

All Plaintiffs Against Defendants Sheriff Hodgson, Superintendent Souza, Director Lyons.

534. Plaintiffs realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
535. The Fifth Amendment to the U.S. Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The government violates this substantive due process right when it subjects civil detainees to treatment and conditions of confinement that amounts to punishment or does not ensure the detainees' safety and health.
536. Defendants Sheriff Hodgson, Superintendent Souza, and Director Lyons, acted under color of federal law to subject all Plaintiffs to conditions of confinement that include the imminent risk of contracting COVID-19, a deadly disease for which there is no known understanding of the long-term side effects of exposure.
537. As public health experts in correctional medical care and infectious disease agree, individuals and families in immigration detention are at grave risk of COVID-19 infection.
538. Defendants Sheriff Hodgson, Superintendent Souza, and Director Lyons consistently disregarded requests from Plaintiffs and other detainees to adhere to social distancing measures, provide cleaning supplies, and apply broader testing to protect detainees.
539. Defendants Sheriff Hodgson, Superintendent Souza, and Director Lyons also disregarded this court's orders to take proactive means to address the risk of COVID, consistently disregarding directive to increase testing, and constantly refused to release individuals on bail even when directed by the court.

Count 2: Violation of Fifth Amendment Right to Due Process – Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement (42 U.S.C. § 1983) All Plaintiffs against Individual Capacity Defendants Sheriff Hodgson and Superintendent Souza

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. The Fifth Amendment to the U.S. Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The government violates this substantive due process right when it subjects civil detainees to treatment and conditions of confinement that amounts to punishment or does not ensure the detainees' safety and health.

539. Defendants acted under color of state law to subject Plaintiffs to conditions of confinement that include the imminent risk of contracting COVID-19, a deadly disease for which there is no known understanding of the long-term side effects of exposure.

540. As public health experts in correctional medical care and infectious disease agree, individuals and families in immigration detention are at grave risk of COVID-19 infection.

541. Defendants Sheriff Hodgson, and Superintendent Souza acted under color of state law to subject Plaintiffs to conditions of confinement that include the imminent risk of contracting COVID-19, a deadly disease for which there is no known understanding of the long-term side effects of exposure.

542. As public health experts in correctional medical care and infectious disease agree, individuals and families in immigration detention are at grave risk of COVID-19 infection.

543. Defendants Sheriff Hodgson and Superintendent Souza consistently disregarded requests from Plaintiffs and other detainees to adhere to social distancing measures, provide cleaning supplies, and apply broader testing to protect detainees.

544. Defendants Sheriff Hodgson and Superintendent Souza also disregarded this court's orders to take proactive means to address the risk of COVID, consistently disregarding directive to increase testing, and constantly refused to release individuals on bail even when directed by the court.

545. These Defendants have subjected Plaintiffs to imminent risk of physical, emotional and mental harm in violation of Plaintiffs' rights under the Due Process Clause.

546. Accordingly, these Defendants have subjected Plaintiffs to cruel and unusual treatment that amounts to punishment and that fail to ensure their safety and health which shocks the conscience in violation of the Fifth Amendment of the Constitution.

547. This cause of action for the violation of Plaintiff's Fifth Amendment right is brought pursuant to 42 U.S.C. § 1983.

Count 3: Excessive Force Plaintiffs Fall, Galindo, Shigla, Armijos, Guallán Tixi, Lucas, Wafula, Lewis, Menjivar Rojas, Pillco Morocho, Prado, and Battistotti against Doe Officer #1 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Doe #1 knowingly and indiscriminately used chemical agents against Plaintiffs Fall, Galindo, Shigla, Armijos, Guallán Tixi, Lucas, Wafula, Lewis, Menjivar

Rojas, Pillco Morocho, Prado and Battistotti despite Plaintiffs lack of physical resistance or combativeness.

540. Defendant Doe #1 used chemical agents listed Plaintiffs, as described above. This use was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Doe #1's use of force against listed Plaintiffs was objectively unreasonable.

Count 4: Excessive Force Plaintiffs Pillco Morocho, and Prado against Doe Officer #2 (42 U.S.C § 1983)

548. The foregoing allegations are re-alleged and incorporated herein by reference.

549. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

550. Defendant Doe #2 knowingly and indiscriminately threw flash bang grenades at several non-violent and non-resisting detainees. These grenades, as described above, physically injured Plaintiffs Pillco Morocho and Prado.

551. Defendant Doe #2 used flash bang grenades against listed Plaintiffs, as described above. This use was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

552. Alternatively, Defendant Doe #2's use of force against listed Plaintiffs was objectively unreasonable.

Count 5: Excessive Force Plaintiff Fall Against Does #3-5 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Does #3-5 knowingly and maliciously used force against Plaintiff Fall as described in paragraphs 193-201. This force included stomping on kicking Mr. Fall and pepper spraying him despite his lack of resistance.

540. Defendant Does #3-5 use of force against Mr. Fall was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Does #3-5 use of force against listed Mr. Fall was objectively unreasonable.

Count 6: Excessive Force Plaintiff Galindo Against Doe #6 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Doe #6 knowingly and maliciously used force against Plaintiff Galindo as described in paragraphs 202-203. This force included restraining and exerting physical force upon Mr. Galindo.

540. The actions of Defendant Doe #6's against Mr. Galindo were excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Does #6 use of force against listed Mr. Galindo was objectively unreasonable.

Count 7: Excessive Force Plaintiff Shigla Against Doe #7-8 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Doe #7-8 knowingly and maliciously used force against Plaintiff Shigla as described in paragraphs 204-206. This force included shooting Mr. Shigla with rubber bullets and instructing a dog to attack him.

540. Defendants Doe #7-8's use of force against Mr. Shigla was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Does #7-8 use of force against Mr. Shigla was objectively unreasonable.

Count 8: Excessive Force Plaintiff Armijos Against Doe #9-10 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Doe #9-10 knowingly and maliciously used force against Plaintiff Armijos as described in paragraphs 207-209. This force included shooting Mr. Armijos with rubber bullets and violently restraining him.

540. Defendant Doe #9-10's use of force against Mr. Armijos was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Does #9-10 use of force against Mr. Armijos was objectively unreasonable.

Count 9: Excessive Force Plaintiff Guallán Tixi Against Doe #10-11 (42 U.S.C § 1983)

542. The foregoing allegations are re-alleged and incorporated herein by reference.

543. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

544. Defendant Doe #11-12 knowingly and maliciously used force against Plaintiff Guallán Tixi as described in paragraphs 210-217. This force included violently restraining Mr. Guallán Tixi despite his pre-existing injuries, and stomping on his back and neck.

545. Defendant Doe #11-12's use of force against Mr. Guallán Tixi was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

546. Alternatively, Defendant Does #11-12 use of force against Mr. Guallán Tixi was objectively unreasonable.

Count 10: Excessive Force Plaintiff Lucas Against Doe #13-15 (42 U.S.C § 1983)

547. The foregoing allegations are re-alleged and incorporated herein by reference.

548. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

549. Defendant Doe #13-15 knowingly and maliciously used force against Plaintiff Lucas as described in paragraphs 218-223. This force included beating Mr. Lucas and pepper spraying him in the face.

550. Defendant Doe #13-15's use of force against Mr. Lucas was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

551. Alternatively, Defendant Does #13-15 use of force against listed Mr. Lucas was objectively unreasonable.

Count 11: Excessive Force Plaintiff Wafula Against Doe #16-17 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Does #16-17 knowingly and maliciously used force against Plaintiff Wafula as described in paragraphs 224-236. This force included beating Mr. Wafula and pepper spraying him in the face.

540. Defendants Doe #16-17's use of force against Mr. Wafula was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Does #16-16 use of force against listed Mr. Wafula was objectively unreasonable.

Count 12: Excessive Force Plaintiff Lewis Against Doe #18-19 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Doe #18-19 knowingly and maliciously used force against Plaintiff Lewis as described in paragraphs 237-250. This force included shooting Mr. Lewis with rubber bullets and pepper spraying him.

540. The actions of Defendants Doe #18-19's use of force against Mr. Lewis was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Does #18-19's use of force against Mr. Lewis was objectively unreasonable.

Count 13: Excessive Force Plaintiff Menjivar Rojas Against Doe #20-21 (42 U.S.C § 1983)

542. The foregoing allegations are re-alleged and incorporated herein by reference.

543. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

544. Defendant Does #20-21 knowingly and maliciously used force against Plaintiff Lucas as described in paragraphs 251-262. This force included beating Mr. Menjivar Rojas and pepper spraying him.

545. Defendant Doe #20-21s' use of force against Mr. Menjivar Rojas was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

546. Alternatively, Defendant Does #20-21's use of force against listed Menjivar Rojas was objectively unreasonable.

Count 14: Excessive Force Plaintiff Pillco Morocho Against Doe #22-23 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Doe #22-23 knowingly and maliciously used force against Plaintiff Lucas as described in paragraphs 263-268. This force included stomping on Mr. Pillco Morocho's neck and pepper spraying him.

540. The actions of Defendants Doe #22-23's use of force against Mr. Pillco Morocho was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Does #22-23's use of force against Pillco Morocho was objectively unreasonable.

Count 15: Excessive Force Plaintiff Prado Against Doe #24 (42 U.S.C § 1983)

547. The foregoing allegations are re-alleged and incorporated herein by reference.

548. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

549. Defendant Doe #24 knowingly and maliciously used force against Plaintiff Prado as described in paragraphs 269-288. This force included beating Mr. Prado and pepper spraying him in the face.

550. Defendant Doe #24's use of force against Mr. Prado was excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

551. Alternatively, Defendant Doe #24's use of force against Mr. Prado was objectively unreasonable.

Count 16: Excessive Force Plaintiff Battistotti Against Defendant Hodgson and Does #25-26 (42 U.S.C § 1983)

537. The foregoing allegations are re-alleged and incorporated herein by reference.

538. Defendants violate the constitutional rights of immigration detainees when they purposely or knowingly used force against the plaintiff that was objectively unreasonable, *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015).

539. Defendant Hodgson and Does #25-26 knowingly and maliciously used force against Plaintiff Battistotti as described in paragraphs 289-302. This force included shaking Mr. Battistotti, smashing Mr. Battistotti's head into the wall and tightly zip-tying his hands.

540. The actions of Defendant Hodgson and Does #25-26 Mr. Battistotti were excessive, was not rationally related to a legitimate governmental purpose or, alternatively, were excessive in relation to any legitimate governmental purpose.

541. Alternatively, Defendant Hodgson and Doe #25-26's use of force against Mr. Battistotti was objectively unreasonable.

Count 16: Violation of Rehabilitation Act
Plaintiffs Fall, Wafula, Menjivar Rojas, Prado, and Fernando Against the Department of
Homeland Security, Immigration and Customs Enforcement, and the Bristol County
Sheriff's Office

542. Plaintiff realleges and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein

543. Section 504 of the Rehabilitation Act requires federal agencies to provide “reasonable accommodations” to individuals with disabilities so they can fully participate in benefits administered by these agencies. 29 U.S.C. § 794(a).

544. DHS regulations implementing the Rehabilitation Act mandate that “[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.” 6 C.F.R. § 15.30; see also 29 U.S.C. § 794(a).

545. The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing “criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient’s program or activity with respect to handicapped persons.” 34 C.F.R. § 104.4(b)(4).

546. BCSO and BCHOC receive federal funds, in particular, for their detention of civil immigration detainees

547. Mr. Fall's underlying tuberculosis, torn rotator cuff and white blood cell conditions qualify as disabilities for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.
548. Mr. Wafula's damaged knees and PTSD qualify as disabilities for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.
549. Mr. Menjivar Rojas's asthma qualifies as a disability for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.
550. Mr. Prado's asthma, PTSD and metallic leg qualify as disabilities for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.
551. Mr. Fernando's tuberculosis qualifies as a disability for purposes of the Rehabilitation Act. 29 U.S.C. § 705(2)(B); 42 U.S.C. § 12102.
552. By failing to provide above listed Plaintiffs with adequate protection from COVID-19 through the only effective means to reduce the risk of severe illness or death, Defendants denied above mentioned Plaintiffs access to programs services or activities such as a safe place to sleep.
553. Defendants' continued detention of Plaintiffs during the COVID -19 constitutes discrimination because it is either disparate treatment of, or at the very least has a disparate impact on, people with qualifying disabilities, like Plaintiffs, who are at severe risk of serious illness or death if they were to contract COVID-19.
554. Additionally, for failing to accommodate Messrs. Wafula, Fall and Prado's physical disabilities during the planned use of force on May 1, 2020, Defendants put those disabled individuals at a higher risk of harm in contrast to able bodied detainees.

555. Defendants knew of these underlying conditions and nonetheless continued their dangerous actions.

556. For these reasons, Defendants' ongoing detention of Plaintiffs violates the Rehabilitation Act.

**Count 17: Violation of Americans with Disabilities Act
Plaintiffs Fall, Wafula, Menjivar Rojas, Prado, and Fernando Against the Bristol County
Sheriffs' Office**

557. Title II of the American with Disabilities Act of 1990 prohibits discrimination by state and local agencies against individuals with disabilities and requires state agencies to provide "reasonable accommodations" to individuals with disabilities so they can fully participate in benefits administered by these agencies. 42 U.S.C. § 12101

558. BCSO's detention of during the COVID -19 constitutes disability discrimination because it is either disparate treatment of, or at the very least has a disparate impact on, people with qualifying disabilities who are at severe risk of serious illness or death if they were to contract COVID-19.

559. Defendants' failure to provide protection, treatment, or additional accommodations to Plaintiffs, while in Unit B, in solitary confinement, and while being processed for deportation despite having tuberculosis, constitutes as discrimination because of its disparate impact on people with severe risk of serious illness.

560. Defendants' use of pepper spray and failure to consider Plaintiffs' disabilities and other health issues in the May 1, 2020 attack, constitutes discrimination either in its disparate treatment and disparate impact on individuals with qualifying disabilities, such as Mr. Fall.

561. For these reasons, Defendants' ongoing detention of Plaintiffs violates the Americans with Disabilities Act.

562. Mr. Fall's underlying tuberculosis, torn rotator cuff and white blood cell conditions qualify as disabilities for purposes of the ADA.

563. Mr. Wafula's damaged knees and PTSD qualify as disabilities for purposes of the ADA.

564. Mr. Menjivar Rojas's asthma qualifies as a disability for purposes of the ADA.

565. Mr. Prado's asthma, PTSD and metallic leg qualify as disabilities for purposes of the ADA.

566. Mr. Fernando's tuberculosis qualifies as a disability for purposes of the ADA.

567. By failing to provide above listed Plaintiffs with adequate protection from COVID-19 through the only effective means to reduce the risk of severe illness or death, Defendants denied above mentioned Plaintiffs access to programs services or activities such as a safe place to sleep.

568. Defendants' continued detention of Plaintiffs during the COVID -19 constitutes discrimination because it is either disparate treatment of, or at the very least has a disparate impact on, people with qualifying disabilities, like Plaintiffs, who are at severe risk of serious illness or death if they were to contract COVID-19.

569. Additionally, for failing to accommodate Messrs. Wafula, Fall and Prado's physical disabilities during the planned use of force on May 1, 2020, Defendants put those disabled individuals at a higher risk of harm in contrast to able bodied detainees.

570. Defendants knew of these underlying conditions and nonetheless continued their dangerous actions.

Federal Tort Claims Act-28 U.S.C. § 1346(b)

**Count 18: Negligent Maintenance
(by All Plaintiffs against Defendant United States)**

571. The foregoing allegations are re-alleged and incorporated herein by reference.
572. Under Massachusetts law, negligence requires a showing of: (1) a duty of care to the plaintiff; (2) a breach of that duty; (3) proximate causation; and (4) damage to the plaintiff. *Bennett v. Eagle Brook Country Store*, 557 N.E.2d 1166, 1168 (Mass. 1990).
573. Defendants United States of America, DHS, and ICE owed Plaintiffs a duty of care. There was a special relationship between Mr. Fall since the Defendants reasonably could foresee that they would be expected to take affirmative action to protect Mr. Fall and could anticipate harm to Mr. Fall from failure to do so. *See Irwin v. Town of Ware*, 467 N.E.2d 1292, 1300 (Mass. 1984).
574. They are solely responsible for the custody and maintenance of the facility where detainees have no other means of control over their living space, therefore it was reasonably foreseeable that they were required to take affirmative steps to protect detainees through consistent maintenance of common areas and living space during a deadly virus such as COVID-19.
575. Defendants United States of America, DHS, and ICE published clearly established standards for basic safety and hygiene in detention facilities. Defendants did not follow this internal guidance. See Immigration Customs Enforcement, Performance-Based National Detention Standards on Medical Care (Dec. 2016) (Rule 1.2, 4.5, and 4.8)

576. Defendants breached that duty because Plaintiffs were subject to dehumanizing conditions of confinement during COVID-19 and was given no protection, social distancing, or cleaning supplies despite repeated requests for additional supplies and care.
577. Defendants' negligent maintenance of BCHOC is was proximate cause of Plaintiff's heightened risk of COVID-19.
578. Plaintiffs suffered possible exposure to COVID-19 as well as emotional and psychological injuries as a result of the defendants' negligent maintenance.
579. Pursuant to the Federal Tort Claims Act, Defendant United States is liable for the individual defendant officers' actions.
580. Plaintiffs have exhausted the presentment requirements of the FTCA.

Count 19: Assault

(by Messrs. Fall, Galindo, Shigla, Armijos, Guallán Tixi, Lucas, Wafula, Lewis, Menjivar Rojas, Pillco Morocho, Prado, and Battistotti against Defendant United States)

581. The foregoing allegations are re-alleged and incorporated herein by reference.
582. Under Massachusetts law, the elements of assault are: (1) the defendant acts intending to cause a harmful or offensive contact with another, or an imminent apprehension of such a contact; and (2) apprehension is created and experienced by the other person.
- Commonwealth v. Henson*, 259 N.E.2d 769, 773–74 (Mass. 1970).
583. Listed Plaintiffs were unjustifiably and unreasonably beaten, pepper sprayed, shot and otherwise attacked by individual Doe officers as described above during the May 1, 2020, attack.
584. The Defendants assaulted listed Plaintiffs when they intentionally acted in a way that created an apprehension of immediate harm during these physical beatings.

585. As a result of the overt acts of individual officers and Sheriff Hodgson, Plaintiffs suffered the described extensive physical and emotional injuries, as well as humiliation.

586. The individual officers and Sheriff Hodgson committed these acts as employees of the United States while acting in the scope of their employment: they acted within the scope of the general authority granted to them, in furtherance of their employer's business, and for the accomplishment of the objectives for which they were hired.

587. Pursuant to the Federal Tort Claims Act, Defendant United States is liable for the individual defendant officers' actions.

588. All listed plaintiffs have met the presentment requirements imposed by the FTCA.

Count 20: Battery

(by Messrs. Fall, Galindo, Shigla, Armijos, Guallán Tixi, Lucas, Wafula, Lewis, Menjivar Rojas, Pillco Morocho, Prado, and Battistotti against Defendant United States)

589. The foregoing allegations are re-alleged and incorporated herein by reference. Under Massachusetts law, the elements of battery are: (1) the defendant acts intending to cause a harmful or offensive contact with another; and (2) the harmful or offensive contact with another person directly or indirectly results. *Waters v. Blackshear*, 591 N.E.2d 184, 185 (Mass. 1992).

590. Plaintiffs were subjected to multiple unjustifiable and unreasonable beatings, pepper spraying, and other attacks during the May 1, 2020 attack, as described above.

591. Sheriff Hodgson and individual officers committed batteries against the listed plaintiffs when they intentionally caused harm to them in their use of violence which included punching him, kicking, pepper spray, rubber bullets, attack dogs, and excessively tight restraints.

592. As a result of the defendants' multiple batteries, Plaintiffs suffered from extensive physical and emotional injuries, as well as humiliation as described in the complaint.

593. Sheriff Hodgson and individual officers committed these acts as employees of the United States while acting in the scope of their employment: they acted within the scope of the general authority granted to them, in furtherance of their employer's business, and for the accomplishment of the objectives for which they were hired.

594. Pursuant to the Federal Tort Claims Act, Defendant United States is liable for the individual defendant officers' actions.

595. All listed plaintiffs have met the presentment requirements imposed by the FTCA.

**Count 21: Negligent Medical Care
(by All Plaintiffs against Defendant United States)**

596. The foregoing allegations are re-alleged and incorporated herein by reference.

597. Under Massachusetts law, negligence requires a showing of: (1) a duty of care to the plaintiff; (2) a breach of that duty; (3) proximate causation; and (4) damage to the plaintiff. *Bennett v. Eagle Brook Country Store*, 557 N.E.2d 1166, 1168 (Mass. 1990).

598. Defendants United States of America, DHS, ICE, and individual medical officers owed all Plaintiffs a duty of care. There was a special relationship between Defendants and Plaintiffs since the Defendants reasonably could foresee that they were required to take affirmative action to protect Plaintiffs and could anticipate harm to Plaintiffs from failure to do so. *See Irwin v. Town of Ware*, 467 N.E.2d 1292, 1300 (Mass. 1984).

599. Defendants are solely responsible for the custody and medical care of individuals detained in BCHOC where detainees have no other means of obtaining medical care. Therefore, it was reasonably foreseeable that they would be expected to take affirmative

steps to protect detainees from a deadly virus as well as provide detainees with proper care after injuries resulting from the assault by officers.

600. Defendants United States of America, DHS, and ICE published clearly established standards for individual officers to follow for providing medical care. Defendants did not follow this internal guidance with regards to Plaintiffs. *See* Immigration Customs Enforcement, Performance-Based National Detention Standards on Medical Care (Dec. 2016) (Rule 4.3, 4.5, and 4.8)

601. Defendants breached that duty because they actively disregarded medical directions to safeguard against COVID-19, including directions by the Court, leaving Plaintiffs at risk of contracting the deadly virus.

602. Individual medical officers committed these acts as employees of the United States while acting in the scope of their employment: they acted within the scope of the general authority granted to them, in furtherance of their employer's business, and for the accomplishment of the objectives for which they were hired.

603. Pursuant to the Federal Tort Claims Act, Defendant United States is liable for the individual Defendant officers' actions.

604. Plaintiffs have met the presentment requirements under the FTCA for this claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter a judgment against Defendants and award the following relief:

1. Award compensatory and punitive damages pursuant to Plaintiffs *Bivens* claims, claims under 42 U.S.C § 1983, respective Plaintiffs' claims under the ADA, the Rehab Act and the Federal Tort Claims Act in an amount to be proven at trial.
2. Costs and reasonable attorneys' fees and litigation costs to Plaintiffs' attorneys.
3. Grant any and all further relief that the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs respectfully request a jury trial.

April 29, 2022

Respectfully submitted
Plaintiffs, by their attorneys,

s/ Oren Nimni
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