200,000 people in its Tucson Sector in the past two years alone, among them  
20 individuals seeking asylum, mothers with infants, and U.S. citizen children. Many of  
21 the individuals CBP detains have fled dangerous conditions in their home countries,  
22 and are seized following a lengthy, difficult, and perilous journey. They arrive  
23 exhausted, thirsty and hungry, and often are suffering from dehydration, heat stroke,  
24 diarrhea, bleeding and blistered feet, and other health conditions requiring medical  
25 attention. A substantial number of the women are recent victims of sexually assault.  
26 Many other adults and children arrive traumatized by the dangers they have escaped  
27 and the harms they have suffered during their journey to the United States.<sup>1</sup> The

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<sup>1</sup> See *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration Sys.*,  
Ctr. for Gender & Refugee Studies & Kids in Need of Defense (Feb. 2014),

1 conditions in the holding cells—including the inadequate supply of water and food, the  
2 extremely cold temperatures and the lack of access to medical care and medicines—  
3 further endanger those already suffering from exposure-related medical impairments  
4 and other pre-existing conditions.

5 3. In Border Patrol’s Tucson Sector (“Tucson Sector”), Defendants detain  
6 apprehended individuals overnight—and often for multiple nights—in unsanitary  
7 holding cells that are neither designed nor equipped for extended detention, and  
8 certainly not for sleeping. Per Defendants’ own guidelines, holding cell use should be  
9 limited to a period of no more than twelve hours. In practice, the vast majority of  
10 detainees are held far longer. Defendants’ regular use of these filthy, cold, and often  
11 overcrowded holding cells for longer-term detention is dangerous, inhumane, and  
12 punitive.

13 4. As a result of Defendants’ policy and practice of using Tucson Sector  
14 holding cells for overnight and even multiple night confinement, the named Plaintiffs  
15 and putative class members are denied the ability to get adequate sleep—if any at all.  
16 Defendants do not equip holding cells with beds and generally do not provide detainees  
17 mattresses or other bedding. Defendants leave holding cell lights on at all hours, and  
18 detained individuals must attempt to sleep on cold concrete floors and hard benches.  
19 The cells are often so overcrowded that not all detainees are able to lie down and  
20 instead must sit or stand through the night.

21 5. Border Patrol holding cells are notoriously referred to as “hieleras,” the  
22 Spanish term for “freezers” or “iceboxes,” because they are so cold. Defendants  
23 expose Tucson Sector detainees to painfully low temperatures without proper clothing

24 \_\_\_\_\_  
25 [http://www.uchastings.edu/centers/cgrs-docs/treachorous-journey-cgrs-kind-](http://www.uchastings.edu/centers/cgrs-docs/treachorous-journey-cgrs-kind-report.pdf)  
26 [report.pdf](http://www.uchastings.edu/centers/cgrs-docs/treachorous-journey-cgrs-kind-report.pdf); *Invisible Victims: Migrants on the Move in Mexico*, Amnesty Int’l (2010),  
27 [available at https://fusiondotnet.files.wordpress.com/2014/09/amr410142010eng.pdf](https://fusiondotnet.files.wordpress.com/2014/09/amr410142010eng.pdf);  
28 Erin Siegal & Deborah Bonello, *Is rape the price to pay for migrant women chasing the*  
*American Dream?*, Fusion (Sept. 10, 2014), [http://fusion.net/story/17321/is-rape-the-](http://fusion.net/story/17321/is-rape-the-price-to-pay-for-migrant-women-chasing-the-american-dream/)  
[price-to-pay-for-migrant-women-chasing-the-american-dream/](http://fusion.net/story/17321/is-rape-the-price-to-pay-for-migrant-women-chasing-the-american-dream/); Jude Joffe Block,  
*Women crossing the border face sexual assault with little protection*, PBS News Hour  
(Mar. 31, 2014), [available at http://www.pbs.org/newshour/updates/](http://www.pbs.org/newshour/updates/facing-risk-rape-migrant-women-prepare-birth-control/)  
[facing-risk-rape-](http://www.pbs.org/newshour/updates/facing-risk-rape-migrant-women-prepare-birth-control/)  
[migrant-women-prepare-birth-control/](http://www.pbs.org/newshour/updates/facing-risk-rape-migrant-women-prepare-birth-control/)

1 or blankets. Indeed, CBP officials force detainees to remove extra layers of clothing  
2 before entering the frigid cells. CBP officials regularly ignore detainees' complaints  
3 about the cold cells, and it has been reported that officials threaten to make the cells  
4 even colder as punishment for complaining about the temperature.

5 6. Defendants systematically deny Plaintiffs and putative class members'  
6 basic hygiene items. Detainees in Tucson Sector holding cells have no access to soap,  
7 showers, towels, toothpaste, or toothbrushes. Cells are dirty and not regularly or  
8 properly cleaned and are not equipped with waste receptacles. Women are not  
9 regularly provided an adequate supply of sanitary napkins, and women with babies are  
10 not given enough diapers to keep them clean. Shortages of toilet paper are not  
11 promptly remedied. Without soap, detainees cannot adequately wash their hands  
12 before eating and after using the toilet, exacerbating the squalor and increasing the risk  
13 of illness and transmission.

14 7. Plaintiffs and putative class members often are dehydrated, hungry, and  
15 sick as a result of walking in the desert, but Defendants do not provide them with  
16 sufficient access to clean drinking water or food. Sometimes detainees receive no food  
17 or drinking water at all. What Defendants do provide for detainees to eat is  
18 exceedingly minimal, cold, and/or expired, and is consistently described by detainees  
19 as being nearly inedible.

20 8. Many detainees arrive at CBP custody with serious medical conditions,  
21 often resulting from walking for days in the desert. Defendants do not adequately  
22 screen for dangerous or life-threatening medical conditions, do not provide detainees  
23 access to qualified medical personnel in response to detainees' ongoing or emergent  
24 medical issues, and fail to provide medically appropriate administration of medicines to  
25 detainees. When one detainee asked agents to help her seven-year-old U.S. citizen  
26 daughter, who was in pain from what she believed was an ear infection, an agent told  
27 her, "There is no medicine here." By failing to screen detainees for medical conditions,  
28 including communicable illnesses, before placing them in squalid, overcrowded

1 holding cells, Defendants endanger the health of detainees and increase the risk that  
2 illnesses can spread amongst detainees.

3 9. Defendants do not allow detained individuals out of the holding cells for  
4 the duration of their detention, except for official questioning, and detainees are  
5 effectively cut off from the outside world. Defendants also deny access to phones to  
6 secure or communicate with legal counsel or to call loved ones. Held virtually  
7 incommunicado, and under conditions that amount to an inherently coercive  
8 environment, detainees often are pressured by agents into giving up their legal rights by  
9 signing legal documents they do not understand, often in a language they cannot read—  
10 documents that can lead to deportation without further legal process afforded under the  
11 law. For example, many are discouraged or impeded from seeking asylum or similar  
12 protection despite their fear of returning to serious harm in their countries of origin.

13 10. The inhumane and dangerous conditions in the Tucson Sector facilities  
14 result in irreparable, ongoing physical and psychological harm to Plaintiffs and putative  
15 class members and serious risk of future harm.

16 11. The overall conditions of Defendants' holding cells deny the humanity of  
17 those held within their walls, with such intolerable results as the denial of prescribed  
18 pain medication to a pregnant woman with a broken foot; the failure to provide medical  
19 attention to another woman suffering heavy vaginal bleeding; children as young as four  
20 years old stripped of warm clothing and left crying through the night from cold and  
21 hunger; detainees sick, exhausted, and shivering, pleading for guards to turn up the  
22 temperature; and the repeated response of agents that these conditions are the price to  
23 be paid for coming to United States. In the words of one detainee: "It felt like we were  
24 being treated like animals and not as human beings." Other detainees characterized the  
25 experience as "inhumane and degrading," "humiliating," and "like a form of torture."  
26 Still another described "[t]he lack of food and sleep, and the cold and overcrowding" as  
27 "constant and punishing."  
28



1           20. Plaintiff Jane Doe #1 was not screened for medical conditions or  
2 illnesses. She does have a concern with an abrasion on her left foot, but has had no  
3 opportunity to have it looked at by a medical professional.

4           21. The temperature of the holding cell in which Plaintiff Jane Doe #1 was  
5 detained is extremely cold. She was detained with her sister, and they held each to  
6 keep warm. Plaintiff Jane Doe #1 said that if she had been detained alone without her  
7 sister she does not know how she could have kept warm at the Casa Grande facility.

8           22. The holding cell in which Plaintiff Jane Doe #1 was detained is furnished  
9 only with approximately two concrete benches. She tried to sleep on the concrete  
10 bench, but almost fell off so had to sleep on the floor.

11           23. Plaintiff Jane Doe #1 was not provided access to showers, toothpaste, or  
12 toothbrush at either the Casa Grande facility or the Tucson facility. There was no soap  
13 at the Casa Grande facility. There was only the ability to use hand sanitizer when one  
14 of the guards took Plaintiff Jane Doe #1 out of the cell to be interviewed and there was  
15 hand sanitizer in his office.

16           24. In Casa Grande, there was a toilet in the cell and there was no privacy  
17 because the guards can see inside. Plaintiff Jane Doe #1 knows the guards can see  
18 inside while they are using the restroom because when one guard took her out of the  
19 cell to interview her he said to her that she should be sure to use the hand sanitizer  
20 because she used the bathroom. Plaintiff Jane Doe #1 asked if he could see her when  
21 she was using the restroom and understood that he could. The guard made her feel like  
22 an animal because she felt like he was saying to her “put on alcohol so you won’t  
23 contaminate us.”

24           25. One of the women who was being held in the cell with Plaintiff Jane Doe  
25 #1 at the Tucson Border Patrol facility told Plaintiff Jane Doe #1 that she got her period  
26 yesterday and she kept knocking on the door to try to get a sanitary napkin from the  
27 guards, but the guards would not give her anything, and they wouldn’t even come to  
28 the door. The other woman told Jane Doe #1 that she had to use toilet paper and it

1 wasn't until today that another group of women arrived to the cell and she was able to  
2 ask again and finally got a sanitary napkin.

3 26. Plaintiff Jane Doe #1 was not provided access to a bed or bedding. She  
4 had to sleep on the cold concrete floor in order to sleep. She only got about five hours  
5 sleep, if that, because the lights were kept on all day and all night at the Casa Grande  
6 facility. The guards would come in and ask them questions when they were trying to  
7 sleep—it was very tense.

8 27. Plaintiff Jane Doe #1 was provided only a thin aluminum blanket. That  
9 blanket was insufficient to provide warmth to Plaintiff Jane Doe #1.

10 28. Plaintiff Jane Doe #1 has been provided only a small amount of food  
11 while detained by Border Patrol. She was given two packets of cookies and a small  
12 juice box when she arrived at the Casa Grande facility, later she was given a small  
13 burrito, which tasted very bad. Finally, before leaving for the Tucson facility, she was  
14 given another small burrito and a juice box. As a result, Plaintiff Jane Doe #1 is  
15 extremely hungry.

16 29. In the Border Patrol facility in which Plaintiff Jane Doe #1 was held, the  
17 only water provided to Jane Doe #1 came from a small faucet on top of the toilet in the  
18 cell. There was a sign that said “drinking water here.” You had to push a button to get  
19 the water, but it tasted awful. The only way that Plaintiff Jane Doe #1 could handle  
20 drinking the water was to alternate with a sip or two of juice because it tasted awful.  
21 Plaintiff Jane Doe #1 said she forced herself to do this out of necessity.

22 30. When Plaintiff Jane Doe #1 was first apprehended by Border Patrol in  
23 the desert in Arizona, she was tied hand to hand with the other individuals she was  
24 detained with. The Border Patrol officers made Plaintiff Jane Doe #1 and the other  
25 individuals sit in the hot desert for almost two hours. During this time, the Border  
26 Patrol officers were taking photos with their dog and letting the dog run freely between  
27 the detained women and men. There were about four or five Border Patrol officers,  
28 and one dog. It was very scary and the dog was really aggressive. One of the



1 individuals detained asked why the Border Patrol officers were taking photos and they  
2 said it was for the dog's Facebook page. During this order, Plaintiff Jane Doe #1 was  
3 getting dehydrated.

4 31. While they were being held in the desert sun, one of the Border Patrol  
5 officers asked the group if they were hungry, when they said yes, the officer mocked  
6 them by saying "oh, we are about to go to the store."

7 32. After being in the sun with the dog, Plaintiff Jane Doe #1 was transported  
8 with about 9 other people in one van. It was so crowded in the van that one of them sat  
9 on the floor. They were basically piled on top of each other. They were transported to  
10 the Casa Grande facility.

11 33. After arriving to Border Patrol custody, Plaintiff Jane Doe #1 signed legal  
12 documents that Plaintiff Jane Doe #1 did not understand.

13 34. On June 8, after approximately 24 hours in detention, Plaintiff Jane Doe  
14 #1 was transferred to Border Patrol's Tucson facility. Plaintiff has been detained in the  
15 Tucson facility for approximately three additional hours. The conditions in the Tucson  
16 facility are substantially similar to those Plaintiff Jane Doe #1 experienced in the Casa  
17 Grande facility, as described above, except that the temperature at the Tucson facility is  
18 even colder and more uncomfortable.

19 35. Plaintiff Jane Doe #2 is currently detained in the Tucson Border Patrol  
20 Station facility in Tucson, Arizona.

21 36. On June 7, 2015, at approximately 11:00 a.m., Plaintiff Jane Doe #2 was  
22 apprehended along with her sister and a group of approximately ten people by Border  
23 Patrol agents in southern Arizona.

24 37. After being apprehended, the group was handcuffed and left in the hot  
25 sun for two hours. They were not provided with food or water. The agents' service  
26 canine was let loose and allowed to circle and approach the group unrestrained. The  
27 dog stepped on Plaintiff Jane Doe #2. Agents took pictures with their cell phones,  
28 laughed, and joked that the photographs were "for the dog's Facebook account."

1           38. Plaintiff Jane Doe #2 and the rest of the group were placed in a Border  
2 Patrol vehicle and driven to Border Patrol's facility in Casa Grande, Arizona. Plaintiff  
3 Jane Doe #2 was detained in that facility for approximately twenty-four hours.

4           39. Prior to arrival to the Casa Grande facility, Plaintiff was forced to remove  
5 her outer layers of clothing. She was detained wearing only a short-sleeved shirt,  
6 pants, and shoes.

7           40. At the Casa Grande facility, Plaintiff Jane Doe #2 was not screened for  
8 medical conditions or illnesses. An agent simply asked her if she was "okay."

9           41. The temperature of the holding cell in which Plaintiff Jane Doe #2 was  
10 detained was very cold. Plaintiff Jane Doe #2 was not given additional clothing and  
11 was only provided with a thin aluminum blanket.

12           42. The holding cell in which Plaintiff Jane Doe #2 was detained was  
13 furnished only with concrete benches.

14           43. Plaintiff Jane Doe #2 was not provided access to a bed or bedding. She  
15 slept on the concrete floor of the cell.

16           44. Plaintiff Jane Doe #2 was not provided access to showers, toothpaste, a  
17 toothbrush, soap, towels, or cleaning supplies.

18           45. In the Border Patrol facility in which Plaintiff Jane Doe #2 was held, the  
19 lights were kept on all night. The lights and the lack of beds made it very difficult for  
20 Plaintiff Jane Doe #2 to sleep.

21           46. Plaintiff Jane Doe #2 has been provided little food while detained by  
22 Border Patrol. Plaintiff Jane Doe #2 has sporadically received burritos, cookies, and  
23 juice and has been hungry as a result.

24           47. In the Border Patrol facility in which Plaintiff Jane Doe #2 was held, the  
25 only water provided to Plaintiff Jane Doe #2 came from the sink above the toilet.  
26 There were no cups from which to drink and the water had a bad taste.

27           48. On June 8, 2015, after one night and approximately twenty-four hours in  
28 detention in the Casa Grande facility, Plaintiff Jane Doe #2 was transferred to Border

1 Patrol's Tucson facility. Plaintiff has been detained in the Tucson facility for  
2 approximately three hours.

3 49. Plaintiff's hold room in the Tucson facility is even colder than the room  
4 in which she was held in Casa Grande. In most other respects, the conditions in the  
5 Tucson facility are substantially similar to those Plaintiff Jane Doe #2 experienced in  
6 the Casa Grande facility, as described above. Plaintiff Jane Doe #2 has no access to  
7 beds or bedding, soap, towels, toothpaste, or a toothbrush. Plaintiff Jane Doe #2 has  
8 not been able to shower or bathe since she was detained.

9 50. Plaintiff Jane Doe #2 has been detained in CBP custody for  
10 approximately thirty hours in total. Plaintiff Jane Doe #2 has spent one night in Border  
11 Patrol detention.

12 51. Plaintiff Jane Doe #2 fears returning to her home country.

13 52. Plaintiff Norlan Flores is a thirty-four-year-old Nicaraguan native who  
14 has resided in Tucson, Arizona for approximately nine years. Plaintiff Flores has twice  
15 been detained by Border Patrol agents in a holding cell in the Tucson Border Patrol  
16 Station. Based upon these past detentions, he fears that at any time he again could be  
17 detained by Border Patrol agents in a holding cell at the Tucson Border Patrol Station.

18 53. Plaintiff Flores was first detained in a CBP holding cell for three days in  
19 or around 2007. The cell in which he was held was extremely cold and had no beds or  
20 bedding; consequently he was able to sleep very little during the entire three days.  
21 Plaintiff Flores also was very hungry throughout his entire detention; he never received  
22 a meal, but instead was periodically given only juice and crackers. Despite being very  
23 thirsty, he could not drink very much water because the tap water—the only water  
24 available—tasted so bad and the Border Patrol agents provided no drinking cups.  
25 Because there was no soap in the holding cell, Plaintiff Flores was unable to wash his  
26 hands after he used the toilet or before he ate. Plaintiff Flores was not given access to  
27 showers or towels and he could not bathe for three days. He was not given a  
28

1 toothbrush or toothpaste and could not brush his teeth while detained. Plaintiff Flores  
2 was never given the opportunity to speak with an attorney or with his consulate.

3 54. In 2011, Plaintiff Flores was the victim of an assault. In 2012, he began  
4 the process of applying for a U Nonimmigrant visa as the victim of a crime who had  
5 cooperated with the authorities, by formally asking the local Sheriff's Department to  
6 certify his Petition for a U visa—the requisite first step to obtaining such a visa. In or  
7 about August, 2014, Plaintiff Flores received the necessary certification from the  
8 Sheriff's office. He then filed the U Nonimmigrant visa petition with the United States  
9 Department of Homeland Security ("DHS"). Recently, his petition was approved and  
10 he received a U Nonimmigrant visa, which allows him to live and work in the United  
11 States.

12 55. On August 10, 2014, while returning to the hospital following the birth of  
13 his daughter, Plaintiff Flores was arrested by the Tucson Police for a minor traffic  
14 violation. Border Patrol agents arrived at the scene and took him to the Tucson Border  
15 Patrol Station.

16 56. Plaintiff Flores was held at the Tucson Border Patrol Station for  
17 approximately 36 hours in four different holding cells. None of the cells had beds or  
18 bedding; consequently he and others had to attempt to sleep sitting up or—if the cell  
19 was not too crowded—lying on the floor. Plaintiff Flores got little to no sleep during  
20 his 36 hour detention. He was held for 24 hours with about 130 other men all crowded  
21 together "like sardines" in a cell with a posted occupancy of roughly half that number.  
22 At times, there was no room for Plaintiff Flores to lie down in this cell.

23 57. The lights were kept on all night in each of the cells in which Plaintiff  
24 Flores was held, and each cell was extremely cold. Border Patrol agents ordered  
25 Plaintiff Flores to hand over all but one layer of clothing when he arrived. With only a  
26 t-shirt, pants and shoes—and a thin aluminum sheet that did not keep him warm—  
27 Plaintiff Flores spent much of the time shivering from the cold.  
28

1           58. During Plaintiff Flores' detention in the Tucson Border Patrol Station,  
2 none of the cells had soap, towels, or showers. He was unable to wash even his hands  
3 after using the toilet or before eating, and could not shower the entire time. Because  
4 Plaintiff Flores was not given a toothbrush or toothpaste, he could not brush his teeth.

5           59. All of the cells were filthy and smelled terrible. There was garbage on  
6 the floor of all of the cells and no trash bins. The only time the cell was cleaned during  
7 his detention was by several inmates who had been offered an extra burrito in exchange  
8 for cleaning the cell. Even after that cleaning, the cell was filthy and littered with trash.  
9 In one cell, there was no toilet paper. In the last cell, in which 130 people were held,  
10 one of the three toilets did not work, and men had to wait in line to use the remaining  
11 two. The foul smell was overpowering.

12           60. For more than eight hours, Plaintiff Flores received only crackers and  
13 juice. Eventually, Border Patrol agents gave each detainee a small burrito, but the  
14 conditions in the cell were so terrible—due to the filth, the stench, the overcrowding,  
15 and the cold—that Plaintiff Flores was not able to eat. Some of the other detainees in  
16 the cell complained of stomach pain and of feeling sick, but the Border Patrol agents  
17 ignored them.

18           61. Access to water was extremely limited. In the first cell, there was no  
19 water. Later, there was a water container, but no cups, and when the water ran out,  
20 agents did not replenish it for hours at a time. Plaintiff Flores had to refashion a used  
21 juice container into a cup in order to drink water.

22           62. Plaintiff Flores was not screened for any medical conditions at any point  
23 during his detention. Several other detainees were vomiting and suffering from  
24 diarrhea but they did not receive medical attention.

25           63. At the time he was detained, Plaintiff Flores was in possession of a valid  
26 Form G-28 "Notice of Entry of Appearance as Attorney," signed by his immigration  
27 attorney. Nonetheless, he was not able to speak or meet with his attorney while  
28 detained in Border Patrol custody.

1           64. Plaintiff Flores remains very apprehensive about being detained again by  
2 Border Patrol. Although his U visa was approved, there is a backlog of available visas,  
3 so Plaintiff Flores is still waiting to obtain the visa. Unless or until he has finally  
4 obtained the visa and then applied for and received permanent residency status—which  
5 won't be for at least another three and a half years—Plaintiff Flores believes he could  
6 be detained by Border Patrol again.<sup>2</sup>

7           65. Defendant Jeh Johnson, the Secretary of DHS, is charged with enforcing  
8 and administering the immigration laws. He oversees each of the component agencies  
9 within DHS, including CBP and its subdivision the Border Patrol, and has ultimate  
10 authority over all policies, procedures, and practices relating to CBP facilities,  
11 including holding cells within Border Patrol facilities. He is responsible for ensuring  
12 that all individuals held in CBP custody are detained in accordance with the  
13 Constitution and all relevant laws. Defendant Johnson is sued in his official capacity.

14           66. Defendant R. Gil Kerlikowske is Commissioner of CBP. In that capacity,  
15 Defendant Kerlikowske has direct authority over all CBP policies, procedures, and  
16 practices relating to CBP facilities, including holding cells within Border Patrol  
17 facilities. He is responsible for ensuring that all individuals held in CBP custody are  
18 detained in accordance with the Constitution and all relevant laws. Defendant  
19 Kerlikowske is sued in his official capacity.

20           67. Defendant Michael J. Fisher is Chief of the Border Patrol. In that  
21 capacity, Defendant Fisher has direct responsibility for policies, procedures, and  
22 practices relating to Border Patrol facilities, including the holding cells in such  
23 facilities. He is responsible for ensuring that all individuals held in Border Patrol  
24 custody are detained in accordance with the Constitution and all relevant laws.  
25 Defendant Fisher is sued in his official capacity.

26  
27 <sup>2</sup> See Press Release, *ACLU Obtains Judgment Against Arizona Sheriffs & Pinal Cnty.*  
28 *Based On Officers' Use of S.B. No. 1070 "Show Me the Papers" Law*, ACLU  
(December 18, 2014), <https://www.aclu.org/news/aclu-obtains-judgment-against-arizona-sheriffs-and-pinal-county-based-officers-use-sb-1070-show>.

1           68. Defendant Jeffrey Self is Commander of the Arizona Joint Field  
2 Command of CBP. In that capacity, Defendant Self has direct responsibility for  
3 policies, procedures, and practices relating to Border Patrol facilities, including their  
4 holding cells, in the Tucson Sector. He is responsible for ensuring that all individuals  
5 held in Border Patrol custody in the Tucson Sector are detained in accordance with the  
6 Constitution and all relevant laws. Defendant Self is sued in his official capacity.

7           69. Defendant Manuel Padilla, Jr. is the Chief Patrol Agent for the Border  
8 Patrol's Tucson Sector. In that capacity, Defendant Padilla has direct responsibility for  
9 policies, procedures, and practices relating to Border Patrol facilities, including their  
10 holding cells, in the Tucson Sector. He is responsible for ensuring that all individuals  
11 held in Border Patrol custody in the Tucson Sector are detained in accordance with the  
12 Constitution and all relevant laws. Defendant Padilla is sued in his official capacity.

### 13 **FACTUAL BACKGROUND**

14           70. CBP maintains and operates detention facilities in its Tucson Sector,  
15 including facilities in Bisbee ("Brian A. Terry Station," also known as the "Naco  
16 Station"), Casa Grande ("Casa Grande Station"), Douglas ("Douglas Station"), Nogales  
17 ("Nogales Station"), Sonoita ("Sonoita Station"), Tucson ("Tucson Station"), Why  
18 ("Ajo Station"), Willcox ("Willcox Station"), and Three Points ("Three Points  
19 Substation"), among other detention facilities, all of which are located in Cochise,  
20 Pima, Pinal, and Santa Cruz Counties of Arizona.<sup>3</sup> These facilities, which include  
21 Border Patrol Sector Headquarters, Stations, Substations, Ports of Entry, and Forward  
22 Operating Bases, contain holding cells (or "hold rooms") in which individuals  
23 apprehended by CBP and Border Patrol agents are confined pending processing and  
24 transport or release.

25           71. Of the 479,371 Border Patrol apprehensions along the U.S.-Mexico  
26 border reported for Fiscal Year 2014, approximately 18 percent occurred in the Tucson

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27 <sup>3</sup> See *Tucson Sector Arizona*, United States Customs & Border Protection,  
28 <http://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/tucson-sector-arizona>.

1 Sector. Border Patrol has reported more than 200,000 Tucson Sector apprehensions  
2 during the past two years alone. Every year, Border Patrol confines tens of thousands  
3 of the men, women, and children it apprehends in its Tucson Sector holding cells.

4 72. Plaintiffs are among those detained by the Tucson Sector Border Patrol.  
5 They and those they seek to represent are all civil detainees. Plaintiffs and putative  
6 class members all have been or will be apprehended by Border Patrol agents, most  
7 often based upon alleged suspicion that they are noncitizens unlawfully present in the  
8 United States. All have been or will be confined in Tucson Sector holding cells while  
9 Border Patrol agents complete initial processing.

10 73. Individuals apprehended and detained by CBP in the Tucson Sector are  
11 subject to transfer to and detention in multiple CBP facilities prior to being transferred  
12 to another agency, repatriated, or released. In some cases, detainees are held for  
13 extended periods, including overnight, in Border Patrol vehicles or Port of Entry  
14 holding cells without sinks or easy access to toilets, while awaiting transfer to the next  
15 facility.

16 74. After processing, detained individuals are either released, repatriated,  
17 transferred to another CBP facility, or transferred to the custody of another agency—  
18 either to Immigration and Customs Enforcement (“ICE”) for civil removal proceedings,  
19 to the United States Marshals Service for possible federal criminal proceedings, or, if  
20 the detainee is an unaccompanied minor, to the Office of Refugee Resettlement  
21 (“ORR”) within the Department of Health and Human Services. This process regularly  
22 takes multiple days. Throughout these days and nights, detainees are confined to  
23 holding cells.

24 75. Defendants have promulgated extensive policies and procedures related  
25 to the operation of holding cells, from detailed design and construction requirements to  
26 detention standards governing the provision of food, water, and medical care, among  
27 other protocols. Defendants are responsible for the promulgation and implementation  
28 of those policies and procedures. Defendants also are responsible for oversight and



1 monitoring of compliance with applicable laws, policies, and procedures as well as for  
2 the training and supervision necessary to ensure compliance.

3 76. Detention policies and procedures implemented or followed in the  
4 Tucson Sector facilities must be consistent with national policies and standards. These  
5 national policies are described in numerous documents including a June 2, 2008  
6 Memorandum regarding “Hold Rooms and Short Term Custody” issued by CBP  
7 (hereafter “2008 Memorandum”) and a CBP Security Policy and Procedures  
8 Handbook, HB1400-02B (hereafter “2009 CBP Handbook”).<sup>4</sup>

9 77. CBP’s policies “implement[] security policies and standards published in  
10 a number of relevant source documents including numerous Public Laws, Presidential  
11 Directives, regulations, rules, Interagency Security Committee security design criteria,  
12 and U.S. Department of Homeland Security (DHS) Management Directives (MD)  
13 regarding integrating, managing, and governing various Security functions.” (2009  
14 CBP Handbook, Foreword by Acting Commissioner Jayson Ahern.)

15 78. While Defendants’ national policies set minimum standards for detention  
16 conditions in holding cells, they do not satisfy constitutional requirements.  
17 Defendants’ policies and procedures are a cause of irreparable bodily and  
18 psychological harm to Plaintiffs and putative class members. In practice, Defendants  
19 fail to follow even the inadequate policies they have promulgated, further increasing  
20 the harm and risk of harm to Plaintiffs and others like them.

21 79. The conditions experienced by the Plaintiffs are standard in holding cells  
22 in all short-term holding CBP facilities currently operated within the Tucson Sector and  
23 thus have been or will be experienced by all putative class members.

24 80. Defendants have subjected each of the Plaintiffs to prolonged detention  
25 for one or more nights.

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26 <sup>4</sup> Memorandum, *Hold Rooms and Short Term Custody*, U.S. Customs & Border Patrol  
27 (June 2, 2008), available at [https://www.documentcloud.org/documents/818095-bp-  
policy-on-hold-rooms-and-short-term-custody.html](https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html); *Security Policy & Procedures  
28 Handbook, HB1400-02B*, U.S. Customs & Border Patrol at p. 492 (Aug. 13, 2009),  
available at <https://publicintelligence.net/cbp-security-procedures-handbook/>.

1           81. Defendants deny all of the Plaintiffs access to a bed, mattress, or other  
2 adequate bedding.

3           82. None of the Plaintiffs has been able to sleep adequately due to the  
4 extreme cold, lack of beds, the bright lights left on at all times, and other conditions.

5           83. Defendants deny all of the Plaintiffs access to hygiene supplies including,  
6 soap, towels, sanitary napkins, diapers, toothbrushes, and toothpaste.

7           84. None of the Plaintiffs has been permitted to bathe or shower.

8           85. None of the Plaintiffs were adequately screened for medical conditions.

9           86. None of the Plaintiffs has been provided nutritionally adequate food or  
10 clean drinking water.

11           87. Over the past year, Plaintiffs' counsel conducted interviews with, and  
12 took declarations from, more than 75 individuals (hereinafter "former detainees") who,  
13 collectively, were detained in all eight of the Tucson Sector CBP facilities at various  
14 times in 2014 and 2015.

15           88. The descriptions of the holding cells by the former detainees are  
16 consistent in all material respects with the Plaintiffs' descriptions of the holding cells in  
17 which they are detained. All of these individuals describe CBP detention facilities in  
18 which men, women, and children—including asylum seekers, pregnant women, and  
19 U.S. citizens, some of them toddlers and infants—are held in conditions that are  
20 dangerous, inhumane, and punitive.

21           **A. Defendants Detain a Large Number of Individuals in Overcrowded**  
22           **Holding Cells.**

23           89. CBP defines a holding cell (also referred to as a "hold room") as an area  
24 such as a detention cell, a search room, or an interview room in which detained persons  
25 are temporarily held pending processing or transfer.<sup>5</sup> Holding cells vary in dimension  
26 but are generally rectangular, concrete, and minimally furnished. They are equipped  
27 with concrete, metal, or wooden benches affixed to the floors and walls, but have no  
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<sup>5</sup> 2008 Memorandum § 3.3.

1 beds or other furniture. Toilets and sinks are located within the cells and only partially  
2 shielded from view by short metal or concrete partitions.

3 90. According to CBP's policies, the minimum square footage for multiple  
4 occupancy rooms is thirty-seven square feet for the first occupant and seven square feet  
5 of unencumbered space for each additional occupant. "(Unencumbered is usable space  
6 that is not encumbered by fixtures or furnishings)." (2009 CBP Handbook at pp.492-  
7 93.) On information and belief, signs displaying maximum hold room capacity are  
8 posted in many, if not all, holding cells.

9 91. Notwithstanding Defendants' policies specifying the size and maximum  
10 occupancy of holding cells, Defendants regularly permit the number of detainees in  
11 holding cells to exceed the specified capacity, resulting in severe overcrowding and  
12 often making it impossible for all detainees in the holding cell to sit or lie down. As  
13 one former detainee explained, "We were like cigarettes stuffed" in the cell. Another  
14 detainee explained that it was so crowded that, if a detainee used the restroom, he  
15 would lose his spot on the floor and have to stand. Some detainees are left with no  
16 other option but to lie on the floor next to the toilets.

17 92. Defendants detain unreasonably large numbers of individuals in these  
18 holding cells, in violation of Defendants' own guidelines and despite available  
19 alternatives.

20 93. The overcrowded conditions exacerbate the serious harms and risks of  
21 harm from the constitutionally inadequate conditions and punitive practices described  
22 in detail below.

23 **B. Plaintiffs and Putative Class Members are Kept Overnight in**  
24 **Holding Cells That Are Not Equipped for Overnight Sleeping.**

25 94. Although CBP policy indicates that adult detainees should be held for no  
26 more than twelve hours and be moved "promptly,"<sup>6</sup> most detainees are held for much  
27 longer.

28 <sup>6</sup> See, e.g., 2008 Memorandum § 6.2.1; *id.* § 6.2.2 (encouraging agents to "make every effort to promptly move the detainee(s)"); *id.* §§ 6.2.1, 6.2.2 (advising that detainees

1           95.     CBP data provided in response to a Freedom of Information Act  
2 (“FOIA”) request indicates that from January 1, 2013 to June 30, 2013, 72,198  
3 individuals were detained in its Tucson Sector facilities. Of these, 58,083 individuals,  
4 or 80.4 percent of the total number, were in Border Patrol custody for 24 hours or  
5 longer. Over 24,832, or 34.4 percent, were held for 48 hours or more, and 7,839, or  
6 10.9 percent, were held for 72 hours or more.

7           96.     CBP policies and practices, including the agency’s “Consequence  
8 Delivery System” (“CDS”),<sup>7</sup> guarantee that large numbers of detainees will be forced  
9 to spend multiple nights in inhumane and degrading conditions. For example,  
10 consistent with the agency’s CDS policy, Border Patrol screens Tucson Sector  
11 detainees for referral to “Operation Streamline” proceedings,<sup>8</sup> in which dozens of  
12 individuals enter guilty pleas on federal unauthorized entry charges in a single hearing.  
13 In Tucson, these proceedings are held every weekday afternoon. Thus, any individual  
14 who is apprehended on a Friday and referred for Operation Streamline proceedings will  
15 spend a minimum of three nights in Border Patrol custody, while individuals detained  
16 during a weekend will spend at least one and often two nights in custody, prior to  
17 referral for a Monday hearing. In Tucson, thousands of individuals are referred for  
18 these proceedings annually.

19  
20 \_\_\_\_\_  
21 “*should not* be held for more than 12 hours,” and that “every effort will be made to  
22 promptly process, transfer, transport, remove, or release those in custody as appropriate  
23 and as operationally feasible”) (emphasis added).

24 <sup>7</sup> Border Patrol’s “Consequence Delivery System” (“CDS”) applies “targeted  
25 enforcement techniques,” including but not limited to criminal prosecution, to  
26 unauthorized border crossers. According to the Border Patrol, the CDS is designed to  
27 “apply the appropriate post-arrest consequences . . . to break the smuggling cycle and end  
28 the subject’s desire to attempt further illegal entry.” *See 2012-2016 Border Patrol  
Strategic Plan*, U.S. Customs & Border Patrol, at p. 17, available at  
[http://www.cbp.gov/sites/default/files/documents/bp\\_strategic\\_plan.pdf](http://www.cbp.gov/sites/default/files/documents/bp_strategic_plan.pdf).

<sup>8</sup> Operation Streamline “is a partnership program among CBP, U.S. Attorneys, and  
District Court judges in certain border districts to expedite criminal justice processing.  
The program permits groups of criminal defendants to have their cases heard at the  
same time . . . and arranges in most cases for aliens facing felony charges for illegal re-  
entry to plead guilty to misdemeanor illegal entry charges.” *Border Security between  
Ports of Entry*, Congressional Research Service at p. 8 (Dec. 18, 2014), available at  
<https://www.fas.org/sgp/crs/homesecc/R42138.pdf>.

1           97. All of the Plaintiffs were detained overnight. The named Plaintiffs’  
2 experiences in the holding cells are consistent with those of former detainees, all of  
3 whom were held overnight and some of whom also were held for extended periods in  
4 holding cells at Ports of Entry (“POE”) or in vans or buses awaiting transfers.

5           **C. Plaintiffs and Other Detainees Are Subjected to Conditions that**  
6           **Deprive Them of Sleep.**

7           98. Defendants’ policy is to deny detainees access to beds. Despite the fact  
8 that most detainees are held overnight and often for multiple days and nights, Tucson  
9 Sector holding cells are not equipped with beds.

10          99. The 2009 CBP Handbook lists among the “requirements” of a hold room:  
11 “No beds; a hold room is not designed for sleeping.”

12          100. Because there are no beds, Plaintiffs and others detained by Border Patrol  
13 overnight or for multiple nights must attempt to sleep on the limited number of metal,  
14 wood or concrete benches, or if none are available, to sleep sitting or lying on the  
15 filthy, frigid, concrete floor.

16          101. Additionally, Defendants have a practice of denying detainees, including  
17 Plaintiffs, access to mattresses, pillows, and other bedding in violation of Defendants’  
18 own policies. CBP’s policies state: “Detainees requiring bedding will be given clean  
19 bedding. Only one detainee will use this bedding between cleanings. This bedding  
20 will be changed every three days and cleaned before it is issued to another detainee.  
21 Vinyl or rubber-coated mattresses will be disinfected before being reissued.”<sup>9</sup>

22          102. Defendants generally provide detainees with a single, thin aluminum  
23 sheet to serve as a blanket, and nothing else.

24          103. None of the Plaintiffs or former detainees had access to a bed while  
25 confined in any of the CBP facilities in which they were held, and the vast majority of  
26 former detainees—including women detained with children—were forced to spend the  
27 night on a cold cement floor or a hard bench with no mattress and no bedding. One  
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<sup>9</sup> 2008 Memorandum § 6.11.

1 mother recounted staying awake all night to ensure that her five-year old daughter—  
2 who was sleeping on a concrete bench—would not roll over and onto the floor.

3 104. Defendants consistently maintain holding cells at extremely cold  
4 temperatures, causing detainees pain and discomfort and significantly impeding their  
5 ability to sleep. A former detainee compared his attempt to sleep on the cold concrete  
6 floor to “trying to sleep on ice.” The single, thin aluminum sheets Defendants provide  
7 to detained individuals are insufficient to serve as bedding. Most former detainees said  
8 that the aluminum sheet provided was insufficient to provide protection from the  
9 extreme cold, which made sleep difficult or impossible. Nearly all former detainees  
10 who requested additional aluminum sheets were refused, even when their originally-  
11 issued sheets were damaged.

12 105. In addition, as outlined above, Defendants regularly permit the number of  
13 detainees in holding cells to exceed the specified capacity, resulting in severe  
14 overcrowding and often making it impossible for detainees in the holding cell to sit or  
15 lie down. Former detainees describe holding cells as so overcrowded that there is no  
16 available space or room to move, forcing some detainees to lie on the floor surrounding  
17 the toilets; others are forced to stand through the night. One detainee recalled not being  
18 able to sleep for two nights because there was no place to sit or lie down: “My back  
19 became sore from standing. There were people all around me, including at my feet.”  
20 Another detainee gave his space on the floor to an injured man and as a result, he “had  
21 to try and sleep standing.”

22 106. Defendants leave hold room lights on at all times, including overnight,  
23 further impairing Plaintiffs’ and other detainees’ ability to sleep.

24 107. Because detainees are denied beds and instead are forced to attempt to  
25 sleep on cold, hard surfaces, and are subjected to extremely cold temperatures without  
26 sufficient clothing or blankets, in holding cells that are noisy and overcrowded, and  
27 because the lights are often left on twenty-four hours a day, it is difficult or impossible  
28 for detainees to sleep. For those detainees who are able to sleep, it is often only fitfully

1 and for short periods. The deprivation of sleep both creates a risk of and actually  
2 causes physical and psychological harm to Plaintiffs and putative class members.

3 **D. Plaintiffs and Putative Class Members are Subjected to Painful and**  
4 **Punitively Cold Temperatures.**

5 108. Defendants maintain extremely cold temperatures in CBP holding cells,  
6 yet per Defendants' policy, Border Patrol agents only allow Plaintiffs and other  
7 detainees to wear one layer of clothing and provide them with only a thin aluminum  
8 sheet that is insufficient to provide adequate warmth.

9 109. Border Patrol strips detainees who arrive at CBP facilities—including  
10 young children—of any jackets, sweaters, or additional layers of clothing before they  
11 enter the holding cells. Border Patrol agents regularly refuse detainees' requests for  
12 additional layers of clothing or blankets, despite the extreme cold.

13 110. The sudden exposure to extremely cold temperatures is particularly  
14 harmful—physically and psychologically—to individuals who are already suffering  
15 from impairments, such as heat stroke and dehydration.

16 111. The intentionally low temperatures in the holding cells—or “ice boxes”  
17 as they are uniformly called by detainees—are brutal for those confined to these spaces.  
18 As one detainee vividly recounted: “I now understand why dogs sleep in a little ball, to  
19 keep warm, but I couldn't even keep warm by doing that.” Parents describe their  
20 young children crying through the night because of the frigid temperature. One former  
21 detainee described being detained after presenting herself and her four children at the  
22 Nogales Port of Entry: “We were so cold that my bones hurt and we were all  
23 shivering...My children were crying because of the cold and my ten year old and eight  
24 year old, who are both U.S. citizens, started to get sick because of the cold and  
25 developed a cough.” Another former detainee expressed that he contemplated  
26 accepting deportation solely to escape the extreme cold.

27 112. Detainees' requests that Border Patrol agents turn up the temperature  
28 often are ignored, mocked, or result in threats of retaliation by the agents. In some

1 instances, agents threaten to turn down the temperature even further if detainees  
 2 complain or request that the temperature be turned up.<sup>10</sup> Similarly, agents have used  
 3 the temperature in the holding cells as a means of controlling behavior. For example,  
 4 agents have threatened to turn down the temperature if detainees did not stop talking  
 5 among themselves, were too “loud,” or asked for more food. Some former detainees  
 6 described feeling the cell become colder following threats such as these.

7 113. Defendants’ practice of maintaining punitive and painfully cold  
 8 temperatures in Tucson Sector holding cells both creates a risk of and actually causes  
 9 physical and psychological harm to Plaintiffs and putative class members.

10 **E. Plaintiffs and Other Detainees Are Held in Filthy Cells and Not**  
 11 **Given Regular Access to Basic Hygiene Products.**

12 114. CBP policy requires that all detainees “will be held in facilities that are  
 13 safe, secure and clean. Detainees will be provided food, water, properly equipped  
 14 restrooms and hygiene supplies.”<sup>11</sup>

15 115. Despite this policy, Defendants have a practice of denying those detained  
 16 in Tucson Sector facilities access to basic hygiene necessities such as soap, towels,  
 17 toothpaste, toothbrushes, and showers. None of the Plaintiffs or former detainees had  
 18 access to soap, towels, toothpaste, or toothbrushes in any of the CBP facilities in which  
 19 they were held; similarly, none were able to bathe while detained.

20 116. Defendants’ written policy specifically states that detainees shall be  
 21 provided with soap after using the restroom.<sup>12</sup> Yet, the Tucson Sector-wide practice is  
 22 *not* to provide soap to detainees in holding cells. Consequently, detainees are unable to

23 \_\_\_\_\_  
 24 <sup>10</sup> The intentional manipulation of temperatures by Border Patrol officials as a form of  
 25 abuse was documented by the humanitarian aid organization No More Deaths  
 26 (“NMD”) in 2011. *Culture of Cruelty: Abuse & Impunity In Short-Term U.S. Border*  
 27 *Patrol Custody*, No More Deaths (2011), available at  
 28 <http://forms.nomoredeaths.org/abuse-documentation/a-culture-of-cruelty/appendix-official-documents/> (noting reports of agents “turning on the air conditioning or placing fans outside the cells after receiving complaints about cold cells”) (hereafter “*Culture of Cruelty*”).

<sup>11</sup> 2008 Memorandum § 5.1.

<sup>12</sup> 2008 Memorandum § 6.10.



1 wash their hands with soap even after using the toilet and before and after eating. One  
2 former detainee recounted that, not only was there no soap, but the sole sink in the  
3 holding cell did not work. Another explained that because there was no way for the  
4 many people who had spent days walking in the desert to bathe, the “conditions  
5 became disgusting with so many people packed into a cell in this way.”

6 117. Defendants have a practice of denying individuals detained in Tucson  
7 Sector facilities, including Plaintiffs, access to showers and other bathing facilities.  
8 Even Defendants’ own policy provides that detainees held more than seventy-two  
9 hours should be provided with showers.<sup>13</sup> In practice, however, Defendants generally  
10 fail to provide *any* individuals held in Tucson Sector facilities with an opportunity to  
11 bathe. Detainees, many of whom have been apprehended after days in the desert and/or  
12 with serious health conditions, are unable to change clothes or to properly wash  
13 themselves for days on end. Former detainees have described the odors resulting from  
14 the lack of hygiene as unbearable; in the words of one man, the smell was “awful, just  
15 very ugly.”

16 118. Female detainees who are menstruating often are not provided with a  
17 sufficient supply of sanitary napkins or a hygienic means for their disposal. Women  
18 needing additional napkins have been denied access to more.

19 119. Adults with infants and toddlers are often not given an adequate supply of  
20 diapers. For example, one woman reported waiting nineteen hours for fresh diapers for  
21 her child. Another did not receive clean diapers for over twenty-eight hours while in  
22 detention, and was forced to remove her two-year-old daughter’s soiled diaper—with  
23 nowhere to dispose of it—and had to “just be very attentive to whether or not [her  
24 daughter] wanted to go to the bathroom.”

25 120. Detainees, including Plaintiffs, are not provided toothpaste or  
26 toothbrushes. As a result, detainees cannot brush their teeth during the entire time they  
27 are in CBP custody.

28 \_\_\_\_\_  
<sup>13</sup> 2008 Memorandum § 6.14.

1           121. Detainees are often not provided an adequate supply of toilet paper.  
2 Former detainees report that, upon running out of toilet paper, Border Patrol agents  
3 have delayed in bringing more—in one case, for as long as eight hours.

4           122. The harms caused by the absence of basic hygiene products are  
5 exacerbated by the overcrowded and unsanitary conditions in the holding cells.

6           123. CBP policy requires that “[s]upervisors will ensure that detention cells  
7 are regularly cleaned and sanitized.”<sup>14</sup> This policy notwithstanding, Defendants have a  
8 practice of failing to clean or sanitize holding cells regularly. Defendants also fail to  
9 make cleaning and sanitation supplies available. Holding cells are often dirty and  
10 littered with garbage and discarded food wrappers; piles of trash accumulate because  
11 there are no waste bins, and cells are subject to only cursory and infrequent cleaning.  
12 One woman recalled that there were “diapers, toilet paper and other trash strewn  
13 around the bathroom area” when she arrived, and explained that she and others could  
14 not clean the cell because there were no trash receptacles.

15           124. CBP policy requires one working toilet for every fifteen detainees.<sup>15</sup> In  
16 practice, Defendants regularly pack large numbers of individuals into holding cells  
17 such that the ratio of detainees to toilets far exceeds CBP’s own guidelines. One  
18 woman described being in a cell with approximately fifty women and children, and  
19 only one toilet. As a result, there can be long queues for the limited toilet facilities  
20 available. Defendants also fail to clean and maintain holding cell toilets adequately.  
21 Holding cell toilets frequently do not work, leaving even fewer available toilets for  
22 detainees to use. These unsanitary toilets are close to where the detainees eat and try to  
23 sleep.

24           125. While held in Border Patrol custody, detainees are not permitted to leave  
25 the holding cells for the duration of their detention other than for official questioning,  
26 further exacerbating the impact of the holding cells’ filthy conditions on detainees.

27  
28 <sup>14</sup> 2008 Memorandum § 6.16.

<sup>15</sup> 2009 CBP Handbook at p. 493.

1 There are no areas for exposure to natural light and air, recreation, or other outside  
2 visits.

3 126. As a result of Defendants' failure to clean or sanitize the filthy,  
4 unsanitary, and overcrowded facilities, and to provide detainees with hygiene supplies  
5 and access to showers in which to bathe, Plaintiffs and putative class members are at  
6 risk of—and actually have suffered—psychological and physical harm, such as  
7 infections and other communicable illnesses.

8 **F. Plaintiffs and Other Detainees Are Denied Adequate Medical**  
9 **Screening and Access to Necessary Medical Care.**

10 127. Although Defendants' policies state that detainees should be given access  
11 to qualified medical personnel,<sup>16</sup> Defendants do not mandate or provide a medical  
12 screening of all detainees for health problems—including for communicable diseases or  
13 mental illness—prior to confining them.

14 128. Many detainees have pre-existing medical conditions and/or recently  
15 acquired medical conditions resulting from walking in harsh desert environments,  
16 including dehydration, heat stroke, diarrhea, bleeding and blistered feet, and other  
17 health conditions requiring immediate medical care. Defendants nonetheless do not  
18 adequately screen for or provide treatment for dangerous, communicable, and  
19 potentially life-threatening conditions.

20 129. Defendants do not mandate medically appropriate administration of  
21 medicines to detainees in the holding cells, including prescription medicine. All  
22 medications are taken from detainees prior to their being confined. Border Patrol  
23 agents fail to provide access to medically qualified personnel consistently so that  
24 detainees can obtain alternative medication prescribed in the United States. One  
25 former detainee arrived with a preexisting heart condition and asked for access to  
26 prescribed medicine to deal with his condition. Defendants refused his request.

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<sup>16</sup> 2008 Memorandum § 6.7.

1           130. Another detainee asked agents to help her seven-year-old U.S. citizen  
2 daughter, who reported pain from what she believed was an ear infection. An agent  
3 told her, “There is no medicine here.” A detainee with a fever reported her symptoms  
4 to an agent. The agent responded, “I am not a doctor,” and added that even if he had  
5 medicine he would not give it to her.

6           131. Another detainee, an eight-months-pregnant woman with a broken ankle,  
7 received prescription pain medication from a local medical provider. Upon return to  
8 the detention facility, however, agents confiscated the woman’s medication and did not  
9 administer it as prescribed, despite her pained cries for help. Agents told her not to cry  
10 because she “was just going to be deported.”

11           132. Defendants do not mandate or provide appropriate responses to detainees’  
12 ongoing or emergent medical issues. Several former detainees have described that they  
13 asked to see a doctor and were refused. One detainee, a pregnant woman, notified  
14 agents that she was pregnant; agents responded by mocking her, poking her abdomen,  
15 and denying she was pregnant. Even when the woman was finally referred to a  
16 provider, she did not receive a medical examination.

17           133. Another woman, a victim of sexual assault, reported heavy vaginal  
18 bleeding but did not receive any medical attention until after she was transferred to ICE  
19 custody five days later. The same woman observed another detainee with swollen feet  
20 and in great pain, and another who was feverish and shaking, neither of whom received  
21 medical attention while she was detained with them. Another described a six-year-old  
22 child vomiting through the night without receiving any medical attention.

23           134. The inadequacy of necessary and emergency medical care for detainees  
24 confined in CBP holding cells has been documented repeatedly. In 2011, the Tucson-  
25 based humanitarian organization No More Deaths (“NMD”) reported that, following  
26 interviews with over 12,000 individuals released from Border Patrol custody, the  
27 majority of those who needed emergency medical care or medications were denied  
28

1 treatment.<sup>17</sup> A 2009 report on the treatment of unaccompanied children in CBP  
 2 custody from the Women’s Refugee Commission discussed the inadequacy of  
 3 emergency medical treatment, including the case of a detained five-month old baby  
 4 who, when finally taken by CBP to the hospital, was diagnosed with hypothermia and  
 5 pneumonia.<sup>18</sup> In 2014, the ACLU submitted complaints to DHS on behalf of children  
 6 in CBP detention whose medical care was ignored or overlooked, including several  
 7 who required hospitalization.<sup>19</sup>

8 135. Defendants’ failure to ensure appropriate screening for, response to, and  
 9 treatment of detainees’ medical and mental health conditions has both harmed Plaintiffs

10 \_\_\_\_\_  
 11 <sup>17</sup> *Culture of Cruelty* at pp. 20-21.

12 <sup>18</sup> *Halfway Home: Unaccompanied Children in Immigration Custody*, Women’s  
 13 Refugee Commission & Orrick Herrington & Sutcliffe LLP at p. 11 (Feb. 2009),  
 14 available at <https://womensrefugeecommission.org/resources/download/196> (“Carmen  
 15 was apprehended by Border Patrol crossing the river with her five-month-old daughter  
 16 Lily. She was placed into a cell with no dry clothes or blankets for her or the baby.  
 17 Carmen requested something to keep the baby warm since it was so cold in the cell and  
 18 all she had was wet clothing. The agents refused. By morning Lily was turning blue.  
 19 Carmen begged the agents for help. Finally they looked at baby Lily and took her to  
 20 the emergency room. Carmen was placed in shackles. Doctors at the emergency room  
 21 said that Lily was suffering from hypothermia and that she had contracted pneumonia.  
 22 They gave her antibiotics and kept her in the hospital for twenty-four hours. During  
 23 that time Carmen was shackled and nurses were not allowed to give her any food.”)  
 24 (hereafter “*Halfway Home*”).

25 <sup>19</sup> See *Letter Re: Systemic Abuse of Unaccompanied Immigrant Children by U.S.*  
 26 *Customs & Border Protection*, ACLU, at pp.12-13 (June 16, 2014), available at  
 27 [http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP](http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf)  
 28 [P%20Abuse%20of%20UICs.pdf](http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf) (“CBP apprehended H.R. and his paternal aunt near  
 Rio Grande City, Texas. At the time of his apprehension, H.R. was seven years old and  
 was severely developmentally disabled and suffering from severe malnourishment.  
 CBP detained H.R. for approximately five days without any medical treatment. After  
 being transferred to ORR custody, H.R. was hospitalized immediately, underwent  
 surgery, and remained hospitalized for 42 days. His treating physicians and therapists  
 diagnosed H.R. as suffering from a ‘global developmental delay,’ ‘autism disorder,’  
 and ‘severe malnutrition.’ His examination revealed that at seven years of age he  
 weighed only twenty-five pounds, the average weight of an 11-month old child.”)  
 (hereafter “*ACLU Report*”); see also Jessica Bakeman, *New York quietly expands role*  
*in caring for immigrant children*, Capital New York (Oct. 20, 2014), available at  
[http://www.capitalnewyork.com/article/albany/2014/10/8554559/new-york-quietly-](http://www.capitalnewyork.com/article/albany/2014/10/8554559/new-york-quietly-expands-role-caring-immigrant-children)  
[expands-role-caring-immigrant-children](http://www.capitalnewyork.com/article/albany/2014/10/8554559/new-york-quietly-expands-role-caring-immigrant-children) (“When the children arrive at New York-area  
 airports from the federal facilities, they often require extensive medical care for broken  
 bones that healed improperly or illnesses such as appendicitis and pneumonia,  
 nonprofit officials said . . . ‘Some of them have not eaten for long periods of time,’ said  
 Henry Ackermann, chief development officer at [ORR subcontracted] Abbott  
 House . . . ‘They come to us malnourished. They come to us sometimes with unset  
 broken arms or legs, with bronchial or respiratory issues.’”).

1 and putative class members and created a direct and serious risk of harm to the physical  
2 and mental health of detainees. This risk of harm is compounded by Defendants’  
3 policies and practices that result in unsanitary and hazardous conditions in holding  
4 cells, including but not limited to, overcrowding, absence of beds and bedding,  
5 insufficient food and clean drinkable water, and the lack of soap for hand-washing.

6 **G. Plaintiffs and Putative Class Members are Deprived of Adequate**  
7 **Food and Water.**

8 136. Defendants do not provide sufficient or adequate food to detainees,  
9 notwithstanding Defendants’ policy requiring that detainees “will be provided snacks  
10 and juice every four hours” and “a meal” if their detention is anticipated to exceed 8  
11 hours.<sup>20</sup>

12 137. In practice, Defendants do not provide detainees with “meals” at all;  
13 rather, Defendants generally provide detainees peanut butter crackers or cookies and  
14 juice, or small—often cold—bean burritos, and nothing else. This food is provided  
15 erratically, and some detainees receive no food at all. As a result, Tucson Sector  
16 detainees, many of whom are apprehended after days in the desert without sufficient  
17 food, frequently experience intense hunger for the duration of their detention.

18 138. Detainees who are transferred between CBP facilities may not receive  
19 food in transit and may wait twenty-four hours or more before receiving any food. One  
20 former detainee described not being given food for days while another only received a  
21 packet of crackers and an orange once a day for three days. Several women were so  
22 desperate to feed their children that they resorted to giving them broken crackers they  
23 found on the floor.

24 139. Defendants regularly provide food portions that are not adequate to  
25 satisfy detainees’ hunger. The food is often of such poor quality that detainees are  
26 unable to eat it, or report feelings of nausea and stomach pain after trying to eat it.  
27 Former detainees report receiving snacks with packaging dates indicating they have  
28

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<sup>20</sup> 2008 Memorandum § 6.8.

1 expired, and describe the food as “disgusting,” “awful,” “cold,” looking “like it was  
2 bad,” smelling “bad,” tasting “old,” and barely edible. Many detainees cannot  
3 “stomach” the food given its condition and the dirty and foul-smelling condition of the  
4 cells.

5 140. Those who are particularly vulnerable suffer even more—pregnant  
6 women report suffering from severe hunger as a result of the minimal food made  
7 available to them. One woman five months pregnant at the time of her detention, was  
8 “very hungry” but found the crackers and juice she was given to be inedible. When she  
9 examined the packaging, she noticed they were marked as having expired several  
10 months prior.

11 141. Defendants’ policy further provides, “Regardless of time in custody,  
12 juveniles will be provided with meal service, and at least every six hours thereafter, two  
13 of the three meals must be hot.” In practice, Defendants do not provide regular hot  
14 meals, or any meals, to juveniles or young children; rather, children and adolescents  
15 receive the same cold snacks as other detainees on the same irregular and unreliable  
16 schedule. Several former detainees describe children in holding cells crying from  
17 hunger.

18 142. Many detainees have traveled through the desert for days prior to being  
19 apprehended and are moderately or severely dehydrated upon arrival at the Tucson  
20 Sector facilities. Others suffer from gastrointestinal disorders and diarrhea as a result  
21 of drinking contaminated water in the desert. Defendants nonetheless deny detainees  
22 access to adequate amounts of clean drinking water, notwithstanding Defendants’  
23 policy requiring that potable drinking water be available.<sup>21</sup>

24 143. Detainees report not being given access to clean water for hours at a time.  
25 Multiple former detainees did not receive water for an entire day. Sometimes the only  
26 available water source comes from faucets mounted atop the holding cell toilets,  
27 faucets that are not regularly or thoroughly cleaned. Moreover, multiple detainees—  
28

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<sup>21</sup> 2008 Memorandum § 6.9.

1 none of whom have been able to wash their hands with soap after using the toilet—  
2 regularly handle the faucets to obtain drinking water, increasing the risk of  
3 contamination.

4 144. Defendants do not provide sufficient drinking cups, forcing detainees to  
5 share cups or to re-use discarded juice containers provided periodically in order to  
6 drink water.

7 145. The absence of adequate food, nutrition, and potable water both creates a  
8 risk of and actually causes physical and psychological harm to Plaintiffs and putative  
9 class members.

10 **H. Plaintiffs and Putative Class Members are Unable to Communicate**  
11 **with Family or Attorneys.**

12 146. The psychological harms and high anxiety levels resulting from the  
13 punitive conditions under which Plaintiffs and other individuals are held in the Tucson  
14 Sector, described above, are exacerbated by Defendants' practice of holding detainees  
15 incommunicado and denying them access to the outside world while confined. The  
16 deliberately punitive, harsh conditions and severe restrictions on outside  
17 communication also serve to facilitate the coercive practices for which the agency is  
18 notorious.<sup>22</sup>

19  
20 <sup>22</sup> For example, CBP and Border Patrol's widespread practice of coercing detained  
21 individuals into signing removal papers in southern California was the subject of the  
22 class action lawsuit *Lopez-Venegas v. Napolitano*, No. 13-3972 (S.D. Cal. settlement  
23 agreement filed Aug. 18, 2014). In a recent settlement in that case, the agencies agreed  
24 to "supplement their existing procedures" in southern California with additional due  
25 process protections. Richard Marosi, *Feds to Allow Some Immigrant Deportees to*  
26 *Return Under New Settlement*, L.A. Times (Aug. 27, 2014), available at [http://](http://www.latimes.com/local/la-me-deport-return-aclu-20140828-story.html)  
27 [www.latimes.com/local/la-me-deport-return-aclu-20140828-story.html](http://www.latimes.com/local/la-me-deport-return-aclu-20140828-story.html). In addition,  
28 detainees regularly sign paperwork relating to criminal prosecution without access to  
counsel, as well as "Hold Harmless and Release Agreements," wherein, to have any  
chance of recovering their confiscated property, detainees must release and forever  
discharge the government from liability for losing that property. See Ted Robbins,  
*Some Deportees Return to Mexico, But Their Stuff Stays In the U.S.*, NPR (Dec. 10,  
2014), available at [http://www.npr.org/2014/12/10/369893574/some-deportees-return-](http://www.npr.org/2014/12/10/369893574/some-deportees-return-to-mexico-but-their-stuff-stays-in-the-u-s)  
[to-mexico-but-their-stuff-stays-in-the-u-s](http://www.npr.org/2014/12/10/369893574/some-deportees-return-to-mexico-but-their-stuff-stays-in-the-u-s); Daniel E. Martínez, et al., *Bordering on*  
*Criminal: The Routine Abuse of Migrants in the Removal System, Part II: Possessions*  
*Taken and not Returned*, Immigration Policy Center (Dec. 2013), available at  
[http://www.immigrationpolicy.org/sites/default/files/docs/ipc/Border%20-%20Possessi](http://www.immigrationpolicy.org/sites/default/files/docs/ipc/Border%20-%20Possessions%20FINAL.pdf)  
[ons%20FINAL.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/ipc/Border%20-%20Possessions%20FINAL.pdf) ("The combination of a lack of oversight and the frequency of lost



1 147. Tucson Sector detainees are generally not provided an opportunity to  
 2 make any phone calls. Border Patrol agents routinely deny requests to use the phone,  
 3 often telling detainees they can only make a call after transfer to a subsequent facility.

4 148. Defendants' widespread practice, which is uniform within the Tucson  
 5 Sector, contravenes their own policy stating that detainees held for more than twenty-  
 6 four hours "will be given access to a telephone" for the purpose of contacting an  
 7 attorney or other party and that those held longer than twenty-four hours will be given  
 8 access to a phone at least once per day while in custody.<sup>23</sup>

9 149. Defendants also deny attorneys the opportunity to speak or meet with  
 10 clients detained in Tucson Sector facilities. Attorneys who attempt to contact clients in  
 11 Tucson Sector facilities have been informed by Border Patrol agents that they must  
 12 wait for the detained individual to be transferred to the custody of another agency.

13 150. While denying detained individuals access to attorneys, Tucson Sector  
 14 Border Patrol agents regularly coerce detainees into signing immigration-related  
 15 documents without first providing them with the opportunity to consult an attorney or  
 16 even to read the document in a language they speak. In so doing, these agents  
 17 frequently fail to adequately screen detainees to determine if they fear persecution in  
 18 their home country or otherwise intend to apply for asylum.<sup>24</sup> Agents demand

19 \_\_\_\_\_  
 20 belongings creates the appearance of corruption, if not conditions that are rife for  
 exploitation.")

21 <sup>23</sup> 2008 Memorandum § 6.21.

22 <sup>24</sup> CBP agents have a mandatory duty to screen arriving individuals subject to  
 expedited removal from the United States (a classification which includes the vast  
 23 majority of detainees) for a fear of persecution in their home country or an intention to  
 apply for asylum. *See* C.M. Miller, *CBP Inspector's Field Manual*, U.S. Customs &  
 Border Patrol, at p. 114 (Feb. 10, 2006), *available at* [https://shusterman.com/pdf/  
 24 cbpinspectorsfieldmanual.pdf](https://shusterman.com/pdf/cbpinspectorsfieldmanual.pdf); *see also* 8 C.F.R. § 235.3(b)(4); 8 U.S.C. §  
 1225(b)(1)(A)(ii) (authorizing statute). There is a long, well-documented history of  
 25 CBP failing to comply with this legally mandated process. *American Exile: Rapid  
 Deportations That Bypass the Courtroom*, ACLU at p. 38 (Dec. 2014), *available at*  
 26 <https://www.aclu.org/files/assets/120214-expeditedremoval-0.pdf> ("Lucila O. fled  
 27 domestic violence in Nicaragua and was arrested by Border Patrol agents in Texas: 'I  
 told them I was afraid. . . . [The agent] just told me, "You are getting deported. . . .  
 Even if you are afraid you are going to get deported.'" Ericka E. F., a 33-year-old  
 28 woman from Honduras, fled gang violence and sexual and physical violence from her  
 partner and was arrested in Texas: 'I crossed in Laredo and I told them I needed  
 asylum. I needed to stay here to protect myself. . . . I told him I was fleeing for

1 signatures on documents that are neither read to nor understood by the detainees, many  
2 of whom forfeit any opportunity to seek relief from removal from the United States as a  
3 result.

4 151. Among other forms of coercion, Border Patrol officials threaten detained  
5 individuals with continued or indefinite detention if they refuse to sign, or pull  
6 detainees from cells in the middle of the night to sign paperwork. One woman  
7 describes being interrogated and signing documents four separate times in the course of  
8 a single night. Another former detainee stated that a Border Patrol agent threatened to  
9 sign the form himself if the detainee did not sign. Another described being pressured to  
10 sign a removal order despite conveying her fear of return to her home country. Agents  
11 rejected her fear of return and told her that she was only in the United States to work  
12 and would not be able to see a judge.

13 152. Compounding the lack of access to any means of communication with  
14 attorneys or the outside world, detainees have no meaningful mechanism for lodging  
15 complaints regarding holding cell conditions and the mistreatment they experience  
16 while detained. Moreover, DHS and CBP complaint and accountability mechanisms

17  
18  
19 protection because of the violence. They said women always come here with lies. I told  
20 them it was true. [The officer] just laughed and laughed.”); *Letter Re: Inadequate U.S.*  
21 *Customs & Border Protection (CBP) screening practices block individuals fleeing*  
22 *persecution from access to the asylum process*, Nat’l Immigrant Justice Center at pp. 3-  
23 4 (Nov. 13, 2014), available at <http://immigrantjustice.org/sites/immigrantjustice.org/files/images/Right%20to%20Asylum%20-%20CRCL%20Complaint%20Cover%20Letter%20-%2011.13.14%20FINAL%20PUBLIC.pdf> (“[A] significant number of the  
24 individuals who are deported under expedited removal orders despite having valid  
25 claims to asylum are women or young adults with domestic violence claims or  
26 individuals with sexual-orientation based claims. CBP’s failure to properly screen  
27 these individuals can be fatal, sending individuals back into environments where they  
28 are targeted for extreme violence.”); *You Don’t Have Rights Here: U.S. Border*  
*Screening & Returns of Central Americans to Risk of Serious Harm*, Human Rights  
Watch (Oct. 2014), available at <http://www.hrw.org/sites/default/files/reports/us1014-web-0.pdf> (Virtually all of those we interviewed who had been apprehended at or near  
the border were deported summarily, via expedited removal or reinstatement of  
removal. Many said they had expressed their fears to US Border Patrol officials  
charged with screening for fear of return before being deported, but fewer than half of  
these were referred by US Border Patrol for a further assessment of whether they had a  
‘credible’ or ‘reasonable’ fear of returning to Honduras.”).

1 are highly ineffective; the majority of complaints lodged against CBP are not  
2 investigated or acted upon, and officials are rarely disciplined for abuse.<sup>25</sup>

3 153. Defendants' practice of holding individuals in harsh conditions while  
4 severely restricting access to outside counsel compounds detainees' psychological  
5 trauma, and makes individuals more susceptible to coercive tactics, such as forcing  
6 them to sign legal documents they do not understand, including removal papers.

7 **I. Defendants Are Aware of the Unhealthy and Punitive Conditions in**  
8 **Tucson Sector Holding Cells and Have Failed to Take Remedial**  
9 **Action.**

10 154. Defendants repeatedly have been put on notice of the inhumane and  
11 unhealthy conditions in CBP detention facilities and thus are aware or should be aware  
12 of these conditions. Despite this, Defendants have failed to take remedial action.  
13 Numerous civil rights complaints to DHS, as well as human rights reports, media  
14 accounts,<sup>26</sup> lawsuits, and proposed legislation have documented the unlawful,

15 <sup>25</sup> See, e.g., Garrett M. Graff, *The Green Monster: How the Border Patrol Became*  
16 *America's Most Out-of-Control Law Enforcement Agency*, Politico (Nov./Dec. 2014),  
17 available at <http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html#.VW4iv2ktGUL> (DHS oversight agencies have been criticized  
18 for failing to investigate civil rights complaints, which they classify as lower priority,  
19 "non-mission-compromising corruption."); Andrew Becker, *Border Agency's Former*  
20 *Watchdog Says Officials Impeded His Efforts*, Wash. Post (Aug. 16, 2014), [http://](http://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390-story.html)  
21 [www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-](http://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390-story.html)  
22 [impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390-story.html](http://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390-story.html)  
23 (former head of CBP Internal Affairs describing CBP as an agency "rife with coverups  
24 and corruption" where officials have "distorted facts to try to hide any missteps");  
25 Damien Cave, *Complaints of Abuse by Border Agents Often Ignored, Records Show*,  
26 *New York Times* (May 5, 2014), [http://www.nytimes.com/2014/05/06/us/](http://www.nytimes.com/2014/05/06/us/complaints-of-abuse-by-border-agents-often-ignored-records-show.html?module=search&mabReward=relbias:r&r=0)  
27 [complaints-](http://www.nytimes.com/2014/05/06/us/complaints-of-abuse-by-border-agents-often-ignored-records-show.html?module=search&mabReward=relbias:r&r=0)  
28 [of-abuse-by-border-agents-often-ignored-records-show.html?module=](http://www.nytimes.com/2014/05/06/us/complaints-of-abuse-by-border-agents-often-ignored-records-show.html?module=search&mabReward=relbias:r&r=0)  
search&mabReward=relbias:r&r=0 (noting that 97 percent of the 809 abuse  
complaints filed against Border Patrol agents between January 2009 and January 2012  
resulted in the classification "no action" taken).

24 <sup>26</sup> See, e.g., Ed Pilkington, *It Was Cold, Very Cold: Migrant Children Endure Border*  
25 *Patrol "Ice Boxes"*, *Guardian* (Jan. 26, 2015), available at [http://www.theguardian.com/](http://www.theguardian.com/us-news/2015/jan/26/migrant-children-border-patrol-ice-boxes)  
26 [us-news/2015/jan/26/migrant-children-border-patrol-ice-boxes](http://www.theguardian.com/us-news/2015/jan/26/migrant-children-border-patrol-ice-boxes) ("Tatiana was 16 at the  
27 time of her detention, a child herself. 'The room was so cold you almost couldn't  
28 breathe, it made your nose hurt,' she said. There was no bedding, not even a blanket,  
and she slept fitfully with [her infant son] Rafael in her arms. After a few days the  
baby caught a cold and stopped eating solids, and for a couple of days he wouldn't  
even take his mother's milk. His weight fell from 23lbs when he arrived at the border  
station to 15lbs."); Ed Pilkington, *Freezing Cells and Sleep Deprivation: The Brutal*  
*Conditions Migrants Still Face After Capture*, *Guardian* (Dec. 12, 2014), available at  
[http://www.theguardian.com/us-news/2014/dec/12/migrants-face-brutal-conditions-](http://www.theguardian.com/us-news/2014/dec/12/migrants-face-brutal-conditions-after-capture-sleep-deprivation)  
[after-capture-sleep-deprivation](http://www.theguardian.com/us-news/2014/dec/12/migrants-face-brutal-conditions-after-capture-sleep-deprivation) ("Among those subjected to harsh treatment . . . are

1 unconstitutional, and punitive conditions of confinement in CBP holding cells—both in  
 2 the Tucson Sector and in other similar CBP facilities—beginning as early as 2009 and  
 3 continuing to date.

4 155. Public reports by academic institutions and human rights organizations,  
 5 based on thousands of interviews with former CBP detainees, as well as numerous civil  
 6 rights complaints submitted to DHS by multiple advocacy organizations and  
 7 individuals, have consistently described harsh conditions in these facilities, including  
 8 denial of food, water, and medical care; overcrowding; severe temperatures; and  
 9 physical and verbal abuse.

10 156. In 2008, NMD published a report describing grossly inadequate  
 11 detention conditions and verbal and physical abuse by CBP officials, including denial  
 12 of access to bathrooms, clean clothing, and blankets; former detainees described being  
 13 detained in holding cells for days without adequate food and water.<sup>27</sup>

14  
 15 numerous migrant children. Children have described temperatures in the cells that  
 16 turned their lips blue and made their fingers numb.”); Brianna Lee, *Child Migrants*  
 17 *Report Freezing in “Icebox,” U.S. Border Patrol Centers*, Int’l Business Times (Aug.  
 18 1, 2014), <http://www.ibtimes.com/child-migrants-report-freezing-icebox-us-border-patrol-centers-1646428>; John Burnett, *Amid Wave Of Child Immigrants, Reports of Abuse By Border Patrol*, NPR (July 24, 2014), available at  
 19 <http://www.npr.org/2014/07/24/334041633/amid-wave-of-child-immigrants-reports-of-abuse-by-border-patrol>; Molly Redden, *Why Are Immigration Detention Facilities So Cold?*, Mother Jones (July 16, 2014),  
 20 <http://www.motherjones.com/politics/2014/07/why-are-immigration-ice-detention-facilities-so-cold>; *Border Patrol Lockups Called Inhumane*, Courthouse News (May  
 21 22, 2014), available at <http://www.courthousenews.com/2014/05/22/68102.htm>;  
 22 Alfonso Chardy, *Immigrants Recount Horror of Being Detained in “Iceboxes” Before Transfer to South Florida*, Miami Herald (Apr. 19, 2014), available at  
 23 <http://www.miamiherald.com/news/local/community/miami-dade/article1963111.html>;  
 24 Peter O’Dowd & Rachael Bale, *Cold Storage: Migrants Refer to Border Cells as Freezers*, Fronteras (Nov. 18, 2013), available at [http://](http://www.fronterasdesk.org/content/9237/cold-storage-migrants-refer-border-cells-freezers)  
 25 [www.fronterasdesk.org/content/9237/cold-storage-migrants-refer-border-cells-freezers](http://www.fronterasdesk.org/content/9237/cold-storage-migrants-refer-border-cells-freezers);  
 26 Cindy Carcamo & Richard Simon, *Immigrant Groups Complaint of “Icebox” Detention Cells*, LA Times (Dec. 5, 2013), <http://articles.latimes.com/2013/dec/05/nation/la-na-ff-detention-centers-20131206>; Brian Epstein, *Crossing the Line: Part II, Need to Know on PBS* (July 20, 2012), available at <http://www.pbs.org/wnet/need-to-know/video/video-crossing-the-line/14291/>; Brad Poole, *Report Alleges Border Patrol Abuse of Illegal Immigrants*, Reuters (Sept. 21, 2011), available at [http://](http://www.reuters.com/article/2011/09/21/us-usa-mexico-study-idUSTRE78K6NV20110921)  
 27 [www.reuters.com/article/2011/09/21/us-usa-mexico-study-idUSTRE78K6NV20110921](http://www.reuters.com/article/2011/09/21/us-usa-mexico-study-idUSTRE78K6NV20110921).

28 <sup>27</sup> See *Crossing the Line: Human Rights Abuses of Migrants in Short-Term Custody on the Arizona-Sonora Border*, No More Deaths (Sept. 2008), available at

1           157. At the time of the NMD report’s release, numerous organizations sent  
2 letters to DHS leadership and Members of Congress calling attention to the abuses  
3 described in the report and urging reforms to CBP detention practices. More than six  
4 years—and many reports and complaints—later, CBP still has failed to implement  
5 needed reforms and ensure that its facilities meet even minimum standards.

6           158. Other organizations have reported similar conditions in CBP holding  
7 cells. A 2009 report by the Arizona-based Florence Immigrant and Refugee Rights  
8 Project (“FIRRP”) based on interviews with 124 unaccompanied children found 85  
9 percent of the children interviewed were held in excessively cold rooms; a majority  
10 were forced to sleep on the floor; one in three received inadequate food; one in four  
11 were not offered water, while nearly one in three had to share water; and roughly half  
12 were denied the opportunity to call an attorney, consular official, or family member.<sup>28</sup>  
13 The children’s average length of detention was sixty-five hours.<sup>29</sup> FIRRP submitted  
14 administrative complaints to DHS on behalf of the children interviewed, along with the  
15 children’s declarations describing abuse and mistreatment in Border Patrol custody.<sup>30</sup>

16           159. A 2009 Women’s Refugee Commission (“WRC”) report described  
17 facilities in which unaccompanied children were denied access to beds, showers, and  
18 phones, and detained for days and even weeks in frigid, overcrowded holding cells.<sup>31</sup>  
19 WRC noted that, at that time, the U.S. government reported sixteen percent of  
20 unaccompanied children were detained for over seventy-two hours before being  
21 transferred to a shelter.<sup>32</sup>

22  
23 [http://forms.nomoredeaths.org/wp-content/uploads/2014/10/CrossingTheLine-  
full.compressed.pdf](http://forms.nomoredeaths.org/wp-content/uploads/2014/10/CrossingTheLine-full.compressed.pdf)

24 <sup>28</sup> *Seeking Protection, Enduring Prosecution: the Treatment & Abuse of*  
25 *Unaccompanied Undocumented Children in Short-term Immigration Detention*,  
26 Florence Immigrant & Refugee Rights Project (Aug. 2009), available at [http://  
www.firrp.org/media/BPAuseReport.pdf](http://www.firrp.org/media/BPAuseReport.pdf).

27 <sup>29</sup> *Id.* at p. 13.

28 <sup>30</sup> *Id.* at p. 7.

<sup>31</sup> *Halfway Home*, at pp. 9-11.

<sup>32</sup> *Id.* at 9.

1           160. In 2011, NMD published a second report on abuses in CBP custody,  
2 based on interviews with 12,895 individuals released from Border Patrol custody from  
3 2008 to 2011.<sup>33</sup> Of the individuals interviewed, 5,763 reported overcrowding, 3,107  
4 reported unsanitary conditions, and 2,922 reported experiencing extreme cold. Only  
5 twenty percent of individuals detained for more than two days reported receiving  
6 adequate food.

7           161. A 2013 report by Americans for Immigrant Justice (“AI Justice”) also  
8 describes conditions in Border Patrol holding cells consistent with those in the Tucson  
9 Sector—unbearably cold, unsanitary, and inhumane: temperatures that caused  
10 detainees’ fingers and toes to turn blue and their lips to chap and split; a lack of  
11 blankets despite the cold; no beds or mattresses so that detainees were forced to try to  
12 sleep on benches or on the floor; a lack of basic hygiene supplies such as toothbrushes,  
13 soap, combs or ample sanitary napkins; an inability to shower or change clothing; and  
14 inadequate food and water. AI Justice describes Border Patrol agents coercing  
15 detainees into signing certain documents they do not understand, without translation  
16 and under threat of continued detention.<sup>34</sup>

17           162. In May 2014, AI Justice filed a federal lawsuit against the U.S.  
18 government on behalf of a female asylum seeker detained for many days in  
19 overcrowded Border Patrol holding cells without beds, mattresses or other bedding;  
20 denied medical care, hygiene supplies and the ability to bathe; and subjected to extreme  
21 temperatures.<sup>35</sup>

22           163. In June 2014, the ACLU submitted complaints to DHS on behalf of 116  
23 children alleging abuse and mistreatment in Border Patrol detention, including many  
24 who were deprived of beds and bedding and forced to sleep on the floors in unsanitary,  
25

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26 <sup>33</sup> Culture of Cruelty, at p. 5.

27 <sup>34</sup> *The “Hieleras”*: A Report on Human & Civil Rights Abuses Committed by U.S.  
28 *Customs & Border Protection Agency*, Americans for Immigrant Justice, at p. 3 (Aug.  
2013), available at <http://www.aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-and-border-protection-agency>.

<sup>35</sup> *Quinonez Flores v. United States*, No. 14-3166 (E.D.N.Y. filed May 20, 2014).

1 overcrowded, and frigid holding cells.<sup>36</sup> Several were hospitalized after prolonged  
2 detention in Border Patrol custody.<sup>37</sup> Several others reported that Border Patrol agents  
3 told them that the harsh conditions in the holding cells were their punishment for  
4 coming to the United States; others were forced to stand in stress positions as  
5 punishment. One child arriving at a Border Patrol detention facility reports being told  
6 by officials, “Welcome to hell.”<sup>38</sup>

7         164. In response to the ACLU’s complaint, DHS and CBP announced an  
8 investigation and commenced several rounds of inspections of select Border Patrol  
9 facilities, including one in Nogales, Arizona.<sup>39</sup> Less than four months after announcing  
10 that investigation, however, and notwithstanding its acknowledgment of “recurring  
11 problems” in those facilities, the DHS Office of Inspector General (“OIG”) reported it  
12 would be “curtailing routine inspections.”<sup>40</sup> OIG noted that CBP’s “E3” data system,  
13 which is intended as a tool for CBP to track compliance with its detention guidelines,  
14 was subject to frequent system outrages resulting in inconsistent compliance reporting.  
15 OIG concluded that because of this the system is “not a reliable tool for CBP to [use to]  
16

17 <sup>36</sup> See ACLU Letter, at pp.1-2.

18 <sup>37</sup> *Id.* at pp. 13-14 (“M.R. is a 15-year-old girl who traveled from Guatemala with her  
19 two-year-old son, seeking the support of her family in the United States. M.R. recalls  
20 one official who asked, “What are you looking for in the United States? No one told  
21 you to come here.” M.R. reports that CBP officials gave her the same cold meals daily  
22 and that she had to sleep on a hard floor with only an aluminum ‘space blanket.’ Along  
23 with other detainees, M.R. was made to clean the bathrooms at the facility. On several  
24 occasions, she had to wait hours to receive clean diapers for her son. Both M.R. and  
25 her son became sick while in CBP custody, but M.R.’s requests for medical attention  
26 were ignored or dismissed for approximately five days, until she and her son were  
27 finally taken to a hospital. M.R. says that just thinking about the CBP holding facility  
28 in which she was detained makes her feel shaky and nauseous.”).

24 <sup>38</sup> *Id.* at p. 11. See also *id.* at p. 8 (“R.D. fled to the United States at age 17 after being  
sexually abused by a gang member in her home country. While trying to cross the  
border, she cut her hand on a fence. After Border Patrol apprehended her, an agent  
looked at her hand and squeezed the wound, causing her great pain. The agent told her,  
“It’s good that you are hurt, you deserve to be hurt for coming to the US illegally.”).

26 <sup>39</sup> See *Unaccompanied Immigrant Children*, C-SPAN (June 12, 2014), available at  
27 <http://www.c-span.org/video/?320151-1/unaccompanied-immigrant-children>.

28 <sup>40</sup> Press Release, *Improvements Continue at Detention Centers*, Dep’t of Homeland  
Security, Office of Inspector General (Oct. 6, 2014), available at  
[https://www.oig.dhs.gov/assets/pr/2014/oigpr\\_100214.pdf](https://www.oig.dhs.gov/assets/pr/2014/oigpr_100214.pdf).

1 provide increased accountability for [unaccompanied children's] safety and well-  
2 being.”<sup>41</sup> OIG did not indicate whether any action would be taken in response to the  
3 deficiencies identified.

4 165. These children's complaints are consistent with the allegations contained  
5 in a series of Health and Human Services (“HHS”) Special Incident Reports leaked to  
6 members of the press in June 2014. Those reports included nearly 80 complaints by  
7 children of abuse and mistreatment in Border Patrol holding cells in Arizona and Texas  
8 from 2011 to 2013. One child described being detained for five days in 2012 in an  
9 overcrowded Tucson holding cell where there was not enough space to sleep; another  
10 reported being detained in Tucson for five days and denied requests for food. Upon  
11 information and belief, those allegations were communicated to DHS.

12 166. Recent Congressional action with respect to the inhumane conditions in  
13 CBP's detention facilities demonstrates awareness of these conditions at the highest  
14 levels of government. In June 2013, Senator Barbara Boxer added an amendment to a  
15 Senate immigration reform bill, S.B. 744, requiring improved CBP detention standards,  
16 including holding cell capacity limits, adequate climate control, “[s]leeping  
17 arrangements” for detainees held overnight, and access to hygiene items and medical  
18 care, among other reforms.<sup>42</sup> In December 2013, Senator Boxer re-introduced the same  
19 legislation as the Humane Short Term Custody Act, citing reports of harsh CBP  
20 detention conditions and noting, “CBP has written ‘detention standards’ for short term  
21 custody, but there is evidence to suggest that these standards are not consistently  
22

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23 <sup>41</sup> Memorandum *re: Oversight of Unaccompanied Alien Children*, Inspector General  
24 John Roth (July 30, 2014), <http://1.usa.gov/1r3Myd1> <https://www.oig.dhs.gov/assets/Mgmt/2014/Over-Un-Ali-Chil.pdf>; *see also Unaccompanied Juveniles in INS Custody, Report No. I-2001-009, Executive Summary*, Dep't of Justice, Office of the  
25 Inspector General (Sept. 28, 2001), *available at* <http://www.justice.gov/oig/reports/INS/e0109/exec.htm> (“[D]eficiencies in the handling of juveniles continue to exist in  
26 some INS districts, Border Patrol sectors, and headquarters that could have potentially serious consequences for the well-being of the juveniles.”).

27 <sup>42</sup> Border Security, Economic Opportunity & Immigration Modernization Act, Senate  
28 Amend. 1260 to S.B. No. 744 (submitted June 13, 2013) 113th Congress (2013-2014), *available at* <https://www.congress.gov/amendment/113th-congress/senate-amendment/1260/text>.



1 followed.”<sup>43</sup> In September 2013, Representative Lucille Roybal-Allard introduced the  
2 Protect Family Values at the Border Act, which included similar reforms related to  
3 CBP detention conditions.<sup>44</sup> To date, none of these legislative proposals have become  
4 law.

5 167. CBP officials including Defendant Kerlikowske have publicly admitted  
6 to knowledge of the punitive and inadequate conditions in the holding facilities. In  
7 July 2014, in a press interview regarding a complaint filed on behalf of 116  
8 unaccompanied children who experienced similar degrading conditions in Border  
9 Patrol holding cells—including complaints of “being put in excessively uncomfortable  
10 rooms, being left with the lights on all night so that they couldn’t sleep, being denied  
11 medical care”—Kerlikowske stated that the complaints about the facility conditions  
12 were “absolutely spot on.”<sup>45</sup> He also acknowledged that detainees, at least children,  
13 should not have to sleep on a concrete floor.<sup>46</sup>

14 168. The deplorable and unconstitutional conditions in Tucson Sector holding  
15 cells are the direct result of Defendants’ policies and practices. Those conditions result  
16 in serious risks to the health and well-being of Plaintiffs and putative class members.  
17 They are inhumane and punitive, and bear no relationship to any legitimate  
18 governmental purpose.

19 169. Detainees in the Tucson Sector are civil detainees, yet they face much  
20 harsher conditions of confinement than criminal pre-trial detainees; the conditions are  
21 also worse than those to which convicted persons in local jails and prisons are subject  
22 and thus are *per se* punitive.

23  
24 <sup>43</sup> Press Release, *Boxer Introduces Bill to Ensure Humane Treatment at Customs & Border Protection Detention Facilities*, U.S. Senator Barbara Boxer (Dec. 12, 2013),  
25 available at <https://www.boxer.senate.gov/press/release/boxer-introduces-bill-to-ensure-humane-treatment-at-customs-and-border-protection-detention-facilities/>.

26 <sup>44</sup> H.R. No. 3130, available at <https://www.govtrack.us/congress/bills/113/hr3130>.

27 <sup>45</sup> Transcript: *Commissioner Kerlikowske’s Full Interview*, NPR (July 18, 2014),  
28 available at <http://www.npr.org/2014/07/18/332286063/transcript-commissioner-kerlikowskes-full-interview>.

<sup>46</sup> *Id.*

1           170. Defendants have failed to employ reasonable alternatives and less harsh  
2 methods in the operation of these facilities. As a result, CBP detainees, all of whom  
3 are civil detainees awaiting administrative processing, are held for extended periods in  
4 conditions that are far more restrictive than necessary and thus the conditions amount  
5 to prohibited punishment of detainees.

6           171. Given the Defendants' familiarity with the conditions in Tucson Sector  
7 detention facilities—including lack of beds, mattresses and other bedding; overcrowded  
8 and filthy cells; very cold temperatures; inadequate food and drinking water; the  
9 absence of any showers or hygiene items and the lack of adequate medical screening,  
10 —their adoption of practices and policies that perpetuate these conditions reflects an  
11 intention to punish persons believed to be unlawfully present in the United States. This  
12 punitive intent is also reflected in the CBP's policy of "Consequence Delivery,"  
13 whereby Defendants seek to deter unauthorized immigration by inflicting specified  
14 "consequences,"—punishment— including criminal prosecution and prison terms, on  
15 unauthorized immigrants.<sup>47</sup>

16           172. The harsh conditions and mistreatment that define Tucson Sector  
17 detention operations are themselves a form of punishment. As a Border Patrol  
18 spokesman stated, in response to complaints of overcrowding and punitive holding cell  
19 conditions in Texas, "That's basically one of the consequence[s] of entering the  
20 country illegally."<sup>48</sup> Agents frequently communicate the same point to detainees  
21 directly. Brutal hold room conditions also make it more likely that detainees will be  
22 coerced into "accepting" other consequences—such as criminal prosecution through

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23 <sup>47</sup> See Jeremy Slack et al., *In Harm's Way: Family Separation, Immigration*  
24 *Enforcement Programs and Security on the US-Mexico Border*, Journal on Migration &  
25 Human Security, Vol. 3 No. 2, at pp. 109-128 (2015), available at  
26 <http://jmhs.cmsny.org/index.php/jmhs/article/download/46/38> (Border Patrol's  
27 Consequence Delivery System "mark[s] a shift from the deterrent strategy that, in the  
28 1990s relied heavily on the dangers of the natural terrain to dissuade unauthorized  
border crossers, to one that actively punishes, incarcerates, and criminalizes them.")  
(internal citation omitted).

<sup>48</sup> Amy Bracken, *Immigrants, Legal Groups Allege Harsh Treatment at U.S. Borders*,  
PRI (Aug. 1, 2014), available at <http://www.pri.org/stories/2013-08-01/immigrants-legal-groups-allege-harsh-treatment-us-border>.

1 Operation Streamline or deportation without an opportunity to see a judge and without  
2 the opportunity to seek relief available to them under the law—in order to be released  
3 from Border Patrol’s holding cells.

4 173. There are no legal justifications for treating detainees in an inhumane and  
5 punitive manner, or for holding them in grossly inadequate and unsafe conditions in  
6 facilities that are not equipped for overnight or prolonged detention. Defendants’  
7 policies and practices with respect to CBP detention conditions serve no legitimate  
8 purpose.

9 174. Inhumane conditions in CBP holding cells are longstanding and well-  
10 documented. Defendants are aware of and intentionally indifferent to these conditions  
11 and to the serious risk of and actual harm imposed upon all Plaintiffs and putative class  
12 members as a result of these conditions.

13 175. Plaintiffs have suffered irreparable harm as a result of being detained  
14 under these conditions.

15 **INJUNCTIVE RELIEF**

16 176. Plaintiffs are entitled to a preliminary and permanent injunction.  
17 Defendants have acted and threaten to act to deprive Plaintiffs and others they seek to  
18 represent of their constitutional rights. Plaintiffs and others similarly situated have  
19 suffered irreparable physical and psychological injuries and the loss of fundamental  
20 due process rights and have been and will continue to be subjected to serious risks of  
21 these same irreparable harms as the result of confinement in Border Patrol’s Tucson  
22 Sector facilities. Defendants have been and are aware of all of the conditions and  
23 deprivations complained of herein and have condoned or been intentionally indifferent  
24 to such conduct. Plaintiffs have no plain, adequate, or speedy remedy at law.

25 **CLASS ACTION ALLEGATIONS**

26 177. Plaintiffs bring this action on behalf of themselves and all other persons  
27 who are similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and  
28 23(b)(2).

1 178. Plaintiffs seek to represent a class consisting of:

2 All individuals who are now or in the future will be  
3 detained for one or more nights at a CBP facility, including  
4 Border Patrol facilities, within the Border Patrol's Tucson  
Sector ("the Class").

5 179. The putative class is so numerous that joinder of all members is  
6 impracticable. CBP documents, produced in response to a FOIA request, indicate that  
7 72,198 individuals were detained at Tucson Sector detention facilities between January  
8 1, 2013 and June 30, 2013. Of these, 58,083 individuals, or 80.4 percent of the total  
9 number, were in Border Patrol custody for 24 hours or longer. In the past two fiscal  
10 years, more than 200,000 people were apprehended by Border Patrol in the Tucson  
11 Sector alone.<sup>49</sup> A sizeable percentage of those detained after apprehension spent at  
12 least one night—and many spent more—in Border Patrol custody.

13 180. There are multiple questions of law and fact common to the putative  
14 class, including:

15 a. Whether Defendants' policies and practices of failing to provide  
16 detainees with beds or bedding; overcrowding holding cells; illuminating them around  
17 the clock; maintaining the temperature at an unreasonably cold setting and failing to  
18 provide blankets to detainees; and failing to provide adequate food and water to  
19 detainees—which factors alone or in combination interfere with Plaintiffs' and putative  
20 class members' ability to sleep—violate the Due Process Clause of the Fifth  
21 Amendment and the Administrative Procedure Act.

22 b. Whether Defendants' policies and practices of overcrowding the  
23 holding cells; maintaining the cells at unreasonably cold temperatures; failing to  
24 adequately clean the cells; failing to regularly maintain working toilets; and failing to  
25 provide detainees with soap to wash their hands after using the toilet or before eating,  
26 with toothbrushes or toothpaste, or with showers or any opportunity to bathe—which

27 \_\_\_\_\_  
28 <sup>49</sup> *United States Border Patrol, Sector Profile—Fiscal Year 2013*, available at  
<http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>.

1 factors alone or in combination deprive Plaintiffs and putative class members of shelter  
2 that satisfies safety and sanitation standards—violate the Due Process Clause of the  
3 Fifth Amendment and the Administrative Procedure Act.

4 c. Whether Defendants’ policies and practices of failing to adequately  
5 screen detainees for possible medical problems upon admission; provide for the  
6 administration of prescription drugs that are confiscated from detainees or provide  
7 appropriate substitute medication; consistently and adequately provide access to  
8 qualified medical personnel for detainees in need of medical care; and adequately and  
9 consistently provide for the emergency medical needs of detainees—which factors alone  
10 or in combination deprive Plaintiffs and putative class members of a safe and healthy  
11 environment—violate the Due Process Clause of the Fifth Amendment and the  
12 Administrative Procedure Act.

13 d. Whether Defendants’ policies and practices of providing Plaintiffs  
14 and putative class members insufficient quantities of food; of following erratic meal  
15 schedules; of providing food that is cold and nutritionally and calorically inadequate;  
16 of providing food that is often expired and/or inedible; of not uniformly providing  
17 Plaintiffs and putative class members with sufficient clean drinking water and of  
18 failing to provide individual drinking cups when water is made available—which  
19 factors alone or in combination deprive Plaintiffs and putative class members of the  
20 need for adequate food and water—violate the Due Process Clause of the Fifth  
21 Amendment and the Administrative Procedure Act.

22 e. Whether Defendants’ policies and practices of setting the  
23 thermostat in the holding cells at unreasonably low temperatures so that Plaintiffs and  
24 putative class members are always cold, suffer pain and have difficulty sleeping; of  
25 confiscating all but one layer of clothing from Plaintiffs and class members before  
26 placing them in custody; of refusing to provide them with blankets while they are  
27 detained, other than inadequate, thin aluminum sheets—which factors alone or in  
28 combination deprive Plaintiffs and putative class members of the basic need for

1 warmth—violate the Due Process Clause of the Fifth Amendment and the  
2 Administrative Procedure Act.

3 181. The claims of the Plaintiffs are typical of the claims of the putative class.  
4 Each of the Plaintiffs, like all putative class members, is subject to the conditions of  
5 confinement challenged here.

6 182. All of the Plaintiffs will fairly and adequately represent the interests of all  
7 members of the putative class because they seek relief on behalf of the class as a whole  
8 and have no interests antagonistic to other members of the class. The Plaintiffs are  
9 represented by counsel from Morrison & Foerster LLP, the ACLU Foundation of  
10 Arizona; the National Immigration Law Center; the American Immigration Council,  
11 and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Counsel  
12 are very experienced in class action and other complex litigation in both the detention  
13 and immigration arenas and concerning constitutional law.<sup>50</sup>

14 183. Defendants have acted on grounds that apply generally to the putative  
15 class, so that final injunctive relief or corresponding declaratory relief is appropriate  
16 with respect to the class as a whole.

## 17 **CLAIMS FOR RELIEF**

### 18 **FIRST CLAIM**

#### 19 **(Violation of the Due Process Clause of the Fifth Amendment** 20 **to the United States Constitution: Deprivation of Sleep)**

21 184. All of the foregoing allegations are repeated and incorporated as though  
22 fully set forth herein.

23  
24  
25 <sup>50</sup> For a small but representative sampling of the cases handled by counsel in this case,  
26 see *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014), *reh'g denied*, 784 F.3d 571 (9th Cir.  
27 2015 (en banc)); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988),  
28 *aff'd*, *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990); *Orantes-*  
*Hernandez v. Holder*, 321 F. App'x 625 (9th Cir. 2009); *A.B.T. v. United States Citizen*  
*& Immigration Servs.*, No. 11-2108, 2013 U.S. Dist. LEXIS 160453 (W.D. Wash. Nov.  
4, 2013); *de Abadia-Peixoto v. United States Dep't of Homeland Sec.*, No. 11-CV-4001  
(N.D. Cal. docketed Aug. 15, 2011).

1           185. Defendants have a practice of detaining Plaintiffs and putative class  
2 members for one or more nights in holding cells located within Tucson Sector facilities.

3           186. The holding cells within the Tucson Sector facilities are neither designed  
4 for overnight detention nor equipped to detain individuals overnight and do not meet  
5 Plaintiffs' basic human needs.

6           187. Defendants have a practice of not providing beds, mattresses, or other  
7 bedding to Plaintiffs and other detainees forced to spend one or more nights in a  
8 Tucson Sector holding cell.

9           188. As a result of Defendants' practices, the only option available to  
10 Plaintiffs and putative class members is to attempt to sleep on benches or directly on  
11 the cold, concrete floor each night that they are held in a Tucson Sector holding cell.

12           189. Defendants also have practices of overcrowding holding cells;  
13 illuminating them around the clock; maintaining the temperature at an unreasonably  
14 cold setting and failing to provide blankets to detainees; and failing to provide adequate  
15 food and water to detainees.

16           190. These additional adverse conditions—alone or in combination—further  
17 serve to deprive Plaintiffs and class members of sleep during their periods of detention.

18           191. Defendants' failure to provide Plaintiffs and putative class members with  
19 a bed during their overnight detention violates the Due Process Clause of the Fifth  
20 Amendment to the United States Constitution. The additional adverse conditions,  
21 which—alone or in combination—interfere with Plaintiffs and putative class members'  
22 ability to sleep, further violate the Due Process Clause of the Fifth Amendment.

23           192. By their practices described herein, Defendants subject Plaintiffs and  
24 putative class members to a risk of and actual harm and to punishment. Defendants'  
25 policies and practices are inflicted upon Plaintiffs and putative class members with the  
26 intent to punish them and are excessively harsh in relation to any non-punitive or  
27 legitimate purpose. Moreover, any non-punitive purpose that Defendants may have  
28

1 could be accomplished through alternative methods consistent with the constitutional  
2 rights of Plaintiffs and class members.

3 193. The conditions of confinement imposed by Defendants are more  
4 restrictive than necessary.

5 **SECOND CLAIM**  
6 **(Violation of the Due Process Clause of the Fifth Amendment**  
7 **to the United States Constitution: Deprivation of Hygienic & Sanitary Conditions)**

8 194. All of the foregoing allegations are repeated and incorporated as though  
9 fully set forth herein.

10 195. Defendants have practices of detaining Plaintiffs and putative class  
11 members in holding cells under conditions that are unsanitary and therefore hazardous  
12 to their health. In accord with these policies and practices, Defendants overcrowd the  
13 holding cells; maintain the cells at unreasonably cold temperatures; fail to adequately  
14 clean the cells; fail to regularly maintain working toilets; and fail to provide detainees  
15 with soap to wash their hands after using the toilet or before eating, with toothbrushes  
16 or toothpaste, with showers or any opportunity to bathe, and with individual cups with  
17 which to drink water.

18 196. Defendants' practices of detaining Plaintiffs and putative class members  
19 under unsanitary and hazardous conditions—alone or in combination—violate the Due  
20 Process Clause of the Fifth Amendment to the United States Constitution.

21 197. Defendants' policies and practices place the health of Plaintiffs and  
22 putative class members at risk during their confinement in the Tucson Sector facilities  
23 and after they have left these facilities. Defendants' policies and practices are inflicted  
24 upon Plaintiffs and putative class members with the intent to punish them and are  
25 excessively harsh in relation to any non-punitive or legitimate purpose. Moreover, any  
26 non-punitive purpose that Defendants may have could be accomplished through  
27 alternative methods consistent with the constitutional rights of Plaintiffs and putative  
28 class members.



1           198. The conditions of confinement imposed by Defendants are more  
2 restrictive than necessary.

3   **THIRD CLAIM**  
4   **(Violation of the Due Process Clause of the Fifth Amendment**  
5   **to the United States Constitution: Deprivation of Adequate**  
6   **Medical Screening and Care)**

7           199. All of the foregoing allegations are repeated and incorporated as though  
8 fully set forth herein.

9           200. Defendants deprive Plaintiffs and putative class members detained in  
10 Tucson Sector holding cells of adequate and necessary medical screening and medical  
11 care.

12           201. Defendants do not mandate or provide adequate medical screening of all  
13 detainees for health problems—including for communicable diseases or mental  
14 illness—prior to confining them. Defendants also fail to provide for the proper  
15 administration of prescription drugs that are confiscated from detainees or provide  
16 appropriate substitute medication; fail to consistently and adequately provide access to  
17 qualified medical personnel for detainees in need of medical care; and fail to  
18 adequately and consistently provide for the emergency medical needs of detainees.

19           202. The absence of adequate procedures for the medical needs of Plaintiffs  
20 and putative class members—including adequate medical screening—is hazardous to  
21 their health. This hazard is compounded by Defendants’ practices of failing to provide  
22 detainees with adequate food and clean drinking water; overcrowding the holding cells;  
23 maintaining cells at unreasonably cold temperatures; failing to adequately clean the  
24 cells; failing to regularly maintain a sufficient number of working toilets; failing to  
25 provide detainees with soap to wash their hands after using the toilet or before eating;  
26 with toothbrushes or toothpaste; with showers or any opportunity to bathe; with an  
27 adequate supply of sanitary napkins and diapers; and with individual cups with which  
28 to drink water.

1           203. Defendants’ practices of detaining Plaintiffs and putative class members  
2 under unhealthy and hazardous conditions—alone or in combination—violate the Due  
3 Process Clause of the Fifth Amendment to the United States Constitution.

4           204. Defendants’ policies and practices place the health of Plaintiffs and  
5 putative class members at risk during their confinement in the Tucson Sector facilities  
6 and after they have left these facilities. Defendants’ policies and practices are inflicted  
7 upon Plaintiffs and putative class members with the intent to punish them and are  
8 excessively harsh in relation to any non-punitive or legitimate purpose. Moreover, any  
9 non-punitive purpose that Defendants may have could be accomplished through  
10 alternative methods consistent with the constitutional rights of Plaintiffs and putative  
11 class members.

12           205. The conditions of confinement imposed by Defendants are more  
13 restrictive than necessary.

14   **FOURTH CLAIM**

15   **(Violation of the Due Process Clause of the Fifth Amendment to the**  
16   **United States Constitution: Deprivation of Adequate Food and Water)**

17           206. All of the foregoing allegations are repeated and incorporated as though  
18 fully set forth herein.

19           207. Defendants deprive Plaintiffs and putative class members detained in  
20 Tucson Sector holding cells of adequate food and clean drinking water.

21           208. Defendants holding cell practices ignore that, prior to their apprehension  
22 by Border Patrol agents, Plaintiffs and putative class members often have been walking  
23 for days through the desert without enough food or water. They typically are famished  
24 and suffering from moderate to severe dehydration.

25           209. Pursuant to Defendants’ practices, provision of food to Plaintiffs and  
26 putative class members is erratic and inadequate. Food is sometimes withheld for an  
27 entire day; on other occasions, detainees might be served one or two snacks per day.  
28 Detainees are fed small portions that consist of either a child-size box of juice or a

1 child-size packet of crackers or a small burrito. The food is cold and nutritionally and  
2 calorically inadequate. In addition to the inadequate portions, the food is often expired  
3 and/or inedible.

4 210. Defendants have a policy and practice of not always providing Plaintiffs  
5 and putative class members with sufficient clean drinking water. In some instances, no  
6 water is provided for an entire day. Some detainees have to drink water out of sinks  
7 that are placed on top of the toilets and that are not regularly and thoroughly cleaned.  
8 In other holding cells, detainees are given a single jug of water to share amongst  
9 themselves. They are usually not provided with individual drinking cups; instead,  
10 multiple detainees must share a cup or detainees must attempt to refashion their  
11 discarded juice boxes to drink water.

12 211. Defendants' above practices—alone or in combination—violate the Due  
13 Process Clause of the Fifth Amendment to the United States Constitution.

14 212. Defendants' policies and practices place the health of Plaintiffs and  
15 putative class members at risk during their confinement in the holding cells and after  
16 they have left these cells. Defendants' policies and practices are inflicted upon  
17 Plaintiffs and class members with the intent to punish them and are excessively harsh in  
18 relation to any non-punitive or legitimate purpose. Moreover, any non-punitive  
19 purpose that Defendants may have could be accomplished through alternative methods  
20 consistent with the constitutional rights of Plaintiffs and putative class members.

21 213. The conditions of confinement imposed by Defendants are more  
22 restrictive than necessary.

#### 23 **FIFTH CLAIM**

#### 24 **(Violation of the Due Process Clause of the Fifth Amendment** 25 **to the United States Constitution: Deprivation of Warmth)**

26 214. All of the foregoing allegations are repeated and incorporated as though  
27 fully set forth herein.

1 215. Defendants have a practice of setting the thermostat in the holding cells at  
2 unreasonably low temperatures so that Plaintiffs and putative class members are always  
3 cold. The cold temperature causes Plaintiffs and putative class members pain and  
4 interferes with their sleep, especially because they are forced to sleep on frigid benches  
5 or concrete floors. Defendants’ policy and practice is to confiscate all but one layer of  
6 clothing from Plaintiffs and putative class members before placing them in custody,  
7 and refusing to provide them with blankets while they are detained, other than  
8 inadequate, thin aluminum sheets.

9 216. Defendants’ practices—alone or in combination—violate the Due Process  
10 Clause of the Fifth Amendment to the United States Constitution.

11 217. Defendants’ policies and practices have harmed Plaintiffs and putative  
12 class members and place them at risk of continued harm during their confinement in  
13 holding cells and after they have left these cells. Defendants’ practices are inflicted  
14 upon Plaintiffs and putative class members with the intent to punish them and are  
15 excessively harsh in relation to any non-punitive and legitimate purpose. Moreover,  
16 any non-punitive purpose that Defendants may have could be accomplished through  
17 alternative methods consistent with the constitutional rights of Plaintiffs and putative  
18 class members.

19 218. The conditions of confinement imposed by Defendants are more  
20 restrictive than necessary.

21 **SIXTH CLAIM**  
22 **(Violation of the Administrative Procedure Act:**  
23 **Agency Action Unlawfully Withheld)**

24 219. All of the foregoing allegations are repeated and incorporated as though  
25 fully set forth herein.

26 220. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1), requires  
27 a court to “compel agency action unlawfully withheld or unreasonably delayed.”  
28

1 221. CBP has promulgated extensive policies and procedures in the 2008  
2 Memorandum and the CBP Security Policy and Procedures Handbook (HB1400-02B)  
3 and elsewhere related to the operation of holding cells, including the minimum space  
4 per detainee as well as the provision of food, water, and medical care.

5 222. CBP has failed to enforce those procedures.

6 223. CBP’s failure to enforce constitutes final agency action.

7 224. Plaintiffs and putative class members have suffered legal wrongs and  
8 have been adversely affected and aggrieved by CBP’s failure to act.

9  
10 **PRAYER FOR RELIEF**

11 225. Plaintiffs and the class they seek to represent have no adequate remedy at  
12 law to redress the wrongs suffered as set forth in this Complaint. Plaintiffs and the  
13 putative class have suffered and will continue to suffer irreparable injury as a result of  
14 the unlawful acts, omissions, policies, and practices of Defendants, as alleged herein,  
15 unless Plaintiffs and the putative class are granted the relief they request. The need for  
16 relief is critical because the rights at issue are paramount under the United States  
17 Constitution and the laws of the United States.

18 **WHEREFORE**, the Named Plaintiffs and the class they seek to represent  
19 request that this Court grant them the following relief:

20 226. Declare that the suit is maintainable as a class action pursuant to Federal  
21 Rule of Civil Procedure 23(a) and 23(b)(2);

22 227. Adjudge and declare that the acts, omissions, policies, and practices of  
23 Defendants, and their agents, employees and officials, described herein, are in violation  
24 of the rights of Plaintiffs and the class members they seek to represent under the  
25 Administrative Procedure Act and the Due Process Clause of the Fifth Amendment,  
26 which grants constitutional protection to the Plaintiffs and the class they represent;

27 228. Preliminarily and permanently enjoin Defendants, their agents,  
28 employees, and officials from subjecting Plaintiffs and the class members they seek to

1 represent to the illegal and unconstitutional conditions, acts, omissions, policies, and  
2 practices set forth above;

3 229. Order Defendants and their agents, employees, and officials to eliminate  
4 the risk of harm that Plaintiffs and members of the class suffer due to the inadequate,  
5 unsafe, and unhealthy conditions described above. Defendants' plan shall include at a  
6 minimum the following:

7 230. The provision of a bed and bedding to all detainees held overnight in any  
8 Tucson Sector CBP facility;

9 231. Adequate access to soap, toothbrushes and toothpaste, paper towels,  
10 sanitary napkins, diapers, showers and towels if held overnight, and sanitation which  
11 satisfies constitutionally adequate standards for all detainees;

12 232. The provision of clean drinking water and nutritionally adequate meals  
13 prepared and served in a safe and sanitary manner;

14 233. Uniform enforcement of constitutionally adequate standards with respect  
15 to cell occupancy rates, temperature control, and all federal fire, health and safety  
16 standards;

17 234. Policies and practices that reliably and adequately screen for medical,  
18 dental, and mental health conditions that need immediate treatment;

19 235. Timely and competent responses to health care emergencies;

20 236. Court-ordered monitoring as appropriate;

21 237. Award Plaintiffs the costs of this suit, and reasonable attorneys' fees and  
22 litigation expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;

23 238. Retain jurisdiction of this case until Defendants have fully complied with  
24 the orders of this Court and there is a reasonable assurance that Defendants will  
25 continue to comply in the future absent continuing jurisdiction; and  
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1           239. Award such other and further relief as the Court deems just and proper.

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Dated: June 8, 2015

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Dated: June 8, 2015

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