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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: [Signature] DEPUTY

5 Attorneys for Plaintiff Arturo and Fabiola Kunie Lorenzo

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ARTURO LORENZO, an individual, and
FABIOLA KUNIE LORENZO, an
11 individual;

12 Plaintiffs,

13 vs.

14 UNITED STATES OF AMERICA; and
DOES 1 through 50, inclusive,

15 Defendants.
16

Case No. '09 CV 1803 DMS CAB

COMPLAINT FOR DAMAGES FOR
PERSONAL INJURIES

JURY TRIAL DEMANDED

17 JURISDICTION AND VENUE

18 1. This is an action arising under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq.; the
19 Privacy Act, 5 U.S.C. 552a; and 28 U.S.C. §§ 1331 and 1346(b).

20 2. This action arises from a shooting incident on March 26, 2007 that occurred along the banks
21 of the All-American Canal near Calexico, California, County of Imperial. The shooting incident was
22 captured on video. The video, featuring Plaintiff ARTURO LORENZO's likeness, name and rank,
23 was released to the public, in violation of Plaintiffs' privacy rights. The release of this video resulted
24 in death threats to Plaintiff ARTURO LORENZO, Plaintiff FABIOLA KUNIE LORENZO and their
25 family.

26 3. Venue is proper in the Southern District because a substantial part of the events or omissions
27 giving rise to the claim occurred in this District.

28 ///

The Gomez Law Firm
Attorneys at Law
[Signature]

PARTIES

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2 4. Plaintiff ARTURO LORENZO was a resident of Imperial County, State of California, at the
3 time the events and/or omissions giving rise to this action occurred and until September 2007.

4 5. Plaintiff FABIOLA KUNIE LORENZO was a resident of Imperial County, State of
5 California, at the time the events and/or omissions giving rise to this action occurred and until
6 September 2007.

7 6. Plaintiffs are informed and believe that Defendant UNITED STATES OF AMERICA is, and
8 at all relevant times herein was, a governmental entity, organized pursuant to the Constitution of the
9 United States.

10 7. Plaintiffs are informed and believe that Customs and Border Protection ("CBP") is an agency
11 within the Department of Homeland Security, and both are agencies of Defendant UNITED STATES
12 OF AMERICA and DOES 1 through 50.

13 8. The true names and capacities of Defendants DOES 1 through 50, inclusive, are unknown to
14 Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and
15 believe and allege thereon that each of the Defendants herein designated as DOE is responsible in
16 some manner for the events and happenings herein referred to and caused the injuries and damages
17 legally thereby as alleged herein.

18 9. Plaintiffs are informed and believe, and on that basis allege, that at all times herein
19 mentioned, Defendant UNITED STATES OF AMERICA and DOES 1 through 50, inclusive, were the
20 officers, employees, servants, agents, contractors, subsidiaries, divisions, and other affiliated
21 individuals or entities of each other, and were acting within the scope and purpose of such agency or
22 employment, and with the power and authority vested in them as officers, employees, or servants, or
23 ratification, endorsement or approval of the conduct of each other with respect to the events and
24 happenings alleged herein.

25 10. Plaintiffs are informed and believe that Defendant UNITED STATES OF AMERICA and
26 DOES 26 through 50, inclusive, are vicariously liable for the negligent and intentional acts of
27 Defendant DOES 1 through 25, inclusive, who were acting in the course and scope of their
28 employment as officers, employees, or servants of Defendant UNITED STATES OF AMERICA and

1 DOES 26 through 50, inclusive, at all relevant times herein alleged.

2 **PROCEDURAL ALLEGATIONS**

3 11. On or about November 14, 2008, Plaintiffs served on Defendants their Claim for Damage,
4 Injury, or Death Forms pursuant to the Federal Tort Claims Act 28 U.S.C. § 2671 et seq.

5 12. Defendant UNITED STATES OF AMERICA served a written denial of Plaintiffs' claims on
6 or about May 7, 2009.

7 13. In accordance with 28 U.S.C. § 2675, Plaintiffs now file this action.

8 **GENERAL ALLEGATIONS**

9 14. On or about March 26, 2007, Senior Border Patrol Agent ARTURO LORENZO was
10 performing his official duties for the CBP United States Border Patrol El Centro Sector, El Centro
11 Station, on the banks of the All-American Canal. ARTURO LORENZO responded to a call for help
12 from a fellow agent who was under attack by a group of illegal immigrant smugglers throwing large
13 rocks. ARTURO LORENZO engaged in a physical altercation with one of the smugglers. The
14 smuggler escaped ARTURO LORENZO's grasp and instead of retreating to the border, the smuggler
15 picked up a large rock and raised his arm, preparing to throw the rock at ARTURO LORENZO from a
16 distance of approximately one car length. ARTURO LORENZO discharged his service rifle, striking
17 the smuggler in the chest and killing him.

18 15. Plaintiffs are informed and believe that on or about March 26, 2007, the shooting incident
19 herein described was captured by a Remote Video Surveillance System camera. The resulting video
20 featured ARTURO LORENZO's distinctive appearance and likeness.

21 16. Plaintiffs are informed and believe that officers, employees, or servants of CBP, whose
22 identities are presently unknown to Plaintiffs, at all material times had exclusive custody, control
23 and/or possession of the video recording described herein.

24 17. Plaintiffs are informed and believe that after the video recording of the shooting was in the
25 exclusive custody, control and/or possession of CBP officers, employees, or servants of CBP, whose
26 identities are presently unknown to Plaintiffs, those CBP officers, employees or servants improperly,
27 illegally, willfully and/or intentionally edited the video recording to add ARTURO LORENZO's name
28 and rank, the seals of the Department of Homeland Security and CBP and an "Enhanced View" of the

1 shooting. ARTURO LORENZO never consented to his name and/or rank being added to the video
2 recording of the shooting. ARTURO LORENZO did not consent to the creation of an "Enhanced
3 View" of the video.

4 18. Plaintiffs are informed and believe that officers, employees, or servants of CBP, whose
5 identities are presently unknown to Plaintiffs, improperly, illegally, willfully and/or intentionally
6 disclosed the videotape of the shooting to other individuals within CBP and individuals and/or entities
7 outside of CBP. ARTURO LORENZO never consented to disclosure of the video recording of the
8 shooting to any individual or entity.

9 19. As a direct and proximate result of the acts of Defendants, and each of them, the video
10 recording became widely circulated on the Internet and has appeared on a large number of websites
11 domestically and internationally. A recent search using www.google.com still reveals 12,800 items
12 found in response to "Arturo Lorenzo Shooting." The video recording also appeared on Mexican news
13 stations and in Mexican publications. Domestically, the video recording has been aired on news
14 programs, including "Hannity's America" and "Geraldo at Large."

15 20. As a direct and proximate result of the acts of Defendants, and each of them, ARTURO
16 LORENZO and FABIOLA KUNIE LORENZO suffered death threats, contempt, ridicule, financial
17 and emotional distress and harm to their reputations in the community. ARTURO LORENZO's and
18 FABIOLA KUNIE LORENZO's safety was so jeopardized that they were forced to move their family
19 from their Calexico, California home. ARTURO LORENZO was transferred from the CBP United
20 States Border Patrol El Centro Sector, El Centro Station and was ultimately relocated to the CBP
21 United States Border Patrol Miami Sector, Pembroke Pines Station, in September 2007 because the
22 death threats on himself, FABIOLA KUNIE LORENZO and their family persisted.

23 21. As a direct and proximate result of the acts of Defendants, and each of them, ARTURO
24 LORENZO and FABIOLA KUNIE LORENZO lost their Calexico, California home due to bank
25 foreclosure and have been unable to obtain comparable housing in Miami, Florida.

26 22. As a direct and proximate result of the acts of Defendants, and each of them, FABIOLA
27 KUNIE LORENZO was forced to abandon a thriving insurance business in Calexico, California. This
28 resulted in a substantial loss of income to ARTURO LORENZO and FABIOLA KUNIE LORENZO.

1 23. As a direct and proximate result of the acts of Defendants, and each of them, FABIOLA
2 KUNIE LORENZO will be unable to inherit a book of insurance business from her insurance agent
3 father in Calexico, California. This will result in a substantial loss of income to ARTURO LORENZO
4 and FABIOLA KUNIE LORENZO.

5 24. As a direct and proximate result of the acts of Defendants, and each of them, ARTURO
6 LORENZO and FABIOLA KUNIE LORENZO have suffered non-economic damages, including, but
7 not limited to, fright, anxiety, inconvenience, embarrassment, damage to their reputations, loss of
8 standing in the community, emotional and mental pain and suffering, mental anguish, loss of
9 enjoyment of life, damage to their professions and occupations, humiliation, and exposure to hatred,
10 contempt, ridicule, and shame such as to discourage others from associating or dealing with them.

11 25. As a direct and proximate result of the acts of Defendants, and each of them, Plaintiffs have
12 incurred, and will continue to incur, medical expenses.

13 26. As a direct and proximate result of the acts of Defendants, and each of them, ARTURO
14 LORENZO and FABIOLA KUNIE LORENZO are, due to financial hardship, no longer able to visit
15 ARTURO LORENZO's son from a prior marriage, who resides in California.

16 **FIRST CLAIM FOR VIOLATION OF PRIVACY UNDER 5 U.S.C. § 552a(b)**

17 **(Against All Defendants and DOES 1-50)**

18 27. Plaintiffs hereby incorporate each and every allegation contained in Paragraphs 1 through 26
19 as though fully set forth herein.

20 28. At all relevant times herein alleged, the video recording of the shooting was a record
21 pertaining to ARTURO LORENZO that was contained in a system of records as defined by 5 U.S.C. §
22 552a.

23 29. The improper, illegal, willful and/or intentional disclosure of the video recording of the
24 shooting to other individuals within CBP and individuals and/or entities outside of CBP was in
25 violation of 5 U.S.C. § 552a.

26 30. As a direct and proximate result of the improper conduct of CBP, by and through its officers,
27 employees, or servants, whose identities are presently unknown to Plaintiffs, ARTURO LORENZO
28 and FABIOLA KUNIE LORENZO have suffered past and will suffer future actual damages,

1 including, but not limited to, fright, anxiety, inconvenience, embarrassment, damage to their
2 reputations, loss of standing in the community, emotional and mental pain and suffering, mental
3 anguish, loss of enjoyment of life, loss of opportunity, loss of money, loss of property, damage to their
4 professions and occupations, humiliation, exposure to hatred, contempt, ridicule, and shame such as to
5 discourage others from associating or dealing with them and past and future medical expenses.

6 **SECOND CLAIM FOR INVASION OF PRIVACY – PUBLIC DISCLOSURE OF PRIVATE**

7 **FACTS**

8 **(Against All Defendants and DOES 1-50)**

9 31. Plaintiffs hereby incorporate each and every allegation contained in Paragraphs 1 through 30
10 as though fully set forth herein.

11 32. At all relevant times herein alleged, CBP officers, agents and employees, whose identities are
12 presently unknown to Plaintiffs, acted within the scope of their employment with CBP.

13 33. The disclosure of the video recording of the shooting to individuals within CBP and to
14 individuals and/or entities outside CBP was an invasion of ARTURO LORENZO's and FABIOLA
15 KUNIE LORENZO's right to privacy, in that it was a public disclosure of private facts.

16 34. The improper disclosure of the video recording constituted a publication of private facts, for
17 which there was no waiver or privilege.

18 35. The improper disclosure of the video recording would be highly offensive to a reasonable
19 person, and Defendants, and each of them, knew or acted with reckless disregard of that fact.

20 36. The private facts improperly disclosed on the video recording were not of legitimate public
21 concern.

22 37. As a direct and proximate cause of the conduct of Defendants, and each of them, ARTURO
23 LORENZO and FABIOLA KUNIE LORENZO suffered harm including, but not limited to, fright,
24 anxiety, inconvenience, embarrassment, damage to their reputations, loss of standing in the
25 community, emotional and mental pain and suffering, mental anguish, loss of enjoyment of life, loss of
26 opportunity, loss of money, loss of property, damage to their professions and occupations, humiliation,
27 exposure to hatred, contempt, ridicule, and shame such as to discourage others from associating or
28 dealing with them and past and future medical expenses.

THIRD CLAIM FOR INVASION OF PRIVACY – FALSE LIGHT

(Against All Defendants and DOES 1-50)

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3 38. Plaintiffs hereby incorporate each and every allegation contained in Paragraphs 1 through 37
4 as though fully set forth herein.

5 39. The disclosure of the video recording of the shooting to individuals within CBP and to
6 individuals and/or entities outside CBP was an invasion of ARTURO LORENZO's and FABIOLA
7 KUNIE LORENZO's right of privacy, in that it placed them in a false light in the public eye.

8 40. Defendants, and each of them, publicized information or material that showed ARTURO
9 LORENZO and FABIOLA KUNIE LORENZO in a false light.

10 41. The false light created by the publication of the improperly released video recording of the
11 shooting would be highly offensive to a reasonable person.

12 42. There is clear and convincing evidence that Defendants, and each of them, knew the
13 publication would create a false impression about ARTURO LORENZO and FABIOLA KUNIE
14 LORENZO and/or acted with reckless disregard for the truth; and/or Defendants, and each of them,
15 were negligent in determining the truth of the information or whether a false impression would be
16 created by the publication.

17 43. ARTURO LORENZO and FABIOLA KUNIE LORENZO suffered harm to their property,
18 business, professions and occupations as a result of the publication by Defendants, and each of them.

FOURTH CLAIM FOR INVASION OF PRIVACY – INTRUSION INTO PRIVATE AFFAIRS

(Against All Defendants and DOES 1-50)

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21 44. Plaintiffs hereby incorporate each and every allegation contained in Paragraphs 1 through 43
22 as though fully set forth herein.

23 45. The disclosure of the video recording of the shooting to individuals within CBP and to
24 individuals and/or entities outside CBP was an invasion of ARTURO LORENZO's and FABIOLA
25 KUNIE LORENZO's right of privacy, in that it was an intrusion into their private affairs.

26 46. ARTURO LORENZO and FABIOLA KUNIE LORENZO had a reasonable expectation of
27 privacy in the internal documentation of ARTURO LORENZO's job duties, including the shooting at
28 issue and his identity as a law enforcement officer engaging in those duties.

1 47. Defendants, and each of them, intentionally intruded into ARTURO LORENZO's and
2 FABIOLA KUNIE LORENZO's privacy.

3 48. The intrusion by Defendants, and each of them, into ARTURO LORENZO's and FABIOLA
4 KUNIE LORENZO's private affairs would be highly offensive to a reasonable person.

5 49. As a direct and proximate cause of the conduct of Defendants, and each of them, ARTURO
6 LORENZO and FABIOLA KUNIE LORENZO suffered harm including, but not limited to, fright,
7 anxiety, inconvenience, embarrassment, damage to their reputations, loss of standing in the
8 community, emotional and mental pain and suffering, mental anguish, loss of enjoyment of life, loss of
9 opportunity, loss of money, loss of property, damage to their professions and occupations, humiliation,
10 exposure to hatred, contempt, ridicule, and shame such as to discourage others from associating or
11 dealing with them and past and future medical expenses.

12 **FIFTH CLAIM FOR NEGLIGENT SUPERVISION**

13 **(Against All Defendants and DOES 1-50)**

14 50. Plaintiffs hereby incorporate each and every allegation contained in Paragraphs 1 through 49
15 as though fully set forth herein.

16 51. Defendants, and each of them, had a duty to use reasonable care in employing persons to
17 perform work or other activities on behalf of Defendants, and each of them.

18 52. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them,
19 hired employees whom they reasonably knew or should have known were incompetent or unfit and
20 likely to cause harm, and negligently trained, retained, and supervised such employees.

21 53. Defendants, and each of them, failed to use reasonable care to discover whether their
22 employees were unfit or incompetent.

23 54. As a direct and proximate result of the incompetence or unfitness of Defendants' employees,
24 and each of them, Plaintiffs suffered the harm and damages described herein.

25 **SIXTH CLAIM FOR INTENTIONAL NEGLIGENT OF EMOTIONAL DISTRESS**

26 **(Against All Defendants and DOES 1-50)**

27 55. Plaintiffs hereby incorporate each and every allegation contained in Paragraphs 1 through 54
28 as though fully set forth herein.

1 56. The conduct of Defendants, and each of them, in improperly disclosing the video recording of
2 the shooting, knowing the harm it would cause, and knowing they did not have Plaintiff ARTURO
3 LORENZO's consent, was negligent.

4 57. ARTURO LORENZO and FABIOLA KUNIE LORENZO suffered serious emotional
5 distress as a result of Defendants' improper release of the video recording of the shooting.

6 58. The conduct of Defendants, and each of them, was a substantial factor in causing ARTURO
7 LORENZO's and FABIOLA KUNIE LORENZO's severe emotional distress.

8 59. As a direct and proximate result of the conduct of Defendants, and each of them, in
9 improperly releasing the video recording of the shooting, ARTURO LORENZO and FABIOLA
10 KUNIE LORENZO have suffered damages, including but not limited to, fright, anxiety,
11 inconvenience, embarrassment, damage to their reputations, loss of standing in the community,
12 emotional and mental pain and suffering, mental anguish, loss of enjoyment of life, loss of opportunity,
13 loss of money and loss of property, damage to their professions and occupations, humiliation, exposure
14 to hatred, contempt, ridicule, and shame such as to discourage others from associating or dealing with
15 them, in an amount to be proven at time of trial and past and future medical expenses.

16 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 17 1. For general damages;
- 18 2. For special damages, including, but not limited to, lost past and future income, loss of
19 the family home, lost visitation with their son, and past and future medical expenses;
- 20 3. For incidental damages;
- 21 4. For attorneys' fees;
- 22 5. For prejudgment interest as permitted by law;
- 23 6. For costs of suit incurred herein; and
- 24 7. For such other and further relief as the court may deem just and proper.

25 Dated: August 17, 2009

THE GOMEZ LAW FIRM

By: 

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