

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

LAURA MIRELES,	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL NO. B-13-197
	§	
UNITED STATES CUSTOMS AND	§	
BORDER PROTECTION, ET AL.,	§	
Defendant.	§	

**ORDER**

On September 11, 2014, the United States Magistrate Judge filed a Report and Recommendation [Doc. No. 38]. Defendant Riano's filed his Objections to Magistrate Judge's Report and Recommendation [Doc. No. 39] and Plaintiff has filed her Objections to the Report and Recommendation [Doc. No. 40] and a Response to Defendants' Objections to the Second Report and Recommendation of the Magistrate Judge [Doc. No. 41].

Having considered *de novo* the Magistrate Judge's Report and Recommendation and the issues raised by Plaintiff's objections and response and Defendant Riano's objections to the Report and Recommendation, the Court hereby adopts the Magistrate Judge's Report and Recommendation [Doc. No. 38] with the exception of references to Daniel Riano's employment by the Border Patrol (as opposed to being an agent of Customs and Border Protection), Defendant's Motion to Dismiss [Doc. No. 22] is granted in part and denied in part. The motion to dismiss, for lack of jurisdiction, is granted as to the Federal Tort Claims Act claims of battery, assault, false arrest, false imprisonment, and intentional infliction of emotional distress against the United States. These claim are dismissed without prejudice. The motion is denied as to the claims of false arrest and excessive

force against Riano, who is not entitled to the protection of qualified immunity at this stage in the case.

Signed this 10<sup>th</sup> day of November, 2014.

A handwritten signature in black ink, appearing to read 'A. S. Hanen', written over a horizontal line.

Andrew S. Hanen  
United States District Judge