

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

Northern Division

TAMMY NOBLES , as an individual, and)	
as the successor in interest to and)	
representative of)	
the Estate of Decedent Kayla Hamilton,)	
)	
Plaintiff ,)	
)	
v.)	Civil Action No.
)	
UNITED STATES OF AMERICA ,)	
)	
Defendant.)	

**PLAINTIFF'S ORIGINAL COMPLAINT FOR DAMAGES UNDER THE FEDERAL
TORT CLAIMS ACT**

Comes Now, Tammy Nobles, Individually, and as Successor in Interest to and as Representative of the Estate of Kayla Hamilton, Deceased ("Plaintiff") and files this Complaint for Damages against the United States of America ("Defendant USA") pursuant to the Federal Tort Claims Act.

Parties

1. Plaintiff is a resident of Virginia. She is the surviving mother of Decedent Kayla Hamilton.

2. Plaintiff is the proper party under Maryland law to bring a claim for wrongful death of her daughter, Kayla Hamilton.

3. Defendant USA may be served with process by delivering a copy of the Summons and Complaint via certified mail to each of the following:

a. Erek L. Barron, United States Attorney for the District of Maryland,
address: 36 S. Charles St., Baltimore, MD 21202-2692, Attn: Civil Process Clerk;

b. Merrick Garland, Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001, Attn: Civil Process Clerk;

c. Department of Homeland Security, Office of the General Counsel, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20528-0485; and

d. Department of Health and Human Services, Office of the General Counsel, 200 Independence Avenue, S.W., Room 713-F, Washington, D.C. 20201.

Jurisdiction and Venue

4. This action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.* & 1346 *et seq.* for money damages for death that was caused by institutional failures and the negligent and wrongful acts or omissions of one or more employees of Defendant USA (including any employee or service personnel charged with implementing and making sure existing policies and procedures were followed, any charged with ensuring policies and procedures were adequate and/or responsible for making any necessary revisions or modifications to such policies and procedures) while acting within the course and scope of their office or employment under circumstances where Defendant USA, if a private person, would be liable to Plaintiff in accordance with Maryland law.

5. This action arises out of an incident that occurred in Harford County, Maryland, the same county where Decedent resided. Harford County is in the District of Maryland.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1402(b) because the incident occurred in Harford County, Maryland.

Facts

7. On July 27, 2022, Kayla Hamilton (“Ms. Hamilton”), a twenty-year-old autistic woman, was raped, strangled with a phone cord, and murdered in Aberdeen, Maryland by Walter Javier Martinez (“Martinez”). Martinez, a minor at the time, was associated with the MS-13 gang in El Salvador. On information and belief, Martinez had a prior criminal record in El Salvador.

8. Due to the operational negligence of employees at Department of Homeland Security (DHS) and Department of Health and Human Services (“DHHS”), Martinez was permitted to enter the United States illegally in March 2022. The operational negligence of one or more employees of DHS and DHHS includes but is not limited to the following:

a. DHS and DHHS employees negligently, recklessly, and/or egregiously failed to follow proper DHS and/or DHHS protocols in lifting the shirt of Martinez to visually inspect for gang-related tattoos. Had the employees performed a rudimentary visual inspection of Martinez’s body, they would have seen MS-13 gang-related tattoos on his body which would have disqualified Martinez from entering the United States and Ms. Hamilton would be alive today.

b. DHS and DHHS employees negligently, recklessly, and/or egregiously failed to make a simple phone call to the El Salvador government to verify if Martinez was on an MS-13 gang-affiliation list. Had they done so, El Salvador government officials would have confirmed that Martinez was a known MS-13 gang member with a prior criminal history. Martinez would have then been disqualified from entering the United States and Ms. Hamilton would be alive today.

c. DHS and DHHS employees violated clearly articulated DHS protocol requiring a minor to be placed with a "verified" relative before entering the United States.

DHS employees negligently, recklessly, and/or egregiously failed to verify a legitimate family member of Martinez before allowing him to enter the United States. This was borne out by inconsistencies in DHS records regarding the identity of the relative and by Martinez ultimately and shockingly being placed in a foster home by authorities.

d. DHS and DHHS supervisors negligently, recklessly, and/or egregiously trained and supervised DHS employees to properly screen minors attempting to enter the United States from El Salvador. This operational negligence was the proximate cause of Ms. Hamilton's rape and murder.

9. On July 27, 2022, at approximately 5:13 p.m., officers from Aberdeen Police Department and paramedics from Aberdeen Fire Department responded to the unit block of E. Inca Street for a cardiac arrest.

10. Upon arrival, the officers and paramedics located Ms. Hamilton. Ms. Hamilton had only recently moved to the area with her boyfriend. Officers and paramedics found Ms. Hamilton was deceased and suffering from injuries consistent with a homicide – she was bound at the wrists and there was a phone charging cord wrapped tightly around her neck and mouth. Officers secured the scene and detectives from the Criminal Investigations Division responded to the scene and assumed the investigation. The Office of the Chief Medical Examiner determined the death to be a homicide by strangulation.

11. The investigation conducted by Aberdeen Police Department Criminal Investigations Division in conjunction with DHS, Maryland State Police Homicide Unit, and U.S. Immigration and Customs Enforcement showed that Ms. Hamilton was raped and strangled to death by a sixteen-year-old Hispanic male that broke into her mobile home. After raping and killing Ms. Hamilton, the individual stole her money and cell phone and left the scene. DNA

evidence collected from the crime scene led to the arrest of the now seventeen-year-old Hispanic male.

12. That assailant was determined to be Martinez, an undocumented non-citizen from El Salvador who was sixteen-years old at the time. U.S. Immigration and Customs Enforcement verified Martinez was listed in El Salvador as an MS-13 gang member with a prior criminal history. This was later confirmed by Martinez's own defense counsel.

13. On January 15, 2023, Martinez was arrested and charged with first degree murder. On August 21, 2024, he pleaded guilty to first degree murder.

FTCA Conditions Precedent

14. Pursuant to 28 U.S.C. § 2675(a), Plaintiff timely presented her claim to the United States by submitting Form SF-95 to DHS, via FedEx Priority Overnight to Office of the General Counsel – U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20528-0485 on October 9, 2023. Notification of delivery on October 10, 2023 was later received from FedEx.

15. Pursuant to 28 U.S.C. § 2675(a), Plaintiff timely presented her claim to the United States by submitting Forms SF-95 to DHHS, via FedEx Priority Overnight to Office of the General Counsel, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 713-F, Washington, D.C. 20201 on October 9, 2023. Notification of delivery on October 10, 2023 was later received from FedEx.

16. Receipt of the claim by DHS on October 31, 2023 was acknowledged by attorneys Michael Aguirre and Dominique Villareal, U.S. Customs and Border Protection, Office of the Chief Counsel.

17. Receipt of the claim by DHHS on October 10, 2023 was acknowledged FedEx Proof of Delivery which showed it was signed by K. Kenny in the mailroom.

18. As of September 23, 2024, more than six months have elapsed since the claim was presented to Defendant USA and Defendant USA has not made a final disposition of Plaintiff's claims. Accordingly, Plaintiff's claims are deemed denied pursuant to 28 U.S.C. § 2675(a).

19. Plaintiff has exhausted her administrative remedies under the Federal Tort Claims Act and has fully complied with the statutory prerequisites for bringing this tort action against Defendant USA.

Count I: Negligence

20. The proceeding paragraphs are incorporated and re-alleged as if fully set forth herein.

21. Ms. Hamilton's death was caused in whole by the institutional failures and operational negligence of DHS and DHHS in that these entities negligently, recklessly, carelessly, and/or egregiously failed to follow proper protocol and policies for minors detained at the border as required by law and which would have prevented and barred Martinez from being able to brutally assault and murder Ms. Hamilton.

22. Defendant USA owed Ms. Hamilton a special duty in light of her murderer—Martinez—having a criminal propensity as evidenced by his prior criminal history in his native El Salvador and his participation as a member of the MS-13 gang.

23. The House of Representatives Judiciary Committee conducted an investigation into the failures of Defendant USA in allowing Martinez into the United States.

24. Martinez, who murdered Ms. Hamilton, was allowed to enter the United States as an unaccompanied alien child in March 2022 at the Rio Grande Valley Sector of the United States-Mexico Border (“the border”). The Judiciary Committee’s investigation determined that Defendant USA insufficiently vetted Martinez and ignored key warning signs about his propensity for violence. Among the ignored warning signs were the following:

a. Years before entering the United States, Martinez was arrested in El Salvador for “illicit association” with MS-13, a dangerous gang. He had a prior criminal record in El Salvador;

b. Martinez had gang tattoos, something that was not disclosed in his DHS file or the file held by the Department of Health and Human Services Office of Refugee Resettlement (“ORR”).

25. Here, DHS and DHHS failed to perform the most basic measures to ensure that Martinez, an undocumented immigrant entering the United States was not a dangerous criminal or known gang member. Had DHS and DHHS vetted Martinez according to policy, he would have been placed in a secure facility for criminal unaccompanied minors rather than being placed with an alleged first cousin whom he escaped from. At no time should Martinez have been roaming free in Aberdeen, Maryland.

26. Martinez’s gang affiliation was never discovered by DHS because of DHS’s operational negligence. It was Aberdeen Police Department officers that quickly found the association. Ironically, Martinez told DHS employees that he had left El Salvador to escape gang-related threats. DHS and DHHS also missed Martinez’s gang-related tattoos, further showing operational negligence on the part of DHS and DHHS when it should have been acting

for the safety of American citizens and showing a complete failure to follow vetting protocol when Martinez was detained by DHS and DHHS.

27. Further operational negligence was shown in the handling of Martinez's placement in a foster home with children while his homicide charge was pending and after his affiliation with MS-13 gang was known.

28. Furthermore, DHS and DHHS failed to investigate or vet contradicting narratives provided by Martinez. Martinez's sponsors are listed as a male first cousin with no childcare experience, as a female aunt, and as his father. Meanwhile, Martinez had also told DHS and DHHS officials that he had no relationship with his father. Also, the file notes Martinez had no siblings while also stating he had a half-brother.

29. DHS and DHHS utterly and carelessly failed in their obligations which allowed the tragic murder of Ms. Hamilton to occur.

30. Had DHS and DHHS done as required, Martinez would not have been free roaming the streets of Maryland and would not have been near Ms. Hamilton's home. Given Martinez's known affiliation with the MS-13 gang in El Salvador and his prior arrests and criminal history, it was reasonably foreseeable that he would commit a violent crime in the United States.

31. The utterly careless and reckless failures of DHS and DHHS described above resulted in numerous missed opportunities for various government entities to prevent further violence by Martinez.

32. Based upon the foregoing, the death of Ms. Hamilton was caused in whole by the negligence, recklessness, and/or carelessness of Defendant USA, through DHS's and DHHS's failure to adhere to the regulations, policies, procedures, and/or guidelines of their respective

departments in proper protocol related to the detention of minors at the border, thereby allowed Martinez to roam free throughout the streets of Maryland and ultimately brutally rape and murder Ms. Hamilton.

33. Had DHS and DHHS complied with its own operational and mandatory regulations, Martinez would have been barred from being free to roam the streets of Maryland.

34. DHS and DHHS created a dangerous condition to the public, specifically to Ms. Hamilton, through its operational negligence, including but not limited to, its failure to follow clearly enumerated protocol related to the vetting and detention of minors at the border.

35. Based upon the foregoing, the death of Ms. Hamilton was caused in whole by the negligence, recklessness, and/or carelessness of Defendant USA, through DHS and DHHS, in breaching the duty of care owed to the public generally, and to Ms. Hamilton specifically, by its failure to follow its own policies and procedures as they relate to the detention of minors at the border.

36. Based upon the foregoing, the death of Ms. Hamilton was caused in whole by the negligence, recklessness, and/or carelessness of Defendant USA, through DHS and DHHS, unleashing on the public an individual with dangerous propensities that should have remained in custody.

37. Based upon the foregoing, the death of Ms. Hamilton was caused in whole by the negligence, recklessness, and/or carelessness of Defendant USA, through DHS and DHHS, all of which, individually and/or jointly, proximately caused in whole the subject assault and murder of Ms. Hamilton and Plaintiff's damages set forth herein.

Count II: Wrongful Death

38. The preceding paragraphs are incorporated and re-alleged as if fully set forth herein.

39. Plaintiff brings this action as the surviving wrongful death beneficiary of Ms. Hamilton.

40. This action is brought pursuant to Md. Code Ann. Cts. & Jud. Proc. § 3-904, commonly referred to as the “Wrongful Death Act,” and pursuant to the terms and provisions of Md. Code Ann. Cts. & Jud. Proc. §6-401, known as the “Survivor’s Act,” and any and all other applicable laws including the common law of the State of Maryland.

41. No administration of the estate is pending, and no administration is necessary. Further, no administrator has been appointed in this action.

42. As a direct and proximate result of the negligent conduct and failures of Defendant USA, Ms. Hamilton died, and Plaintiff has suffered damages.

43. As the surviving parent of Ms. Hamilton, Deceased, Plaintiff is the statutory beneficiary of Decedent Ms. Hamilton.

44. By reason of the brutal rape and murder of Ms. Hamilton, Plaintiff has suffered past and future pecuniary loss, meaning the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Plaintiff in reasonable probability, would have received from Ms. Hamilton had she lived.

45. By reason of the brutal rape and murder of Ms. Hamilton, Plaintiff has suffered past and future loss of companionship and society that Plaintiff, in reasonable probability, would have received from Ms. Hamilton had she lived.

46. By reason of the brutal rape and murder of Ms. Hamilton, Plaintiff has suffered past and future mental anguish, meaning the emotion pain, torment, and suffering experienced by Plaintiff because of the death of Ms. Hamilton.

47. The Estate of Decedent Kayla Hamilton is also entitled to bring action on behalf of Decedent Ms. Hamilton for the physical pain and mental anguish she was caused to endure from the time Martinez attacked her until the time of her death as a result of the negligence of Defendant USA.

No Applicable Exceptions to FTCA

48. None of Plaintiff's claims asserted herein are subject to any of the exceptions to sovereign immunity found in 28 U.S.C. § 2860.

49. Defendant USA, including DHS and DHHS and its employees, failed to meet the required obligations as they relate to the detention of minors at the border as described herein.

50. Defendant USA, including DHS and DHHS and its employees, failed to exercise due care in the execution of its duties under the required obligations related to the detention of minors at the border described herein.

51. The obligations described herein do not involve discretionary functions or duties.

Damages and Relief Requested

52. WHEREFORE, Plaintiff prays and respectfully demands verdict and judgment as follows:

- a. That summons and process issue and Defendant USA be served with this Complaint as required by law and that Defendant USA be required to appear and answer;
- b. That Plaintiff's claims under the Federal Torts Claims Act against Defendant USA be tried by a judge sitting as the fact finder;

c. That Plaintiff be awarded damages sought herein in an amount determined by the trier of fact;

d. That Defendant USA be charged with all costs and other expenses attributable to this action to the maximum extent permitted by law under the Federal Torts Claims Act; and

e. That Plaintiff be granted such other and further relief as is supported by the evidence and authorized by the law that the Court may deem appropriate.

Dated: October 7, 2024

Dated: October 7, 2024

Respectfully submitted,

Respectfully submitted,

/s/ BRIAN E. CLAYPOOL

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

TAMMY NOBLES, as an individual, and as the
successor in interest to and representative of the
Estate of Decedent Kayla Hamilton,

Plaintiff,

v.

UNITED STATES,

Defendant.

* * * * *

MOTION TO DISMISS

Defendant, The United States, by and through undersigned counsel, EreK L. Barron, United States Attorney for the District of Maryland, and Beatrice C. Thomas, Assistant United States Attorney for said District, hereby moves to dismiss the Complaint under FED. R. CIV. P. 12(b)(3). Defendant's arguments in support of this motion are fully set forth in the attached Memorandum of Law.

Respectfully submitted,

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Attorneys for Defendant United States of America

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December 2024, I caused a copy of the foregoing *Motion to Dismiss* to be filed via the CM/ECF System, which will give notice to all parties and their counsel.

/s/

Beatrice C. Thomas
Assistant United States Attorney

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

TAMMY NOBLES, as an individual, and as the
successor in interest to and representative of the
Estate of Decedent Kayla Hamilton,

Plaintiff,

v.

UNITED STATES,

Defendant.

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Civil Action No. 1:24-cv-2913-JMC

* * * * *

**MEMORANDUM OF LAW IN SUPPORT OF
THE UNITED STATES' MOTION TO DISMISS**

Because Plaintiff is a resident of Virginia and because all alleged negligent acts or omissions at issue in Plaintiff's complaint occurred in Texas, this judicial district is an improper venue for this Federal Tort Claims Act ("FTCA") action. 28 U.S.C. § 1402(b). By this motion, the United States moves to dismiss this action for improper venue. Fed. R. Civ. P. 12(b)(3).

I. RELEVANT VENUE FACTS AND ALLEGATIONS

This action arises out of Walter Javier Martinez's ("Martinez") murder of Plaintiff's daughter, Kayla Hamilton, on July 27, 2022, in Aberdeen, Maryland. ECF No. 1, ¶ 7. Plaintiff alleges that the United States, acting through the Department of Homeland Security ("DHS") and Department of Health and Human Services ("HHS"), is liable for Ms. Hamilton's death because the United States allegedly: failed to perform a "visual inspection" of Martinez for MS-13 gang related tattoos when apprehended, *id.* ¶¶ 8.a, 26; failed to "make a simple call to the El Salvador government to verify if Martinez was on an MS-13 gang-affiliation list," *id.* ¶¶ 8.b, 28; placed Martinez with a sponsor and allegedly failed to "verify a legitimate family member," *id.* ¶¶ 8.c, 25, 27–28; and negligently trained and supervised DHS employees that processed Martinez. *Id.* ¶

8.d.¹ As a result of this alleged negligence, Plaintiff contends that the United States should have “disqualified [Martinez] from entering the United States,” *id.* ¶¶ 8.a, 8.b, which “would have prevented Martinez from being able to brutally assault and murder Ms. Hamilton[.]” *Id.* ¶ 21.

On March 23, 2023, DHS’s Customs and Border Protection (“CBP”) encountered Martinez at the border near Roma, Texas. **Exhibit A**, Gloria Chavez Declaration (“Chavez Decl.”) ¶ 6. CBP transported Martinez to the Donna Holding Facility in Donna, Texas. *Id.* ¶¶ 4, 6. CBP determined that Martinez was an “unaccompanied alien child” (“UAC”), 6 U.S.C. § 279(g)(2). *Id.* ¶ 7. As such, CBP was legally required transfer Martinez to HHS’s Office of Refugee Resettlement (“ORR”). 6 U.S.C. §§ 279(a), (b)(1)(A), (b)(1)(C); *see also* 8 U.S.C. § 1232(b)(1) (any federal agency shall “transfer the custody of such child to [ORR] not later than 72 hours after determining that such child is” an UAC).

In the evening of March 23, 2022, Martinez arrived at Compass Connections, also known as BCFS Health and Human Services (“Compass Connections”) in Harlingen, Texas. ECF No. 1, ¶ 8; **Exhibit B**, Jeremy Harvey Declaration (“Harvey Decl.”) ¶ 5. Compass Connections, a private entity that receives funds from HHS through a Cooperative Agreement, housed Martinez at its facility in Harlingen, Texas, from March 22 through May 3, 2022. **Ex. B**, Harvey Decl. ¶¶ 2, 4–5. Compass Connections contacted (amongst others) Ms. D.C.M., Martinez’s cousin, to be a potential sponsor, from its facility in Harlingen, Texas. *Id.* ¶ 6. The law required placement of Martinez in “the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A). Ms. D.C.M. agreed to sponsor Martinez. **Ex. B**, Harvey Decl. ¶ 7.

On May 3, 2022, Compass Connections discharged Martinez in Harlingen, Texas, and

¹ The United States does not admit the truth of these allegations or that Plaintiff has properly invoked the FTCA’s limited waiver of sovereign immunity.

arranged for his travel to Dulles Airport in Virginia for release to Ms. D.C.M. *Id.* Plaintiff does not allege any government involvement with Martinez between the time of his release from Compass Connections custody and the murder. *See* ECF No. 1, ¶¶ 24–25, 28, 30 (all alleged negligence occurred when detaining and “vet[ting]” Martinez).

II. STANDARD OF REVIEW

A defendant may move to dismiss a complaint for improper venue. Fed. R. Civ. P. 12(b)(3). On a Rule 12(b)(3) motion, Plaintiff bears the burden of making a prima facie showing that the District of Maryland is a proper venue as to each claim and as to each party. *Stone v. Wells Fargo Bank*, 361 F. Supp. 3d 539, 549 (D. Md. 2019); *accord Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004). When assessing venue, the Court may “freely consider evidence outside the pleadings.” *Sucampo Pharms., Inc. v. Astellas Pharma, Inc.*, 471 F.3d 544, 550 (4th Cir. 2006). The Court’s consideration of evidence, to include declarations, extraneous to the complaint on a motion to dismiss for improper venue does not convert the motion to a motion for summary judgment. *Wilson-Cook Med., Inc. v. Wilson*, 942 F.2d 247, 252 (4th Cir. 1991). If the Court determines venue is improper, it should dismiss pursuant to Fed. R. Civ. P. 12(b)(3), or may, “in the interest of justice . . . transfer any civil action to any other district . . . where it might have been brought[.]” 28 U.S.C. § 1404(a).

III. ARGUMENT

Under the FTCA, Maryland is not the appropriate venue for this case. Under the FTCA’s venue statute, which applies to this action, *see Dicken v. United States*, 862 F. Supp. 91, 92 (D. Md. 1994), Plaintiff may only bring an action in: (1) “the judicial district where the plaintiff resides;” or (2) the judicial district “wherein the act or omission complained of occurred.” 28 U.S.C. § 1402(b).

A. Plaintiff is Not a Resident of Maryland.

Plaintiff is a resident of Virginia. ECF No. 1, ¶ 1. For purposes of the FTCA venue statute, it is irrelevant that the decedent (Ms. Hamilton) was a resident of Maryland. It is Plaintiff's residence, and not the decedent's former residence, that is relevant for purposes of venue under the FTCA. *See Lopez v. United States*, 68 F. Supp. 2d 688, 691 (M.D.N.C.1999) ("Where claims are brought on behalf of a Decedent's estate, '[w]here the plaintiff resides is determined by the residence of the administrator for purposes of venue under the FTCA.'") (quoting *Andrade v. Chojnacki*, 934 F. Supp. 817, 829 n. 23 (S.D. Tex. 1996)); accord *MacGuineas v. United States*, No. 87-cv-855, 1987 WL 18473, at *1 (D.D.C. Oct. 1, 1987).

It is also irrelevant that Plaintiff purports to sue as "representative of the Estate of Decedent Kayla Hamilton." *See generally* ECF No. 1. Plaintiff does not aver she petitioned for probate of her daughter's estate, Md. Code Ann., Est. & Trusts § 5-201, or that a Maryland probate court has issued her letters, Md. Code Ann., Est. & Trusts § 5-205(c). Even if Plaintiff has obtained letters for a Maryland estate, the FTCA considers the personal representative to be the real party in interest and the representative's residence controls for venue purposes. *Buchheit v. United Air Lines, Inc.*, 202 F. Supp. 811, 814 (S.D.N.Y. 1962). Thus, Plaintiff is not a resident of this judicial district for purposes of the FTCA venue statute.

B. The Acts or Omissions Complained of Did Not Occur in Maryland.

All alleged negligence occurred in Texas, not Maryland. Plaintiff alleges the United States was negligent because it did not "lift[] the shirt of Martinez to visually inspect for gang-related tattoos." ECF No. 1, ¶ 8.a. Any such inspection would have occurred at the CBP facility in Donna, Texas, or the Compass Connections facility in Harlingen, Texas.

Plaintiff alleges the United States was negligent because it "failed to make a simple phone call to the El Salvador government to verify if Martinez was on an MS-13 gang-affiliation list."

Id. ¶ 8.b. Again, that background check would have occurred at the CPB facility in Donna, Texas, or the Compass Connections facility in Harlingen, Texas. There are no allegations that any employees of the government, located or stationed in Maryland, negligently performed a background check.

Plaintiff also contends that the United States was negligent because it “failed to verify a legitimate family member of Martinez before allowing him to enter the United States.” ECF No. 1, ¶ 8.c. Compass Connection’s vetting and selection of a sponsor occurred in Harlingen, Texas. **Ex. B**, Harvey Decl. ¶ 6. It is irrelevant for venue purposes that Martinez’s sponsor resides in Maryland or that Compass Connections arranged for Martinez’s travel. Plaintiff does not allege that Martinez’s travel was negligent, she only alleges that the “vet[ting]” of D.C.M. was negligent. ECF No. 1, ¶¶ 24–25, 28, 34. That vetting occurred in Texas. **Ex B**, Harvey Decl. ¶ 6.

In *Moler v. Wells*, an inmate alleged he suffered an injury while housed in Louisiana, mentioned his injury to a facility in Oklahoma that provided no care, and then allegedly failed to receive proper medical treatment in Arkansas. 18 F.4th 162, 165 (5th Cir. 2021). The inmate sued in Louisiana. *Id.* at 164. The Fifth Circuit held Louisiana was not a proper venue under the act or omission prong of the FTCA venue statute because all alleged medical negligence occurred in Arkansas. *Id.* at 165. It was irrelevant where the original injury occurred or where the inmate ended up. *Id.* It was only relevant for venue purposes where the alleged negligence occurred. *Id.* Similarly, here, the allegedly negligent “vet[ting]” occurred in Texas, and it is irrelevant that Martinez ultimately ended up in Maryland. *See Reuber v. United States*, 750 F.2d 1039, 1048 n.9 (D.C. Cir. 1984) overruled on other grounds by *Kauffman v. Anglo-Am. Sch. of Sofia*, 28 F.3d 1223, 1226 (D.C. Cir. 1994) (rejecting for FTCA venue purposes that “where the injury took place”

applies instead of where the act or omission occurred).²

Finally, Plaintiff alleges the United States negligently “trained and supervised DHS employees.” ECF No. 1, ¶ 8.d. DHS, though CBP, only interacted with Martinez in Texas. **Ex. A**, Chavez Decl. ¶¶ 6–8.

Here, no allegedly negligent acts or omissions complained of in the complaint occurred in Maryland. They all occurred in Texas. At least one court has observed that, under the FTCA’s act or omissions venue provision, there can be only one district where venue is appropriate. *Andrade v. Chojnacki*, 934 F. Supp. 817, 829 n. 23 (S.D. Tex. 1996) (“venue in FTCA actions (at least when based solely on this ground) is proper in only one district”). That same reasoning should be applied in this case. Here, that venue is not Maryland. The federal government’s encounter with, processing, and release of Martinez all occurred in Texas. Therefore, venue is not proper in Maryland for this FTCA matter, and the Complaint should be dismissed.

IV. CONCLUSION

Because Plaintiff is not a resident of Maryland and because the alleged negligence in encountering, processing, and releasing Martinez did not occur in Maryland, venue is inappropriate in this district. The Court should dismiss this action for improper venue.

[SIGNATURE BLOCK TO FOLLOW]

² Plaintiff’s allegation about Martinez “being placed in a foster home by authorities” is irrelevant. ECF No. 1, ¶ 8.c. Plaintiff does not identify what “authorities” made this placement. Those “authorities” are not alleged to be federal employees in Maryland. It also appears from the complaint that this foster home placement occurred after the murder. *Id.* ¶ 27.

Respectfully submitted,

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/s/

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Attorneys for Defendant United States of America

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMMY NOBLES, as an individual, and as *
the successor in interest to and
representative of the Estate of Decedent *
Kayla Hamilton,

Plaintiff,

v.

UNITED STATES,

Defendant.

* Civil Action No. 1:24-cv-2913

* * * * *

DECLARATION OF GLORIA I. CHAVEZ

In accordance with the provisions of 28 U.S.C. § 1746, I, Gloria I. Chavez, hereby make the following declaration under penalty of perjury:

1. I am the Chief Patrol Agent of the Rio Grande Valley (RGV) Sector, U.S Border Patrol (Border Patrol), U.S. Customs and Border Protection (CBP). I have been employed in this capacity since October 9, 2022. In my capacity as the Chief Patrol Agent of the RGV Sector, I have direct oversight of the tactical and strategic operations of nine stations responsible for securing 316 river miles, 317 coastal miles, and 34 counties.
2. U.S. Customs and Border Protection is a federal law enforcement agency within the U.S. Department of Homeland Security. It is comprised of the U.S. Border Patrol, Office of Field Operations, and Air and Marine Operations.
3. The U.S. Border Patrol is comprised of 20 Border Patrol sectors, to include the RGV Sector in Texas. The mission of the U.S. Border Patrol is to detect and prevent undocumented immigrants, terrorists, and terrorist weapons from entering the United States, and prevent illegal trafficking of people and contraband.
4. The RGV Sector is comprised of nine Border Patrol stations: Brownsville, Corpus Christi, Falfurrias, Fort Brown, Harlingen, Kingsville, McAllen, Rio Grande City, and Weslaco. I oversee all nine stations within the RGV Sector and am responsible for the oversight of more than 3,000 Border Patrol agents and support personnel combined. I have oversight of the day-to-day law enforcement operations of Border Patrol in the RGV Sector, including the apprehension and processing of aliens. In addition to the nine stations, RGV Sector has established a Centralized Processing Center (CPC) in McAllen, Texas and the Donna Holding Facility (DHF) in Donna, Texas, which I also oversee.

5. I am familiar with the complaint and the allegations in the civil action captioned *Tammy Nobles v. United States of America*, No. 1:24-cv-02913, which was filed in the United States District Court for the District of Maryland.
6. According to my review of internal Border Patrol records, Walter Javier Martinez (Mr. Martinez) was apprehended by agents assigned to the Rio Grande City, Texas Border Patrol Station on March 23, 2022, near Roma, Texas. Border Patrol agents then transported Mr. Martinez to the DHF for processing.
7. On March 23, 2022, Border Patrol agents determined Mr. Martinez to be an unaccompanied alien child (UAC) and processed him for a Warrant of Arrest / Notice to Appear for removal proceedings.
8. On March 23, 2022, following processing by Border Patrol, Mr. Martinez was transported to the custody of the Department of Health and Human Services, Office of Refugee Resettlement (ORR). Mr. Martinez was placed at BCFS Health and Human Services in Harlingen, Texas.
9. The Rio Grande City Border Patrol Station and DHF are Border Patrol facilities located in the area of operations of RGV Border Patrol Sector in Texas, near the United States-Mexico Border. These facilities are both within the Southern District of Texas, McAllen Division, and are materially unchanged from March 2022.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on December 3, 2024 at Edinburg, Texas.

Signature: Gloria I. Chavez
Gloria I. Chavez

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMMY NOBLES, as an individual, and as *
the successor in interest to and *
representative of the Estate of Decedent *
Kayla Hamilton,

Plaintiff,

v.

UNITED STATES,

Defendant.

* Civil Action No. 1:24-cv-2913

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**DECLARATION OF JEREMY HARVEY,
OFFICE OF REFUGEE RESETTLEMENT**

I, Jeremy Harvey, declare the following, based on my official knowledge, information acquired by me in the course of performing my official duties, information contained in the records of the Department of Health and Human Services (“HHS”), and information supplied to me by current HHS employees:

1. I am the Director of Field Operations for the Office of Refugee Resettlement (“ORR”), an Office within the Administration for Children and Families (“ACF”), Department of Health and Human Services. In that capacity, I oversee all the ORR federal field specialist staff from ORR headquarters in Washington, D.C. The following statements are true and correct to the best of my official knowledge and belief.

2. ORR places minors in its custody into ORR-funded, care provider facilities that it maintains cooperative agreements with to provide a safe environment in the least restrictive setting appropriate for the minor’s needs while it attempts to unify a minor with

a qualified sponsor.

3. HHS maintains a database referred to as the UC Portal, which contains records created in the normal course of business relating to minors in ORR custody. Included within the UC Portal are records relating to a minor's admission and release from ORR custody to the custody of a qualified sponsor.

4. A review of the UC Portal reflects that Walter Javier Martinez ("Martinez") was placed with ORR as "an unaccompanied child" ("UC") and remained in the legal custody of ORR from March 23, 2022 to May 3, 2022.

5. While in ORR custody, Martinez was cared for at Compass Connections Harlingen f/k/a BCFS Health and Human Services ("Compass Connections"), an ORR-funded private care provider facility, in Harlingen, Texas.

6. Upon arrival at Compass Connections, efforts were immediately made by Compass Connections to locate a qualified sponsor for Martinez. Compass Connections communicated with Martinez's mother, and identified and contacted a first cousin (Martinez's maternal first cousin referred to as a Category 2B sponsor), D.C.M., who was living in Frederick, Maryland. D.C.M. agreed to sponsor Martinez.

7. D.C.M. submitted a Family Reunification Application ("FRA") to Compass Connections to sponsor Martinez. In addition to completing the FRA, Compass Connections also collected documentation from D.C.M. to verify her identity, address, and relationship to Martinez, along with documentation verifying the identity of Martinez, and evidence verifying the identity of all adults residing with D.C.M. and all adult caregivers identified in a sponsor care plan. When this was completed, Compass Connections submitted a Release Request to ORR, which was approved on May 1, 2022.

8. On May 3, 2022, Compass Connections arranged for Martinez's travel to Dulles, Virginia, for unification with his sponsor D.C.M. and discharged Martinez from ORR custody.

Dated: December 9, 2024.
Chicago, Illinois

SIGNED: Jeremy Harvey -S
Jeremy Harvey

Digitally signed by Jeremy Harvey
-S
Date: 2024.12.09 09:55:15 -06'00'

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

TAMMY NOBLES, as an individual, and as the
successor in interest to and representative of the
Estate of Decedent Kayla Hamilton,

Plaintiff,

v.

UNITED STATES,

Defendant.

* * * * *

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* Civil Action No. 1:24-cv-2913-JMC
*

ORDER

Upon consideration of the United States' Motion to Dismiss, and the record in this case, it
is this ____ day of _____, 2025 hereby:

____ ORDERED that the Complaint shall be and hereby is DISMISSED for Improper Venue
pursuant to Federal Rule of Civil Procedure 12(b)(3).

It is so ORDERED.

The Honorable J. Mark Coulson
United States Magistrate Judge