



times relevant hereto, Plaintiffs were, and now are, citizens of the Republic of Mexico.

1.2 At all times relevant hereto, Plaintiffs may maintain a Federal Wrongful Death and Survival Action and recover damages for the value of the Decedent's life and the Decedent's pain and suffering.

1.3 Defendant, United States of America, acting through United States Coast Guard, is a Federal Agency of the United States Department of Homeland Security. Defendant may be served with process in compliance with the Federal Rules of Civil Procedure 4(I) by serving a copy of the summons and complaint by certified mail, return receipt requested to:

- a. The Civil Process Clerk at the office of U.S. Attorney for the Southern District of Texas, Kenneth Magidson, at P.O. Box 61129, Houston, Texas 77208;
- b. The U.S. Attorney General, Department of Justice, 950 Pennsylvania Avenue, N.W., Room B-324, Washington, D.C. 20530;
- c. The Chief, Claims Division, United States Coast Guard, Commanding Officer S. Steiner, Legal Service Command, 300 East Main Street, Suite 400, Norfolk, VA 23510-9100

## **2. SUBJECT MATTER JURISDICTION**

2.1 The court has jurisdiction over the lawsuit under 28 U.S.C. 1346(b), 2671-2680, Federal Tort Claims Act ("FTCA"), because the suit involves a claim against the United States for personal injury caused by the negligent acts and omissions of a government employee(s) while acting within the scope of their official employment. Specifically, this incident was caused by the negligence of U.S. Coast Guard employees/officers while they were operating a U.S. Coast guard vessel.

2.2 In the alternative, Plaintiff brings this cause of action pursuant to the Suits in Admiralty Act, 46 U.S.C. App. §§ 741-752 App. (“SAA”)(now codified at 46 U.S.C. §§ 30901-30913), to the extent the action is deemed to arise out of an incident on navigable waters and involve a significant relationship to traditional maritime activity. All cases involving a tort committed on navigable water are governed by admiralty law. There is an interrelationship between the FTCA, the SAA and the Public Vessels Act. As such, Plaintiffs also bring this cause of action under the Public Vessels Act since a complaint “in admiralty may be brought against the United States ... for damages caused by a public vessel of the United States ...” 46 U.S.C. §31102.

### **3. VENUE**

3.1 Venue is proper in this district because a substantial part of the events or omissions giving rise to the claim occurred in this district. 28 U.S.C. §1391(e)(2) & (3); 46 U.S.C. App §742 (now codified at 46 U.S.C. §30906). As more fully set forth herein, Plaintiffs contend that the Coast Guard’s agent’s acts occurred at the Brownsville Ship Channel in Brownsville, Texas.

### **4. CONDITIONS PRECEDENT**

4.1 All conditions precedent to maintain this action have been performed, have occurred prior to the filing of this action, or have been waived. To the extent the FTCA is deemed applicable in this action, Plaintiff timely presented separate administrative claims with the United States Coast Guard pursuant to 28 U.S.C. §2675(a).

**5. GENERAL FACTUAL ALLEGATIONS APPLICABLE  
TO ALL CLAIMS FOR RELIEF**

5.1 On or about April 21, 2015, Patricia Guadalupe Garcia Cervantes (“Patricia”), left her home in Veracruz, Mexico in search of work to support her husband and minor daughter. Her destination was the United States of America.

5.2 Patricia arrived in Matamoros, Mexico on April 23, 2015. She met with a human smuggler who was negotiating and coordinating her transportation across the Rio Grande River.

5.3 On the same day, Patricia and the smuggler were transported across the Rio Grande River on a wooden boat. They then hiked approximately three miles to the Brownsville Ship Channel (“BSC”). Patricia and the smuggler arrived at the BSC on the evening of April 23, 2015.

5.4 The smuggler had previously purchased two plastic recreational-type inner tubes to aid them in swimming across the BSC. After ascertaining that there were no nearby boats, Patricia and the smuggler attempted to swim across the BSC.

5.5 Unbeknownst to both Patricia and the smuggler, four Coast Guard members on board a 33 ft Special Purpose Craft Law Enforcement (SPC-LE) vessel were conducting a patrol and approaching the area wherein Patricia and the smuggler were swimming across.

5.5 The SPC-LE vessel had been traveling at a speed of 10 knots or less since they started their patrol. Immediately prior to the incident made the basis of this suit, the Coast Guard members decided to increase the transition speed of the SPC-LE vessel to 30.86 knots in order to come up on plane. The crew made the conscious decision to increase the vessel speed even though they were aware that they were operating in a known smuggling area.

5.6 Patricia and the smuggler heard the SPC-LE before it came into sight. They unsuccessfully attempted to evade the oncoming SPC-LE. Unfortunately, Patricia was hit by the vessel's propeller causing her traumatic injuries, resulting in her untimely death.

## **6. CLAIM AGAINST THE UNITED STATES OF AMERICA BASED ON THE COAST GUARD NEGLIGENCE**

6.1 Plaintiffs repeat and incorporate above paragraphs 1 through 5, inclusive, as though fully set forth in this paragraph.

6.2 Plaintiff's claims against Defendant is brought under the provisions of the Federal Tort Claims Act 28 U.S.C. §2671 *et seq.*

6.3 In the alternative, this cause of action is brought under the Suits in Admiralty Act, 46 U.S.C. App. §§ 741-752 App. (now codified at 46 U.S.C. §§ 30901-30913) and the Public Vessels Act 46 U.S.C. §31101-13.

6.4 At all times material, Defendant, United States of America, is the responsible party defendant for the actions of the Coast Guard members involved in the incident described above, including the Coast guard officers, agents, and employees at Coast Guard Station SPI, and the Coast Guard officers, agents, and employees assigned to the vessel involved in the incident. 28 U.S.C. §2679.

6.5 Under the doctrine of respondeat superior, Defendant, United States of America is vicariously liable for the actions of the Coast Guard members involved in the incident described above, including the Coast guard officers, agents, and employees at Coast Guard Station SPI, and the Coast Guard officers, agents, and employees assigned to the vessel involved in the incident. The occurrence made the basis of this suit, referred to above, and the resulting injuries and damages were

proximately caused by the negligent acts and/or omissions of Defendant, United States of America's employees in one or more of the following particulars:

- 6.5.1 In operating the SPC-LE at an unsafe speed even though the crew knew or should have known that they were operating in a known smuggling area;
- 6.5.2 In failing to keep a proper lookout for persons in the water, including Plaintiff;
- 6.5.3 In operating the SPC-LE at a speed that created a backlighting effect that reduced the crew's visibility thereby diminishing their ability to discern objects or people in the water;
- 6.5.4 In operating the SPC-LE without the proper navigation lights;
- 6.5.5 In operating the SPC-LE without energizing the navigation lights;
- 6.5.6 In operating the SPC-LE at a rate of speed that was not appropriate given the history of smuggling activity in the area, the darkness and overcast conditions on that night, and the presence of background lighting.
- 6.5.7 In failing to render aid to Plaintiff after she was hit by the vessel's propeller.

6.6 Each of these acts and omissions, singularly or in combination with others, constituted negligence which proximately caused the occurrence made the basis of this action and Plaintiff's fatal injuries and damages.

6.7 As a direct and proximate result of the wrongful acts and omissions of the Coast Guard's crew, while in the course and scope of their employment with Defendant, Decedent suffered fatal injuries for which Plaintiffs now complain. Plaintiffs allege that such acts and omissions fall within the purview of 28 U.S.C. §, et. seq.

6.8 Further, as a direct and proximate result of the wrongful acts and omissions of the Defendant's employees, Plaintiffs have suffered the loss of the love, aid, comfort, and society of Decedent, who was a devoted wife and mother, funeral and burial expenses, and Decedent suffered

conscious pain and suffering, loss of value of life to herself and any and all other damages allowed under the FTCA and/or SAA and/or PVA for which Plaintiffs seek compensatory damages against Defendant.

**7. CLAIM AGAINST THE UNITED STATES OF AMERICA FOR  
WRONGFUL DEATH/SURVIVAL BASED ON THE COAST GUARD'S  
NEGLIGENCE**

7.1 Plaintiffs repeat and incorporate above paragraphs 1 through 6, inclusive, as though fully set forth in this paragraph.

7.2 On April 21, 2015, the Coast Guard crew had a duty, while acting within the course and scope of their employment with Defendant, to not cause personal injury or death through their own wrongful or negligent act or omission. The Coast Guard crew further had a duty to act with due care including, but not limited to, following appropriate policies and procedures and to not allow a situation to develop in which he would, through lack of due care, cause the death of another human being.

7.3 The Coast Guard crew, negligently or otherwise, breached this duty of care on April 21, 2015 when they placed themselves in a position such as to wrongly and unjustifiably cause the death of Patricia Guadalupe Garcia Cervantes. The Coast Guard crew was negligent in causing the death of Decedent, and their negligence or other wrongful conduct of the crew resulted in the death of Decedent and gives rise to a cause of action under the FTCA, 28 U.S.C. §2671, et seq. At all times relevant herein, the Coast Guard crew should have maintained appropriate precautions such as to use an appropriate speed and/or appropriate lighting on the vessel so as to not cause the death of Decedent. The Coast Guard crew breached these duties when they negligently or otherwise sped

up the vessel, failed to maintain a proper lookout, and/or used inappropriate lighting on the vessel, causing Decedent's untimely death.

7.4 As a direct and proximate result of the actions of the Coast Guard crew, Plaintiffs have suffered the loss of love, aid, comfort, and society of Decedent, who was a devoted wife and mother, funeral and burial expenses, and Decedent herself suffered conscious pain and suffering, loss of value of life to herself and any and all other damages allowed under the FTCA for which Plaintiffs seek compensatory damages against Defendant, USA.

## **8. DAMAGES**

8.1 Plaintiffs hereby plead for damages arising out of the wrongful death of Patricia Guadalupe Garcia Cervantes to the fullest extent allowed by law.

8.2 Plaintiffs asks that Plaintiffs be compensated for actual damages.

8.3 Plaintiffs would further show that they are entitled to recover interest for all elements of damages recovered for which the law provides for pre-judgment interest.

8.4 Plaintiffs are also entitled to post-judgment interest at the lawful rate.

## **PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs, requests that on final trial they have judgment against Defendants for a sum according to the proof at the time of trial, pre-judgment and post-judgment interest to the extent the law provides for, costs of suit, and all other relief to which Plaintiffs are justly entitled.

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Respectfully submitted,

By: /s/ Javier Villarreal

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