

40 North Central Avenue, 19th Floor
Phoenix, Arizona 85004-4429
Telephone: (602) 262-5311

Kristina N. Holmstrom, State Bar No. 023384
Direct Dial: 602 262-5762
Direct Fax: 602 734-3875
EMail: KHolmstrom@LRLaw.com
Kirstin A. Story, State Bar No. 023485
Direct Dial: (602) 262-5332
Direct Fax: (602) 734-3797
EMail: KStory@LRLaw.com

Daniel Pochoda, State Bar No. 021979
ACLU Foundation of Arizona
3707 North 7th Street, Suite 235
Phoenix, Arizona 85014
Telephone: (602) 650-1854
dpochoda@acluaz.org

Attorneys for Plaintiff
Tanya Guzman-Martinez

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

TANYA GUZMAN-MARTINEZ, a single
woman,

Plaintiff,

vs.

CORRECTIONS CORPORATION OF
AMERICA, a Maryland corporation;
CHUCK DeROSA, Corrections Corporation
of America Eloy Detention Center Warden
(EDC); T. MOHN, Corrections Corporation
of America EDC Unit Manager; CAPTAIN
ADAMS, Corrections Corporation of
America EDC Detention Officer; JOHN
DOE #1, Correction Corporation of America
EDC Sexual Abuse and Assault Prevention
Coordinator; JUSTIN MANFORD, a single
man; CITY OF ELOY, a political
subdivision; JOHN DOE #2, City of Eloy
Contracting Officer Technical
Representative; KATRINA S. KANE,
Immigration and Customs Enforcement
Field Office Director; EARL SCALET,
Immigrations and Customs Enforcement
Assistant Field Office Director; BO
CAMPBELL, Immigration and Customs
Enforcement Supervisory Deportation and
Detention Officer; MICHAEL LEAL,
Immigration and Customs Enforcement
Deportation Officer; JOHN DOE#3,
Immigration and Customs Enforcement
Contracting Officer Technical
Representative;

No.

COMPLAINT

Defendants.

1
2 For her complaint, Tanya Guzman-Martinez makes the following allegations:

3 **Introduction**

- 4 1. Plaintiff Tanya Guzman-Martinez is a transgender woman; her appearance
5 and behaviors are those of a woman. She has undergone surgical alterations to appear
6 feminine, and is taking hormones and estrogen to prepare for gender reassignment
7 surgery.
- 8 2. In September 2009, Ms. Guzman-Martinez was placed in federal
9 immigration removal proceedings and detained at the Eloy Detention Center (“EDC”) in
10 Eloy, Arizona, from September 2009 until May 2010. She applied for asylum,
11 withholding of removal and protection under the Convention Against Torture because of
12 the past persecution she suffered and a well-founded fear of future persecution that she
13 would face in Mexico because of her gender identity.
- 14 3. EDC is maintained and operated by the private Corrections Corporation of
15 America (“CCA”) to house immigration detainees based on CCA’s contractual agreement
16 with the City of Eloy (“Eloy”) to assume Eloy’s responsibilities in this area. Eloy had
17 previously contracted with Immigration and Customs Enforcement (“ICE”) through an
18 Inter-Governmental Service Agreement (“IGSA”) to provide immigration detention
19 services. ICE had continuing responsibilities to monitor the safety and well-being of
20 detainees at EDC.
- 21 4. Because she demonstrated a well-founded fear of persecution in Mexico,
22 Ms. Guzman-Martinez’s application for withholding of removal was granted by the Eloy
23 Immigration Court on March 1, 2010. However, Ms. Guzman-Martinez had already
24 suffered and would continue to suffer persecution and harassment, insults, physical
25 abuse, and sexual assault at the hands of State and Federal defendants overseeing her
26 detention. These and more abuses were visited on Ms. Guzman-Martinez while detained
27 in the EDC awaiting a ruling on her application for asylum. Ms. Guzman-Martinez
28 continued to suffer abuse after her application was granted and prior to her release.

1 5. The failures of CCA, Eloy, and ICE personnel to properly train and monitor
2 the administrators and staff at EDC, to implement best practices for the housing of
3 transgender detainees and to follow professional and agency standards, caused the serious
4 harms to Ms. Guzman-Martinez. Even after notice of ongoing harassment and a sexual
5 assault on Ms. Guzman-Martinez, the CCA and ICE defendants did not take basic steps
6 to protect her physical safety and emotional well-being, and enforce existing legal
7 requirements and insulate her from male staff and detainees presenting threats. As a
8 result, Ms. Guzman-Martinez suffered continuing abuse until shortly before she was
9 released, including a second sexual assault.

10 6. This litigation is necessary to compensate Ms. Guzman-Martinez for the
11 serious harms that resulted from Defendants' acts and failures to act, and to punish the
12 individual defendants for their knowing and reckless disregard for her rights and bodily
13 integrity and deter such abuses for other transgender women detainees.

14 **JURISDICTION AND VENUE**

15 7. This Action arises under the Constitution and laws of the United States and
16 therefore this Court has jurisdiction pursuant to Title 28, Sections 1331and 1343 of the
17 United States Code and directly under the United States Constitution. This Court has
18 supplemental jurisdiction over the State law claims pursuant to Title 42, Section 1367(a).
19 This Court has subject matter jurisdiction over the claims grounded in customary
20 international law under 28 U.S.C. § 1350.

21 8. This Court also has jurisdiction pursuant to Title 28, Section 1332 because
22 the parties are completely diverse and the amount in controversy exceeds \$75,000.

23 9. A substantial part of the events and omissions giving rise to this Action
24 occurred in this judicial district, and therefore venue is proper in this Court pursuant to
25 Title 28, Section 1391(b) of the United States Code.

26 **Parties**

27 10. Plaintiff Tanya Guzman-Martinez (aka Victor Guzman-Martinez) is a
28 resident of Santa Clara County, California.

1 11. Defendant Corrections Corporation of America (“CCA”) is a corporation
2 organized under the laws of the State of Maryland, with a principal place of business in
3 Nashville, Tennessee. CCA is licensed to do business in the State of Arizona. Pursuant to
4 a contract with Defendant City of Eloy (“Eloy”), CCA manages, operates, and staffs the
5 EDC in its use to house immigration detainees. For all relevant purposes of this
6 Complaint, CCA and its employees are state actors and derive their authority from Eloy,
7 a political subdivision of the State of Arizona.

8 12. At all relevant times in this Complaint, Defendant Chuck DeRosa
9 (“DeRosa”) was an employee of CCA and Warden of the EDC. He was responsible for
10 setting all operational policies at the Center, and implemented and approved the practices
11 for housing transgender women detainees including the practices that resulted in the
12 harms and abuses to Plaintiff. He was aware of the serious risk of harm that the
13 conditions of confinement presented to Ms. Guzman-Martinez’s safety and failed to
14 intervene to insure her well-being. He did not require adequate training and supervision
15 of CCA employees at EDC in the area of safeguarding the safety of transgender women.
16 He is sued in his official and individual capacities. DeRosa is a citizen of Arizona.

17 13. Defendant Justin Manford (“Manford”) was hired and employed as a
18 detention officer at EDC. He verbally and sexually assaulted Ms. Guzman-Martinez
19 causing serious harms and great distress. On June 8, 2010 he was convicted of the crime
20 of Attempted Unlawful Sexual Contact for his victimization of Ms. Guzman-Martinez.
21 Manford is a citizen of Arizona.

22 14. Defendant T. Mohn (“Mohn”) was the Unit Manager at EDC. Defendant
23 Mohn was responsible for determining Plaintiff’s classification status. He failed to
24 adequately evaluate the risk to Ms. Guzman-Martinez when assigning her a classification
25 level and housing her in a unit with male detainees and officers. He further failed to
26 reassign her housing classification after she was assaulted the first time. These failures
27 enabled the abusive and illegal actions against Ms. Guzman-Martinez. Mohn is a citizen
28 of Arizona.

1 15. Defendant Captain Adams (“Adams”) was a Detention Officer at EDC. He
2 was responsible for overseeing decisions about Plaintiff’s housing and classification
3 status. Adams is a citizen of Arizona.

4 16. Defendant John Doe #1 was the CCA Sexual Assault and Abuse
5 Prevention Coordinator and was required by contracted standards to assist with
6 development of policies and procedures, training protocols, coordinate methods to track
7 incidents of sexual abuse and assault and serve as a liaison with other agencies. Upon
8 information and belief, John Doe #1 is a citizen of Arizona.

9 17. Defendant City of Eloy (“Eloy”) is a political entity formed and designated
10 as such pursuant to Section 9-101 of the Arizona Revised Statutes. Pursuant to a contract
11 with ICE, Eloy was responsible for the safety and well-being, and for protecting the
12 rights of Ms. Guzman-Martinez during her confinement at EDC. The City of Eloy is a
13 “person” for purposes of 42 U.S.C. § 1983. For purposes of diversity jurisdiction, Eloy is
14 a citizen of Arizona.

15 18. Defendant John Doe # 2 was the Contracting Officer Technical
16 Representative (COTR) for the City of Eloy, tasked with ensuring compliance with the
17 contractual provisions government the detention of immigrant detainees at EDC,
18 including Ms. Guzman-Martinez. Upon information and belief, John Doe #2 is a citizen
19 of Arizona.

20 19. All individual Defendants are sued in their individual capacity.
21 Defendants City of Eloy, CCA, DeRosa, Manford, Mohn, Adams, John Does 1 and 2
22 acted under color of state law with respect to the matters alleged in this Complaint. They
23 acted pursuant to the CCA contract with the City of Eloy, Arizona.

24 20. Defendants Katrina S. Kane, Earl Scalet, Bo Campbell, Michael Leal and
25 John Doe 3 were ICE employees and acted under color of Federal law with respect to all
26 matters alleged in this Complaint.

27 21. Defendant Katrina Kane (“Kane”) was the ICE Field Office Director in
28 Phoenix, which includes EDC and had direct responsibility for ensuring the safety and

1 well-being of all detainees including Ms. Guzman-Martinez. Upon information and
2 belief, Kane is a citizen of Arizona.

3 22. Defendant Earl Scalet (“Scalet”) was the ICE Assistant Field Office
4 Director at EDC and directly responsible for ensuring the safety and well-being of all
5 detainees at EDC, including Ms. Guzman-Martinez.

6 23. Defendant Bo Campbell (“Campbell”) was the ICE Supervisory Detention
7 and Deportation Officer at EDC and had direct knowledge of the events incorporated in
8 this complaint and was directly responsible for ensuring the safety and well-being of Ms.
9 Guzman-Martinez. Upon information and belief, Campbell is a citizen of Arizona.

10 24. Defendant Michael Leal (“Leal”) was the ICE Deportation Officer
11 responsible for matters relating to Plaintiff’s detention and removal proceedings
12 including issues regarding her custody and classification. Defendant Leal also had direct
13 knowledge of the events incorporated in this complaint. Upon information and belief,
14 Leal is a citizen of Arizona.

15 25. John Doe # 3 was the ICE Contracting Officer and Technical
16 Representative (COTR) and was directly responsible for ensuring proper administration
17 of the contract after award, including approving and adhering to safety and security
18 policies and standards required by that contract. Upon information and belief, John Doe
19 #3 is a citizen of Arizona.

20 **FACTS**

21 **I. BACKGROUND**

22 **A. Immigration Detention Under ICE**

23 26. On any given day, approximately 33,000 persons are confined across the
24 country in immigration detention facilities subject to the supervision and authority of
25 ICE. In Arizona, ICE daily detains approximately 3,000 men and women in five different
26 facilities.

27 27. Persons in immigration detention are civil detainees. The majority have not
28 committed crimes in the United States. Many have fled violence or persecution in their

1 home countries. These detainees are not placed in detention as punishment, but to restrain
2 their movement in the United States pending the adjudication of their application to
3 remain in this country.

4 **B. ICE’s Contract With the City of Eloy for Detention Services**

5 28. On February 17, 2006, ICE entered into an Inter-Governmental Service
6 Agreement (“IGSA”) with the City of Eloy, Arizona (“Eloy”) to provide services relating
7 to detention of non-citizen detainees. A true and accurate copy of the IGSA is attached to
8 this Complaint as Exhibit A.

9 29. The IGSA provided that Eloy would provide for the housing, detention, and
10 care of non-citizen detainees at the EDC.

11 30. As the “PROVIDER” Eloy was responsible for providing “detention
12 services for detainees” at the EDC. Eloy was required to provide these services in
13 accordance with existing ICE Detention Requirements, the American Correctional
14 Association (ACA) Standards for Adult Local Detention Facilities, ACA accreditation
15 standards, and the health standards of the National Commission on Correctional Health
16 Care (NCCHC) and applicable state and federal laws.

17 31. The IGSA further recognizes that there are costs that are indirectly related
18 to the housing and detention of detainees at the EDC, including the salaries of Eloy
19 elected officials and other local government costs.

20 32. Under the IGSA, Eloy agreed “to accept and provide for the secure custody,
21 care, and safekeeping of detainees in accordance with the State, and local laws, standards,
22 policies, procedures, or court orders applicable to the operations of the facility.”

23 33. Under the IGSA, ICE reserved the right to conduct periodic inspections of
24 the facility. ICE agreed to share the findings of those inspections with facility
25 administrators “to promote improvements to facility operations or conditions of
26 detainment.”

27 **C. The City of Eloy’s Contract With CCA for Detention Services**

28 34. On February 17, 2011, Eloy entered into an agreement with CCA.

1 35. CCA is the largest operator of privatized prison and detention facilities in
2 the nation. Since 2006, its growth has been largely attributable to the increase in ICE
3 detention beds. Mainly through contracts with local governments including Defendant
4 Eloy, CCA currently operates 14 immigration detention facilities across the country with
5 a total of 14,556 beds -- almost half of the total 33,000 beds used by the federal
6 government for immigration detention.

7 36. Under CCA's agreement with Eloy, CCA was charged with the housing,
8 detention, and maintenance of up to 1,550 detainees at the EDC. A true and accurate copy
9 of the agreement is attached to this Complaint as Exhibit B.

10 37. In signing the agreement, CCA assumed Eloy's obligations under the IGSA
11 with ICE, including housing the detainees in accordance with the standards and
12 requirements outlined above in paragraph 30.

13 38. CCA is the largest employer in the City of Eloy and was managing several
14 prison and jail facilities in the area. The Mayor of Eloy has been a CCA employee.

15 **D. Publicized Reports of Conditions in Detention Facilities**

16 39. There have been multiple publicized reports and studies describing
17 problems in the provision of care to immigration detainees, including in facilities
18 managed by CCA and in facilities in Arizona.

19 40. These reports found that the lack of resources and insufficient standards for
20 immigration detention facilities plus the failure to adequately staff and monitor personnel
21 and practices at these facilities allow inappropriate and illegal practices to exist and
22 present serious risks to the health, well-being, and legal rights of all detainees. The
23 shortcomings and risks were found to be uniquely severe for vulnerable populations, and
24 specifically for transgender women detainees.

25 41. These reports include:
26
27
28

1 a. *No Refuge Here: A First Look at Sexual Abuse in Immigration*
2 *Detention*, a study published by Stop Prisoner Rape¹ in 2004, recounted numerous reports
3 of sexual abuse of detainees by officers at immigration detention centers.²

4 b. In July 2006, the United Nations Committee Against Torture
5 expressed its concern about “reliable reports of sexual assault of . . . persons in . . .
6 immigration detention [in the United States and by] the lack of prompt and independent
7 investigation of such acts and that appropriate measures to combat these abuses have not
8 been implemented by the [United States].”³

9 c. In June 2009, the National Prison Rape Elimination Commission,
10 created by Congress, published a report noting over twenty years of sexual abuse of
11 detainees by immigration detention center staff and detailing the many factors
12 contributing to the particular vulnerability of such detainees. The report noted that
13 “[b]ecause immigration detainees are confined by the agency with the power to deport
14 them, officers have an astounding degree of leverage.” The Commission “learned that
15 officers [told women in their custody] if they want to be released they need to comply
16 with their sexual demands. The fear of deportation cannot be overstated and also
17 functions to silence many individuals who are sexually abused.”⁴

18 d. In the BUREAU OF JUSTICE STATISTICS, *National Inmate Survey,*
19 *Sexual Victimization in Prisons and Jails Reported by Inmates*, 2008-09 (August, 2010),
20 the Department of Justice concluded that it is more likely for ICE detainees, including
21 those at EDC, to be sexually victimized by facility staff than by another inmate.⁵

22
23 ¹ Since 2008, Stop Prisoner Rape has been known as Just Detention International.

24 ² Stop Prisoner Rape, *No Refuge Here: A First Look at Sexual Abuse in Immigration*
Detention (2004), available at: <http://www.spr.org/pdf/NoRefugeHere.pdf>.

25 ³ United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading
26 Treatment or Punishment, Committee Against Torture, Thirty-sixth Session,
Consideration of Reports Submitted by States Parties Under Article 19 of the
Convention, United States of America, ¶ 32.

27 ⁴ National Prison Rape Elimination Commission, *Report*, 22, 179 (June 2009) available
at: <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

28 ⁵ BUREAU OF JUSTICE STATISTICS, *National Inmate Survey, Sexual Victimization in*
Prisons and Jails Reported by Inmates, 2008-09 (August, 2010)
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2202>.

1 Inmates with a sexual orientation other than heterosexual reported significantly higher
2 rates of inmate-on-inmate sexual victimization and staff sexual misconduct.⁶

3 e. According to documents obtained by the ACLU through a Freedom
4 of Information Act request, there were at least 185 allegations of sexual abuse noted in
5 ICE, the DHS Office of the Inspector General, and the DHS Office for Civil Rights and
6 Civil Liberties documents since 2007. Of these, at least 16 reports concerned detainees in
7 Arizona immigration detention facilities and 8 of those were documented at the EDC run
8 by CCA.⁷

9 42. Upon information, Defendants knew about the contents and conclusions
10 contained in many if not all of the reports and documentation noted in paragraphs 39
11 through 41 above.

12 43. In addition to the above reports of widespread sexual abuse of detainees,
13 the specific problems for transgender women in detention settings have been well-
14 documented and were well-known by corrections professionals and organizations. These
15 findings include:

16 a. Similar to the dynamics of sexual violence in prisons, jails, and the
17 community at-large, immigration detainees from marginalized populations are at greatest
18 risk for sexual abuse. In particular, lesbian, gay, bisexual, transgender, and queer
19 (LGBTQ) individuals, youth, and detainees living with mental illness or disabilities are
20 disproportionately targeted.⁸

21 b. LGBTQ detainees frequently describe officials ignoring or even
22 laughing at reports of sexual violence.⁹ Institutional homophobia and apathy toward
23 LGBTQ victims leads to an even greater reluctance to report abuse by compounding the

24 ⁶ *Id.* at 13-14.

25 ⁷ American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*
(October 2011), available at: [http://www.aclu.org/maps/sexual-abuse-immigration-](http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities)
26 [detention-facilities](http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities)

27 ⁸ Just Detention International, *Factsheet: Sexual Abuse in Immigration Detention*, 1
(January, 2009) available at:
<http://www.justdetention.org/en/factsheets/immigrationfactsheet.pdf>.

28 ⁹ Just Detention International, *Factsheet: LGBTQ Detainees Chief Targets for Sexual*
Abuse in Detention, 1 (February, 2009) available at:
http://justdetention.org/en/factsheets/JD_Fact_Sheet_LGBTQ_vD.pdf.

1 fear that reporting abuse by officials or other detainees will result in deportation or
2 another form of retaliation.¹⁰

3 c. Transgender women are typically housed with men, in accordance
4 with their birth gender, and are required to shower and submit to strip searches in front of
5 male officers and inmates.¹¹

6 d. Gay and transgender inmates often seek protective custody because
7 of their heightened risk for abuse, only to be placed in solitary confinement, locked in a
8 cell for 23 hours a day, and losing access to programming and other services.¹²

9 e. Many personal accounts of sexual abuse and other mistreatment by
10 detention staff against LGBTQ immigrants have been published. The ACLU of Arizona
11 interviewed a number of gay and transgender detainees held in ICE facilities in Arizona.
12 Some of their specific concerns include being housed with detainees of a gender with
13 which they don't identify, inadequate medical care, detention staff divulging confidential
14 information, placements in segregation, and physical and sexual violence.¹³ The ACLU
15 discovered five cases involving transgender or gay detainees who were sexually assaulted
16 or treated in an abusive manner in Arizona ICE facilities.¹⁴

17 44. At the time Ms. Guzman-Martinez was detained at Eloy, Defendants knew
18 or should have known about the documented and widespread sexual abuse of women
19 detainees and the specific problems for transgender women in detention as described in
20 paragraph 43 above.

21 45. Despite this common knowledge, and the great risks to and reported abuses
22 of transgender women detainees, Defendants failed to adequately address these concerns
23 at the EDC and were deliberately indifferent to the health and well-being of the
24 transgender population including Ms. Guzman-Martinez.

25 _____
26 ¹⁰ *Id.*

27 ¹¹ *Id.*

28 ¹² *Id.*

¹³ American Civil Liberties Union of Arizona, *In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers*, (June, 2011) available at:
<http://acluz.org/sites/default/files/documents/detention%20report%202011.pdf>.

¹⁴ *Id.*

1 46. Defendants’ actions and failures to act caused or enabled the verbal and
2 sexual abuse of Ms. Guzman-Martinez and the serious resulting physical and
3 psychological harms to her, as described herein.

4 E. **Ms. Guzman-Martinez is Sexually Assaulted, Harassed,
5 Threatened, and Intimidated While Detained at EDC.**

6 47. Ms. Guzman-Martinez has resided in the United States since 1999, when
7 she left her native country of Mexico because she was persecuted based on her gender
8 identity.

9 48. Ms. Guzman-Martinez is a transgender woman who is in the process of
10 gender reassignment.

11 49. Although born biologically male, Ms. Guzman-Martinez self-identifies as a
12 woman. Her appearance, behavior, and mannerisms are those of a woman. Ms.
13 Guzman-Martinez has surgically altered her breasts, buttocks, hips, and legs to appear
14 more feminine. At the time she was detained by CCA (as described below), she was
15 taking hormones and receiving estrogen injections to prepare for gender reassignment
16 surgery. In September 2009, ICE instituted removal proceedings against Ms. Guzman-
17 Martinez.

18 50. In removal proceedings, Ms. Guzman-Martinez applied for asylum,
19 withholding of removal and protection under the Convention against Torture based on
20 past and future persecution she would suffer in Mexico because of her gender identity.
21 Her application for withholding of removal was granted by the Eloy Immigration Court
22 on March 1, 2010.

23 51. As a result of being placed in removal proceedings, Ms. Guzman-Martinez
24 was detained at the EDC from September 29, 2009 until May 14, 2010.

25 52. Throughout her detention at EDC, Ms. Guzman-Martinez was housed in a
26 male “special housing unit” or “SHU” where she was in daily, direct contact with male
27 detainees and officers. The decisions by Defendants CCA, DeRosa, Mohn, Adams,
28 Manford and the individual ICE defendants to allow her to be housed in this manner
enabled the abusive and assaultive actions against Ms. Guzman-Martinez.

1 53. From the beginning of her confinement at the EDC, Ms. Guzman-Martinez
2 was subjected to repeated verbal abuse and harassment by male detainees and male
3 detention officers who insulted her by calling her “dog,” “faggot,” and “boy”. On one
4 occasion, a detention officer told other detainees that they could “have her” if they gave
5 him three soup packets. She was constantly threatened with disciplinary action including
6 being placed in “the hole”.

7 54. Ms. Guzman-Martinez was often inappropriately patted-down by male
8 officers. After complaining to EDC staff, Ms. Guzman-Martinez was told she would no
9 longer be subjected to pat-downs by male detention staff but was never allowed to review
10 a copy of a purported memo on this topic.

11 55. Ms. Guzman-Martinez was sexually assaulted twice by males at EDC. The
12 first of these assaults occurred on December 7, 2009, when Ms. Guzman-Martinez was
13 sexually assaulted by a CCA detention officer, Defendant Manford.

14 56. Specifically, Manford maliciously forced Ms. Guzman-Martinez to watch
15 him masturbate into a white styrofoam cup and then demanded that she ingest his
16 ejaculated semen. Failures by Defendants CCA, DeRosa and Manford to adequately
17 screen and monitor Manford, and to prevent situations where a male officer such as
18 Manford is alone with a transgender woman detainee and out of sight of others, enabled
19 this horrific assault on Ms. Guzman-Martinez.

20 57. The assault followed a history of frequent inappropriate behavior and
21 inquiries by Manford about Ms. Guzman-Martinez, including questions about her
22 sexuality, whether she had a boyfriend, and whether other inmates had seen her breasts.

23 58. During the commission of the assault, Manford made offensive gestures,
24 faces, and comments towards Ms. Guzman-Martinez and threatened that he could have
25 her locked up in “the hole,” lengthen her detention or have her deported to Mexico if she
26 did not follow his demands.

27
28

1 59. Manford harassed and assaulted Ms. Guzman-Martinez in the course of his
2 employment with CCA, and utilized the authority conferred upon him by State law as a
3 detention officer at the EDC.

4 60. Ms. Guzman-Martinez immediately reported her December 7, 2009 sexual
5 assault to CCA detention staff, ICE and the Eloy Police Department.

6 61. Manford was subsequently convicted in the Pinal County Superior Court on
7 June 8, 2010 for Attempted Unlawful Sexual Contact in violation of Arizona Revised
8 Statutes § 13-1419(A)(2).

9 62. Ms. Guzman-Martinez also filed an administrative complaint with the DHS
10 Office for Civil Rights and Civil Liberties (CRCL) on February 26, 2010. On June 21,
11 2010, CRCL notified Plaintiff that they were initiating an investigation into the assault
12 against Ms. Guzman-Martinez as well as CCA and ICE policies and procedures at EDC.
13 To date, Plaintiff has not received the results of this investigation.

14 63. Even after learning of the sexual assault committed by Manford,
15 Defendants failed to take appropriate action to protect Ms. Guzman-Martinez.

16 64. On April 23, 2010, Ms. Guzman-Martinez was sexually assaulted a second
17 time, this time by a male detainee, Johnny Pereira Vigil (“Vigil”).

18 65. Like Manford, Vigil assaulted Ms. Guzman-Martinez after harassing her
19 for some time prior, including calling her a “faggot,” making inappropriate sexual
20 gestures, following her in and out of her cell and peeking into Ms. Guzman-Martinez’s
21 cell when she was using the toilet or dressing.

22 66. Specifically, on the date of the assault, Vigil approached Ms. Guzman-
23 Martinez, pushed her, forcefully grabbed her breast, and slapped her on her buttocks.

24 67. When Ms. Guzman-Martinez told him to stop because she would tell the
25 corrections officer on duty, Vigil threatened that he or other detainees would physically
26 injure her.

27 68. Defendants CCA, DeRosa, Mohn, Adams, Campbell and Leal’s failures to
28 conduct an adequate risk assessment about the placement and classification of Ms.

1 Guzman-Martinez at EDC, and to properly and safely house Ms. Guzman-Martinez while
2 at EDC, and to protect her before and even after she was assaulted, enabled these assaults
3 and made her extremely fearful and vulnerable to the physical harm perpetrated by Vigil
4 as well as threats of future sexual assaults.

5 69. Ms. Guzman-Martinez immediately reported the assault by Vigil to
6 detention staff. She did not file an incident report with the local police until May 4, 2010,
7 because of a fear of retaliation by other detainees and the known failures of Defendant
8 CCA and other Defendants to safeguard her from attacks by male detainees and guards.

9 70. Soon after she reported the assault by Vigil to the police, Ms. Guzman-
10 Martinez was released from ICE custody.

11 71. As a result of Defendants CCA, DeRosa, John Doe # 1, John Doe # 2,
12 Kane, Scalet, Campbell and John Doe # 3 failure to institute appropriate education and
13 training and to adopt procedures to protect her from verbal assaults and repeated sexual
14 attacks, Ms. Guzman-Martinez experienced abuse and assaults, great fear and significant
15 emotional distress while she was detained.

16 72. After she was assaulted, Ms. Guzman-Martinez experienced severe
17 depression and anxiety and required medication for anxiety and as a sleep aid.

18 73. Ms. Guzman-Martinez has experienced episodes of hyper-vigilance out of
19 her fear of being retaliated against by officers or detainees. While she was still in custody
20 at EDC, she would frequently check that her cell door was locked so that no detainee or
21 officer could enter to assault her again.

22 74. Since her release from custody, Ms. Guzman-Martinez continues to suffer
23 from depression, anxiety and is fearful at the idea of any encounter with law enforcement.
24 These serious harms have negatively impacted her on a regular basis.

25 75. Ms. Guzman-Martinez's fear of law enforcement is justified by her past
26 abuse as well as by her immigration status: withholding of removal does not permit
27 adjustment status to legal permanent resident or naturalization to U.S. citizen. Thus, it is
28 possible that Ms. Guzman-Martinez could be subjected to detention by ICE/CCA in the

1 future. Without changes to the education, training, and procedures to protect transgender
2 detainees, Ms. Guzman-Martinez has a well-founded fear that she could be subjected to
3 additional sexual and/or physical assaults by detention officers and detainees.

4 **F. Ms. Guzman-Martinez’s Injuries Are Caused by Defendants’**
5 **Failure to Implement Reasonable Procedures and Follow the**
6 **Law and Governing Standards.**

7 76. The two sexual assaults of Ms. Guzman-Martinez and resulting physical
8 and psychological harms were caused at least in part by Defendants’ joint and several
9 failure to institute appropriate training, education, and detention standards addressing the
10 treatment and care of transgender immigrant detainees and to adequately screen and
11 monitor CCA officers in charge of vulnerable detainees including Defendant Manford.

12 77. Defendants CCA, DeRosa, John Doe # 1, John Doe # 2, Kane, Scalet,
13 Campbell and John Doe # 3 failed to implement the contractually required standards
14 including the ICE Detention Standards, the American Correctional Association (ACA
15 Standards for Adult Local Detention Facilities and the National Commission on
16 Correctional Health Care (NCCHC), to protect the welfare of vulnerable detainees, such
17 as Ms. Guzman-Martinez at EDC.

18 78. In assessing the particular problems facing transgender women detainees
19 for example, the NCCHC declared, “In matters of housing, recreation, and work
20 assignments custody staff should be aware that transgender people are common targets
21 for violence. Accordingly, appropriate safety measures should be taken, regardless of
22 whether the individual is placed in male or female housing areas.”¹⁵ Defendants
23 repeatedly failed to take such measures.

24 79. The ACA Standards provide that, “Single occupancy cells/rooms are
25 available when indicated for ... inmates likely to be exploited or victimized by others.”¹⁶
26 At no time during her detention at EDC was Ms. Guzman-Martinez provided a single-

27 ¹⁵ National Commission on Correctional Health Care (“NCCHC”), *Position Statement:*
28 *Transgender Health Care in Correctional Settings*, Recommendation #7, Patient Safety,
pp. 2-3; Adopted by the NCCHC Board of Directors Oct. 18, 2009; available at:
<http://ncchc.org/resources/statements/transgender.html>

¹⁶ American Correctional Association (“ACA”), Performance-Based Standards for Adult
Local Detention Facilities, 4th edition, Part 2: Security, Policy #3-ALDF-2C-01-1, p.23

1 occupancy cell, even after she requested one, despite the vulnerabilities that existed when
2 she entered EDC and that became heightened after she was assaulted the first time.

3 80. In September 2008, ICE announced the implementation of revised
4 performance-based “detention standards,” with final implementation to occur in 2010. All
5 facilities must meet 90% of the non-mandatory components and 100% of the mandatory
6 components. The ICE Detention Standards are specifically incorporated in the IGSA
7 between Defendant City of Eloy and ICE for detention services at EDC.

8 81. The ICE Standards incorporate specific protocols included in the Prison
9 Rape Elimination Act of 2003 (PREA). The ICE standard on Sexual Abuse and Assault
10 Prevention specifically observes that “(PREA) sets a zero tolerance standard regarding
11 rape and sexual assault in ‘any confinement facility of a federal, states, or local
12 government, whether administered by such government or by a private organization.’”¹⁷

13 82. The ICE Detention Standard on Classification System also provides
14 instruction that was not followed in this case. That standard states, “detainees shall be
15 screened upon arrival at the facility for potential vulnerabilities” including relevant
16 factors such as “a history of victimization while in detention.” The standard further
17 requires that “Each detainee’s classification will be reviewed at regular intervals, when
18 required by changes in the detainee’s behavior or circumstances, or upon discovery of
19 additional, relevant information.”¹⁸

20 83. In addition to the above-noted process for reclassifications, detainees may
21 also be subject of “special reassessment” to be completed “at any other time when
22 additional, relevant information becomes known. Reclassification may occur as a result
23 of an assault, a criminal act, or victimization.”¹⁹

24 84. Defendants DeRosa, Mohn, Adams, Scalet, Campbell and Leal were
25 deliberately indifference by not following these standards in classifying and reclassifying
26

27 ¹⁷ ICE/DRO Detention Standard: Sexual Abuse and Assault Prevention and Intervention,
28 dated December 2, 2008

¹⁸ ICE/DRO Detention Standard: Classification System, dated December 2, 2008

¹⁹ *Id.*

1 Ms. Guzman-Martinez based on the vulnerabilities she presented upon initial booking at
2 EDC and then again after she was assaulted for the first time.

3 85. In addition to failing to meet contractually-obligated standards, Defendants
4 also failed to meet generally accepted professional standards in a detention facility to
5 safeguard the rights and well-being of vulnerable detainees including transgender
6 women.

7 86. One such example includes the World Professional Association for
8 Transgender Health (WPATH). In their report, WPATH notes, “Housing... facilities for
9 transsexual, transgender, and gender nonconforming people living in institutions should
10 take into account their gender identity and role, physical status, dignity and personal
11 safety. Placement in a single-sex housing unit, ward or pod on the sole basis of the
12 appearance of external genitalia may not be appropriate and may place the individual at
13 the risk for victimization.”²⁰

14 87. The injuries Ms. Guzman-Martinez suffered as a result of the sexual
15 assaults, harassment, threats, and intimidation while detained at EDC comprise the
16 precise types of harm sought to be prevented by the standards, laws, and guidelines cited
17 above.

18 **COUNT I**
19 **DEPRIVATION OF CONSTITUTIONAL RIGHTS UNDER FIFTH &**
20 **FOURTEENTH AMENDMENTS- DUE PROCESS (42 U.S.C. § 1983)**
21 **(Against Defendants Eloy, CCA, DeRosa, Mohn, Adams, John Doe #1 and John Doe**
22 **#2)**

23 88. Plaintiff incorporates the allegations stated in Paragraphs 1 through 87 of
24 this Complaint as if fully stated herein.

25 89. Defendants Eloy, CCA, and DeRosa maintained or sanctioned official
26 policies, practices, and/or customs of deliberately or indifferently neglecting to protect
27 transgender immigrant detainees at EDC from clear and foreseeable risk of assault,
28 sexual assault, and abuse by detainees and guards by: (1) failing to implement policies,

²⁰ World Professional Association for Transgender Health (WPATH), *Standards of Care for the Health of Transsexual, Transgender and Gender Nonconforming People*, Seventh Version, available at: <http://www.wpath.org/>.

1 measures, and practices to prevent assault, sexual assault, and abuse by detainees and
2 guards, including measures or practices were required by applicable contracts, policies,
3 and standards; (2) failing to appropriately monitor and supervise detention conditions,
4 which Defendants Eloy, CCA, and DeRosa knew or should have known were proceeding
5 in violation of applicable policies and standards, and of accepted professional practices,
6 designed to prevent assault, sexual assault, and abuse of transgender detainees by
7 detainees and guards.

8 90. The risk of assault, sexual assault, and abuse on Ms. Guzman-Martinez
9 under these circumstances was clear, obvious, and ongoing.

10 91. Persons entrusted with policymaking at Eloy and CCA, including DeRosa,
11 had actual and constructive knowledge of policies, practices, and customs of Eloy and
12 CCA in the EDC, and had the ability to modify and remedy those policies, protections,
13 and customs that placed the safety and well-being of Ms. Guzman-Martinez at risk.
14 Nonetheless, they failed to do so.

15 92. As a direct and proximate result of the deliberate indifference of
16 Defendants Eloy, CCA, and DeRosa to the clear risk of sexual assault on Ms. Guzman-
17 Martinez, Ms. Guzman Martinez suffered and continues to suffer injury and damages,
18 including severe mental and emotional distress.

19 **COUNT II**
20 **DEPRIVATION OF CONSTITUTIONAL RIGHTS UNDER FIFTH AND**
21 **FOURTEENTH AMENDMENTS- DUE PROCESS (42 U.S.C. § 1983)**
22 **(Against Defendants Manford, Eloy, CCA, DeRosa, Mohn, Adams, John Doe #1 and**
23 **John Doe #2)**

24 93. Plaintiff incorporates the allegations stated in Paragraphs 1 through 92 of
25 this Complaint as if fully stated herein.

26 94. Defendant Manford willfully deprived Ms. Guzman-Martinez of her rights,
27 privileges, and immunities secured by the United States Constitution and laws by
28 sexually assaulting her without her consent and by acting in such a manner as to fear
further assault and other consequences if she did not comply with his demands.

1 Defendant Manford’s conduct violated Ms. Guzman-Martinez’s rights not to be deprived
2 of liberty, including her bodily integrity, without due process of law.

3 95. As a direct and proximate result of Defendant Manford’s deprivation of her
4 liberty without due process of law during the course of his sexual assault, Ms. Guzman-
5 Martinez suffered substantial injuries and damages, including severe mental and
6 emotional distress.

7 96. The risk of assault, sexual assault, and abuse on Ms. Guzman-Martinez
8 under these circumstances was clear, obvious, and ongoing.

9 97. Persons entrusted with policymaking at Eloy and CCA, including
10 Defendants Eloy, CCA, DeRosa, Mohn, Adams and John Doe 1 and John Doe 2 had
11 actual and constructive knowledge of policies, practices, and customs of Eloy and CCA
12 in the EDC, and had the ability to modify and remedy those policies, protections, and
13 customs. Nonetheless, they failed to do so.

14 98. As a direct and proximate result of the deliberate indifference of
15 Defendants Eloy, CCA, DeRosa, Mohn, Adams and John Does 1 and 2 to the clear risk of
16 sexual assault on Ms. Guzman-Martinez, Ms. Guzman Martinez suffered and continues to
17 suffer injury and damages, including severe mental and emotional distress.

18 **COUNT III**
19 **DEPRIVATION OF CONSTITUTIONAL RIGHTS UNDER THE FIFTH**
20 **AMENDMENT-DUE PROCESS (BIVENS)**
21 **(Against Defendants Kane, Scalet, Campbell, Leal and John Doe #3)**

22 99. Plaintiff incorporates the allegations stated in Paragraphs 1 through 98 of
23 this Complaint as if fully stated herein.

24 100. As detailed at length above, Defendants Kane, Scalet, Campbell, Leal and
25 John Doe 3 exhibited deliberate indifference in their respective capacities by (1)
26 willfully disregarding the necessity of policies and measures to prevent assault, sexual
27 assault, and abuse of transgender detainees under ICE custody in the EDC; and (2) by
28 failing to appropriately monitor and supervise housing and detention conditions which
they knew were proceeding in violation of applicable contracts, policies, and standards

1 designed to prevent assault, sexual assault, and abuse of transgender detainees, including
2 Ms. Guzman-Martinez.

3 101. The risk of assault, sexual assault, and abuse on Ms. Guzman-Martinez
4 under these circumstances was clear, obvious, and ongoing.

5 102. As a direct and proximate result of the deliberate indifference of
6 Defendants Kane, Scalet, Campbell, Leal and John Doe #3 to the clear risk of sexual
7 assault on Ms. Guzman-Martinez, Ms. Guzman Martinez suffered and continues to suffer
8 injury and damages, including severe mental and emotional distress.

9 **COUNT IV**
10 **CRUEL, INHUMAN, AND DEGRADING TREATMENT**
11 **IN VIOLATION OF 28 U.S.C. § 1350**
12 **(Against Defendants Manford and CCA)**

13 103. Plaintiff incorporates the allegations stated in Paragraphs 1 through 102 of
14 this Complaint as if fully stated herein.

15 104. At the time period relevant to this Complaint, Ms. Guzman-Martinez was
16 an alien for the purpose of Title 28, Section 1350 of the United States Code.

17 105. Plaintiff asserts a claim against Defendants Manford and CCA based upon
18 their cruel, inhuman, or degrading treatment at the hands of Defendant Manford and/or
19 other agents or employees of CCA.

20 106. Ms. Guzman-Martinez was subjected to cruel, inhuman, or degrading
21 treatment by Defendant Manford and/or other agents or employees of CCA. Customary
22 international law prohibits any act undertaken with the intent and effect of grossly
23 humiliating and debasing and individual, forcing that individual to act against her will or
24 conscience, inciting fear or anguish, and/or breaking her physical and moral resistance.
25 This prohibition against cruel, inhuman, or degrading treatment is a specific, universal,
26 and obligatory norm of customary international law, which is cognizable under the Alien
27 Tort Statute.

28 107. The assault against Ms. Guzman-Martinez by Defendant Manford and/or
other employees or agents of CCA while she was under their custody and control violates

1 the norm prohibiting cruel, inhuman, or degrading treatment, and is therefore actionable
2 under the Alien Tort Statute.

3 108. Defendant Manford subjected Ms. Guzman-Martinez to cruel, inhuman,
4 and/or degrading treatment by sexually assaulting her. At the time of this assault,
5 Defendant Manford was an employee of Defendant CCA. Defendant CCA is therefore
6 liable for Defendant Manford's actions because he was an agent of CCA and because he
7 was acting within the course and scope of his employment as a detention guard when the
8 sexual assault occurred.

9 109. Further, or in the alternative, Defendant CCA is liable for cruel, inhuman,
10 or degrading treatment of Ms. Guzman-Martinez by: (1) recklessly disregarding the
11 foreseeable risk of assault, sexual assault, and abuse of transgender detainees by
12 detention officers; (2) adopting policies, practices, and customs that institutionalized and
13 otherwise furthered deliberate indifference; (3) willfully disregarding the need to
14 implement policies and measures to prevent assault, sexual assault, and abuse of
15 transgender detainees, including policies and measures were required by applicable
16 contracts, policies, and standards; and (4) failing to supervise and monitor detention
17 conditions which it knew violated applicable policies and standards designed to prevent
18 assault, sexual assault, and abuse of Ms. Guzman-Martinez and other transgender
19 detainees.

20 110. As a direct and proximate result of Defendants' Manford's and CCA's
21 cruel, inhuman, and degrading treatment of Ms. Guzman-Martinez, Ms. Guzman
22 Martinez has suffered substantial injuries and damages, including severe mental and
23 emotional distress.

24 111. The acts and omissions of Defendants Manford and CCA were deliberate,
25 intentional, wanton, malicious, and oppressive, and should be punished by an award of
26 punitive damages in an amount to be determined at trial.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT V
BATTERY
(Against CCA and Manford)

112. Plaintiff incorporates the allegations stated in Paragraphs 1 through 111 of this Complaint as if fully stated herein.

113. Defendant Manford intentionally caused harmful and/or offensive contact with Ms. Guzman-Martinez.

114. When Defendant Manford caused harmful and/or offensive contact with Ms. Guzman-Martinez, he was acting with actual or apparent authority as an agent of Defendant CCA.

115. When Defendant Manford caused harmful and/or offensive contact with Ms. Guzman-Martinez, he was acting in the course and scope of his employment with CCA.

116. As a result of Defendant Manford's harmful and offensive contact with Ms. Guzman-Martinez, Ms. Guzman-Martinez has sustained injury and damages.

COUNT VII
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
(Against CCA and Manford)

117. Plaintiff incorporates the allegations stated in Paragraphs 1 through 116 of this Complaint as if fully stated herein.

118. The conduct of Defendants CCA and Manford, described above, was extreme and outrageous.

119. Defendants CCA and Manford intentionally caused severe emotional distress to Ms. Guzman-Martinez, and/or recklessly disregarded the near certainty of severe emotional distress to Ms. Guzman-Martinez.

120. As a result of the conduct of Defendants CCA and Manford, Ms. Guzman-Martinez has suffered severe emotional distress.

COUNT VIII
NEGLIGENT SUPERVISION
(Against CCA and DeRosa)

1
2
3 121. Plaintiff incorporates the allegations stated in Paragraphs 1 through 120 of
4 this Complaint as if fully stated herein.

5 122. Defendants CCA and DeRosa owed Ms. Guzman-Martinez, as a detainee
6 seeking asylum, as well as withholding of removal under the Convention Against
7 Torture, a duty to provide adequate supervision of Manford.

8 123. Defendants CCA and DeRosa breached their duty of supervision.

9 124. As a direct and proximate result of Defendants CCA's and de la Rosa's
10 negligent supervision of Manford, Ms. Guzman-Martinez was assaulted.

11 125. As a direct and proximate result of Defendants CCA's and DeRosa's
12 negligent supervision, Ms. Guzman-Martinez has sustained injuries and damages
13 associated with her assault, including severe and emotional and mental distress.

14 **DAMAGES**

15 126. As a direct and proximate result of the breach of Plaintiff's rights in each of
16 the above mentioned claims for relief, Ms. Guzman-Martinez sustained and continues to
17 sustain substantial injuries including physical and emotional harms; the verbal abuse and
18 horrific assaults under the most vulnerable conditions have predictably negatively
19 impacted her mental state and abilities to function. Plaintiff is entitled to substantial
20 compensation for the harms resulting from the unconstitutional and illegal acts by
21 Defendants.

22 127. As set out above, the actions by the individual Defendants demonstrated a
23 reckless disregard for the rights and well-being of Ms. Guzman-Martinez and an intent to
24 harm and degrade her. Exemplary damages are necessary from those Defendants acting
25 in their individual capacity and causing harm to plaintiff in order to punish these persons
26 and deter them from repeating these abusive and illegal acts to victimize other vulnerable
27 detainees in the future.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Plaintiff requests this Court provide the following relief:

- A. Judgment and damages in an amount to be proven at trial against Defendants;
- B. Punitive damages;
- C. Declaratory judgment that the policies and practices concerning the housing and treatment of transgendered detainees in EDC is inadequate, and unlawfully and unreasonably exposes detainees to harm.
- D. An award of reasonable attorneys’ fees and costs;
- E. For such other and further relief as is just and proper.

DATED this 5th day of December, 2011.

LEWIS AND ROCA LLP

By _____
Kristina N. Holmstrom
Kirstin A. Story

AMERICAN CIVIL LIBERTIES UNION

By _____
Daniel Pochoda

Attorneys for Plaintiff Tanya Guzman-Martinez
