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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 TSUNGAI TUNGWARARA,
16 Plaintiff,
17 vs.
18 UNITED STATES OF AMERICA,
19 ALFERT LUDWIGS, and DOES 1-25,
20 inclusive,
21 Defendants.

C 04 2144
Case No.

COMPLAINT FOR DAMAGES
DEMAND FOR JURY TRIAL

22 Plaintiff Tsungai Tungwarara alleges as follows:

23 **JURISDICTION AND PROCEDURAL PREREQUISITES TO SUIT**

24 1. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, 28 U.S.C.
25 § 1343(a)(4), 28 U.S.C. § 1346(b)(1), and 28 U.S.C. § 1367.

26 2. On October 10, 2003, Tsungai Tungwarara filed an administrative claim with the
27 United States Department of Homeland Security ("DHS"), as the government agency succeeding
28 the former United States Immigration and Naturalization Service ("INS"), pursuant to the Federal

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRB

1 Tort Claims Act, 28 U.S.C. § 2671 et seq. ("FTCA"). Assistant Chief Counsel for DHS denied
2 Ms. Tungwarara's claims in a letter dated March 4, 2004.

3 VENUE

4 3. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
5 § 1391.

6 INTRADISTRICT ASSIGNMENT

7 4. Plaintiff's claims arose in the county of San Francisco. Therefore, assignment to
8 the San Francisco or Oakland Division of this Court is proper under Local Rule 3-2(d).

9 THE PARTIES

10 5. Plaintiff Tsungai Tungwarara is a citizen of Zimbabwe. She was granted
11 derivative asylum status in the United States in 2003 in connection with the asylum application of
12 her mother, Faith Virimayi, who was granted asylum status in 2002. Ms. Virimayi was granted
13 asylum status after being interviewed by an INS Asylum Officer and found to be credible and to
14 have a well-founded fear of persecution in Zimbabwe.

15 6. At all relevant times herein, Defendant Alfert Ludwigs ("Ludwigs) was an agent
16 and/or employee of the Immigration and Naturalization Service of the United States of America
17 ("INS") and is sued in his individual capacity. Defendant was the officer-in-charge of the stop,
18 detention, arrest, search and/or seizure of Plaintiff that is described herein. Plaintiff is informed
19 and believes and thereon alleges that Ludwigs is a resident of the Northern District of California.

20 7. Defendant United States of America exists under the Constitution of the United
21 States of America and laws enacted by the United States Congress. The INS was at all times
22 mentioned herein an agency of the United States Department of Justice, organized and existing
23 under the laws of the United States. The United States is vicariously liable for the misconduct of
24 its agents and employees and is directly liable for any policies of the United States or its agencies
25 leading to or contributing to such misconduct, including but not limited to failure to supervise
26 employees properly, failure to train employees properly, and failure to implement sufficient
27 procedures to guard against the type of misconduct that occurred in this case.

28 8. At all relevant times herein, defendants DOES 1-25 (also referred to hereinafter as

1 the "DOE defendants"), each of whom Plaintiff sues in their individual capacities, were agents,
2 employees, and/or otherwise representatives of the Immigration and Naturalization Service, the
3 United States Department of State, other federal agencies, state agencies, local government
4 agencies, and/or private actors acting in their individual capacities. Plaintiff is informed and
5 believes and thereon alleges that many, if not all, of DOES 1-25 are residents of the Northern
6 District of California. Plaintiff and/or her representatives have undertaken reasonable and
7 diligent efforts to ascertain the true identities of DOES 1-25, but, despite such efforts, Plaintiff is
8 presently unaware of the true identities of defendants DOES 1 through 25, inclusive, and Plaintiff,
9 therefore, sues each such defendant by a fictitious name. Ms. Tungwarara is informed and
10 believes and thereon alleges that DOES 1 through 25, inclusive, are legally responsible for the
11 wrongs committed against Plaintiff, as alleged herein, and that many, if not all, of DOES 1-25,
12 had supervisory and/or managerial responsibility over Ludwigs and exercised, or failed to
13 exercise, that authority in Ludwigs' dealings with Plaintiff, in a manner which caused the harms
14 herein alleged, or otherwise proximately caused the harms herein alleged in derogation of their
15 duties to Ms. Tungwarara. When Plaintiff becomes aware of the true identities of one or more
16 DOE defendants, Plaintiff will amend her complaint to add or substitute them as named
17 defendants.

18 FACTS GIVING RISE TO CLAIMS

19 9. The incident on which Ms. Tungwarara's claims are based began on or about
20 January 9, 2002, when Ms. Tungwarara, an 18 year-old woman taking her first trip to the United
21 States, arrived at San Francisco International Airport ("SFO") following a three-day journey from
22 her home country of Zimbabwe. Ms. Tungwarara was planning to visit her mother,
23 Ms. Virimayi, and younger sister Rutendo, who were residing in the San Francisco Bay Area.

24 10. Ms. Virimayi and Rutendo had fled Zimbabwe because they were threatened with
25 violence and feared for their lives due to Ms. Virimayi's role in an organization that she co-
26 founded called the Association for the Widows of Fallen Heroes of Zimbabwe. On May 9, 2002,
27 Ms. Virimayi was granted political asylum in the United States. Due to her mother's political
28 activities, Ms. Tungwarara also faced danger in Zimbabwe of being kidnapped or killed, and she

1 required escorts for protection. On or about October 9, 2003, Ms. Tungwarara was granted
2 derivative asylum status when her Refugee Asylum Relative Petition was approved.

3 11. Ms. Tungwarara arrived at SFO on January 9, 2002 at approximately 1:00 p.m. on
4 a valid tourist visa that her mother had obtained for her. Upon her arrival in San Francisco, an
5 INS immigration officer asked Ms. Tungwarara a series of standard questions, such as the
6 purpose of her visit. Ms. Tungwarara informed the officer that she was visiting her mother and
7 sister. Instead of permitting Ms. Tungwarara to enter, however, the INS referred her to INS
8 secondary inspection for further questioning.

9 12. At secondary inspection, Ms. Tungwarara was met by defendant Alfert Ludwigs
10 (“Ludwigs”), an INS agent. Ludwigs, alone and in concert with other defendants who are sued
11 herein as DOES 1-25, proceeded to engage in a course of illegal, tortious, extreme and outrageous
12 conduct that has severely harmed Ms. Tungwarara and deprived her of substantial rights under the
13 United States Constitution and the California Constitution.

14 13. Ludwigs detained Ms. Tungwarara in the INS waiting room from approximately
15 1:00 p.m. until at least 11:00 p.m. Despite the fact that Ms. Tungwarara had endured three days
16 of flying—from Harare, Zimbabwe to Johannesburg to Paris to San Francisco—she was not
17 offered any food until after 11:00 p.m.

18 14. Ludwigs did not permit Ms. Tungwarara to have any contact with her mother,
19 Ms. Virimayi, despite the fact that Ms. Virimayi was present at the airport to pick up
20 Ms. Tungwarara. Ms. Virimayi had not seen her daughter for a substantial period for time.
21 Ms. Tungwarara made repeated requests to be allowed to see her mother, but they were all denied
22 by Ludwigs without explanation.

23 15. In the airport terminal, Ludwigs spoke with Ms. Virimayi, telling her that her
24 daughter would be released only if Ms. Virimayi purchased a return ticket for her immediately.
25 Ludwigs also told Ms. Virimayi that, after September 11th, there was a “problem” with “these
26 people from Africa.” He further told Ms. Virimayi that Ms. Tungwarara was “going back to
27 Africa” and he stated, “We won’t allow these people here—not after September 11th. Go back to
28 the jungle.”

1 16. Ludwigs was informed by Ms. Virimayi that she was an asylum applicant. Despite
2 this knowledge, Ludwigs did not refer Ms. Tungwarara to an Asylum Officer for an interview to
3 assess her fear of returning to Zimbabwe. If he had, he would have learned that Ms. Tungwarara
4 feared being kidnapped or killed by her mother's enemies in Zimbabwe.

5 17. Ludwigs thereafter coerced Ms. Tungwarara, under extreme duress, to sign forms
6 (which he did not permit her to read) containing false statements and to withdraw her application
7 for entry.

8 18. Ms. Tungwarara was thereafter photographed, fingerprinted, handcuffed, and
9 taken to a local jail where Defendants knew or reasonably should have known that Ms.
10 Tungwarara would be strip-searched. The official who took Ms. Tungwarara to the jail confided
11 that this was not supposed to be the way things happened, that what INS officials were doing was
12 unfair, and that this was not the normal INS procedure. At the jail, Ms. Tungwarara was forced to
13 undergo a humiliating strip search and physical examination in which she was forced to strip
14 down to her undergarments and an officer touched her genitals. Ms. Tungwarara was not charged
15 with any crime; she has never been arrested for or convicted of any crime. The strip search was
16 conducted without probable cause, reasonable suspicion, lawful authority, or a rational or
17 nondiscriminatory basis.

18 19. Ms. Tungwarara was then forced to spend the night in a jail cell. She was not
19 segregated from the general jail population but was placed in a cell with women who were being
20 held on criminal charges. This constituted a clear violation of INS policy, which instructs that
21 immigrants such as Ms. Tungwarara shall not be booked into any jail facility "absent
22 extraordinary circumstances" but should instead be housed at a facility provided by the airport, a
23 local shelter care facility, detained under guard in a hotel, or placed in an INS holding facility
24 segregated from other detainees.

25 20. Ms. Tungwarara was kept in the jail cell until approximately 6:00 or 7:00 a.m., at
26 which time she was taken in chains to the INS's San Francisco office. Ms. Tungwarara was then
27 permitted to see her mother for the first and only time during the entire ordeal. She was only
28 permitted to see her mother, however, for approximately five minutes, and she was separated

1 from her by a glass wall. Emotionally distraught by the horrendous experience, Ms. Tungwarara
2 was barely able to speak to her mother and sat silently staring at her.

3 21. That morning, Bernice Brown, a family friend of Ms. Tungwarara, spoke to an
4 INS official regarding Ms. Tungwarara's treatment. The INS employee admitted that a French
5 immigrant who had recently arrived in the Bay Area with improper documentation had been
6 released by INS overnight to family and friends. When Ms. Brown asked if Ms. Tungwarara
7 could be released to her, the INS employee said, "Absolutely not" and refused to explain why Ms.
8 Tungwarara was being treated differently. Ms. Brown was forced to purchase a return ticket for
9 Ms. Tungwarara.

10 22. Ms. Tungwarara was forced to board a flight for Zimbabwe later that afternoon on
11 January 10. Ms. Tungwarara had a layover in France and, because her visa had been cancelled by
12 the INS, the French authorities treated her with suspicion and strip-searched her before allowing
13 her to board her connecting flight. She finally arrived back in Zimbabwe on January 13.

14 23. Ms. Tungwarara is now attending school in South Africa. Following the incident
15 with the INS agents, she has become depressed, angry, withdrawn, discouraged, anxious, unable
16 to eat properly and afraid to travel. She has suffered from constant headaches, loss of appetite
17 and sleep disturbances stemming from her experience with the INS agents.

18 24. Defendants were on notice of the fact that visitors were being subjected to
19 wrongful treatment by INS officials and that such officials were not receiving appropriate training
20 and supervision. In fact, this is not the only incident involving misconduct by federal
21 immigration officials at San Francisco International Airport. Over the last several years,
22 Defendant United States and federal immigration officials have been sued on several occasions
23 regarding racist and discriminatory actions by airport immigration officials.

24 a. On or about July 16, 1999, Dr. Chizoba Nwosu, a United States citizen of Nigerian
25 descent, arrived at San Francisco International Airport and was wrongfully detained, interrogated,
26 and subjected to demeaning and offensive statements about her nationality, under circumstances
27 similar to the circumstances surrounding Ms. Tungwarara's ordeal. She later filed suit in the
28 Northern District of California.

1 arrest, detain, restrain and/or seize Ms. Tungwarara and/or cause her to return to Zimbabwe
2 against her will.

3 29. Ms. Tungwarara is informed and believes that defendant United States at all times
4 either knew, recklessly and callously disregarded, or reasonably should have known of the
5 unlawful nature of the arrest and imprisonment.

6 30. Ms. Tungwarara did not consent to the conduct of defendant United States and was
7 harmed by such conduct.

8 **THIRD CLAIM FOR RELIEF**
9 **(Negligence)**
10 **(Against Defendant United States Of America)**

11 31. Ms. Tungwarara hereby incorporates paragraphs 1 through 30 above and each
12 allegation therein as though fully set forth herein.

13 32. Defendant United States owed Ms Tungwarara a duty of care not to cause her the
14 harms herein alleged without legal justification. By committing the above-described acts without
15 legal justification and without having taken reasonable precautions to avoid such harms,
16 defendant United States breached its duty of care and proximately harmed Ms. Tungwarara, as
17 described above.

18 **FOURTH CLAIM FOR RELIEF**
19 **(Assault)**
20 **(Against Defendant United States Of America)**

21 33. Ms. Tungwarara hereby incorporates paragraphs 1 through 32 above and each
22 allegation therein as though fully set forth herein.

23 34. By committing the above-described acts, defendant United States caused
24 Ms. Tungwarara to experience imminent apprehension of harmful or offensive contact against
25 herself, without any legal justification or privilege to cause such apprehension, causing her the
26 harms herein alleged. Ms. Tungwarara did not consent to the conduct of defendant United States.
27 Ms. Tungwarara is informed and believes that defendant United States engaged in such conduct
28 with the intent to cause imminent apprehension in Ms. Tungwarara.

1 **FIFTH CLAIM FOR RELIEF**
2 **(Battery)**
3 **(Against Defendant United States Of America)**

4 35. Ms. Tungwarara hereby incorporates paragraphs 1 through 34 above and each
5 allegation therein as though fully set forth herein.

6 36. The above-described acts by defendant United States constitute harmful or
7 offensive contact against Ms. Tungwarara, without any legal justification or privilege therefor.
8 Ms. Tungwarara did not consent to the harmful and offensive contact. Ms. Tungwarara is
9 informed and believes that defendant United States engaged in such conduct with the intent to
10 harm or offend her. Ms. Tungwarara was, in fact, harmed and/or offended by such conduct.

11 **SIXTH CLAIM FOR RELIEF**
12 **(Violation Of California Constitution)**
13 **(Against Defendant United States Of America)**

14 37. Ms. Tungwarara hereby incorporates paragraphs 1 through 36 above and each
15 allegation therein as though fully set forth herein.

16 38. By engaging in the above-described acts, defendant United States violated
17 Ms. Tungwarara's rights under Article I, section 1 of the California Constitution.

18 **SEVENTH CLAIM FOR RELIEF**
19 **(Violation Of California Civil Code § 52.1(b))**
20 **(Against Defendant United States Of America)**

21 39. Ms. Tungwarara hereby incorporates paragraphs 1 through 38 above and each
22 allegation therein as though fully set forth herein.

23 40. Defendant United States, in violation of California Civil Code section 52.1(b),
24 deprived Ms. Tungwarara of her rights under California Civil Code section 51.7 by actual and
25 implied threats of violence, or intimidation by actual and implied threats of violence, or by aiding,
26 inciting or conspiring in the denial of such rights. Ms. Tungwarara is informed and believes that
27 a motivating reason for defendant United States' conduct was her race, color, national origin,
28 and/or ancestry. As a result of such conduct, Ms. Tungwarara has suffered harm.

29 **EIGHTH CLAIM FOR RELIEF**
30 **(Violation of Fourth Amendment)**
31 **(Against Defendants Does 1-25 and Alfert Ludwigs)**

32 41. Ms. Tungwarara hereby incorporates paragraphs 1 through 40 above, each

1 allegation therein as though fully set forth herein.

2 42. At all relevant times, defendant Ludwigs and DOES 1-25 were acting under color
3 of federal law.

4 43. The Fourth Amendment to the United States Constitution provides that each
5 person has a right to be secure in his or her person, houses, papers, and effects, against
6 unreasonable searches and seizures.

7 44. By committing the above-described acts and setting in motion a series of acts by
8 others which Defendants knew or reasonably should have known would cause such others to
9 inflict injury on Ms. Tungwarara, Defendant Ludwigs and DOES 1-25 violated Ms. Tungwarara's
10 rights under the Fourth Amendment to the United States Constitution.

11 45. The conduct of defendants violated clearly established constitutional and other
12 rights of which defendants knew, or which a reasonable public official should have known.

13 46. Ms. Tungwarara has no effective administrative mechanism or other remedy at law
14 by which to seek the proper measure of damages for the constitutional wrongs.

15 47. As a direct and proximate result of defendants' conduct, Ms. Tungwarara has been
16 harmed. Defendants' actions caused Ms. Tungwarara to experience severe and lasting anxiety,
17 depression, fear, sadness, humiliation, nervousness, stress, and frustration.

18 48. Ms. Tungwarara is informed and believes and thereon alleges that the above-
19 described acts of defendants and each of them were done knowingly, intentionally, maliciously,
20 with deliberate, reckless or callous indifference to Ms. Tungwarara's personal safety, security,
21 freedom, and civil and constitutional rights, and/or with intent to injure, harass, and oppress
22 Ms. Tungwarara. Accordingly, Ms. Tungwarara is entitled to an award of punitive damages
23 against defendant and each of DOES 1-25.

24
25 **NINTH CLAIM FOR RELIEF**
26 **(Violation of Fifth Amendment)**
(Against Defendants Does 1-25 and Alfert Ludwigs)

27 49. Ms. Tungwarara refers to and incorporates paragraphs 1 through 48 as though fully
28 set forth herein.

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the extent permitted by law;

3. That Ms. Tungwarara be awarded treble damages pursuant to California Civil Code sections 52 and 52.1 against defendant United States and DOES 1 through 25;

4. That Ms. Tungwarara be awarded a civil penalty of \$25,000 against defendant United States and DOES 1 through 25 for each violation of her rights, pursuant to California Civil Code sections 52 and 52.1;

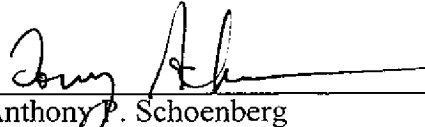
5. Attorneys' fees pursuant to all applicable statutory, common law, or constitutional provisions including California Civil Code sections 52 and 52.1;

6. Reasonable costs and expenses; and

7. Such other relief as the Court may deem just and proper.

DATED: June 1, 2004

FARELLA BRAUN & MARTEL LLP

By: 
Anthony P. Schoenberg


Attorneys for Plaintiff
TSUNGAI TUNGWARARA

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: June 1, 2004

FARELLA BRAUN & MARTEL LLP

By: 
- Anthony P. Schoenberg

Attorneys for Plaintiff
TSUNGAI TUNGWARARA


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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: June 1, 2004

FARELLA BRAUN & MARTEL LLP

By: 
Anthony R. Schoenberg

Attorneys for Plaintiff
TSUNGAI TUNGWARARA

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