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Attorneys for Plaintiff FRANCISCO TIRADO

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FRANCISCO TIRADO,

Plaintiff,

v.

UNITED STATES OF AMERICA;
UNITED STATES CUSTOMS AND
BORDER PROTECTION; DOES 1–50,

Defendants.

CASE NO.: '26CV0747 WQHSBC

COMPLAINT FOR DAMAGES:

1. Fourth Amendment (*Bivens*)
Excessive Force;
2. Fourth Amendment (*Bivens*)
Failure to Intervene;
3. FTCA – Assault and Battery;
4. FTCA – Negligence;

DEMAND FOR JURY TRIAL

1 Plaintiff, FRANCISCO TIRADO, by and through his undersigned counsel,
2 complains and alleges as follows:

3 **I. INTRODUCTION**

- 4 1. This action arises from an unprovoked and excessive use of force by United
5 States Customs and Border Protection officers against Plaintiff Francisco
6 Tirado at the San Ysidro Port of Entry on February 17, 2025.
- 7 2. Without justification, a CBP officer punched Plaintiff and forced him to the
8 ground, where multiple officers piled on, causing significant physical
9 injuries, emotional trauma, and long-term medical consequences.
- 10 3. Defendants' conduct violated Plaintiff's rights under the Fourth Amendment
11 to the United States Constitution and constituted assault, battery, and
12 negligence under California law, for which the United States is liable under
13 the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671–2680.

14
15 **II. JURISDICTION AND VENUE**

- 16 4. This Court has jurisdiction over Plaintiff's federal constitutional claims
17 pursuant to 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents*, 403
18 U.S. 388 (1971).
- 19 5. This Court has jurisdiction over Plaintiff's tort claims against the United
20 States pursuant to 28 U.S.C. § 1346(b)(1).
- 21 6. Venue is proper in this District under 28 U.S.C. § 1391(b) because the events
22 giving rise to these claims occurred in San Diego County, California,
23 including at the San Ysidro Port of Entry.

24
25 **III. PARTIES**

- 26 7. Plaintiff Francisco Tirado is a United States citizen and resident of
27 California.

8. Defendant UNITED STATES OF AMERICA is substituted as the proper defendant for Plaintiff's tort claims under the FTCA.

9. Defendant U.S. Customs and Border Protection (CBP) is a federal law enforcement agency within the Department of Homeland Security and is named for identification and narrative purposes only.

10. Defendants DOES 1–25 are individual CBP officers who directly participated in, observed, failed to intervene in, or supervised the unconstitutional conduct alleged herein. Plaintiff will amend this Complaint to substitute their true names when discovered.

IV. FACTUAL ALLEGATIONS

11. On February 17, 2025, Plaintiff lawfully presented himself at the San Ysidro Port of Entry.

12. A CBP officer directed Plaintiff to proceed to secondary inspection.

13. Plaintiff did not pose a threat, was not resisting arrest, and was not attempting to flee.

14. When Plaintiff hesitated or questioned instructions, a CBP officer became agitated, lost his temper, and suddenly punched Plaintiff.

15. Plaintiff was immediately taken to the ground, where multiple CBP officers piled on him.

16. The force used against Plaintiff was grossly disproportionate, unnecessary, and objectively unreasonable.

17. As a direct result of Defendants' actions, Plaintiff suffered facial lacerations and bruising, a severely injured ankle, an injured elbow requiring surgical referral, and significant emotional distress.

18. Plaintiff required emergency medical treatment and ongoing physical therapy.

19. Several CBP officers were present and observed the use of excessive force but failed to take reasonable steps to intervene.

20. Plaintiff suffered depression, anxiety, insomnia, and psychological harm following the assault.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES (FTCA)

21. Plaintiff timely presented written administrative claims to U.S. Customs and Border Protection using Standard Form 95, including a detailed statement of facts and a demand for a sum certain, as required by 28 U.S.C. § 2675(a).

22. Plaintiff submitted the administrative claim within two years of accrual.

23. More than six months have elapsed since presentment, and CBP has failed to make final disposition of Plaintiff's claim.

24. Plaintiff has exhausted all administrative remedies required under the FTCA, or exhaustion is deemed complete by operation of law.

VI. CLAIMS FOR RELIEF

COUNT I – Fourth Amendment (*Bivens*)

Excessive Force

(Against Individual Defendants DOES 1–25)

25. Plaintiff realleges and incorporates by reference the prior paragraphs.

26. Defendants intentionally used force against Plaintiff.

27. The force used was objectively unreasonable under the totality of the circumstances.

28. Plaintiff did not pose an immediate threat, was not actively resisting, and did not attempt to evade officers.

29. Defendants' conduct violated Plaintiff's clearly established Fourth Amendment right to be free from excessive force.

30. Defendants acted with reckless disregard for Plaintiff's safety and constitutional rights.

COUNT II – Fourth Amendment (*Bivens*)

Failure to Intervene

(Against Individual Defendants DOES 1–25)

31. Plaintiff realleges and incorporates by reference the prior paragraphs.

32. Defendants observed or were aware of the use of excessive force against Plaintiff.

33. Defendants had a realistic opportunity to intervene and prevent further harm.

34. Defendants failed to take reasonable steps to stop or mitigate the excessive force.

35. Defendants' deliberate inaction violated Plaintiff's Fourth Amendment rights.

COUNT III – Federal Tort Claims Act

Assault and Battery

(Against Defendant United States of America)

36. Plaintiff realleges and incorporates by reference the prior paragraphs.

37. Federal law enforcement officers employed by CBP intentionally and unlawfully struck and applied force to Plaintiff.

38. Plaintiff did not consent to the use of force.

39. The force used was harmful, offensive, and not legally justified.

40. The United States is liable for assault and battery under California law pursuant to the law enforcement proviso of 28 U.S.C. § 2680(h).

COUNT IV – Federal Tort Claims Act

Negligence

(Against Defendant United States of America)

41. Plaintiff realleges and incorporates by reference the prior paragraphs.

42. Defendants owed Plaintiff a duty to exercise reasonable care in the use of force, supervision of officers, and protection of detainees.

43. Defendants breached these duties by using excessive force and failing to intervene.

44. Defendants' conduct was negligent and reckless.

45. Defendants' breaches were the direct and proximate cause of Plaintiff's injuries.

VII. DAMAGES

46. Plaintiff suffered physical injuries, pain and suffering, emotional distress, mental anguish, medical expenses, and loss of enjoyment of life.

47. Plaintiff seeks compensatory damages according to proof.

VIII. PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants as follows:

A. Compensatory damages in excess of \$75,000;

B. Costs of suit;

C. Attorneys' fees where permitted by law;

D. Declaratory relief;

E. Such other relief as the Court deems just and proper.

DATED: February 6, 2026

FINN TRIAL ATTORNEYS, APC

Gomez Law Group, P.C.

By:

s/David Finn

DAVID P. FINN, Esq.

Alvin M. Gomez, Esq.

Boris Smyslov, Esq.

Attorneys for Francisco Tirado

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2 **DEMAND FOR TRIAL BY JURY**
3

4 Plaintiff hereby demands a trial by jury.
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6 DATED: February 6, 2026

FINN TRIAL ATTORNEYS, APC
Gomez Law Group, P.C.

7 By:

8 *s/David Finn*
9

10 DAVID P. FINN, Esq.

11 Alvin M. Gomez, Esq.

12 Boris Smyslov, Esq.

13 Attorneys for Francisco Tirado
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