

Section I.

INTRODUCTORY OVERVIEW OF CASE

1. Plaintiffs own and live on a ranch situated at approximately the 35-mile marker, east side frontage road, 3 miles south of Encinal, Texas more than 25 miles beyond the external boundary of the United States. Over the last several years, Plaintiffs' have encountered agents of U.S. Customs and Border Protection (CBP) going onto their land, at will, without any warrant or legal authority, without landowner consent, over landowners' objection, and without any warrant or exigent circumstances that would permit such intrusions upon private property. On each such occasion, Plaintiffs admonished the CBP agents they encountered that they, the agents were trespassing onto private property, and ordered CBP off of their land to no avail. CBP, insisting that they were within "25 miles," continued with their intrusions onto Plaintiffs' property. Plaintiff, Ricardo D. Palacios brought this issue to the attention of CBP headquarters who responded with assurances that the matter would be looked into. No results were forthcoming, and the trespassing continued. Finally, and most recently, Plaintiff, Ricardo D. Palacios encountered a surveillance camera affixed to a tree on the subject property within close proximity to the curtilage thereon, and removed it from the tree. Subsequently, officials from U.S. CBP and the Texas Ranger contacted Plaintiff claiming ownership of the camera, demanding its immediate return, with the latter party, the Texas Ranger, threatening to file criminal charges for theft upon a persistent refusal to surrender the camera. This action follows.

Section II.

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to:

- a) 28 U.S.C. §1331(a) because the controversy arises out of the Constitution or laws of the United States, namely the interpretation and applicability of U.S. Code, Title 8, §1357(a)(3), Powers of Immigration Officers and Employees, and Powers without a warrant;
- b) A citizen suffering injury to a constitutionally protected interest may invoke the general federal question jurisdiction of the District Courts to obtain an award of monetary damages against the responsible federal official; and,

c) 28 U.S.C. §1343(a)(3) because this action seeks to redress the deprivation, under color of State Law, of a right secured by the Constitution of the United States.

3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. 1367 because state law claims levelled herein are part of the same case or controversy under Art. III of the United States Constitution, namely, on information and belief, the Texas Ranger, acting in formal or informal cooperation with U.S. CBP has allowed the use of its department resources and equipment to conduct the unwarranted police search(es) as alleged herein.

4. In addition, Plaintiffs file this *Original Complaint* seeking remedies pursuant to Fed. R. Civ. P. 57 because Plaintiffs have suffered injury in fact, as will be expanded upon herein below; the injury suffered is directly attributed to the unlawful intrusion by CBP and the Texas Ranger onto Plaintiffs' property, and, a declaration by this court of the relative rights of the parties will right the wrong and prevent its reoccurrence. As will be shown, the government threatened Plaintiff with criminal prosecution. Where threatened action by government is concerned, a plaintiff need not expose himself to liability before bringing suit to challenge the basis for the threat. Putting plaintiffs to choose between abandoning their rights or risking prosecution is a dilemma of the sort that the Declaratory Judgement Act was designed to ameliorate.

5. Finally, this Court has jurisdiction to award attorney's fees, expert fees, costs to the Plaintiffs, and, where appropriate punitive damages pursuant to Fed. R. Civ. P. 57, 65, and the *Declaratory Judgement Act*, 28 U.S.C. §2201, *et seq.*

Section III.

VENUE

6. Venue is proper before this court because the events or omissions giving rise to the Plaintiffs' claims occurred in the Southern District of Texas, Laredo, Division, and the property that is the subject of the action is situated therein. 28 U.S.C. §1391.

Section IV.

PARTIES

7. Plaintiffs are: Ricardo D. Palacios individually, and JUAN SALINAS RANCH LTD, a Texas Limited Partnership, in which title to the subject property resides, by and through its General Partner, Ricardo D. Palacios.

8. Defendants are the, Chief Patrol Agent, Mario Martinez, for the U.S. CBP; unknown/unnamed agents of the UNITED STATES CUSTOMS AND BORDER PROTECTION, a governmental entity. Process may be served on these defendants by delivering a copy of the summons and complaint to Assistant United States Attorney for the Southern District of Texas, Laredo Division, Mr. Hector Ramirez at 11204 McPherson Rd., Ste. 100-A, Laredo, Texas, 78045, and also by serving the officer or employee(s) pursuant to FRCP 4(e) by delivering a copy to an agent authorized by appointment or by law to receive service of process.

9. Defendant, Texas Ranger Ernesto Salinas of the TEXAS DEPARTMENT OF PUBLIC SAFETY, TEXAS RANGER DIVISION, a governmental agency, may be served with process at _____ . Service on this Defendant may be effectuated by certified mail. ((find out how))

Section V.

STATEMENT OF FACTS

10. Plaintiffs own and live on a ranch situated at approximately the 35-mile marker on Interstate 35, east side frontage road, 3 miles south of Encinal, Texas, approximately 34 miles beyond the external boundary of the United States.¹

¹ By using the "My Map" facility available at the Texas General Land Office, Plaintiffs measured the closest distance between the subject property and the nearest bend in the Rio Grande at the southern border of the United States to be 27.5065 bird-flight miles.

11. Plaintiffs' troubles with U.S. CBP began at about 1 a.m. on April 4, 2010 when Plaintiff's two sons drove up to the U.S. Border Patrol checkpoint on I.H. 35 about 29 miles north of Laredo, Texas while on their way home on the ranch close to Encinal, Texas located some distance north of the checkpoint. At the checkpoint primary inspection, Plaintiff's son, Ricardo D. Palacios, Jr., was asked where he lived. He refused to answer and was then referred to secondary inspection. Upon parking the vehicle at the secondary inspection area, Plaintiff's son, who was sitting in the passenger seat of the vehicle they were driving, was pounced upon without warning by about ten government agents who appeared suddenly out of the darkness. The agents hauled Plaintiff's son out of the vehicle, body-slammed him to the ground, handcuffed him, and then placed him in a detention cell—all in one swift, uninterrupted motion. Plaintiff's other sons were left unharmed.

12. One agent, with a last name of "Champion," partook in the assault on Plaintiff's son with particular zeal, later throwing Ricardo D. Palacios, Jr., while yet handcuffed, to the floor of the detention cell.

13. Plaintiff's son was released from custody about an hour and a half later.

14. Later that same night, at approximately 3 a.m., Plaintiff received an alarming called from one of his other sons. As a result, Plaintiff looked out of a window of his home, and there at the front gate to his home, Plaintiff saw an olive-green colored truck, unmarked with official indicia, with two or three uniformed Border Patrol agents inside it. The truck was parked at Plaintiff's front gate. It was equipped with a camera, possibly night vision, mounted on a high scaffold on bed of the pickup. Plaintiff went outside to question the agents, and order them off his ranch. Plaintiff's son arrived at the scene. A confrontation ensued between Plaintiff and his son, and the government agents with Plaintiff and son ordering the agents off their property. Instead of complying with Plaintiff's order, a group of 8 to 10 more agents arrived apparently having been called as backup. The more than dozen agent snow arrayed themselves in rank confrontation before the Plaintiff and his son at the front of Plaintiff's home. Plaintiff and son insisted that the agents leave. One agent, name unknown, challenged Plaintiff to, "Make us leave." At this juncture, a supervisor named Elwynn Sherman arrived and ordered the agents to, "bring the camera down." The supervisor then asked Plaintiff if he could have a private word with Plaintiff's son. Agreeing to this, Plaintiff's son and the supervisory agent stepped off to the side and had a private exchange. The substance of this exchange was regarding the incident where Plaintiff's son was roughed up at the hands of Border patrol as related in paragraphs 11-13, above. Afterwards, the supervisor turned to Plaintiff and offered to end the present confrontation, now well past 3 a.m., by, "shaking hands and walking away [from it]." The group of agents then disbanded and departed.

15. Since these awful incidents, and over the last several years, Plaintiffs' have encountered agents of U.S. Customs and Border Protection (CBP) going onto their land, at will, day and night, without any warrant or legal authority, without landowner consent, over landowners' objection, and without exigent circumstances that would permit such intrusions upon private property, and roaming freely about.

16. On each such occasions, Plaintiffs ordered CBP off of their land, told them they were trespassing but to no avail: Plaintiff's protestations made no difference to the agents and the unwarranted intrusions continued unabated.

17. On some occasions, the U.S. CBP agents insisted that they were within "25 miles," within their rights, and bluntly told the Plaintiff that they could therefore do what they wanted.

18. U.S. CBP agents followed through according to their self-proclaimed, legal understanding, and continued with their unwarranted intrusions onto Plaintiffs' property.

19. On April 9, 2010, Plaintiff, Ricardo D. Palacios, forwarded a certified letter to U.S. Customs and Border Protection complaining of the unwarranted incidents on his premises urging that CBP's trespassing onto Plaintiff's property cease. A copy of that letter is attached hereto as Exhibit "A," and incorporated herein by reference.

20. U.S. CBP, responding to Plaintiff's April 9 letter by letter dated April 19, 2010, whereby CBP acknowledged the issue brought to its attention by Plaintiff, assured plaintiff that it, CBP, "...takes all complaints...very seriously," and that, "If corrective action is required, [that such would be taken]." A copy of U.S. CBP's April 19 letter is attached hereto as Exhibit "B," and incorporated herein by reference.

21. Notwithstanding U.S. CBP's assurances that the matter would be looked into and corrected if need be, the trespassing continued unabated with incidents occurring as recently as a few weeks preceding the filing of this cause of action. Some CBP intrusions happened at night, within the curtilage, and others during the day. Examples follow.

22. After the exchange of letters as aforesaid, Plaintiff's son, Ricardo D. Palacios Jr., was awakened at night, also by his dog barking in alarm. Upon looking outside his home, Ricardo D. Palacios, Jr. encountered three or four agents investigating the outside and around his home with the use of flashlights. Plaintiff's

son confronted the agents who claimed they were busy “tracking” to which Plaintiff’s son responded that they, the agents, were trespassing. The agents then departed.

23. The next encounter of significance occurred approximately three years ago at the end of a day when, at dusk, Plaintiff, Ricardo D. Palacios, looked out his kitchen window to find a CBP agent, having already unlocked an oil company service entrance gate, driving into the ranch in an easterly direction. The particular gate referred to is located a couple of blocks away from Plaintiff’s home. Plaintiff called his son, and together they intercepted the Border Patrol agent, and confronted him. Plaintiff questioned the agent as to how he gained entry onto the ranch. Through the questioning, the agent produced an “LPP key.”

24. The “LPP” key is a gate key belonging to Lewis Petro Properties, an oil and gas tenant of Plaintiffs’ property. The LPP key opens a lock on the oil company service entrance. Upon the trial of this matter, Plaintiff will show that an “LPP key” was not given to U.S. CBP neither by Plaintiff nor by the oil and Gas tenants of the property.

25. Upon questioning the CBP about how they obtained the LPP key, a CBP agent said, “I bought the key at the office, someone had to have gotten it [from Lewis Petro Properties].” Upon asking the “land-man” for Lewis Petro whether this was true, Plaintiff was assured, in no uncertain terms, that that explanation by Border Patrol agent was contra-factual.

26. Plaintiff and son told the CBP agent that he had no permission to be on the ranch despite the LPP key, and escorted him off the property.

27. Subsequently, Plaintiff, Ricardo D. Palacios, encountered two CBP agents roaming aimlessly on Plaintiff’s ranch. When asked what their purpose was, the agents claimed to be lost, and could not remember how or where they gained entry onto the property. Plaintiff, Ricardo D. Palacios, suspecting that the agents had used a certain gate located at the back of the ranch, escorted the agents to that gate there let them out. The agents confirmed that that gate was the manner by which they had gained entry. After that incident, Plaintiff battened the gate to no longer allow for further entry.

28. Later still, Plaintiff’s son, Ricardo D. Palacios, Jr., encountered several U.S. CBP vehicles at the oil and gas service gate. After stopping them, Plaintiff’s son advised the agents that they were trespassing. At about this time, another appeared from within the ranch and approached the gate to exit. Plaintiff’s son asked the

agents he originally encountered on this occasion who that might be, and was told, “that is sensor tech Garza.”

29. Thereafter, Plaintiff found a ½ inch diameter, aluminum spike about two and a half feet long with a round three-inch red reflector on the top, embedded in the ground at his ranch. The “spike” remains in possession of the Plaintiff.

30. The final incident involving this sort of unlawful intrusion onto Plaintiffs’ private property occurred approximately three weeks before the filing of this action when Plaintiff, Ricardo D. Palacios encountered a surveillance camera affixed to a tree on the subject property located about one-half city block from the residence of Plaintiff’s son. Plaintiff removed the camera from the tree and took possession of it.

31. Subsequently, officials from U.S. CBP and the Texas Ranger each contacted Plaintiff in turn, claiming ownership of the camera, demanded its immediate return, with the Texas Ranger threatening to file criminal charges for theft against Plaintiff upon his refusal to surrender the camera.

32. Plaintiffs maintain that the foregoing activity constitute an on-going, concerted activity by Defendants characterized by a consistent and continued pattern of intrusions onto Plaintiff’s private property without legal justification. This action follows.

33. By motion accompanying this Original Complaint, Plaintiff tenders the camera for deposit into the registry of the court to be safely kept there as evidence of Defendants’ trespass pending the outcome of this litigation. On information and belief, and based on the representations made by CBP and the Texas Ranger, the surveillance camera in question belongs to either the U.S. CBP or the Texas Department of Public Safety, Texas Rangers Division.

34. Plaintiff claims no ownership interest in the subject camera.

35. The threat of criminal charges by the Texas Ranger and the Plaintiff insisting on protecting his person and his rights has necessitated the taking of the foregoing measure.

Section VI.

CLAIMS FOR RELIEF

36. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth. In addition, each portion below likewise will incorporate by reference any such allegation above it, also as though set forth at length therein.

37. Each Defendant was at all times an in all matters acting under color of federal and state law in regard to the acts and omissions alleged by Plaintiffs.

Section VII.

COMMON LAW TRESPASS

38. Texas law recognizes a cause of action for trespass to real property. Trespass to real property is an unauthorized entry upon the land of another, and may occur when one enters, or causes something to enter another's property. *Barnes v. Mathis*, 353 S.W. 3d 760, 763 (Tex. 2011).

39. There are three elements to a trespass cause of action: (1) entry (2) onto the property of another (3) without the property owner's consent or authorization.

40. Plaintiffs maintain that Defendants, known and unknown trespassers, have entered Plaintiffs' property repeatedly, over the landowners' objection. On such occasions, as described herein, Defendants entered onto Plaintiffs' property without a warrant, and without the legal justification that exigent circumstances might provide.

41. Defendant's trespass has been continuing and ongoing and will likely continue barring judicial relief. The Texas Supreme Court has determined that "an injury to real property is considered permanent if, even though the injury can be repaired, fixed, or restored, it is substantially certain that the injury will repeatedly continually, and regularly recur, such that future injury can be reasonably evaluated."

Section VIII.

CRIMINAL TRESPASS

42. A person who enters or remains on property...without the effective consent when the person had notice that entry was forbidden *or received notice to depart but failed to do so* commits criminal trespass [emphasis added]. Tex. Penal C. §§30.05(a) and 107(a)(5). Notice may be an oral or written communication by the owner. Tex. Penal C. §30.05(b)(2). Criminal trespass is ordinarily a Class B misdemeanor. However, if the actor carries a deadly weapon during the commission of the offense, it is a Class A misdemeanor. Tex. P. C. §30.05(d)(1) & (2).

43. Under Texas law, Defendants have criminally trespassed onto Plaintiffs' private property. For purposes of the present action, this fact serves as an aggravating factor.

Section IX.

WARRANTLESS POWERS OF IMMIGRATION OFFICERS

45. U.S. Code, Title 8, §1357, et seq., *Powers of Immigration Officers and Employees*, subsection (a)(3) (Powers without Warrant), provides that,

“...any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without a warrant...*within a distance of twenty-five miles from any...external boundary* [of the United States]...to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent illegal entry of aliens into the United States...”. [emphasis added]

46. 18 U.S. Code §2236—Searches Without Warrant, provides,

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, **or maliciously and without reasonable cause searches any other building or property without a search warrant**, shall be fined under this title for a first offense; and

for a subsequent offense, shall be fined under this title or imprisoned not more than one year, or both. [emphasis added]

Section X.

CLAIMS FOR TRESPASS

47. Plaintiff maintains that agents for CBP with names unknown, in conjunction with the Texas Ranger, have trespassed onto Plaintiffs' land in violation of the aforementioned state and federal laws. In perpetrating their trespass against Plaintiff's property rights, Defendants repeatedly referred to being within their rights, specifically mentioning the "25-mile" rule. Plaintiff having brought to the attention of U.S. CBP by formal letter-complaint dated, April 9, 2010 (Exhibit "A") notwithstanding, agents of CBP continued to trespass at will, day or night, which trespassing will undoubtedly continue if judicial relief is denied. Conversely, such unwarranted police intrusions will certainly cease if judicial relief is granted.

48. Plaintiffs maintain that in perpetrating their trespass onto Plaintiffs' property, agents of CBP and the Texas Ranger acted in violation of 8 U.S.C. §1357 (a)(3) because Plaintiffs' ranch is situated beyond 25 miles from the external boundary of the United States. CBP agents were therefore required to have either a warrant, landowner consent, or exigent circumstances none of which were present on the many times Defendants trespassed onto Plaintiffs' property. As such Defendants acted *beyond* the outer parameters of their line of duty. Their actions do not fall within the scope of official duties of government agents.

49. Plaintiffs maintain that the trespass onto Plaintiffs' property by agents of CBP, in conjunction with the Texas Ranger, constitutes an unlawful search of Plaintiffs' property, without a warrant.

Section XI.

CONSTITUTIONAL CLAIMS

50. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth. In addition, each portion below likewise will incorporate by reference any such allegation above it, also as though set forth at length therein

51. Plaintiff has a constitutional right against unreasonable searches and seizures under the 4th Amendment to the United States Constitution, and brings forth this claim under the auspices thereof.

52. Plaintiffs maintain that the on-going, unlawful, warrantless searches of Plaintiffs' property by Defendants, unsupported by any arrest, constitutes a violation of Plaintiffs' 4th amendment right to privacy. Searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the fourth amendment subject only to a few specifically established and well-delineated exceptions.

53. The warrantless placement by CBP in conjunction with the Texas Ranger of a surveillance camera in a tree on Plaintiffs' property is *per se* unreasonable because neither agency had lawful authority to be on Plaintiffs' property to begin with.

54. Defendants' violation of Plaintiffs' 4th amendment right gives rise to this "Bivens," federal cause of action for monetary damages. *Bivens vs. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L Ed.2d 619 (1971).

Section XII.

DECLARATORY RELIEF

55. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth. In addition, each portion below likewise will incorporate by reference any such allegation above it, also as though set forth at length therein

56. Plaintiffs brings forth this claim for declaratory relief pursuant to Fed. R. Civ. P. 57 and the *Declaratory Judgement Act*, 28 U.S.C. §2201 as there exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory relief because this would clear up the misapprehension of law that U.S. CBP and company are laboring under.

57. The on-going trespass by agents of CBP, in conjunction with the Texas Ranger, constitutes a violation of the warrantless authority given to CBP under 8 U.S.C. §1357(a)(3) and as such constitutes an

unreasonable search and a violation of Plaintiffs' 4th Amendment Constitutional right to be free from unwarranted governmental searches.

58. While Plaintiff does not know for certain what arrangement there exists between the U.S. CBP and the Texas Department of Public Safety, Texas Ranger Division, allowing the latter to participate with the former in the exercise of its law enforcement efforts against illegal immigration, Plaintiff suspects that an agreement pursuant to 8 U.S.C. §1357(g) has been struck between them. Discovery will bear this out.

59. In pursuing their joint efforts, Defendants have conducted themselves as described herein, and recently threatened Plaintiff, Ricardo D. Palacios with criminal charges unless he surrendered the subject camera referred to earlier. When threatened action by government is concerned, Plaintiff need not expose himself to liability before bringing suit to challenge the basis for the threat. This is exactly what the Declaratory Judgement Act was designed to address.

60. Plaintiff asks the Court to declare its rights as a private property owner as against those of U.S. CBP as a law enforcement agency vis-à-vis the proper application of 8 U.S.C. §1357(a)(3).

Section XIII.

DAMAGES

61. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

62. As a direct result of Defendants' ongoing trespass onto Plaintiffs' property, plaintiff has suffered general damages including mental and emotional distress for which Plaintiffs seek compensation in the amount of \$500,000.00;

63. Defendant's conduct was intentional, or recklessly or callously indifferent to Plaintiff's protected for which Plaintiffs are entitled to punitive damages.

64. It was necessary for Plaintiffs to hire the undersigned attorneys to file this lawsuit. Upon judgement, Plaintiffs are entitled to a n award of attorney fees and costs under Fed. R. Civ. P. 57, and the Declaratory Judgement Act, 28 U.S.C. §2201.

65. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a jury trial for all issues in this matter.

Section XIV.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully requests the Court to enter judgement as follows:

- A. That the Court declare that Plaintiffs' property is beyond 25 miles from the external boundary of the United States;
- B. That the Court declare that Defendants' entering Plaintiffs' private property without a warrant; without exigent circumstances; and, without landowner consent exceeds the outer parameters of authority granted to U.S. CBP for warrantless excursions onto private property which is limited to 25 miles from the external boundary of the United States;
- C. That Plaintiffs be awarded compensatory damages in the amount of \$500,000.00;
- D. That Plaintiffs be awarded punitive damages;
- E. That Plaintiffs be awarded attorney fees; and,
- F. That Plaintiffs be granted any further relief to which they may be entitled at law or equity and as the Court may deem proper.

Respectfully submitted,

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