

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ROXANA ORELLANA SANTOS

Plaintiff,

v.

FREDERICK COUNTY BOARD OF COMMISSIONERS

Serve:

John Mathias, Esq.

Frederick County Attorney

12 East Church Street

Frederick, Maryland 21701

and

Frederick County Sheriff CHARLES JENKINS

in his official and individual capacities

Frederick County Law Enforcement Center

110 Airport Drive East

Frederick, MD 21701

and

Frederick County Deputy Sheriffs

JEFFREY OPENSHAW and KEVIN LYNCH

in their official and individual capacities

Frederick County Law Enforcement Center

110 Airport Drive East

Frederick, MD 21701

Defendants.

Civil Action No. Civil Action No. 09-
CV-2978-BEL

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff Roxana Orellana Santos brings this action seeking relief for injuries caused by the acts and/or omissions of Defendants in violation of 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments of the United States Constitution and Title VI of the Civil Rights Act of 1964.

INTRODUCTION

1. This action arises out of Defendants' unlawful and unconstitutional interrogation and detention of individuals based solely on their race and/or ethnicity; Defendants' implementation of policies and practices that condone and perpetuate the unlawful behavior at issue in this Complaint; and Defendants' unlawful interrogation, seizure and arrest of Ms. Orellana Santos based solely on her perceived race and/or ethnicity and without any reasonable suspicion or probable cause.

PARTIES

2. Plaintiff ROXANA ORELLANA SANTOS ("Ms. Orellana Santos") is an adult resident of Frederick County. Ms. Orellana Santos is originally from El Salvador. She has very little formal education, none in the United States, and only in recent years has she worked outside of her home. She entered the United States in October 2005 and has lived with her husband in Frederick for approximately five years. Ms. Orellana Santos' native language is Spanish, and she can neither speak nor understand much English. Ms. Orellana Santos and her husband have a three-year-old son, who is a United States citizen. On October 7, 2008, while quietly eating her lunch, Ms. Orellana Santos was confronted and detained by two Frederick County deputy sheriffs. Despite having committed no criminal offense under Maryland law, Ms. Orellana Santos was detained, taken into custody and subsequently transferred to the custody of U.S. Immigration and Customs Enforcement. After temporary detention in the Frederick County Adult Detention Center and Baltimore Adult Detention Center, ICE transferred Ms. Orellana Santos to the Dorchester County Jail in Cambridge, Maryland, where she remained until her supervised release on or about November 13, 2008.

3. Defendant CHARLES JENKINS is the Sheriff of Frederick County, Maryland. Under state and municipal law, he is charged with ultimate responsibility for the training and supervision of

Frederick County Sheriff's Office ("FCSO") Deputies, and for the administration and implementation of FCSO policies, practices, and/or customs. Defendant Jenkins is also the FCSO signatory of a memorandum of agreement with U.S. Immigrations and Customs Enforcement ("ICE"), which authorizes certain deputy sheriffs to carry out limited, specified functions of federal immigration officers (the "287(g) MOA"). Defendant Jenkins is sued in his official and individual capacities. During all times relevant to this Complaint, Defendant Jenkins was acting under color of state law as a law enforcement agent of Frederick County.

4. Defendant JEFFREY OPENSHAW is a deputy sheriff of the FCSO. He is responsible for carrying out the policies, practices, and/or customs of the FCSO. Defendant Openshaw arrested Ms. Orellana Santos without the authority to do so. He is sued in his official and individual capacities. During all times relevant to this Complaint, Defendant Openshaw was acting under color of state law as a law enforcement agent of Frederick County.

5. Defendant KEVIN LYNCH is a deputy sheriff of the FCSO. He is responsible for carrying out the policies, practices, and/or customs of the FCSO. He also participated in the arrest of Ms. Orellana Santos on or about October 7, 2008. He is sued in his official and individual capacities. During all times relevant to this Complaint, Defendant Lynch was acting under color of state law as a law enforcement agent of Frederick County.

6. Defendant FREDERICK COUNTY BOARD OF COMMISSIONERS ("BOCC") is a Maryland commissioner county. It fully funds the FCSO, which operates under a set of law enforcement policies, practices and customs directed and affected by Frederick County. Frederick County is sued under *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), for the execution of its unconstitutional customs and policies.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Plaintiff's claims arising under the U.S. Constitution and federal statutes pursuant to 28 U.S.C. §§ 1331, 1343, and 1361. Jurisdiction to grant declaratory judgment is conferred by 28 U.S.C. §§ 2201-02.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) in that all events complained of and giving rise to Plaintiff's claims arose in this district.

STATEMENT OF FACTS

I. Immigration Law Enforcement in Frederick County under Sheriff Charles Jenkins

9. In 2006, Defendant Jenkins was elected as Sheriff of Frederick County. During his campaign, he claimed that Frederick County was experiencing a violent crime wave fueled by the "nationwide illegal immigration problem." He also warned that Frederick County was home to a number of potential terrorist targets, necessitating "a strategic countywide plan for homeland security." His campaign for sheriff was based largely on promises of increased immigration enforcement.

10. Upon assuming office, Defendant Jenkins engaged in anti-immigrant rhetoric. In 2007, he stated that undocumented aliens were moving to Frederick County from Northern Virginia, but that he planned to "shoot them right back." He stated that "the single biggest threat to our country is the immigration problem. We cannot continue to absorb this population or we will end up in collapse like a Third World Country."

11. During Defendant Jenkins' tenure as Sheriff, Frederick County has devoted an increasingly greater share of its resources to the enforcement of federal immigration laws, as distinct from state and local criminal laws.

12. Under Defendant Jenkins' leadership, FCSO signed an Inter-Governmental Service Agreement ("IGSA") with ICE, renting out cells in the Frederick County Adult Detention Center for ICE detainees.

13. Although it costs the Frederick County Adult Detention Center approximately \$70 a day to house an immigration detainee, ICE reimburses Frederick County \$83 per day for each detainee. In 2008, Frederick County received over \$1,000,000.00 in reimbursement for holding ICE detainees at the Frederick County Adult Detention Center as part of the IGSA program.

14. In 2008, due in large part to Defendant Jenkins' efforts, FCSO also became the first local agency in Maryland to participate in the "287(g) program" run by ICE and authorized by an amendment to the Immigration and Nationality Act (INA).

15. Sheriff Jenkins stated to the House Committee on Homeland Security that one of the reasons for seeking participation in the 287(g) program was due to "[t]he enormous increase in crime throughout the United States, to include this region, which can be tied directly to the unchecked flow of illegal immigrants through our southern borders with Mexico."

16. Under Section 287(g) of the INA, 8 U.S.C. § 1357(g), the Department of Homeland Security has authority to enter into agreements with state and local law enforcement agencies, pursuant to which selected officers receive certification to carry out certain functions of federal immigration officers.

17. The main objective of the 287(g) program is to address serious criminal activity, such as violent crimes, gang activity, narcotics smuggling and other felonies committed by foreign nationals. Participation in the 287(g) program authorizes local law enforcement to investigate the immigration

status and perform certain functions of federal immigration officials where an individual has committed a crime and has already been detained by local law enforcement.

18. On or about February 5, 2008, Defendant Jenkins, on behalf of the FCSO, signed a Memorandum of Agreement with ICE (the “287(g) MOA”). Julie Myers, the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement at the time, signed on behalf of the Department of Homeland Security.

19. Defendant Jenkins has stated that the 287(g) MOA is designed to address national security concerns and to make Frederick County a safer place by ridding the county of “criminal aliens” – individuals who commit serious, violent crimes and who are not lawfully present in the United States.

II. Implementation of the 287(g) Program

20. In January 2009, the United States Government Accountability Office issued a report to Congress regarding the implementation of 287(g) programs throughout the country entitled “Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws” (the “GAO Report”).

21. The GAO report concluded that ICE lacked internal controls for implementation of the 287(g) program:

The 287(g) program lacks several management controls that limit ICE’s ability to effectively manage the program. First, ICE has not documented the program’s objectives in program-related materials. Second, program related documents, including the MOA, lack specificity as to how and under what circumstances participating agencies are to use 287(g) authority, or how ICE will supervise the activities of participating agencies. Third, ICE has not defined what program information should be tracked or ensured that program information is being consistently collected and communicated, which would help ensure that management directives are followed. And finally, ICE has not developed performance measures to assess the effectiveness of the 287(g) program and whether it is achieving its intended results.

GAO Report at 10.

22. The GAO Report also concluded that ICE has not consistently communicated to participating agencies the scope of their authority or the circumstances under which certified officers may exercise their powers under the 287(g) MOA. The GAO Report noted the potential for misuse of authority, stating “Another potential consequence of not having documented program objectives is misuse of authority.” GAO Report at 13.

23. Contrary to Defendant Jenkins’ remarks, FCSO’s implementation of the 287(g) MOA has not focused on violent crimes or national security. Rather, it has resulted in a discriminatory practice and policy of targeting and interrogating individuals about their immigration status based solely on their perceived race, national origin or ethnicity and selective enforcement of state and local law by, for example, using minor traffic offenses as a pretense for enforcement of federal immigration laws under the guise of the 287(g) program. A recent report found that less than 10% of those arrested by the FCSO under the 287(g) program were arrested for any sort of violent or serious crime.

24. The majority of individuals detained by the FCSO under the 287(g) MOA, 90% according to a recent study, have not been charged with violent crimes – a result that is higher than the national average.

25. In 2008, approximately 50% of the individuals detained by the FCSO under the 287(g) MOA were arrested for driving without a license. Another 10% of the individuals detained by the FCSO under the 287(g) MOA were charged with misdemeanor traffic offenses. Less than 10% of the individuals detained by the FCSO in 2008 under the 287(g) MOA were charged with felonies.

26. In 2008, over 90% of the individuals arrested by the FCSO and detained under the 287(g) MOA were of Latino descent.

27. Based upon the above information, and upon information and belief, the Defendants in this action engage in a policy and practice of racially profiling individuals for immigration enforcement purposes.

III. The Arrest of Roxana Orellana Santos by FCSO Deputy Sheriffs

28. At approximately 10:00 a.m. on October 7, 2008, Ms. Orellana Santos was sitting alone on a curb, near a storage container and a grassy area behind a food co-op near Evergreen Square on Buckeystown Pike in Frederick, Maryland. She was quietly eating her lunch and looking away from the building that housed the food co-op, at a newly-formed pond behind a row of stores.

29. Ms. Orellana Santos was not engaged in any unlawful or suspicious activity, nor was she engaged in activity that reasonably could have been perceived as unlawful.

30. While Ms. Orellana Santos was eating her lunch, a patrol cruiser of the FCSO drove around the rear of the building which housed the food co-op. When Defendant Openshaw and Defendant Lynch, the officers in the patrol cruiser, saw Ms. Orellana Santos, they drove toward her and stopped the car near her, without pulling into a parking spot.

31. Upon information and belief, Defendants Openshaw and Lynch stopped the car solely because they intended to interrogate Ms. Orellana Santos about her immigration status based on her perceived race, ethnicity and/or national origin.

32. Defendants Openshaw and Lynch both exited the vehicle and approached Ms. Orellana Santos, surrounding her from either side.

33. Defendants Openshaw and Lynch wore standard issue uniforms and guns of the FCSO, and Defendant Openshaw identified himself as a deputy with the FCSO.

34. Upon approaching Ms. Orellana Santos, Defendants Openshaw and Lynch saw that she appeared to be eating a sandwich.

35. As Defendant Openshaw approached Ms. Orellana Santos, who was seated on the curb, he asked her, in English, if she was on break or eating lunch. Ms. Orellana Santos told Defendants, “Yes.”

36. Defendant Openshaw then asked Ms. Orellana Santos whether she worked at Common Market. Ms. Orellana Santos responded, “Yes.”

37. Defendant Openshaw immediately identified a language barrier between Ms. Orellana Santos and himself. He asked Ms. Orellana Santos whether she spoke English. She responded in the negative.

38. Speaking English, Defendant Openshaw proceeded to ask Ms. Orellana Santos for identification. Confused about what Defendant Openshaw was asking for, Ms. Orellana Santos told Defendants that she did not have any identification with her.

39. Defendant Openshaw then asked Ms. Orellana Santos if she had a passport. Ms. Orellana Santos told Defendants that her passport was at home.

40. Questioning of Ms. Orellana Santos continued for some minutes.

41. Although Defendants had no reasonable basis to detain Ms. Orellana Santos for further questioning, for some time, Defendants continued to stand in close proximity to Ms. Orellana Santos, talking to each other and periodically looking down at Ms. Orellana Santos, who remained seated.

42. With Defendants standing over her and watching her, Ms. Orellana Santos did not feel free to leave or otherwise terminate the encounter.

43. After a few minutes passed, Ms. Orellana Santos remembered that she had a national identification card in her purse, which she then retrieved and showed to Defendants, hoping they would be satisfied and would leave her alone.

44. Defendant Openshaw took the identification, examined it, and asked Ms. Orellana Santos whether she had lived in Virginia. She responded, "No."

45. Defendant Openshaw then appeared to use his radio while Defendant Lynch watched Ms. Orellana Santos.

46. After some time, Ms. Orellana Santos asked Defendants whether there was a problem, and Defendant Openshaw stated, "No, no, no," while holding out his hand and gesturing that she should remain seated.

47. Ms. Orellana Santos did not feel free to leave or otherwise terminate the encounter because Defendants were in possession of her identification card and were standing over her as she sat, watching her, and gesturing that she should remain seated.

48. Ms. Orellana Santos is a native Spanish speaker with limited proficiency in English. Neither Defendant Openshaw nor Defendant Lynch spoke Spanish, and they could not communicate with Ms. Orellana Santos about why they had stopped, taken her identification card or were preventing her from leaving.

49. After sitting quietly for some time, Ms. Orellana Santos stood up for the first time and reached down to collect her purse.

50. As Ms. Orellana Santos stood up, one of the Defendants put his hands on her shoulders to prevent her from leaving, while the other Defendant proceeded to handcuff Ms. Orellana Santos with her hands behind her back and place her in the backseat of the cruiser.

51. Defendants transported Ms. Orellana Santos to the Frederick County Adult Detention Center (“ADC”), where she was detained for a night before being transported to the Baltimore Detention Center.

52. Approximately two days later, Ms. Orellana Santos was transferred to Dorchester County Jail in Cambridge, Maryland. On or about November 11, 2008, she was granted supervised release for humanitarian concerns.

53. At the time of her release, Ms. Orellana Santos had been in custody for five weeks and there had still been no incident or arrest report filed relating to Ms. Orellana Santos’ arrest, nor had she been charged with the violation of any state, local or federal criminal law.

54. Ms. Orellana Santos was not arrested for or charged with the violation of any state, local or federal criminal law. No incident or arrest report has been filed by Defendants relating to Ms. Orellana Santos’ arrest.

55. Defendants Openshaw and Lynch were on routine patrol on the day of their encounter with Ms. Orellana Santos. No reports of suspicious or illegal activity in the vicinity of the parking lot, where Ms. Orellana Santos sat eating her lunch, were reported to Defendants Openshaw and Lynch before they approached Ms. Orellana Santos. Nor had Defendants Openshaw and Lynch initiated any previous encounters with people in the parking lot where Ms. Orellana Santos sat.

56. Nevertheless, Defendants Openshaw and Lynch approached and interrogated Ms. Orellana Santos without reasonable, individualized, articulable suspicion that Ms. Orellana Santos was involved in unlawful activity. They had no legitimate factual or legal basis to approach, interrogate or detain Ms. Orellana Santos.

57. Upon information and belief, Defendant Jenkins has directed, encouraged, aided, abetted, and/or permitted deputies of the FCSO to selectively target for investigation and law enforcement individuals whom deputies perceive to be immigrants to the United States, in a manner inconsistent with the U.S. Constitution.

58. Defendant Jenkins knew or should have known that the policies and practices that he implemented and condoned were likely to result in unlawful discrimination by FCSO officers, and knew or should have known that such policies were likely to result in FCSO officers exceeding the bounds of their authority.

59. Upon information and belief, Defendant Jenkins directed, encouraged, aided, abetted, and/or permitted this unlawful behavior as part of his ongoing anti-immigrant campaign, and in reckless and/or negligent disregard for the constitutional rights of those who are, or who are perceived to be, non-citizens in Frederick County.

60. As Sheriff, Defendant Jenkins has supervision over enforcing the policies, practices, and customs administered by Frederick County.

61. Defendant Frederick Board of County Commissioners fully funds FCSO and its employees, including Defendants Jenkins, Openshaw and Lynch in their law enforcement duties.

IV. Effect on Plaintiff Orellana Santos and the Immigrant Community at Large

62. Defendants' unlawful arrest and detention of Ms. Orellana Santos and the restrictions Defendants placed on her liberty caused Ms. Orellana Santos to suffer humiliation, emotional distress, physical pain and suffering, as well as monetary damages.

63. Ms. Orellana Santos continues to fear that she, her family, and/or her acquaintances will be arbitrarily and unlawfully arrested by officers of FCSO.

64. Moreover, the discriminatory and otherwise unlawful actions committed and/or permitted by Sheriff Jenkins and the members of the FCSO have created a climate of fear among immigrants, Latinos, and those perceived to be of either or both groups, who reside, work, and/or travel through Frederick County. This conclusion is reinforced by a recent study that documents a 61 percent drop in the Frederick County Hispanic noncitizen population between 2007 and 2009, despite growth in the Hispanic noncitizen population in neighboring Montgomery County.

FIRST CLAIM FOR RELIEF

UNLAWFUL SEIZURE

**42 U.S.C. § 1983 Claim in Violation of the Fourth and Fourteenth
Amendments to the U.S. Constitution
(Defendants Openshaw and Lynch in their Personal and Official Capacities)**

65. Ms. Orellana Santos repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

66. Defendants Openshaw and Lynch interrogated and detained Ms. Orellana Santos based on nothing more than her actual or perceived race, ethnicity, and/or national origin.

67. Defendants had no reasonable, individualized, articulable suspicion that Ms. Orellana Santos was involved in unlawful activity. They saw that she was merely sitting and eating her lunch.

68. Neither Ms. Orellana Santos, nor a reasonable person, would have felt free to leave or free to terminate the encounter because:

- a. Defendants appeared to have specifically stopped and exited their car for the sole purpose of investigating Ms. Orellana Santos' immigration status;
- b. Defendants were in uniform and armed;
- c. Defendants approached Ms. Orellana Santos jointly and with purpose;

- d. Defendants surrounded Ms. Orellana Santos from either side, their presence restricting her movement;
- e. Even after Ms. Orellana Santos answered Defendants' questions, Defendants continued to stand over her and watch her;
- f. One of the Defendant Deputy Sheriffs took Ms. Orellana Santos' identification card while the other Defendant watched Ms. Orellana Santos, and one gestured to her that she should stay seated;
- g. For an extended period of time, Defendants continued to watch Ms. Orellana Santos and, through their body language, gestures and conduct, communicated that Ms. Orellana Santos was not free to leave or terminate the encounter;
- h. When Ms. Orellana Santos stood and reached down for her purse, one of the Defendants placed his hands on her shoulders while the other Defendant handcuffed her and placed her in the patrol car;
- i. Defendants could not effectively communicate with Ms. Orellana Santos because they did not speak Spanish; and
- j. Ms. Orellana Santos has very little formal education, and she did not understand police practices in the United States.

69. When Defendants Openshaw and Lynch continued questioning Ms. Santos about whether she had identification, after she had already told them she did not, they seized her.

70. Defendants Openshaw and Lynch's conduct violated Ms. Orellana Santos' right to be free from unreasonable seizures under the Fourth and Fourteenth Amendments of the United States Constitution.

71. As a result of the Defendants' actions, Ms. Orellana Santos suffered damages, including but not limited to violation of her constitutional rights, loss of liberty, monetary damages, emotional distress, and physical pain and suffering.

72. As a result of the Defendants' actions, Plaintiff Orellana Santos fears that she will be stopped, interrogated and treated unfairly and in a discriminatory manner in the future by law enforcement officers in the FCSO.

SECOND CLAIM FOR RELIEF

UNLAWFUL ARREST

42 U.S.C. § 1983 Claim in Violation of the Fourth Amendment to the U.S. Constitution (Defendants Openshaw and Lynch in their Official and Individual Capacities)

73. Ms. Orellana Santos repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

74. Ms. Orellana Santos was not charged or arrested for violation of a criminal law.

75. Defendants Openshaw and Lynch detained arrested Ms. Orellana Santos without the legal authority to do so and in the absence of any exigent circumstances, probable cause, or reason to believe that she had or was engaged in criminal activity.

76. As a result of the Defendants' actions, Ms. Orellana Santos suffered damages, including but not limited to violation of her constitutional rights, loss of liberty, monetary damages, emotional distress, and physical pain and suffering.

THIRD CLAIM FOR RELIEF

EQUAL PROTECTION

**42 U.S.C. § 1983 Claim in Violation of the Fourteenth Amendment to the U.S. Constitution
(Defendants Openshaw and Lynch in their Official and Individual Capacities)**

77. Ms. Orellana Santos repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

78. Defendants Openshaw and Lynch stopped their police cruiser, approached Ms. Orellana Santos and interrogated her based solely on her perceived race, ethnicity and/or national origin.

79. Defendants Openshaw and Lynch subjected Plaintiff Orellana Santos to selective law enforcement out of a bad faith and unlawful intent to drive her and other residents of Latino and/or foreign-born appearance from Frederick County.

80. In interrogating and detaining Ms. Orellana Santos, Defendants Openshaw and Lynch intentionally treated her differently from other similarly situated residents without any rational basis for doing so.

81. These actions violated Ms. Orellana Santos' right to Equal Protection under the Fourteenth Amendment of the United States Constitution.

82. As a result of the Defendants' actions, Plaintiff Orellana Santos suffered damages, including but not limited to violation of her constitutional rights, loss of liberty, monetary damages, emotional distress, and physical pain and suffering.

83. As a result of the Defendants' actions, Plaintiff Orellana Santos fears that she will be stopped, interrogated and treated unfairly and in a discriminatory manner in the future by law enforcement officers in the FCSO.

FOURTH CLAIM FOR RELIEF

CONSPIRACY

42 U.S.C. § 1985(3) Claim in Violation of the Fourteenth

Amendment to the U.S. Constitution

(Defendants Openshaw and Lynch in their Official and Individual Capacities)

84. Plaintiff Orellana Santos repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

85. Defendants Openshaw and Lynch entered into an agreement, between and among themselves, to act in concert for the purpose of depriving Ms. Orellana Santos of equal protection under the law and her right to be free from unreasonable seizures.

86. Defendants Openshaw and Lynch knew or should have known that Ms. Orellana Santos was not engaged in any suspicious or unlawful activity.

87. Defendants Openshaw and Lynch knew or should have known that it is unlawful to detain and interrogate an individual solely on the basis of her actual or perceived race, ethnicity and/or national origin.

88. Notwithstanding the foregoing, Defendants Openshaw and Lynch conspired to stop the police cruiser, approach and detain Ms. Orellana Santos in an effort to prevent her from leaving and to question Ms. Orellana Santos regarding her immigration status.

89. Defendants Openshaw and Lynch's actions in detaining and interrogating Ms. Orellana Santos constitute acts in furtherance of that conspiracy.

90. Defendants Openshaw and Lynch's conspiracy to violate Ms. Orellana Santos' right to equal protection under the Fourteenth Amendment and right to be free from unreasonable seizures under the Fourth Amendment violated 42 U.S.C. § 1985(3).

91. As a result of the conspiracy between and among the Defendants and the overt actions taken in furtherance thereof, Ms. Orellana Santos suffered damages, including but not limited to violation of her constitutional rights, loss of liberty, monetary damages, emotional distress, and physical pain and suffering.

FIFTH CLAIM FOR RELIEF

PERSONAL SUPERVISORY LIABILITY

42 U.S.C. § 1983

(Defendant Jenkins in his Official and Individual Capacities)

92. Ms. Orellana Santos repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

93. Defendant Jenkins was personally involved in and proximately caused the aforementioned violations of Plaintiff Orellana Santos' rights by knowingly and intentionally creating, implementing, enforcing, encouraging, sanctioning, and/or acquiescing in a policy, practice, and/or custom in which local law enforcement officials engaged in the unconstitutional conduct described in the foregoing claims.

94. Defendant Jenkins was personally involved in and proximately caused the aforementioned violations through his deliberate indifference to Ms. Orellana Santos' rights and his grossly negligent supervision of his subordinates, including but not limited to Defendants Openshaw and Lynch.

95. Defendant Jenkins, the Frederick County Sheriff, is responsible for implementing and administering the policies, practices, and/or customs of the FCSO.

96. Defendant Jenkins is also responsible for supervising all FCSO deputies in the commission of their duties.

97. Defendant Jenkins was aware that the implementation of the 287(g) MOA in Frederick County has not focused on addressing serious, violent crimes committed by undocumented foreign nationals, but instead has resulted in officers using minor traffic offenses as a pretense to check the immigration status of individuals perceived to be of Latino descent.

98. Defendant Jenkins was or should have been aware that FCSO deputies have stopped, interrogated and detained individuals based solely on their perceived race, ethnicity and/or national origin and have arrested individuals for violation of federal immigration law, even though those individuals have committed no criminal offense under Maryland law.

99. Upon information and belief, Defendant Jenkins' anti-immigrant rhetoric and FCSO's financial incentive to arrest and detain as many undocumented foreign nationals as possible under the IGSA program, have fostered an atmosphere that is conducive to and has encouraged and/or tolerated selective and discriminatory enforcement of local laws.

100. As a result of Defendant Jenkins' acts and/or omissions, Ms. Orellana Santos suffered damages, including but not limited to violation of her constitutional rights, loss of liberty, monetary damages, emotional distress, and physical pain and suffering.

101. As a result of the Defendants' actions, Plaintiff Orellana Santos and others in the community fear that they will be stopped, interrogated, and treated unfairly and in a discriminatory manner in the future by law enforcement officers in the FCSO.

SIXTH CLAIM FOR RELIEF

VIOLATION OF CIVIL RIGHTS ACT

**42 U.S.C. § 2000d Claim for Violation of Title VI of the Civil Rights Act of 1964
(Defendant Frederick County Board of Commissioners)**

102. Ms. Orellana Santos repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

103. Defendants Openshaw and Lynch's decision to stop, detain and interrogate Ms. Orellana Santos was based solely on her actual or perceived race, ethnicity, and/or national origin.

104. Defendants Openshaw and Lynch were acting in accordance with the pattern and practice of discrimination on the basis of perceived race, ethnicity and/or national origin that had been established and tolerated within the FCSO.

105. Defendant Jenkins condoned the discriminatory practices of the officers that he supervised.

106. The Board of County Commissioners fully funds the FCSO, which operates under a set of law enforcement policies, practices and customs directed and affected by Frederick County.

107. The conduct of the FCSO has denied and will deny Ms. Orellana Santos the right to be free from discriminatory treatment under 42 U.S.C. § 2000d.

SEVENTH CLAIM FOR RELIEF

ENTITY LIABILITY

(Defendant Frederick County Board of Commissioners)

108. Ms. Orellana Santos repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

109. Frederick County Board of Commissioners is liable pursuant to *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), for the promulgation of county policy and/or custom by

Defendants Jenkins, Openshaw and Lynch prior to and during the arrest of Plaintiff Orellana Santos on October 7, 2008.

110. Defendant Frederick County Board of Commissioners fully funds the FCSO, including employees Jenkins, Openshaw and Lynch.

111. Defendant Frederick County acted with extreme and deliberate indifference to the risk of possible constitutional violations in its lack of adequate training of deputies in the proper criteria for stopping, questioning, and arresting individuals.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- 1) Enter a declaratory judgment that the actions of Defendants Openshaw, Lynch, Jenkins, and the Frederick County Board of Commissioners violated the United States Constitution.
- 2) As to Defendants Jenkins, Openshaw, and Lynch in their personal capacities, award Ms. Orellana Santos compensatory damages not less than \$1 million.
- 3) Award Ms. Orellana Santos the cost of this action;
- 4) Award Ms. Orellana Santos reasonable attorney fees pursuant to 42 U.S.C. § 1988(b).
- 5) Grant such other relief as the Court deems just and equitable.

Dated: February 18, 2011

/s/

John C. Hayes, Jr. (Bar No. 01936)
David West (Bar No. 17610)
NIXON PEABODY LLP
401 Ninth Street, N.W., Suite 900
Washington D.C. 20004
(202) 585-8000 (phone)
(866) 814-2042 (facsimile)
jhayes@nixonpeabody.com
dwest@nixonpeabody.com

Kimberly Jandrain (Bar No. 17391)
Coburn & Coffman, PLLC
1244 19th, NW
Washington, DC 200036
(202) 657-5470 (phone)
(866) 561-9712 (facsimile)
kj@cclegal.us

Jose L. Perez*
Diana S. Sen*
LatinoJustice PRLDEF
99 Hudson Street, 14th Floor
New York, NY 10013
(212) 219-3360 (phone)
(212) 231-4276 (facsimile)
jperez@latinojustice.org
dsen@latinojustice.org

Counsel for Plaintiff Roxana Orellana Santos

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2011, I caused a true and correct copy of the foregoing Second Amended Complaint to be filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following recipients:

Daniel Karp
Karpenski, Colareski & Karp, P.A.
120 East Baltimore Street
Baltimore, MD 21202-1617

*Counsel for Defendants Jenkins, Openshaw, and Frederick
County Board of Commissioners*

_____/s/
John C. Hayes, Jr.