

JUDGE FRANK MONTALVO

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
OCT 21 PM 4:07
DEPUTY

JANET PADILLA, INDIVIDUALLY §
AND AS REPRESENTATIVE OF THE §
OF THE ESTATE OF §
LUIS PADILLA; AND ON BEHALF §
OF LUIS PADILLA, JR., (A MINOR) §
INDIVIDUALLY AND AS §
REPRESENTATIVE OF THE ESTATE §
OF LUIS PADILLA, AND JACQUELINE §
PADILLA, (A MINOR) INDIVIDUALLY §
AND AS REPRESENTATIVE OF THE §
ESTATE OF LUIS PADILLA; AND §
JASMINE PADILLA (A MINOR) §
INDIVIDUALLY AND AS §
REPRESENTATIVE OF THE §
ESTATE OF LUIS PADILLA AND THE §
ESTATE OF LUIS PADILLA §

Plaintiffs,

vs.

Civil Action No. EP04CA0396

GIOVANNI GAUDIOSO, PATRICIA §
KRAMER, JUANITA FIELDEN, §
MICHAEL GARCIA, CURTIS COMPTON §
AND RAUL BENCOMO as agents of §
The UNITED STATES OF AMERICA, §
BUREAU OF IMMIGRATION AND §
CUSTOMS ENFORCEMENT, and the §
UNITED STATES DEPARTMENT OF §
JUSTICE, DRUG ENFORCEMENT §
AGENCY, and the UNITED STATES §
ATTORNEY'S OFFICE §

Defendants,

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

PLAINTIFFS' ORIGINAL COMPLAINT

The Plaintiffs, Janet Padilla (“Janet” or “Ms. Padilla” or “Plaintiff”) files this her Plaintiff’s Original Complaint on behalf of herself, the estate of Luis Padilla, and her children Luis Padilla, Jr., Jaqueline Padilla, and Jasmine Padilla (collectively referred to herein as “Plaintiffs”), and complains of the Defendants, The United States of America (“USA” or “United States”) the Bureau of Immigration and Customs Enforcement and the Justice Department, the U.S. Attorney’s Office, Giovanni Gaudio (“Gaudio”), Michael Garcia, Patricia Kramer (“Kramer”), Curtis Compton (“Compton”), Raul Bencomo (“Bencomo”) and Juanita Fielden (“Fielden”) (collectively referred to herein as “Defendants”) and, in support of a cause of action, would show the Court the following:

I.

PARTIES AND SERVICE

1. Plaintiff Janet Padilla is the wife of the deceased, Luis Padilla a resident of El Paso, El Paso County, Texas. Ms. Padilla is a representative of the Estate of Luis Padilla.
2. Plaintiff Luis Padilla. Jr., a minor, is the son of the deceased, Luis Padilla, a resident of El Paso, El Paso County, Texas. Luis Padilla. Jr. is a representative of the Estate of Luis Padilla.
3. Plaintiff Jacqueline Padilla, a minor, is the daughter of the deceased, Luis Padilla, a resident of El Paso, El Paso County, Texas. Jacqueline Padilla is a representative of the Estate of Luis Padilla.
4. Plaintiff Jasmine Padilla, a minor, is the daughter of the deceased Luis Padilla, is a resident of El Paso, El Paso County, Texas. Jasmine Padilla is a representative of the Estate of Luis Padilla.
5. Plaintiff the Estate of Luis Padilla, is represented by Plaintiff Ms. Padilla for the benefit of all parties entitled to bring a cause of action for the death of Luis Padilla and

for any and all other causes of action at common law to which they are entitled. There was no need for an administration of the Estate of the Deceased and all lawful heirs are parties to the lawsuit.

8. Defendant Michael Garcia (“Garcia”) may be served with citation and with a copy of the summons and complaint at 4849 North Mesa, Suite 300, El Paso, Texas 79912 or anywhere he may be found.

9. Defendant the Patricia Kramer (“Kramer”) may be served with citation and with a copy of the summons and complaint at 4849 North Mesa, Suite 300, El Paso, Texas 79912 or anywhere she may be found.

10. Defendant Curtis Compton (“Compton”) may be served with citation and with a copy of the summons and complaint at 4849 North Mesa, Suite 300, El Paso, Texas 79912 or anywhere he may be found.

11. Defendant Giovanni Gaudio (“Gaudio”) may be served with citation and with a copy of the summons and complaint at 4849 North Mesa, Suite 300, El Paso, Texas 79912 or anywhere he may be found.

12. Defendant Raul Bencomo (“Bencomo”) may be served with citation and with a copy of the summons and complaint at 4849 North Mesa, Suite 300, El Paso, Texas 79912 or anywhere he may be found.

13. Defendant Juanita Fielden (“Fielden”) may be served with citation and with a copy of the summons and complaint at 700 E. San Antonio Ave., Suite 200, El Paso, Texas 79901 or anywhere she may be found.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, each of the Defendants was the agent, servant and employee, co-

venturer and co-conspirator of each of the remaining Defendants, and Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden were at all times herein mentioned, acting within the course, scope, purpose, consent, knowledge, ratification, and authorization of such agency, employment, joint venture, and conspiracy.

15. The Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden were acting individually and in the scope of their employment with the Bureau of Immigration and Customs Enforcement ("ICE") and the United States Attorney, Department of Justice. The Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden are liable for their tortious and non-discretionary acts performed at the operational level. Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden are liable personally and in their representative and official capacities for the violations specified in this Complaint.

16. Whenever in this complaint reference is made to "Defendants" such allegation shall be deemed to mean the acts of Defendants acting individually, jointly, and/or severally.

II.

JURISDICTION AND VENUE

17. The Court has jurisdiction over this action filed pursuant to, *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S. Ct. (1971), violations of the Fourth and Fifth Amendments; and the common law for the State of Texas.

Venue is proper in the Western District, El Paso Division where the Plaintiffs reside or the district in which the acts or omissions giving rise to the suit occurred. 28 U.S.C. §1402(b).

18. Venue is proper in the United States District Court for the Western District of Texas, El Paso Division as Plaintiffs are residents of El Paso County, Texas and events giving rise to the causes of action occurred in El Paso, El Paso County, Texas. Venue is proper in this District under 28 U.S.C. §1402(b) as the Plaintiffs reside in El Paso, Texas. In addition, venue is governed by 28 U.S.C. §1391(e) and proper in El Paso, Texas where a substantial part of the events or omissions giving rise to the claims occurred, and where the defendants reside.

III.

FACT STATEMENT AND BACKGROUND

19. Luis Padilla, husband of Plaintiff Ms. Padilla and father of three minor children, Plaintiffs Luis Padilla Jr., Jacqueline and Jasmine was a former Socorro High School athlete and a 1995 Socorro graduate. Luis Padilla went missing since January 14, 2004. His body was later found in the backyard of a small house in Jaurez, Mexico. He was 29. The story behind his death is detailed below.

20. Beginning on or about January 2003, Defendants working for the United States Immigration and Customs Enforcement hired and paid a confidential informant who took part in the killing of several people in the border city of El Paso, Texas. Between August 2003 and January 2004, nearly twenty people, including Luis Padilla, were tortured, killed and then buried in the back yard of a house in Juarez, Mexico.

21. The informant was a high-level member of the Juarez drug cartel working for Santillan Tabares, a member of the Vicente Carrillo Fuentes drug cartel. The informant worked as a double agent: providing the U.S. authorities with questionable intelligence information, while also working for the Juarez drug cartel.

22. The informant operated under the supervision and under the authority of the United States Immigration and Customs Enforcement (“ICE”) officers, Defendants

Garcia, Kramer, Compton, and his handler Bencomo. The informant also operated under the authority and supervision of the Assistant United States Attorney, Defendant Fielden. Contrary to protocol Fielden made tactical decisions regarding the handling and operations of the informant.

23. As early as August 2003, ICE officials including Defendants Garcia, Kramer, Compton, and Bencomo and assistant U.S. attorney Fielden were aware that the informant was participating in kidnapping and killings.

24. The informant was later identified as Jesus Contreras a/k/a "Lalo", "SA-913-EP" in a debriefing before the Drug Enforcement Administration, the Mexican Consulate, the Legal Attaché for the Attorney General's Office of the Republic of Mexico (PGR), and the Mexican Office of Public Depositions. The informant admitted to the kidnapping and killings of several individuals including Luis Padilla. Testifying under condition of immunity, Contreras detailed the numerous killings he committed while under the protection of the United States government. Contreras bragged in grisly detail how the murders were carefully planned and carried out.

25. In August 2003 Contreras had killed his first victim while on the U.S. payroll, a well known Juarez attorney named Fernando Reyes Aguado. The killing was actually monitored and recorded by the ICE officials as it occurred. The ICE account of the incident details how Contreras and his men tortured and brutally killed. The shocking details also reveal how Reyes pleaded for his life.

26. In the course of six months, Contreras participated in the killings of over twelve (12) people, possibly more. In each incident, the informant was instrumental in luring the victims to the house on Parsioneros Street in Juarez, Mexico where the killings occurred. He used duct tape, rope, and a plastic bag for extensive torture of the cartel victims. After each horrible ordeal, Contreras would purchase sacks of lime for burial and decomposition of the bodies. Contreras stacked and buried the bodies on top of each

other in the backyard of the house. In a later debriefing, Contreras provided his ICE handlers a drawing of the house with numerous stick figures representing over a dozen murder victims.

The Recruitment

27. Contreras had worked for the DEA but the agency “deactivated” him in June 2003 when the U.S. Border Patrol caught him trying to smuggle drugs across the New Mexico border into the United States. Contreras had attempted to smuggle a load of marijuana through Las Cruces, New Mexico. The DEA had targeted Contreras for prosecution but ICE officials recruited him as an informant. A deal was struck. The United States Justice Department was able to get the charges dropped against Contreras. Thereafter, Contreras became a paid informant for ICE under the protection of the U.S. Attorney’s office in El Paso. Instead of landing in jail, Contreras continued to work for Immigration and Customs -ICE.

28. In the course of two years, Contreras was paid hundreds of thousands of dollars by the U.S. government to work for ICE and the U.S. attorney. Although Contreras purported to work for ICE, yet he continued to work illegally and take orders from the Juarez drug cartel. Contreras had outsmarted his handlers: he could traffic in drugs, torture and kill countless victims -while on the payroll of the U.S. government. With no fear of prosecution, Contreras killed and threatened indiscriminately. Yet ICE and Fielden were not necessarily outsmarted. Both agencies had recorded the killing of Reyes as early as August 2003. The last murders according to the Superseding indictment filed by Fielden, occurred in January 2004, six months later.

29. Apathy, marred by incompetence characterized the operations run by ICE and the United States Attorney’s office in El Paso. Yet the facts would reveal that both agencies were consciously aware of the ongoing killings. All killings after August of 2003 could have been prevented. At the very least, the Contreras operation should have been shut

down. After the Reyes murder, a senior government official demanded that ICE and the prosecutor shut down the operation. The request was refused.

30. Both ICE and the Justice Department had every opportunity to arrest Santillan and the cartel members and shut down the organization in El Paso and Juarez. ICE and the assistant U.S. Attorney knew the intimate details of most of the killings –from the initial planning to the eventual torture and burial of the bodies. Most revealing was the statement from an ICE supervisor when confronted with the evidence of the killings. “Who gives a damn, they’re only Mexican,” was the response.

Contreras as a Double Agent

31. Contreras continued to work for the Juarez drug cartel and its chief, Vicente Carrillo Fuentes and the Bureau of Immigration and Customs Enforcement and the Justice Department and their chiefs Gaudioso and Fielden. Contreras provided disinformation to both organizations and receiving money from both organizations -while leaving a trail of dead bodies.

32. The cartel got its point across and Fielden got her indictments. Both sides got what they wanted –and Contreras got paid. But the cost was high: after the killing of Reyes, twelve more people were brutally killed.

The killing of Fernando Reyes Aguado

33. The informant notified his ICE supervisors on August 5th, 2003 of a planned killing that day in Juarez. Contreras and his cartel cohorts had planned the brutal killing of Fernando Reyes. Contreras had communicated the murder plot to his ICE handlers and the Justice Department. No action was taken to prevent the killings –instead ICE and the Justice Department facilitated the process in order to record the killing.

34. ICE official Garcia recounted details of the killing of Reyes in a memorandum written on August 25, 2003. The memo discusses Contreras' first recorded death victim. The document from ICE details the debriefing of the informant to "obtain information related to events that occurred between Thursday July 31, 2003 and Tuesday, August 5, 2003 related to a homicide that was allegedly supervised by SA-913-EP [the informant]." The informant was later identified as Jesus Contreras in his sworn deposition at the Mexican Consulate in Dallas, Texas.

35. Contreras recounted the details of the brutal killing of Reyes, the hapless Mexican lawyer. Apparently, the ICE officials ordered Contreras to turn on his cell phone so they could listen in on his activities from their El Paso offices. The ICE officials listened as Contreras and his Mexican accomplices bound Reyes using duct tape, a rope, and finally used a plastic bag and a shovel to kill the victim. ICE officials recorded the brutal torture and slaying of the lowly victim suspected of losing a delivery belonging to the cartel. In deposition, Contreras claimed that Reyes "begged for his life" as the brutal torture ensued.

36. According to the memo, the informant was always provided with a firearm when he crossed the border into Mexico. As a routine matter, ICE handlers allowed Contreras to carry a 9mm Beretta with a 15 round magazine upon crossing the border. Contreras even carried a second magazine, in case the first magazine contained only blanks.

37. The U.S. government was clearly on notice that Contreras had committed the killing. ICE officials had a live feed of the Reyes killing as it occurred via Contreras' cell phone. The officials knew and should have known that other killings would soon follow. The ICE memorandum, as well as the Contreras deposition reveals that ICE sponsored, controlled, and armed Contreras allowing him to torture and kill on behalf of the drug cartel. With no fear of prosecution, Contreras and his Mexican accomplices would terrorize the border town in a siege of violence and murder.

The Dead Bodies

38. By January 2004, over a dozen dead bodies were discovered buried in a house on Parsioneros Street in Juarez, Mexico. The key killer was Jesus Contreras, a/k/a Lalo, otherwise known by his handlers as SA-913-EP. In a debriefing, Contreras provided his ICE handlers a drawing of the house with numerous stick figures representing over a dozen death victims. ICE and the Justice Department, however, knew that the bodies were stacking up.

39. By February 2004, ICE and the Justice Department had to come to terms with the crimes committed by Contreras. Contreras gave a sworn deposition at the Mexican Consulate in Dallas, Texas. Contreras admits he bought duct tape, gauze, and plastic bags in order to carry out the killings. He even purchased several sacks of lime for the decomposition and burial of the bodies. Contreras was an accomplice in the death of Reyes –handing the plastic bag that would eventually suffocate Reyes. The deposition reveals that the informant was instrumental in another twelve (12) deaths.

40. The ICE memorandum read in conjunction with Contreras' deposition clearly proves that ICE officials had details of the planning, the torture, and killing of Fernando Reyes. The memo discusses the torture and killing of Reyes preceded by Contreras purchasing duct tape, plastic bags and quick lime for later burial. By January 2004, Contreras admitted to torturing and killing several victims -carried out in the same manner as the Reyes killing. Under the watchful eyes of ICE officials, Contreras actively participated in the planning and carrying out of several killings. Contreras even alerted his ICE handlers before the killings took place. Afterwards, Contreras paid the other killers to help bury the bodies in the Parsioneros house in Juarez.

A Serial Killer

41. During his debriefing in Dallas, Contreras was less than remorseful. Testifying on condition of immunity, Contreras was brazen in his testimony. After recounting dozens of killings, Contreras bragged that he struck fear in Juarez announcing to all that “we are a serious organization,” capable of killing anyone. Contreras and his band of killers even killed women and children. Contreras describes the killing of a mother and three-year-old daughter. The two came to ask the cartel for assistance -money for the legal defense of their father. Rather than giving the mother and little girl money, they were killed, instead.

42. Contreras and his band of cutthroats continued to kill anyone who crossed them, whether or not they were involved in the drug trade. The victims are targeted for sequestration, torture, and eventual killing. The targets, however, were seldom found alone. Many were taken off the street, at restaurants, shops, and businesses. And along with the targets, any perceived companions were also abducted and killed. Luis Padilla was one such innocent victim.

Death of Luis Padilla

43. Contreras and his group killed indiscriminately. Bystanders are abducted along with the principal targets. Protected by the U.S. government while working for the Mexican drug cartel there was no limit to their siege of torture and killing. Contreras continued to take orders from the Carillo-Fuentes drug cartel whose sole objective was to increase power and wealth and at the same time eliminate any competition through torture and death.

44. On or about January 8th, 2004 six months after the recorded killing of Reyes, Contreras and his cohorts targeted a courier for the “carne asada” or barbeque. The

reference is meant to signify the usual abduction, torture, and killing. Santillan ordered Contreras to prepare a carne asada for the targeted courier or “mule.” But as usual, others were abducted along with the target. Making a day trip to Juarez, Luis Padilla, an El Paso resident, was also taken. A victim of the Contreras hit squad, Padilla was never again seen by his family. In attempt to leave no trace, Padilla and the target were killed by Contreras and the cartel. His mutilated body was eventually identified at the Parsioneros house in Juarez.

45. Luis Padilla was one of the last persons killed by Contreras’ group. His death could and should have been prevented. Nevertheless, Padilla was killed due to the negligence and conscience indifference of the Bureau of Immigration and Customs Enforcement and the assistant U.S. Attorney in El Paso. Mr. Padilla left a wife and three small children.

DEA agent, wife and children targeted for death

46. On January 13, 2004 the torture and killings would have continued had not two U.S. DEA agents been targeted for assassination. One victim of Contreras’ brutal torture revealed the address of the house in a gated residential community occupied by a businessman living in Juarez, Mexico. The group suspected that the house contained a large cache of illegal drugs. Contreras and the cartel planned a siege on the house and a “barbeque” of the occupants.

47. On January 14, 2004 Contreras discovered, through his ICE contacts, that the businessman was actually a DEA agent living in Mexico with his family. Contreras immediately reported to the drug cartel the identity and location of the DEA agent and his family. The stage was set for the kidnapping, torture, and killing.

Time to leave

48. On that day cartel gunmen accompanied by heavily armed Juarez police, descended upon the house in Juarez and lay in ambush for the agent and his family. They knocked on the door. The agent's wife realized that something was amiss. Trained to suspect strange visitors, she did not answer and waited for her husband. When he returned home, everyone jumped in the car and immediately vacated. It was no longer safe.

49. Waiting for the family to leave the gated community, several gunmen accompanied by Juarez police, pulled the family over at a street light. With guns drawn, the cartel gunmen accompanied by paid police officers forced the agent, wife, and two children out of his automobile. Facing imminent death of his family, in desperation the agent used his cell phone to call his partner who was in Juarez at the time. The second agent appeared on the scene to assist his comrade and his family.

50. The agent and his family along with the second agent faced several gunmen intent on killing. The second agent acted quickly and summoned help. By sheer luck, the agent reached his diplomatic contacts and several state police officers who immediately appeared on the scene. The Chihuahua State Police officers, verifying the diplomatic identification cards carried by the agents, were able to secure their release.

51. A Drug Enforcement Agency agent and his family were almost kidnapped and murdered sending shock waves throughout the law enforcement community. ICE and the Justice Department could no longer ignore the siege of mayhem and murder. They could no longer ignore the serial killings. Tracking the serial killers was easy (Contreras is on their payroll). Covering it up proved much more difficult.

The Criminal Prosecution

52. Just one month prior to the DEA fiasco, December 3, 2003, the Justice Department had filed a sealed indictment in the U.S. District Court in El Paso, listed as Cause No. EP-03-CR-2291-KC. The Justice Department and Defendant Fielden were aware, as early as in December 2003 that Contreras had supervised and participated in several murders. A senior official strongly recommended to both ICE and the prosecutor to arrest Santillan and shut down the operations in Juarez. These demands were ignored. Defendants Fielden and ICE refused to make any arrests and instead continued the Contreras operation. In January 2004, three more people, including Luis Padilla, were killed.

53. The sealed indictment is most revealing. While alleging drug charges and criminal conspiracy, it makes no mention of the multiple killings. Clearly the killings would have continued had the threat not extended to a DEA agent and his family. To Defendant Fielden, the innocent murder of El Paso residents was an acceptable price to pay. And to the ICE Immigration supervisors “Who gives a damn ... they are only Mexican.”

54. After the attempted murder of two DEA agents, -the gig was up. The DEA discovered that Contreras was kept on the ICE payroll and was the key participant in the Juarez murders. Back in August 2003, ICE never took the advice of the DEA to arrest Santillan and shut the operation down. Now, there is no denying that the ICE informant was involved in several killings. The original indictment has been amended by the Superseding Indictment that now includes various selective murder charges against the defendants. Santillan is named as the primary criminal defendant. Ironically, Santillan was nowhere in the vicinity at the time of the killings. In contrast, Contreras was directly involved in the kidnapping, torture, and killing of each individual. Contreras was never arrested. On the contrary, he was left on the street –free to carry out at least three more killings.

55. On January 15, 2004, El Paso sheriff's officers arrested Mr. Santillan Tabares, the day after attempts to kill two Juarez-based U.S. agents of the Drug Enforcement Administration were foiled. Shortly after the arrest of Mr. Santillan Tabares, Mexican and U.S. federal authorities unearthed several bodies at a home in Juarez. Initially, authorities believed the men were victims in a killing spree involving rival drug traffickers. Officials later learned about the role of the ICE informant in at least one of the killings.

Cartel members escape

56. In January 2004 shortly after the attempted assassination of the DEA agent and his family, senior DEA officials attempted to question Contreras. The debriefing by the DEA allowed the PGR to obtain a search warrant for the Parsioneros house and arrest all the cartel members. The ICE handlers and the assistant U.S. attorney, intent on disguising evidence of their complicity, denied all access to Contreras. The government officials also purported to protect Contreras as a witness in a cigarette smuggling case. The DEA and the cooperating PGR in Mexico were both kept in the dark. The resulting one week delay allowed the cartel members to escape capture.

57. That same month, ICE and Fielden proclaim the results of a 2½ year old cigarette smuggling case filed under seal at the same time as the indictment of Santillan. ICE officials and the Justice Department laud the superior exploits of the Justice Department.

58. The reality is much different. The main defendant is a wheel chair bound invalid made out to be a drug kingpin. In the meantime, thirteen people are murdered and all the Attorney General is applauding the accomplishments in foiling a case involving the importation of tax free cigarettes. The tobacco companies are now protected.

Sweetheart Deals

59. Embarrassed, shamed, and incriminated, the prosecution of Santillan was marred by unorthodox procedure, lack of disclosure, and ultimately resulted in “sweetheart deals” for the criminals. Unprecedented deals were struck and criminal defendants were given “wrist slaps” for their complicity in the drug trafficking and killings. In court documents, Defendant Fielden, the assistant U.S. attorney, sought to modify the Court’s standing Order regarding the discovery of the criminal files. Defendant Fielden claimed to have “massive amount of tape recordings and corresponding transcripts in this case” and would not “produce the copies until fourteen (14) days prior to trial.”

60. Thus, Defendant Fielden thwarted any disclosure regarding the ICE and Contreras murders and concealed her complicity. Lawful discovery is denied to the criminal defendants. Defendant Fielden claimed that early disclosure of such material regarding certain witnesses would place those witnesses, and possibly their families, in grave danger. Yet, Defendant Fielden failed to inform the Court that Contreras, the key murderer, was put back on the street.

The Government Investigation

61. The Justice Department initiated a Management Review to investigate the killings murders involving a government informant. Several officials reported the violations of policy, regulations, and breach of protocol that led to over twelve (12) known murders perpetrated by Contreras. The investigations even reveal criminal violations by several government officials involved in supporting and sponsoring the killings by Contreras. The voluminous reports read in conjunction with the sworn deposition of Contreras implicate all the Defendants as “accessories to murder.” The audit reveals that ICE officials and the assistant U.S. Attorney used extremely bad judgment but falls short of recommending prosecution.

62. Contreras' complicity in the killings under the sponsorship and protection of the U.S. attorney's office and ICE officials –made him a dangerous liability for the U.S. government. Requests by the DEA to question and debrief Contreras were repeatedly thwarted and blocked. Despite the fact that two DEA agents were nearly killed, access to Contreras was denied. The truth regarding the killings involving ICE and Contreras was suppressed.

63. On May 27, 2004, ICE official, Defendant Garcia issued a CONFIDENTIAL INFORMANT POLICY ADDENDUM. The memorandum states the following:

“[I]f an active informant is arrested or is believed to have engaged in unauthorized, unlawful conduct, including any act of violence, other than a petty crime or a minor traffic offense the use of that CI (confidential informant) should be immediately suspended. This pertains to information regarding any act of violence by the CI; whether alleged or confirmed, whether anticipated, current or historical.”

64. The memorandum, however, ignores the agency's incompetence and complicity regarding the 12 killings. Other reports are much more critical and nearly convict the officials involved in the Contreras debacle. Thus far, however, the Justice Department has refused to take any legal action.

A Serial Killer roams Free

65. Contreras became a liability. To everyone. To the U.S. government, to the Mexican government, and to the drug cartel. The U.S. government wanted to be rid of him. And the drug dealers seek his death. The Mexican government denies existence of the entire matter.

66. There is a problem. Contreras refuses protective custody and the witness protection program. In the tainted view of the Justice Department, prosecution of Contreras for murder is out of the question. He is a witness in the cigarette case and the Santillan murders. If he is prosecuted for murder, he will take others down with him. Therefore, Contreras is allowed to roam free.

Another Contreras linked murder

67. Contreras won't go away. On August 25th, 2004 Contreras negotiated a drug payment for himself to be delivered to at a Whataburger restaurant in El Paso. The informant sent his friend Abraham Guzman to make the pickup. Not trusting his friend, Contreras sent his wife to watch the transaction from a parked car. There was no payment –only payback. Two gunmen shouted the name “Lalo” and emptied the bullets of a gun in the back of Guzman’s head.

Injustice by the Justice Department

68. Lives are ruined. Children are left without a father. And the border town is cloaked in a reign of terror. Without a doubt, the Bureau of Immigration and Customs Enforcement and the Justice Department officials showed conscious indifference and callous disregard for human life. Defendant Fielden and ICE officials ignored the admonishments and warnings of the Drug Enforcement Administration after the agency had “blacklisted” Contreras when he began running drugs behind their back. Defendant Fielden routinely made untrained and unqualified operational decisions regarding the control of Contreras. Defendant Fielden has no authority or training in order to make such decisions. ICE and the Justice Department had full knowledge of the serial murders. A conscientious official demanded that ICE and the U.S. Attorney arrest Santillan and shut down the operation. ICE and Defendant Fielden refused. As early as August 2003, the U.S. Attorney and ICE knew where the bodies were buried. One auditor concluded

that the agencies would have allowed the killings to continue had a DEA and his family not been threatened.

69. Many skeletons will be revealed.

IV.

FIRST CAUSE OF ACTION

BIVENS AND COMMON LAW CLAIMS: INDIVIDUAL DEFENDANTS

70. The Plaintiffs hereby repeat and reallege the allegations contained within the preceding paragraphs as if fully set forth herein.

71. The Plaintiffs are entitled to seek recovery of damages under the Federal Tort Claims Act, 28 U.S.C. §2671 et seq., where the intentional, negligent or otherwise wrongful acts or omissions of certain employees of the United States, Bureau of Immigration and Customs Enforcement, acting within the scope of their office or employment, proximately caused or substantially contributed to the harms complained of herein, all under circumstances where the United States, if a private person would be liable to Plaintiffs in accordance with the laws of the State of Texas. However, the Federal Tort Claims Act mandates an administrative claim being made before the appropriate federal agency and a cause of action against the United States for money damages arises only on such claim being denied. 28 U.S.C. §2675. Since the Plaintiffs anticipate a delay in the making and processing of the administrative claim, they hereby reserve their right to initiate action against the United States of America and its various relevant and appropriate agencies under the Federal Tort Claims Act after completion of the procedural formalities, should Plaintiffs' claims be denied.

72. However, the formalities under the Federal Tort Claims Act for injuries caused by federal employees acting within the scope of their employment does not preclude actions against federal employees in their personal capacities for Constitutional

violations. See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 392-397 (1971).

73. The right to be free from unwarranted bodily injury at the hands of law enforcement officers is supported by both the fourth amendment guarantee of the right to be secure in one's person and the Fifth Amendment guarantee against the loss of liberty without due process of law. *Shillingford v. Holmes*, 634 F.2d 263, 265 (5th Cir.1981). Where the intentional torts of federal law enforcement officers violate constitutional rights, the plaintiff "shall have an action under FTCA against the United States as well as a *Bivens* action against the individual officials alleged to have infringed their constitutional rights." *Carlson v. Green*, 446 U.S. 14, 20. The actions and omissions of Defendants Garcia, Kramer, Curtis, Gaudio, Bencomo, and Fielden were wanton and oppressive and were done with reckless and callous indifference to Luis Padilla's constitutional rights. The actions, omissions and conduct of Defendants Garcia, Kramer, Curtis, Gaudio, Bencomo, and Fielden directly and proximately caused Luis Padilla's death. Defendants Garcia, Kramer, Curtis, Gaudio, Bencomo, and Fielden are therefore individually liable to the Plaintiffs on the following additional common law grounds:

A) Malice:

74. The actions and omissions of Defendants Garcia, Kramer, Curtis, Gaudio, Bencomo, and Fielden in recruiting, encouraging and allowing Contreras to torture and kill several victims including Luis Padilla, under the shield of law was characterized by ill will, spite, evil motive, and a purpose to injure constituting malice. Such malice gave rise to a reasonably foreseeable risk of harm to the Decedent Luis Padilla and his survivors. As a result, the Plaintiffs are entitled to recover all damages allowed by law on account of Defendants Garcia, Kramer, Curtis, Gaudio, Bencomo, and Fielden actions and omissions constituting malice.

B) Negligence:

75. Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden were all acting in the course of their employment at all times when they recruited, encouraged and allowed Contreras to torture and kill several victims including Luis Padilla, under the shield of law. Needless to say that such action constituted a breach of their duty resulting to damages caused to the Plaintiffs by such breach amounting to negligence. As a result, the Plaintiffs are entitled to recover all damages allowed by law on account of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden actions and omissions constituting negligence.

C) Gross negligence:

76. Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden were all acting in the course of their employment at all times when they recruited, encouraged and allowed Contreras to torture and kill several victims including Luis Padilla, under the shield of law. The acts and omissions of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden were the result of a conscious indifference to the rights, safety and welfare of Contreras' victims including Luis Padilla and his family, resulting in damages caused to the Plaintiffs. Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden are therefore guilty of gross negligence and as a result, the Plaintiffs are entitled to recover all damages allowed by law on account of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden actions and omissions constituting gross negligence.

D) Conspiracy:

77. Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden were all in agreement in recruiting, encouraging and allowing Contreras to torture and kill several victims including Luis Padilla, under the shield of law which was undoubtedly unlawful and beyond their call of duty amounting to conspiracy. As a result, the Plaintiffs are

entitled to recover all damages allowed by law on account of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden actions and omissions constituting conspiracy

E) Intentional Infliction of Emotional Distress:

78. The actions and omissions of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden in recruiting, encouraging and allowing Contreras to torture and kill several victims including Luis Padilla, under the shield of law were intentional, reckless, extreme and outrageous. Such actions and omissions resulted in the killing of Luis Padilla resulting in severe emotional distress to the Plaintiffs. As a result, the Plaintiffs are entitled to recover all damages allowed by law on account of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden actions and omissions which resulted in intentional infliction of emotional distress on the Plaintiffs.

F) Negligent Infliction of Emotional Distress:

79. The actions and omissions of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden in recruiting, encouraging and allowing Contreras to torture and kill several victims including Luis Padilla, under the shield of law were intentional, reckless, extreme and outrageous, but also negligent. Such actions and omissions resulted in the killing of Luis Padilla resulting in severe emotional distress to the Plaintiffs. As a result, the Plaintiffs are entitled to recover all damages allowed by law on account of Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden actions and omissions which resulted in negligent infliction of emotional distress on the Plaintiffs.

As a proximate result of the occurrences in question and the conduct of the Defendants as described hereinabove, the Plaintiffs have suffered injuries and damages including, but not necessarily limited to: physical shock, mental anguish and emotional trauma arising from the occurrence in question, grief, bereavement, and loss of society,

companionship, affection, consortium, and familial relationship form the incident forming the basis of this health care liability claim, to Plaintiffs' damage in a fair and reasonable amount. Additionally, the Plaintiffs have suffered economic loss as a result of the death of Luis Padilla.

V.

SECOND CAUSE OF ACTION

VIOLATION OF TITLE III

80. The Plaintiffs hereby repeat and reallege the allegations contained within the preceding paragraphs as if fully set forth herein.

81. During a criminal investigation, the Government secured a series of court orders authorizing electronic surveillance of the Defendants and Contreras, as mandated by Title III of the Omnibus Crime Control and Safe Streets Act of 1968, *18 U.S.C. § 2510* et seq. The Act was amended most recently by the USA Patriot Act (Public Law 107-56), which Congress passed in the wake of the September 11, 2001 terrorist attacks.

82. Applications for wire intercepts must be in writing and include a detailed statement of the facts and circumstances that describe the criminal offense, the location and place where the interception is to occur, the types of communications sought, and the identify of persons involved, if known. The application must also describe whether other investigative procedures have been attempted or, if not, why they are not likely to succeed.

83. The order must also meaningfully instruct government agents about the content and scope of the surveillance, including the identity of persons whose communications are to be intercepted, the type of communications sought, and the duration of the order. Surveillance must "terminate upon attainment of the authorized objective" or within thirty days, unless extended by the court. The statute reads as follows:

§ 2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter [18 USCS §2510 et seq.] shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed ...

84. Furthermore the Title III warrant must authorize the surveillance for a period no longer than is necessary to achieve the objective of the authorization (usually for no more than 30 days, subject to extensions). The Justice Department and Defendant Fielden should have disclosed evidence of the killings that had occurred under the supervision of Contreras and his ICE handlers. The death of Luis Padilla was a reasonably foreseeable consequence in the misuse of the Title III wire tap.

85. Alternatively, the Defendants negligently used Contreras without obtaining the Title III Court order or without prior judicial authorization. Contreras, as an informant, may have taped numerous conversations on hidden recorder or via cell phone without obtaining a court order. Contreras is required to act "under color of law" and have consented to the wiretap. 18 USCS § 2511(2)(c). ICE, Defendant Fielden and the U.S. Attorney's office exercised loose supervision of Contreras. The surveillance violated 18 USCS § 2511(2)(d), because Contreras the informant was involved in the furtherance of multiple criminal acts in carrying out the orders of the drug cartel. The Contreras surveillance was committed in the absence of "color of law," and in furtherance of committing a criminal or tortuous acts.

86. As a result of the foregoing violations by the Defendants, the death of Luis Padilla was a foreseeable event. It was directly and proximately caused from the Defendants' callous disregard for human life, conspiracy, gross negligence, negligence and their non-discretionary acts performed at the operational level. As a result, the Plaintiffs are entitled to recover all actual damages allowed by law. The Defendants' actions and omissions constitute gross negligence and malice. The Defendants acted with malice characterized by ill will, spite, evil motive, and a purpose to injure. The Defendants' actions involved an extreme degree of risk but proceeded anyway with a conscious indifference to the rights, safety, and welfare of Luis Padilla. The Defendants' actions were characterized by a callous disregard for human life and evil motive. As a result, the Plaintiffs are entitled to Punitive and Exemplary damages in accordance with Texas law.

87. As a proximate result of the occurrences in question and the negligence of the Defendants as described herein, the Plaintiffs have suffered injuries and damages including, but not necessarily limited to: physical shock, mental anguish and emotional trauma grief, bereavement, and loss of society, companionship, affection, consortium, and familial relationship arising from the occurrence in question, forming the basis of this claim to Plaintiffs' damage in a fair and reasonable amount. Additionally, the Plaintiffs have suffered economic loss as a result of the death of Luis Padilla.

VI.

THIRD CAUSE OF ACTION

Violation of Attorney General Guidelines Use of Confidential Informants and Violation of U.S. Attorney's Manual regarding Covert Investigations

88. The Plaintiffs hereby repeat and reallege the allegations contained within the preceding paragraphs as if fully set forth herein.

89. During a criminal investigation, the Government secured authorization to conduct covert investigations, as mandated by 18 USCS §2510, the United States Attorney's

Manual and the Attorney General Guidelines. The relevant provisions of the manual read as follows:

§ 9-21.050 Utilization of Persons in Custody of BOP or USMS for Investigative Purposes, or as Targets of Investigative Activity

Requests to use, for investigative purposes, persons who are in the custody of the USMS or BOP, or who are under BOP supervision, or to target such individuals in covert investigations, must be submitted to OEO for review and prior approval. Such requests must first be approved by the designated official(s) at the agency's headquarters, and then submitted, in writing, by personnel at the agency's headquarters to the Chief, Special Operations Unit, OEO, Criminal Division, U.S. Department of Justice, P.O. Box 7600, Washington, D.C. 20044-7600.

18 USCS § 2510, United States Attorney's Manual USAM § 9-21.050

90. The Defendants Garcia, Kramer, Curtis, Gaudio, Bencomo, and Fielden violated the provisions of 18 USCS § 2510, United States Attorney's Manual USAM § 9-21.050 in their sponsorship and payment of Contreras. The Defendants violated the Plaintiff's Constitutional rights and due process of law under the Fourth and Fifth Amendments. The Defendants are liable for conspiracy to protect and conceal the informant's criminal activities from investigation, arrest and prosecution in order to continue the covert operations. The conspiracy between the Defendants and others acting in concert with the confidential informant Contreras give rise to a reasonably foreseeable risk of harm to the Decedent Luis Padilla and his survivors. Contreras and his associates are such notorious serial killers that it was reasonably foreseeable that a failure to comply with the applicable guidelines would result in continuing killings including the killing of Luis Padilla.

91. Luis Padilla's death was a foreseeable event. It was directly and proximately caused from the Defendants' callous disregard for human life, gross negligence,

negligence and their non-discretionary acts performed at the operational level. As a result, the Plaintiffs are entitled to recover all actual damages allowed by law. The Defendants' actions and omissions constitute gross negligence and malice. The Defendants acted with malice characterized by ill will, spite, evil motive, and a purpose to injure. The Defendants' actions involved an extreme degree of risk but proceeded anyway with a conscious indifference to the rights, safety, and welfare of Luis Padilla. The Defendants' actions were characterized by a callous disregard for human life and evil motive. As a result, the Plaintiffs are entitled to Punitive and Exemplary damages in accordance with Texas law.

92. As a proximate result of the occurrences in question and the negligence of the Defendants as described herein, the Plaintiffs have suffered injuries and damages including, but not necessarily limited to: physical shock, mental anguish and emotional trauma grief, bereavement, and loss of society, companionship, affection, consortium, and familial relationship arising from the occurrence in question, forming the basis of this claim to Plaintiffs' damage in a fair and reasonable amount. Additionally, the Plaintiffs have suffered economic loss as a result of the death of Luis Padilla.

VII.

FOURTH CAUSE OF ACTION WRONGFUL DEATH, SURVIVOR

The Plaintiffs hereby repeat and reallege the allegations contained within the preceding paragraphs as if fully set forth herein.

The Defendants are liable for the wrongful death of Luis Padilla by reason of the conscious indifference, reckless, negligent, and gross negligence for the conscious disregard for human life including Luis Padilla. The Defendant's conduct directly and

proximately caused the foreseeable death of Luis Padilla. The Defendants' callous disregard for human life, gross negligence, and negligent acts were non-discretionary and performed at the operational level. As a result, the Plaintiffs are entitled to recover all actual damages allowed by law. The Defendants' actions and omissions constitute gross negligence and malice. The Defendants acted with malice characterized by ill will, spite, evil motive, and a purpose to injure. The Defendants' actions involved an extreme degree of risk but proceeded anyway with a conscious indifference to the rights, safety, and welfare of Luis Padilla. As a result, the Plaintiffs are entitled to Punitive and Exemplary damages in accordance with Texas law.

As a proximate result of the occurrences in question and the negligence of the Defendants as described herein, the Plaintiffs have suffered injuries and damages including, but not necessarily limited to: physical shock, mental anguish and emotional trauma arising from the occurrence in question, grief, bereavement, and loss of society, companionship, affection, consortium, and familial relationship from the incident forming the basis of this health care liability claim, to Plaintiffs' damage in a fair and reasonable amount. Additionally, the Plaintiffs have suffered economic loss as a result of the death of Luis Padilla.

VII. ATTORNEY FEES

93. Plaintiffs hereby seek lawful, reasonable attorney's fees and expenses. Plaintiffs repeat and reallege by reference each and every allegation contained in all previous paragraphs and incorporates the same herein as though fully set forth. The Plaintiffs have been forced to retain counsel to prosecute their Bivens claims. Pursuant to 42 U.S.C. § 1988, Plaintiffs hereby request that they be awarded their reasonable attorneys' fees and costs incurred in prosecuting this action.

VIII.
CLAIM FOR INTEREST

94. Plaintiffs seek all lawful interest from January 2004 until the date of payment of any judgment.

IX.

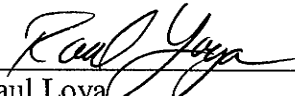
JURY DEMAND

95. Plaintiffs hereby demand trial by jury

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein and upon final hearing of this cause, Plaintiffs have judgment against Defendants Garcia, Kramer, Curtis, Gaudioso, Bencomo, and Fielden for the damages described herein, for costs of suit, interest from the date of the incident and for such other relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

LOYA & ASSOCIATES, P.C.

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PATRIOTISM MEANS LOVING YOUR COUNTRY ALL OF THE TIME BUT YOUR GOVERNMENT ONLY WHEN IT
DESERVES IT.