

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS**

COMPLAINT

1. This is an action to recover damages and civil penalties for violations of Plaintiff's civil rights protected under the Fourth, Fifth and Fourteenth Amendments.

I. PARTIES

2. Plaintiff Eduardo Gonzalez is a resident of Houston, Texas, residing at 1139 Piedmont Creek Trail, Houston, Texas 77073.
 3. Defendants U.S. Border Patrol, US Department of Homeland Security and U.S. Customs and Border Protection are entities that are located within the Southern District of Texas, and are active in the District territory. They are located at 9149 TX-44, Corpus Christi, Texas, 78406.

II.

VENUE, JURISDICTION AND CONDITIONS PRECEDENT

4. The Court has subject matter jurisdiction because this action arises under 42 U.S.C. § 1983. An individual who believes that their constitutional rights have been violated may bring a civil action against the government to recover the damages sustained as a result of that violation.
5. Specifically, 42 USC §1983 “provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.” *Gomez v. Toledo*, 446 US 635, 638 (1980) (*internal quotations omitted*).
6. This Court has personal jurisdiction over these claims as all the incidents stated in this suit occurred within the Southern District of Texas.
7. Plaintiff affirmatively avers that all condition precedents to filing this suit have taken place.

III.

FACTUAL BACKGROUND

8. On April 22, 2015, after spending a few days hunting with his father at a lease near Rio Grande, TX, Plaintiff Gonzalez began to make his way home back to Houston, TX. Plaintiff Gonzalez chose to go through Alice, TX, and was heading north east on road 359 all the way to Skidmore, TX. He then made a left going towards Beeville, TX. It was approximately 8 p.m. and was dark outside.

9. Plaintiff Gonzalez was driving on road 181 on the inside lane when a vehicle approached from the rear, and began tailgating Plaintiff Gonzalez in an unsafe manner. Plaintiff Gonzalez changed lanes and moved to the right so the car could safely pass. When the vehicle passed, Plaintiff Gonzalez noticed it was a marked Border Patrol agent vehicle. This did not cause any concern to Plaintiff Gonzalez as he was not doing anything illegal, and thought the agent driving the car was in a hurry.
10. Plaintiff Gonzalez continued towards Beeville and passed another Border Patrol vehicle that was off to the side of the road. When Plaintiff Gonzalez arrived in Beeville, TX, he stopped at a gas station to get fuel, and then went to McDonald's to have a meal. During this time he had been attempting to contact his wife, but he was having issues with his phone.
11. After his meal, Plaintiff Gonzalez drove to a nearby Wal-Mart, and parked his truck, a 2010 Black Dodge Ram 1500, in the parking lot and made his way to the entrance to the Wal-Mart. At the entrance he noticed a Beeville Police Officer vehicle parked outside the entrance of the Wal-Mart. Plaintiff Gonzalez greeted the officer as he was walking out of the store.
12. Plaintiff Gonzalez proceeded inside to get a new phone. He was in the store for approximately fifteen minutes, and left the store and walked toward his vehicle.
13. As he approached his truck, he noticed the same Beeville Police Officer parked behind the truck. When Plaintiff Gonzalez got near the door of the truck, the officer exited his patrol car and approached him and said, "Hang on for a second".

14. The officer then asked a few questions; “Where was he coming from?”, “What was he doing in this town?”; “Where was he going?”; “How long was he over there?”; “Was he travelling alone?” these were among the number of questions that were asked.
15. Plaintiff Gonzalez asked the officer what seemed to be the problem, to which the officer told him that his vehicle matched the description of a vehicle that was involved in some illegal activity. The officer then asked Plaintiff Gonzalez for his driver’s license, and he asked him to hang tight, and that the Border Patrol wanted to speak to him.
16. A few minutes later, two Border Patrol Agents arrived in two separate vehicles and asked the same questions as the Beeville police officer, including, “What was someone from Houston doing in this area?”, and also asked if there was another vehicle that was following Plaintiff Gonzalez.
17. Plaintiff Gonzalez told the officer that he was traveling alone, and was heading home and that there was a Border Patrol vehicle that was tailgating him earlier.
18. The officer also asked if Plaintiff Gonzalez had turned around at any point while he was traveling. Plaintiff Gonzalez informed the agent that he did not and it would be unnecessary and inconvenient to do so because he was headed home.
19. After hearing Plaintiff Gonzalez’s responses, the Border Patrol agent became visibly aggravated and then accused Plaintiff Gonzalez of the crime of transporting illegal aliens with no proof, evidence, or probable cause.
20. Plaintiff Gonzalez denied this accusation. The officer asked Plaintiff Gonzalez if he could search his vehicle. Plaintiff Gonzalez, confused by what was happening, and believing that he would be released once he let the agents search his truck, agreed to the search.

21. The officer then proceeded to search the vehicle, as well as searched Plaintiff Gonzalez.

After finding no evidence of any wrong doing, the agent spoke to the other Border Patrol agent, and then placed Plaintiff Gonzalez in handcuffs and placed him in the back seat of the Border Patrol unit.

22. The Border Patrol agents insisted that Plaintiff Gonzalez was transporting aliens, and he was taken to a Border Patrol Station out in Corpus Christi TX, (approximately 57 miles away) where he was placed in a small holding cell.

23. After being placed in the holding cell, Plaintiff Gonzalez was then taken out from the holding cell and was fingerprinted photographed, and questioned about any gang affiliations, which Plaintiff Gonzalez denied.

24. During the arrest, the booking and the questioning, Plaintiff Gonzalez had not been read his Miranda Warnings.

25. Plaintiff Gonzalez was then placed back into the holding cell, and was removed later in order to count the money that they officers had found in his vehicle, which amounted to nothing more than some spare changes and a few dollars. During the entire process, Plaintiff Gonzalez kept asking what was going on. He also asked to make a phone call to his wife in order to tell her where he was, and he was denied any such phone call.

26. Plaintiff Gonzalez was then told that he was going to be charged with transporting illegal aliens and that they were going to speak to the U.S. District Attorney in order to get confirmation on the charges.

27. Sometime later, Plaintiff Gonzalez was then taken out of the holding cell in order to speak to an investigator. Plaintiff Gonzalez was asked similar questions as to the ones previously asked by the Border Patrol agents. He was then returned to the holding cell.

28. Soon after, Plaintiff Gonzalez was taken out the cell for a last time and was informed that the U.S. District Attorney did not want to proceed with any type of case and that Plaintiff Gonzalez was being released.
29. Plaintiff Gonzalez spent approximately fourteen hours at the station, being illegally detained.
30. Plaintiff Gonzalez was told that his truck was going to be seized, and that he could not drive it home. He was told that he would receive information in the mail on how to retrieve it at a later date.
31. Plaintiff Gonzalez was given a trash bag with his belongings that were taken from his vehicle, and then was asked to sign a release form. Plaintiff Gonzalez was under duress when this form was signed.
32. Plaintiff Gonzalez was then taken to a nearby gas station where he had to purchase a bus ticket to get home back to Houston (a distance of over 180 miles).
33. Days after returning home, Plaintiff Gonzalez hired an attorney to assist with retrieving his personal vehicle that was illegally seized.
34. Plaintiff Gonzalez was charged \$5,000 to file the paperwork.
35. Approximately six months later, Plaintiff Gonzalez was called from the asset forfeiture office and was told he could pick up his vehicle at an impound yard near McAllen TX.
36. Plaintiff Gonzalez was then charged another \$1,000 to retrieve the truck from the impound lot, along with the additionally expenses of travelling to the impound lot.
37. In 2016, Plaintiff Gonzalez decided to apply for a TWIC card to be able to enter the Houston ports for business reasons.

38. He received notice from TWIC that he was not eligible to obtain the TWIC card due to a charge of transporting aliens in 2015. He also received a similar letter when he tried to renew his Concealed Handgun License.
39. Plaintiff Gonzalez hired yet another attorney to assist him, and after doing a search, it was revealed that no charges had been filed in regards to the illegal arrest. However, the illegal arrest was showing on his record.
40. Plaintiff Gonzalez then decided to pursue his career goal of becoming a police officer. He enrolled in the University of Houston Police academy, and after his fingerprints were run for a background check, he was informed that he could not attend the Academy unless he could show proof that the charges of transporting aliens had been dropped.
41. Plaintiff Gonzalez contacted the U.S. Border Patrol, was asked to call a different department, and the U.S. Border Patrol gave him a number to a cruise line.
42. After several days of trying to contact someone who could help him, Plaintiff Gonzalez contacted his U.S. State Representative. Because there were no official charges that were filed, it was difficult to get anything expunged. However, it is clear that the illegal arrest happened, and the arrest is showing on his record.
43. The illegal arrest is preventing Plaintiff Gonzalez from moving forward as a police officer as he has been unable to secure employment in his chosen field. This has caused him to lose wages as he has to take lower paying jobs while not working in his chosen profession.
44. This impact is a direct result of the illegal stop and search that was made by the U.S. Border Patrol. Additionally, the last communication that Plaintiff Gonzalez had from the U.S. Border Patrol was that they refused to remove the arrest from his record.

IV.

4thAMENDMENT VIOLATIONS

45. The 4th Amendment states that all citizens have, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Illegal search and seizure is directly referred to within the 4th Amendment. In order for the police to stop and search a person or seize anything, probable cause needs to exist, and in some cases, reasonable suspicion.
46. In *Gomez v. Toledo*, the United States Supreme Court determined that only two elements must be pled to properly assert a cause of action under 42 USC §1983. First, the Plaintiff must specifically identify the constitutional right of which he or she was deprived. *Id. at 640*. Second, the Plaintiff must assert that “the person who deprived him of that federal right acted under color of state or territorial law.” *Id. at 640*.
47. Therefore, the individual who deprived the Plaintiff of the right must have been acting for or on behalf of a governmental entity at the time the right was denied. However, an agent of the government who is abusing his position or the power conferred upon him is still acting under the “color of law” and is thus subject to §1983 actions. *Monroe v Pape*, 365 US 167, 172 (1960).
48. Plaintiff Gonzalez has identified the constitutional rights that he was deprived; the 4th, 5th and 14th Amendments. This satisfies the first prong under Gomez.
49. Plaintiff Gonzalez has satisfied the second prong under Gomez as the U.S. Border Patrol officers were acting under the color of law, as they were acting in their official capacities of agents of the U.S. Border Patrol.

50. Additionally, they exceeded and abused their power by making a “stop” that was not at a fixed station of border patrol, and was more than the legal limit in nautical miles from the nearest border. Beeville, Texas, specifically the Wal-Mart where Plaintiff Gonzalez was detained, is 134 miles from the closest border, which is in Laredo, Texas.

51. The nautical mile conversion equates to 116.44 nautical miles.

52. The legal jurisdiction for the U.S. Border Patrol to make a roving stop is 100 nautical miles from the closest border. Thus, the U.S. Border Patrol agents exceeded and abused their power.

53. U.S. Border Patrol agents acted with malice. In this situation, “Malice” means that the U.S. Border Patrol agents intended to illegally search and arrest the Plaintiff without probable cause. Looking for a black truck does not rise to the level of probable cause.

**V.
5th and 14th AMENDMENT VIOLATIONS**

54. The 5th Amendment states in part that, “No person shall be deprived of life, liberty, or property, without due process of law”.

55. A person is deprived of liberty if that person is detained or not free to leave on their own accord.

56. From the point of contact with the U.S. Border Patrol agents, Plaintiff Gonzalez was not free to leave. The U.S. Border Patrol agents blocked Plaintiff Gonzalez’s exit and questioned him without due process.

57. The U.S. Border Patrol agents arrested Plaintiff Gonzalez and questioned him without reading the Miranda Warnings, which is a further violation of due process.

58. Denying Plaintiff Gonzalez due process are violations of the 5th and 14th Amendments.

VI.
CAUSES OF ACTION

COUNT I

(Right to Be Secure From Unreasonable Seizures 42 U.S.C. §1983 - Fourth Amendment)

59. Plaintiffs re-allege and incorporate the allegations set forth in the preceding paragraphs as though fully set forth herein.
60. Defendants and their employees and agents violated Plaintiff's Fourth Amendment rights to be free from unreasonable search and seizure of their person and property by illegally stopping and detaining the Plaintiff without probable cause.
61. Additionally, Plaintiff's property was unlawfully detained and impounded and held for an unreasonable amount of time. The Plaintiff incurred monetary damages to retrieve said property. These unlawful actions were done with the specific intent to deprive Plaintiff of his constitutional rights to be free from unlawful search and seizure.
62. Defendant agents lacked probable cause to detain Plaintiff during the stop, or in the alternative, Defendant agents detained Plaintiff for an unreasonable amount of time.
63. Defendant agents lacked probable cause to interrogate Plaintiff.
64. Defendant agents lacked probable cause to seize and search Plaintiff's vehicle.
65. Defendant agents' acts were objectively unreasonable. Plaintiff Gonzalez was stopped first, accused of crime, and then searched. Any consent given by Plaintiff Gonzalez was not valid because Plaintiff Gonzalez had already been stopped and accused of a crime without probable cause or reasonable suspicion.
66. Any consent that was given is irrelevant as Plaintiff Gonzalez's 4th amendment rights were already violated.

67. The fact that the Border Patrol agents were looking for a black truck is too vague to give rise to probable cause or reasonable suspicion to make a stop and search. There are thousands of black trucks on the roadway, and there are thousands of black dodge trucks that are on the roadway.
68. The Defendant U.S. Border Patrol agents did not have a plate number, nor did they say that they were looking for the Plaintiff specifically as identified by his plate number.
69. To stop and search “a black truck” is too thin an assumption to give rise to probable cause or reasonable suspicion.
70. Thus, the U.S. border Patrol agents violated Plaintiff’s 4th amendment constitutional rights.
71. When Plaintiff Gonzalez gave consent for the search, his consent was invalid as the violation against his 4th Amendment rights had already occurred.
72. Plaintiff Gonzalez’s freedom had already been deprived as they prevented him from leaving by blocking his vehicle.
73. Further, once the U.S. Border Patrol agents searched the truck, as well as Plaintiff Gonzalez, and found no evidence, they arrested Plaintiff Gonzalez and continued to deprive him of his freedom.
74. The arrest of Plaintiff Gonzalez is an additional violation of Plaintiff Gonzalez’s 4th amendment rights from unreasonable searches and seizures.
75. The U.S. Border Patrol had no probable cause or reasonable suspicion to detain Plaintiff Gonzalez.
76. After illegally searching both Plaintiff Gonzalez and Plaintiff Gonzalez’s truck, the U.S. Border Patrol found no evidence that Plaintiff Gonzalez had been transporting any

illegal aliens. However, acting with malicious intent, the Border Patrol agents then arrested Plaintiff Gonzalez and put him in the back of their patrol vehicle (they were more than 100 nautical miles from the border).

77. Once Plaintiff Gonzalez was placed in the vehicle, he was driven approximately 57 miles to the Corpus Christi holding area.

78. The Defendant agents' acts were unreasonable.

79. Defendants' actions continue to cause embarrassment, humiliation, pain and suffering and mental and emotional distress.

COUNT II

(Right to due process of law 42 U.S.C. § 1983-5th and 14th Amendments)

80. Plaintiffs re-allege and incorporate the allegations set forth in the preceding paragraphs as though fully set forth herein.

81. Once Plaintiff Gonzalez was transported to Corpus Christi, the U.S. Border Patrol then placed him in a cell, and removed him on certain instances to further question him or to go over the inventory of his seized truck.

82. During the questioning, Plaintiff Gonzalez was never read his Miranda Warnings.

83. Plaintiff was clearly under arrest and was being questioned by the U.S. Border Patrol agents.

84. Plaintiff was denied due process during this time, as well as when the initial contact was made in Beeville, TX.

85. Additionally, Plaintiff Gonzalez asked several times to make a phone call, as he wanted to alert his wife to what was going on. Plaintiff Gonzalez was denied the right to make a phone call.

86. These instances are further examples of violations of Plaintiff Gonzalez's 5th Amendment rights and 14th Amendment rights.
87. Plaintiff Gonzalez was illegally held for over fourteen hours. Plaintiff Gonzalez never should have been stopped and questioned as the U.S. Border Patrol did not have probable cause or reasonable suspicion to stop him. Plaintiff Gonzalez's 4th Amendment rights were violated all the way back at the initial contact point in Beeville, Texas. Any and all subsequent issues dealing with Plaintiff Gonzalez is a continuation of the violations against his 4th Amendment constitutional rights, his 5th Amendment Constitutional rights and his 14th Amendment Constitutional rights, and is further evidence that the U.S. Border Patrol agents were acting with malicious intent.
88. The arrest of Plaintiff was wrongful, without probable cause and deprived Plaintiff of his liberty, which is a violation of his Fifth and Fourteenth Amendment rights to due process.
89. The actions of Defendant officers proximately caused damages to Plaintiff in loss of liberty, embarrassment, humiliation, pain and suffering and mental and emotional distress.
90. Defendant officers acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive the Plaintiff of his Constitutional Rights. As a result of the nature of Defendants' conduct, Plaintiff is entitled to recover punitive damages against the Defendants.
91. The actions of the Defendant officers were the result of either a lack of training and supervision or a de facto policy of failing to comply with Fifth and Fourteenth Amendment Standards on the part of United States Border Patrol.

92. Defendant agents' acts were objectively unreasonable.
93. Defendant agents' deprivation of Plaintiff's rights caused Plaintiff damages.
94. Defendant agents acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive Plaintiff of his Constitutional Rights. As a result of the nature of Defendant's conduct, Plaintiff is entitled to recover punitive damages.
95. Defendant agents did not obtain a warrant to arrest Plaintiff.
96. Defendants' actions continue to cause embarrassment, humiliation, pain and suffering and mental and emotional distress.

VII.

PRAYER

Plaintiff incorporates the preceding paragraphs by reference herein.

WHEREFORE, Plaintiff seeks the following relief:

- I. Actual and compensatory damages sufficient to make him whole, which equates to \$363,000.00
- II. Punitive damages against Defendants sufficient to punish them and to deter further wrong doing, which equates to \$1,000,000.00
- III. Pain and suffering, mental anguish, which equates to \$8,000,000.00
- IV. Treble damages;
- V. To have the arrest expunged from Plaintiff's record;
- VI. Attorneys' fees, litigation expenses, costs, pre- and post-judgment interest as provided by law; and

VII. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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