

1 David P. Finn, Esq. (Cal. Bar No. 249247)
2 david@finntrialattorneys.com
3 FINN TRIAL ATTORNEYS, APC
4 501 West Broadway, Suite 800
5 San Diego, CA 92101
6 Telephone: (619) 400-4805
7

8 Alvin M. Gomez, Esq. (Cal. Bar No. 137818)
9 alvingomez@thegomezlawgroup.com
10 Boris Smyslov, Esq. (Cal. Bar No. 297252)
11 boris@thegomezlawgroup.com
12 GOMEZ LAW GROUP, P.C.
13 2725 Jefferson Street, Suite 3
14 Carlsbad, CA 92008
15 Telephone: (858) 552-0000
16 Facsimile: (760) 542-7761
17

18 Attorneys for Plaintiff FRANCISCO TIRADO
19

20 **UNITED STATES DISTRICT COURT**
21 **SOUTHERN DISTRICT OF CALIFORNIA**
22

23 FRANCISCO TIRADO,
24

25 Plaintiff,

26 v.
27 UNITED STATES OF AMERICA;
28 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 **II. JURISDICTION AND VENUE**

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

23 **III. PARTIES**

- 24 7. Plaintiff Francisco Tirado is a United States citizen and resident of
25 California.

- 1 8. Defendant UNITED STATES OF AMERICA is substituted as the proper
- 2 defendant for Plaintiff's tort claims under the FTCA.
- 3 9. Defendant U.S. Customs and Border Protection (CBP) is a federal law
- 4 enforcement agency within the Department of Homeland Security and is
- 5 named for identification and narrative purposes only.
- 6 10. Defendants DOES 1–25 are individual CBP officers who directly
- 7 participated in, observed, failed to intervene in, or supervised the
- 8 unconstitutional conduct alleged herein. Plaintiff will amend this Complaint
- 9 to substitute their true names when discovered.

10

11 **IV. FACTUAL ALLEGATIONS**

- 12 11. On February 17, 2025, Plaintiff lawfully presented himself at the San Ysidro
- 13 Port of Entry.
- 14 12. A CBP officer directed Plaintiff to proceed to secondary inspection.
- 15 13. Plaintiff did not pose a threat, was not resisting arrest, and was not attempting
- 16 to flee.
- 17 14. When Plaintiff hesitated or questioned instructions, a CBP officer became
- 18 agitated, lost his temper, and suddenly punched Plaintiff.
- 19 15. Plaintiff was immediately taken to the ground, where multiple CBP officers
- 20 piled on him.
- 21 16. The force used against Plaintiff was grossly disproportionate, unnecessary,
- 22 and objectively unreasonable.
- 23 17. As a direct result of Defendants' actions, Plaintiff suffered facial lacerations
- 24 and bruising, a severely injured ankle, an injured elbow requiring surgical
- 25 referral, and significant emotional distress.
- 26 18. Plaintiff required emergency medical treatment and ongoing physical
- 27 therapy.

28

- 1 19. Several CBP officers were present and observed the use of excessive force
- 2 but failed to take reasonable steps to intervene.
- 3 20. Plaintiff suffered depression, anxiety, insomnia, and psychological harm
- 4 following the assault.

5

6 **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES (FTCA)**

- 7 21. Plaintiff timely presented written administrative claims to U.S. Customs and
- 8 Border Protection using Standard Form 95, including a detailed statement of
- 9 facts and a demand for a sum certain, as required by 28 U.S.C. § 2675(a).
- 10 22. Plaintiff submitted the administrative claim within two years of accrual.
- 11 23. More than six months have elapsed since presentment, and CBP has failed to
- 12 make final disposition of Plaintiff's claim.
- 13 24. Plaintiff has exhausted all administrative remedies required under the FTCA,
- 14 or exhaustion is deemed complete by operation of law.

15

16 **VI. CLAIMS FOR RELIEF**

17 **COUNT I – Fourth Amendment (*Bivens*)**

18 **Excessive Force**

19 (Against Individual Defendants DOES 1–25)

- 20 25. Plaintiff realleges and incorporates by reference the prior paragraphs.
- 21 26. Defendants intentionally used force against Plaintiff.
- 22 27. The force used was objectively unreasonable under the totality of the
- 23 circumstances.
- 24 28. Plaintiff did not pose an immediate threat, was not actively resisting, and did
- 25 not attempt to evade officers.
- 26 29. Defendants' conduct violated Plaintiff's clearly established Fourth
- 27 Amendment right to be free from excessive force.

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

3 **COUNT II – Fourth Amendment (*Bivens*)**

4 **Failure to Intervene**

5 (Against Individual Defendants DOES 1–25)

- 6 31. Plaintiff realleges and incorporates by reference the prior paragraphs.
7 32. Defendants observed or were aware of the use of excessive force against
8 Plaintiff.
9 33. Defendants had a realistic opportunity to intervene and prevent further harm.
10 34. Defendants failed to take reasonable steps to stop or mitigate the excessive
11 force.
12 35. Defendants' deliberate inaction violated Plaintiff's Fourth Amendment
13 rights.

14 **COUNT III – Federal Tort Claims Act**

15 **Assault and Battery**

16 (Against Defendant United States of America)

- 17 36. Plaintiff realleges and incorporates by reference the prior paragraphs.
18 37. Federal law enforcement officers employed by CBP intentionally and
19 unlawfully struck and applied force to Plaintiff.
20 38. Plaintiff did not consent to the use of force.
21 39. The force used was harmful, offensive, and not legally justified.
22 40. The United States is liable for assault and battery under California law
23 pursuant to the law enforcement proviso of 28 U.S.C. § 2680(h).

24 **COUNT IV – Federal Tort Claims Act**

25 **Negligence**

26 (Against Defendant United States of America)

- 27 41. Plaintiff realleges and incorporates by reference the prior paragraphs.
28

- 1 42. Defendants owed Plaintiff a duty to exercise reasonable care in the use of
- 2 force, supervision of officers, and protection of detainees.
- 3 43. Defendants breached these duties by using excessive force and failing to
- 4 intervene.
- 5 44. Defendants' conduct was negligent and reckless.
- 6 45. Defendants' breaches were the direct and proximate cause of Plaintiff's
- 7 injuries.

8

9 **VII. DAMAGES**

- 10 46. Plaintiff suffered physical injuries, pain and suffering, emotional distress,
- 11 mental anguish, medical expenses, and loss of enjoyment of life.
- 12 47. Plaintiff seeks compensatory damages according to proof.
- 13

14 **VIII. PRAYER FOR RELIEF**

- 15 Plaintiff prays for judgment against Defendants as follows:
- 16 A. Compensatory damages in excess of \$75,000;
- 17 B. Costs of suit;
- 18 C. Attorneys' fees where permitted by law;
- 19 D. Declaratory relief;
- 20 E. Such other relief as the Court deems just and proper.

21

22 DATED: February 6, 2026

FINN TRIAL ATTORNEYS, APC

Gomez Law Group, P.C.

By:

25 s/*David Finn*

26 DAVID P. FINN, Esq.

27 Alvin M. Gomez, Esq.

28 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
7

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*s/*David Finn
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Attorneys for Francisco Tirado
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