

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

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March 12, 2013

Customs and Border Protection
Swanton Sector, Ogdensburg Station
127 North Water Street
Ogdensburg, NY 13669

Re: **Administrative Complaint pursuant to the Federal Tort Claims Act
for Ms. Lucia Rogers**

To Whom It May Concern:

We submit this letter as an addendum to the attached Form SF-95 on behalf of Ms. Lucia Rogers. Ms. Rogers, an American citizen, was driving near Huevelton, New York in December 2011 when she was stopped by Customs and Border Protection (“CBP”) purely because of her dark complexion, for a “citizenship check-up.” Without any basis, CBP placed Ms. Rogers under arrest and took her into custody, where she was detained for several hours and had her Garmin Nuvi Global Positioning System navigation device (“GPS”) taken from her possession. She was never charged with any crime and CBP refused to return her GPS for approximately seven months.

Ms. Rogers submits this administrative complaint against CBP for torts arising under New York law, including false arrest and imprisonment, assault and battery, and conversion. Pursuant to the Federal Tort Claims Act, Ms. Rogers requests damages amounting to \$210,000.

FACTS

Ms. Rogers is a twenty-seven year old United States citizen of Mexican descent. She resides in Chateaugay, New York, with her husband and newborn son. Since October 2010, Ms. Rogers has worked for Finger Lakes Community Health, providing transportation and interpretation services to Spanish-speaking farmworkers who need medical treatment or consultation. Her position is partially funded by a grant from the federal government.

At approximately 10:30 a.m. on December 28, 2011, Ms. Rogers left her house and drove her Suzuki Sx4 to Rensselaer Falls to pick up two of the three patients she was assigned to accompany that day to their dental appointments in Potsdam. She then proceeded on Route 812 in the direction of the Canadian border to pick up her third patient. At the intersection of Route 812 and Route 184, Ms. Rogers observed a CBP vehicle sitting on the side of the road. At the intersection, Ms. Rogers turned west onto Route 184, which runs parallel to the border; as she made the turn, she observed the CBP vehicle begin to follow her. Ms. Rogers was not speeding, nor had she committed any traffic violation. Ms. Rogers continued to observe all traffic laws until the CBP officer in the vehicle pulled her over, a few minutes after he began shadowing her vehicle.

Border Patrol (“BP”) Agent Crawford pulled Ms. Rogers over at around noon, and told her he was conducting a “citizenship check-up” – an investigatory protocol that does not appear in any CBP manual. BP Agent Crawford asked Ms. Rogers if she was a citizen, and she answered in the affirmative, providing her New York State driver’s license. One of her passengers told the officer that he was a citizen but had forgotten his paperwork at home. The second passenger told Agent Crawford that he was not a citizen. Agent Crawford then questioned Ms. Rogers about her destination; she informed him she was heading to Potsdam, which was her final destination. Agent Crawford walked back to his truck with Ms. Rogers’ driver’s license. Several minutes later, he returned to Ms. Rogers’ car, telling her passengers to get out of the car. He handcuffed them and placed them in the CBP truck. While the agent was arresting Ms. Rogers’ passengers, she called her husband to let him know that she had been stopped by CBP, and she didn’t know why. Her husband told her to find out if she was being arrested.

Agent Crawford continued Ms. Rogers’ roadside detention even after she provided him with her license and indicated that she was a U.S. citizen. As her husband had instructed her, Ms. Rogers asked if she was being arrested, and the agent responded in the affirmative, stating that he was waiting for back up because he had run out of handcuffs. Agent Crawford then requested Ms. Rogers’ keys. Ms. Rogers removed the keys from the ignition, and before she could hand them to the agent, he aggressively grabbed them out of her hand. Moments later, Ms. Rogers’ husband called her cell phone and, as Ms. Rogers went to answer it, Agent Crawford again grabbed her phone from her hand and told her that she was not to take any phone calls.

Agent Crawford then asked Ms. Rogers if she knew that her passengers were undocumented. She replied that she had not asked her passengers that question. He told her that she must have known because she was taking the “back roads.”¹ A second agent appeared at the scene in a second vehicle. BP Agent 2, a male officer, removed Ms. Rogers from the vehicle and asked her if she had ever been handcuffed or arrested; Ms. Rogers replied that she had not. BP Agent 2 then conducted a pat-down search of Ms. Rogers behind her vehicle. Ms. Rogers cried in her extreme embarrassment, fear, and discomfort as cars on the road slowed to watch the commotion. BP Agent 2 placed Ms. Rogers’ hands behind her back, handcuffed her, and placed her in a second CBP vehicle, separated from her passengers. At no point did any agent tell her why she was being arrested. The officers then stood outside the vehicle for another half an hour

¹ Route 184 a main road leading directly into Huevelton, N.Y.

smoking cigarettes and conversing.

While Ms. Rogers and her passengers sat detained in separate cars, a third CBP vehicle arrived on the scene with two more male BP agents. Ms. Rogers felt humiliated, sitting handcuffed in the back of the CBP vehicle. More than an hour after her roadside detention began, BP Agent 2 drove Ms. Rogers to the U.S. Border Patrol station at Ogdensburg. During the drive, Ms. Rogers asked the agent if she would be permitted to make a call once they got to the station. BP Agent 2 replied that they would see once she was processed. Once Ms. Rogers arrived at the Ogdensburg station, her handcuffs were removed, and two female BP agents performed a full search on her. In a private room, they asked her to remove her sweater and boots. BP Agent 3 ran her hands along the inside waistband of her underwear, and around the outside of her bra straps. BP Agent 4 then directed Ms. Rogers to a cell.

A few minutes later, BP Agent 5 entered Ms. Rogers' cell and told her that he did not know yet whether they were going to charge her with anything. The agent left the cell, but returned approximately thirty minutes later and told Ms. Rogers again that they were still unsure whether they were going to charge her. BP Agent 5 told Ms. Rogers that they were going to "have a little chat" and then decide. Ms. Rogers was filled with dread and fear, not knowing why she was in CBP custody and whether she would be allowed to leave, and she agonized over her husband and how worried he must be, not knowing where she was.

Approximately ten minutes later, BP Agent 5 returned to Ms. Rogers' cell and escorted her to an office where Agent Crawford was also present. BP Agent 5 told Ms. Rogers that they were going to have a conversation and, if at any point she was not cooperative, the conversation would be over. Ms. Rogers interpreted this to mean that she would be charged with a crime if she did not cooperate.

BP Agent 5 then asked Ms. Rogers a series of questions. He asked where she lived, her full name, where she worked, how she came to the U.S., how she received legal status, her husband's name and place of employment, what she did for a living, how she was paid, whether she received mileage as part of her job, and whether she could prove where she worked. Ms. Rogers responded to all of their questions.

BP Agent 5 began asking targeted questions about Ms. Rogers' clients: what farms she picked them up from, the name and location of the farm where she was going to pick up the third patient, how far Ms. Rogers travels for her job and whether she went to Watertown or Plattsburgh for her job. Ms. Rogers responded accordingly.

Agent Crawford informed Ms. Rogers that they confiscated her Garmin Nuvi GPS unit from her car and told her that they will need her to sign it over to them otherwise they would have to get a warrant. Ms. Rogers did not respond. She was then escorted back to her cell. After several minutes, BP Agent 5 returned to Ms. Rogers' cell with paperwork. He once again told Ms. Rogers that she needed to sign the paperwork that would give CBP permission to search Ms. Rogers' GPS. He told Ms. Rogers that if she did not sign the paperwork, they would have to get a warrant and that it would take a long while to do so. Ms. Rogers understood this statement to be a threat that if she did not sign the paperwork she would be held indefinitely in CBP

custody. Because she was afraid of a prolonged detention, Ms. Rogers signed the paperwork given to her by BP Agent 5.

Approximately ten to fifteen minutes later, BP Agent 5 returned to Ms. Rogers' cell and told her she was free to leave. The time was approximately 3:45 pm – more than three hours after Ms. Rogers was pulled over in Huevelton. She was photographed by CBP, given her car keys, her purse, and the contents of her glove box, and then was escorted to her vehicle. Ms. Rogers was not given any documents from CBP related to her stop, arrest or detention. No charges were ever filed against Ms. Rogers.

Upon reunifying with her husband, Ms. Rogers learned that throughout the time she was in detention, her husband and her boss had been trying to verify her placement at Ogdensburg station. The agents had told her husband repeatedly that they did not have her. Only when Ms. Rogers' husband told the agents that he knew they were holding her did the agents admit to her being in their station, but did not give him further details.

After about a month of repeated calls by her and her husband, Ms. Rogers received a letter and a receipt for her GPS, notifying her that it was being analyzed and would be returned to her within sixty days. Ms. Rogers' husband called repeatedly to retrieve the GPS, but to no avail. Ms. Rogers was forced to buy a new one because she needed a GPS to perform her job duties. On July 18, 2012 – almost eight months after CBP took custody of the device – Ms. Rogers received another letter from CBP informing her that her GPS was available for her to pick up. However, CBP conditioned its release on her physically coming to the Ogdensburg station to retrieve it, and the completion of an enclosed "Hold Harmless Release Agreement." The "Hold Harmless Release Agreement," included with the letter, would require Ms. Rogers to release CBP of any and all past or future claims against CBP related to the seizure, detention, and release of her property, and further, reimburse CBP for any attorneys' fees associated with enforcement of the agreement. Ms. Rogers did not sign the agreement and her GPS unit was released to her without incident, almost eight months after it was initially taken from her without cause.

Because of this incident, Ms. Rogers feels fear and panic whenever she passes a CBP vehicle, and she vividly recalls the embarrassment she suffered from being detained like a criminal. Now, Ms. Rogers avoids the road where she was detained, knowing that even though she was not breaking the law in any way, CBP agents in the area act with impunity and may stop her simply because of the color of her skin.

ANALYSIS

I. APPLICABLE LAW UNDER THE FEDERAL TORT CLAIMS ACT

The Federal Tort Claims Act ("FTCA") is a limited waiver of the federal government's sovereign immunity, under which the U.S. is liable for the torts committed by its employees "in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674. Sovereign immunity is explicitly waived "'with regard to acts or omissions of investigative or law enforcement officers of the United States,' for 'any claim arising ... out of

assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution.” *Liranzo v. U.S.*, 690 F.3d 78, 85 (2d Cir. 2012) (footnote omitted), *quoting* 28 U.S.C. § 2680(h). Border patrol agents “are ‘investigative or law enforcement officers’ within the meaning of this section.” *See Caban v. U.S.*, 728 F.2d 68, 72 (2d Cir. 1984).

Because the aforementioned events occurred in New York, Ms. Rogers’ claims against CBP are dictated by New York tort law. *See* 28 U.S.C. § 1346(b)(1) (liability under the FTCA is determined “in accordance with the law of the place where the act or omission occurred.”).

II. FALSE ARREST AND IMPRISONMENT²

False imprisonment is the “unlawful deprivation of another’s freedom to choose his own location,” *Caban*, 728 F.2d at 71, and to successfully establish a claim under New York law, a plaintiff must demonstrate four elements: “(1) the defendant intended to confine [the plaintiff], (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged.” *Id.* (*quoting Broughton v. State*, 37 N.Y.2d 451, 456, *cert denied*, 423 U.S. 929 (1975)).³

The BP agents intended to confine Ms. Rogers when they subjected her to roadside detention and stated their objective to do so, satisfying the first element of false imprisonment under New York law. Ms. Rogers asked BP Agent 1 whether she was being detained and he explicitly responded that she was. Moreover, BP Agent 2, when he arrived at the scene, asked her if she had ever been handcuffed or arrested, and subsequently placed her under arrest. Her several hour detention, on both the Huevelton road and at the Ogdensburg border patrol station, demonstrated that the agents intended to confine her and acted on those intentions.

Ms. Rogers was conscious of this confinement throughout the encounter and feared that she could be detained indefinitely. Her questions to the agents of whether she was being detained illustrate her comprehension of her own confinement. Ms. Rogers also stated that she was fearful throughout the encounter because she had no idea how long the detention could last for. She had never been arrested before and, as a U.S. citizen, was unsure why border patrol agents had chosen to handcuff and detain her. Ms. Rogers did not consent to this confinement, and was placed in CBP custody against her own free will.

Finally, CBP’s confinement was not “otherwise privileged.” The Second Circuit recently held that, under New York law, whether confinement was “otherwise privileged” is “determined by consulting federal privileges applicable to federal immigration officers.” *Liranzo*, 690 F.3d at 95, *quoting Caban* 728 F.2d at 71.

There is nothing in federal regulations, border patrol practice manuals or otherwise that permits a BP agent to detain a U.S. citizen without any cause. Roving patrols allow officers to

² Under New York law, “the tort of false arrest is synonymous with that of false imprisonment.” *Posr v. Doherty*, 944 F.2d 91, 96 (2d Cir. 1991).

³ The Second Circuit has recently held that with respect to immigration detention, a private analogue existed for FTCA purposes in the form of false arrest and imprisonment under New York law. *See Liranzo*, 690 F.3d at 95 (holding that a U.S. citizen could bring a false imprisonment claim under the FTCA where he was arrested and detained by Immigration and Customs Enforcement as a removable noncitizen).

stop vehicles “only if [they are] aware of specific *articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicle contains illegal aliens*. Absent consent, a more in-depth search requires probable cause for both types of inland traffic-checking operations.” (Inspector Field Manual §18.6(e)) (emphasis added). *See also Gallegos v. Haggerty*, 689 F. Supp. 93, 99-102, 105 (N.D.N.Y. 1988) (INS could not show as a matter of law that they acted in conformance with federal standards when they made a warrantless entry into a house and detained migrant farmworkers for over ninety minutes).

Agent Crawford did not have the requisite reasonable suspicion to stop Ms. Rogers, necessitated by CBP’s manual and mandated by the Fourth Amendment. *See U.S. v. Singh*, 415 F.3d 288, 294 (2d. Cir. 2005). In *Singh*, the Second Circuit stated that officers should look at the “totality of the circumstances” in order to determine whether reasonable suspicion exists to perform an inland roving patrol stop, and specifically cited eight factors previously articulated by the Supreme Court. *Id.* at 294, *citing U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884-885 (1975). The factors include:

- 1) characteristics of the area where the vehicle is found; (2) its proximity to the border; (3) usual traffic patterns on that road; (4) previous experience with alien traffic in the area; (5) recent information about specific illegal border crossings there; (6) the driver's behavior, such as attempting to evade officers; (7) characteristics of the vehicle itself; and (8) the appearance of persons in the vehicle, such as mode of dress.

Singh at 294. None of these factors were present when CBP initiated the stop of Ms. Rogers. Ms. Rogers was driving on Route 184, the main road leading to Huevelton. She did not attempt to evade border patrol officers and at no time committed a driving infraction while the agent followed her. The vehicle she was driving was an ordinary sedan, capable of seating five people; she only had three occupants including herself. Ms. Rogers was in the driver’s seat, one passenger was in the front passenger seat and the other was in the backseat. All passengers were dressed in ordinary clothes – jeans, t-shirts and jackets. Moreover, the fact that Ms. Rogers was driving near the border cannot in itself constitute reasonable suspicion. *See U.S. v. Rangel-Portillo*, 586 F.3d 376, 380 (5th Cir. 2009) (“[P]roximity of the stop to the border ... alone does not constitute reasonable suspicion to stop and search an individual's vehicle.”).

Lacking reasonable suspicion to initiate the roving patrol stop, the officers certainly lacked probable cause to conduct “a more in-depth search” of her vehicle and her person pursuant to their own manual. The stop, search and detention of Ms. Rogers violated her Fourth Amendment rights and therefore cannot be considered “privileged” actions by federal officers. *See Voskerchian v. U.S.*, 1999 WL 66709 *4, No. 98-CV-0335E(M) (W.D.N.Y. Feb. 10, 1999) (unreported) (“New York cases support the proposition that a law enforcement officer's privilege remains limited to *constitutional* searches and seizures.”) (emphasis added). *See also Rhoden v. U.S.*, 55 F.3d 428, 432 n.5 (9th Cir 1995) (finding that if the detention by the INS was contrary to the Fourth Amendment as interpreted by federal law, then “it was not legally justified or privileged” and plaintiff could therefore “establish the [CA] state tort of false imprisonment.”).

Ms. Rogers’ confinement was not based on regulations and manuals dictating the

practices and rules of immigration officers, and furthermore, CBP's actions violated her Fourth Amendment rights to be free from unreasonable search and seizures. Therefore, the actions of the BP agents were not "privileged" under New York law, which would apply these federal standards, and therefore CBP cannot justify its unlawful arrest and imprisonment of Ms. Rogers.

III. ASSAULT AND BATTERY

Assault is defined as an intentional attempt or threat to do injury or commit a battery. To sustain a cause of action to recover damages for assault, there must be proof of physical conduct placing the plaintiff in imminent apprehension of harmful contact. *See Stanley v. Amalithone Realty, Inc.*, 31 Misc.3d 995, 1006 (Sup. Ct. NY County 2011); *see also Holtz v Wildenstein & Co.*, 261 AD2d 336 (1st Dept. 1999).

A battery is intentional and wrongful physical contact with a person without his or her consent. *See Pope v. State of New York*, 192 Misc 587 (Ct. Cl. 1948), *Wende C. v United Methodist Church, N.Y. W. Area*, 4 N.Y.3d 293, 298 (Ct. App. 2005). The Restatement [Second] of Torts § 18 (1965) states that in order to be subject to liability for battery an actor "acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact" and "an offensive contact with the person of the other directly or indirectly results."

Where an assault or battery occurred in the course of an arrest, the question becomes whether or not the arrest was lawful. Where an arrest is unlawful, a technical assault and battery occurs when a claimant is handcuffed. *See Johnson v. Suffolk County Police Dept.*, 245 A.D.2d 340 (N.Y. Sup. Ct. 1997) (because the arrest of the plaintiff by the police officer was unlawful, the officer committed a battery when he touched her during the arrest.); *see also Sulkowska v. City of New York*, 129 F. Supp.2d 274, 294 (S.D.N.Y. 2001) ("If an arrest is determined to be unlawful, any use of force against a plaintiff may constitute an assault and battery, regardless of whether the force would be deemed reasonable if applied during a lawful arrest."); *Pawloski v. State*, 258 N.Y.S.2d 258, 265 (1965) (police officer liable to plaintiff falsely arrested where plaintiff "was touched by State Police.")

Agent Crawford committed a battery upon Ms. Rogers when he intentionally made physical contact with Ms. Rogers when he forcibly and offensively removed her car keys from her hand without her consent. Additionally, Agent Crawford committed a second battery upon Ms. Rogers when he forcibly and offensively grabbed her phone out of her hand without her consent.

Because the arrest was unlawful, BP Agent 2 also committed a battery upon Ms. Rogers when he intentionally and wrongfully made physical, offensive and harmful contact with Ms. Rogers by conducting a pat-down search, placing her arms behind her back and placing handcuffs on her wrists without her consent. Ms. Rogers was subjected to further battery when she was searched a second time in CBP custody when she underwent a more thorough search of her person.

IV. CONVERSION

When Ms. Rogers was detained by border patrol, they took unlawful possession of her Garmin Nuvi GPS unit. This is an unlawful conversion under New York law. Conversion is the “exercise of unauthorized dominion over the property of another in interference with a plaintiff’s legal title or superior right of possession.” *Citadel Mgmt. Inc. v. Telesis Trust, Inc.*, 123 F. Supp.2d 133, 147 (S.D.N.Y.2000) (quoting *Lopresti v. Terwilliger*, 126 F.3d 34, 41 (2d Cir.1997)). To maintain a claim for conversion, a plaintiff must show: (1) the property subject to conversion is a specific identifiable thing; (2) plaintiff had ownership, possession or control over the property before its conversion; and (3) defendant exercised an unauthorized dominion over the thing in question, to the alteration of its condition or to the exclusion of the plaintiff’s rights. *Moses v. Martin*, 360 F. Supp. 2d 533, 541(S.D.N.Y. 2004). *See also AD Rendon Communications, Inc. v. Lumina Americas, Inc.*, 2006 WL 1593884 (S.D.N.Y. June 7, 2006), *In re Refco Sec. Litig.*, 759 F. Supp. 2d 301, 327 (S.D.N.Y. 2010).

The facts of the incident satisfy all the elements to establish an unlawful conversion. Ms. Rogers’ property is a specific identifiable thing. The GPS unit that was removed from Ms. Rogers’ possession was a Garmin Nuvi. Before its conversion, Ms. Rogers’ undoubtedly had ownership, possession *and* control over the GPS. She purchased the GPS for use in her vehicle, and she utilized it to navigate between locations in the course of her employment. Lastly, CBP exercised an unauthorized dominion over the GPS unit to the exclusion of Ms. Rogers’ rights when the officers unlawfully took it from her. Although Ms. Rogers may have signed a consent form turning over the unit to CBP, this consent was coerced. Ms. Rogers was told that if she did not sign the paperwork turning over the unit, CBP would have to get a warrant and that it would take a long time to do so. Ms. Rogers understood this statement to be a threat that if she did not sign the paperwork she would be stuck indefinitely in CBP custody. Ms. Rogers signed the consent form out of fear of indefinite detention. Consent is not freely given when the consenting party has been threatened. *Miranda v. Arizona*, 384 U.S. 436, 504 (1966). Therefore, Ms. Rogers’ coerced signing of a consent form cannot be considered authorized consent to disrupt the third requirement of a conversion claim.

Even if taking Ms. Rogers’ GPS unit were to be considered lawful, CBP unlawfully retained possession of the unit. In New York, there is a distinction between the wrongful taking of another’s property and the wrongful detention of that property. *In re Refco Sec. Litig.*, 759 F. Supp. 2d 301, 327 (S.D.N.Y. 2010). For claims of wrongful detention in which the possession is originally lawful, a conversion occurs when the owner makes a demand for the return of the property and the person in possession of the property refuses to return it, thus no longer having rightful possession. *Newbro v. Freed*, 409 F. Supp. 2d 386, 394 (S.D.N.Y. 2006) *aff’d*, 06-1722-CV, 2007 WL 642941 (2d Cir. Feb. 27, 2007) (quoting *In re King*, 305 A.D.2d 683, 759 N.Y.S.2d 895 (2003)).

Ms. Rogers’ GPS unit was not returned to her for many months. When she returned home after her arrest, both she and her husband made calls to CBP requesting the return of her CBP unit. Ms. Rogers and her husband were informed that it had to be sent to a lab out of state. Approximately one month later, Ms. Rogers received a letter and a receipt for her GPS unit from CBP notifying her that it was being analyzed and would be returned to her within 60 days.

However, Ms. Rogers was not notified by CBP that she could pick up her GPS unit until nearly seven months after it was taken from her. Accompanying the notice that stated that her GPS unit was available to be picked up was a "Hold Harmless Release Agreement." The agreement asked Ms. Rogers to release CBP of any and all past or future claims against CBP related to the seizure, detention, and release of her property, and further, to reimburse CBP for any attorneys' fees associated with enforcement of the agreement. Ms. Rogers did not sign or return the agreement.

As held in *Newbro*, even if CBP lawfully retained possession of the GPS unit, when Ms. Rogers and her husband made requests for its return, and CBP refused to return it, the detention of the unit became an unlawful conversion. After sending Ms. Rogers a notice that the unit would be returned within sixty days and even after sixty days had elapsed, the unit was not returned to her. Even if a court were to make the unlikely finding that her consent was not coerced, that consent did not last 60 days, nor the additional six months that CBP withheld her property. Further, no claim can be made that a third person had a right to possession of the GPS unit. The government did not have a right to possession. Ms. Rogers was never charged with any crime, or served with a warrant for the GPS unit. It was not evidence in any case against her, and even if there had been a case against her, the GPS unit would likely been unable to be admitted as evidence.

As such, both the taking of Ms. Rogers' Garmin Nuvi GPS unit, and its detention, are unlawful conversions under the law of New York.

V. DAMAGES

Based on the foregoing, Ms. Rogers respectfully requests \$210,000 in damages.

VI. CONCLUSION

Ms. Rogers, a U.S. citizen, was simply doing her federally-funded job when she was stopped by border patrol without cause, subjected to roadside detention, arrested and confined, and eventually stripped of her property for over seven months. Under the FTCA, Ms. Rogers has made out valid claims for false imprisonment and arrest, assault and battery, and conversion under New York law, and she respectfully requests damages in the amount articulated herein.

Respectfully submitted,



Betsy Ginsberg, Esq.

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Britany Nunez, *Legal Intern*

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Sarah Telson, *Legal Intern*

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CARDOZO LAW

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March 6, 2013

Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20258

U.S. Customs and Border Protection
Port of Entry – Ogdensburg
104 Bridge Approach
Ogdensburg, NY 13669

To Whom it May Concern:

L.R.
I, Lucia ~~Rojas~~-Rogers, authorize my representatives at the Kathryn O. Greenberg Immigration Justice Clinic of the Benjamin N. Cardozo School of Law and the New York Civil Liberties Union to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.*, with Customs and Border Protection.

Thank you. If you have any questions, please call the Clinic at (212) 790-0895.

Sincerely,

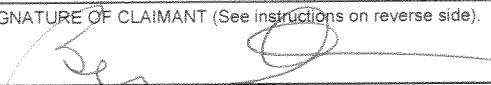
JENNIFER HANSEN
No. 6192063
Notary Public, State of New York
Qualified in Clinton County
My Commission Expires 08/25/2016



Sworn to before me on
this, the 7 day of
March, 2013

Lucia Rogers

Lucia ~~Rojas~~-Rogers
L.R.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: U.S. Customs and Border Protection Ogdensburg Station, Swanton Sector 127 North Water Street Ogdensburg, NY 13669			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Claimant: Lucia Rogers, 26 Chase Road, Chateaugay, NY 12920 See attached pages for information about claimant's legal representatives.		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 12/13/1985	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT 12/28/2011 Wednesday	7. TIME (A.M. OR P.M.) 2:00 P.M.	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). See attached pages.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). Owner is claimant.					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). See attached pages.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. See attached pages.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
See attached pages.		Unknown at this time.			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE 10,000.00	12b. PERSONAL INJURY 200,000.00	12c. WRONGFUL DEATH 0.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 210,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 790-0871	14. DATE OF SIGNATURE 03/12/2013	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

Not applicable.

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No

17. If deductible, state amount.

0.00

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

Not applicable.

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

Not applicable.

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.