

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

OSCAR ALMAGUER,	§	
<i>Plaintiff,</i>	§	
	§	CIVIL ACTION NO. _____
vs.	§	
	§	JURY DEMAND
AGENT J. CASTILLO, AGENT M.	§	
RUDD, AGENT J. TREVINO and ONE	§	
UNKNOWN CUSTOMS AND BORDER	§	
PROTECTION AGENT, in their	§	
individual capacities,	§	
<i>Defendants.</i>	§	

ORIGINAL COMPLAINT

PRELIMINARY STATEMENT

Plaintiff Oscar Almaguer files this lawsuit against Defendants, U.S. Customs and Border Protection (“CBP”) Agent J. Trevino, CBP Agent J. Castillo, CBP Agent M. Rudd, and One Unknown CBP Agent, in their individual capacities, alleging violations of his civil rights and requesting relief under the U.S. Constitution.

On or about February 6, 2015, Plaintiff Oscar Almaguer, a then 58 year-old citizen of the United States and veteran of the United States Navy and transgender individual¹, attempted to enter the United States from Mexico at the Gateway International Bridge in Brownsville, Texas. Defendants initially denied Mr. Almaguer entry to the United States and later detained, struck Mr. Almaguer in the groin, and subjected him to a humiliating groping of his genitals and anus. Nothing in Mr. Almaguer’s conduct suggested that he was breaking the law or otherwise

¹ Plaintiff Oscar Almaguer is referred to in this Original Complaint using masculine titles and pronouns because these are Mr. Almaguer’s preferred titles and pronouns, because he has not legally changed his name, and for the purpose of providing clarity in this Original Complaint. The use of masculine titles and pronouns does not affect his identity as a transgender individual.

justified this invasive search and the intentional, malicious and humiliating conduct of the agents.

Mr. Almaguer brings this action to challenge his unlawful detention, unlawful search, and Defendants' use of excessive use of force. He seeks monetary relief against Defendants pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) ("Bivens").

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiff's Bivens claims is proper under 28 U.S.C. § 1331.
2. Venue is proper in the Southern District of Texas, Brownsville Division under 28 U.S.C.A § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

3. Plaintiff Oscar Almaguer currently resides in the city of Fountain, El Paso County, Colorado.
4. Defendant Agent J. Trevino was at all times relevant to this lawsuit a law enforcement officer employed by the United States of America as an agent of the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security. Agent J. Trevino is or was empowered by law to execute detentions, to perform searches, to seize evidence, and to make arrests for violations of federal law. Defendant Agent J. Trevino is sued in his individual capacity.
5. Defendant Agent J. Castillo was at all times relevant to this lawsuit a law enforcement officer employed by the United States of America as an agent of the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security. Agent J. Castillo is or was

empowered by law to execute detentions, to perform searches, to seize evidence, and to make arrests for violations of federal law. Defendant Agent J. Castillo is sued in his individual capacity.

6. Defendant Agent M. Rudd was at all times relevant to this lawsuit a law enforcement officer employed by the United States of America as an agent of the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security. Agent M. Rudd is or was empowered by law to execute detentions, to perform searches, to seize evidence, and to make arrests for violations of federal law. Defendant Agent M. Rudd is sued in his individual capacity.

7. Upon information and belief, Defendant One Unknown Customs and Border Protection Agent (“Unknown CBP Agent” or “Unknown Border Patrol Agent”) was at all times relevant to this lawsuit a law enforcement officer employed by the United States of America as an agent for U. S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security. Defendant Unknown CBP Agent is or was empowered by law to execute detentions, to perform searches, to seize evidence, and to make arrests for violations of federal law. Defendant Unknown CBP Agent is sued in his individual capacity.

STATEMENT OF FACTS

8. Oscar Almaguer is a 60 year-old United States citizen and veteran of the U.S. Navy. Mr. Almaguer is a transgender individual. His assigned sex at birth was male, but Plaintiff is transitioning to female and has physical characteristics typically associated with females. Plaintiff has been undergoing hormone replacement therapy since the 1980s and has been consistently taking hormone replacement therapy medication since about July of 2013. On the day of the incident giving rise to this suit, Plaintiff exhibited physical characteristics typically associated with females including, but not limited to, softened facial features, long hair, and

developing breasts. Plaintiff also consistently dresses in a style typically associated with females and was dressed in this style on the day of the incident giving rise to this suit.

9. On or about Friday, February 6, 2015, at approximately 10:30 A.M., Mr. Almaguer attempted to enter the United States from Mexico at the Gateway International Bridge in Brownsville, Texas.

10. Mr. Almaguer does not own a passport because he cannot afford a passport. He presented his valid Texas Driver's License and valid identification from United States Department of Veterans Affairs to Defendant Agent J. Trevino, the first agent he encountered at the bridge on February 6, 2015.

11. Mr. Almaguer also declared a small amount of personal use hormone replacement therapy medication at the bridge when he attempted to enter the United States. Mr. Almaguer handed a paper bag that contained Mr. Almaguer's prescription for the medication and the medication itself for inspection to Agent J. Trevino when he arrived at the bridge on February 6, 2015.

12. Initially, Agent J. Trevino denied Mr. Almaguer entry to the United States, handed Mr. Almaguer his identification cards and the paper bag containing his medication and prescription, and told Mr. Almaguer to return to Mexico. Agent J. Trevino made no inquiry regarding Mr. Almaguer's U.S. citizenship to determine whether it was accurate or false.

13. Nonetheless, Mr. Almaguer told Agent J. Trevino that he was a citizen of the United States and, at the time, a resident of Brownsville, Texas. He explained to Agent J. Trevino that he had been allowed to enter the United States at the Gateway International Bridge with the same prescribed personal use medication and the same forms of identification on several previous occasions. Agent J. Trevino continued to deny Mr. Almaguer entry into the United States and

told him to return to Mexico. Again, Agent J. Trevino made no inquiry into Mr. Almaguer's citizenship, nor did he make any further inquiry about Mr. Almaguer's medication or any other conduct that would suggest Agent J. Trevino suspected Mr. Almaguer was engaging in any criminal activity.

14. Mr. Almaguer asked to speak to a supervisor. Agent J. Trevino then left the kiosk where he was sitting and spoke to Defendant Agent J. Castillo. Minutes later Agent J. Castillo, wearing latex gloves, appeared at the kiosk where Mr. Almaguer was waiting next to Agent J. Trevino and escorted Mr. Almaguer to a room inside of the CBP office at the Gateway International Bridge.

15. Immediately upon entering this room, without asking any questions of Mr. Almaguer and without provocation by Mr. Almaguer, Agent J. Castillo and Defendant Agent M. Rudd grabbed Mr. Almaguer and restrained him face first against a wall. Upon information and belief, neither Agent J. Castillo nor Agent M. Rudd made any attempt to confirm Mr. Almaguer's identity or claim of U.S. Citizenship prior to restraining him, nor did they attempt to conduct a pat-down search or explain to Mr. Almaguer why he would be searched.

16. Agent J. Castillo then began to aggressively search Mr. Almaguer's person while Defendant M. Rudd held Mr. Almaguer against the wall. During this search, J. Castillo grabbed and tightly squeezed Mr. Almaguer's developing breasts causing Mr. Almaguer pain. After completing a search of one of Mr. Almaguer's legs, Agent J. Castillo intentionally and maliciously struck Mr. Almaguer in his groin causing Mr. Almaguer severe pain.

17. Mr. Almaguer asked Agent J. Castillo why the agent struck him. Immediately after asking this question, M. Rudd hit the back of Mr. Almaguer's neck and continued to apply pressure, forcing Mr. Almaguer's face against the wall. Agent M. Rudd also held Mr.

Almaguer's left arm outstretched against the wall. A third CBP agent, Defendant Unknown CBP Agent, held Mr. Almaguer's right arm outstretched against the wall. Mr. Almaguer was unable to move in this position.

18. As Mr. Almaguer remained restrained, Agent J. Castillo pulled Mr. Almaguer's waistband away from his body and inserted his hand and forearm, on which he wore a latex glove, inside Mr. Almaguer's pants. Agent J. Castillo proceeded to grope Mr. Almaguer's genitals and anus while he remained restrained against the wall. Mr. Almaguer did not physically resist this invasive search but stated on multiple occasions that he did not consent to such an invasive search and requested to have an attorney present.

19. This invasive and unreasonable search caused Mr. Almaguer emotional distress, mental anguish, extreme humiliation, loss of dignity, and physical pain. Immediately after the groping by Agent J. Castillo, Mr. Almaguer turned away from the wall and saw several CBP agents who had entered the room to witness the search and were laughing at Mr. Almaguer.

20. Defendant Agent M. Rudd then escorted Mr. Almaguer first to another enclosed room in the CBP office. Agent M. Rudd threw the medication that Mr. Almaguer had earlier declared to Agent J. Trevino at his chest. The medication hit Mr. Almaguer's chest and fell to the floor. Terrified of making any movements that Agent M. Rudd might perceive as resistance or an attempt to escape, Mr. Almaguer did not attempt to pick up the medication. Agent M. Rudd then escorted Mr. Almaguer to a waiting area outside of the second enclosed room. Agent M. Rudd told Mr. Almaguer to sit down, not to move, and not to talk. On multiple occasions Agent M. Rudd threateningly motioned towards Mr. Almaguer as if he were going to strike Mr. Almaguer with his elbow.

21. After several minutes of waiting, another CBP agent by the name R. Villarreal entered the waiting area and informed Mr. Almaguer that he was a supervisor. Agent R. Villarreal handed Mr. Almaguer's his driver's license and identification card from the U.S. Department of Veterans Affairs. Mr. Almaguer explained to Agent R. Villarreal that he had been subjected to the above-described conduct and requested the name, including first initial, and badge number of each involved agent so that he could make a complaint regarding the incident. Agent R. Villarreal initially refused to provide this information. Later Agent R. Villarreal agreed to provide the first initial and last names of Agent J. Castillo and Agent M. Rudd, but not their badge numbers and no identifying information for the Defendant Unknown CBP Agent.

22. Agent R. Villarreal and another CBP agent named E. Villarreal talked to Mr. Almaguer for several minutes after the above-described search and attempted to dissuade Mr. Almaguer from filing a complaint with the U.S. Department of Homeland Security, Office for Civil Rights. Mr. Almaguer broke down into tears for several minutes during this encounter. After meeting with agents R. Villarreal and E. Villarreal, Mr. Almaguer was allowed to enter the United States with his medication. The entire encounter lasted approximately 4 hours.

CAUSES OF ACTION

Bivens – Unlawful detention in violation of the 4th Amendment.

23. Plaintiff re-alleges and incorporates by reference paragraphs 1-22 above.

24. At all times relevant to this action, Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent were acting under color of federal law

25. The Fourth Amendment to the U.S. Constitution provides that each person has a right to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures.

26. By committing the above-described acts Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent violated Plaintiff Oscar Almaguer's right to be free from unreasonable seizure as guaranteed by the Fourth Amendment.

27. Because Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent acted in clear violation of well-settled law at the time their conduct was performed, of which a reasonable person would have been aware, Defendants are not entitled to a good faith defense or official immunity defense.

28. In performing the above-described acts, Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent caused Mr. Almaguer's injuries including emotional distress, mental anguish, humiliation, loss of dignity, and physical pain.

29. Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent performed the above-described acts knowingly, intentionally, maliciously, with deliberate, reckless or callous indifference to Plaintiff Oscar Almaguer's civil and constitutional rights and/or with intent to injure, harass, and oppress Mr. Almaguer. Accordingly, Plaintiff Oscar Almaguer is entitled to punitive damages against each Defendant.

30. Violations of Plaintiff Oscar Almaguer's Fourth Amendment rights by Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent give rise to a cause of action for damages against these Defendants in their individual capacities, pursuant to Bivens.

Bivens – Unlawful search in violation of the 4th Amendment.

31. Plaintiff re-alleges and incorporates by reference paragraphs 1-30 above.

32. At all times relevant to this action, Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent were acting under color of federal law

33. The Fourth Amendment to the U.S. Constitution provides that each person has a right to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures.

34. By committing the above-described acts Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent violated Plaintiff Oscar Almaguer's right to be free from unreasonable search as guaranteed by the Fourth Amendment.

35. Because Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent acted in clear violation of well-settled law at the time their conduct was performed, of which a reasonable person would have been aware, Defendants are not entitled to a good faith defense or official immunity defense.

36. In performing the above-described acts, Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent caused Mr. Almaguer's injuries including emotional distress, mental anguish, humiliation, loss of dignity, and physical pain.

37. Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent performed the above-described acts knowingly, intentionally, maliciously, with deliberate, reckless or callous indifference to Plaintiff Oscar Almaguer's civil and constitutional rights and/or with intent to injure, harass, and oppress Mr. Almaguer. Accordingly, Plaintiff Oscar Almaguer is entitled to punitive damages against each Defendant.

38. Violations of Plaintiff Oscar Almaguer's Fourth Amendment rights by Defendants Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent give rise to a cause of action for damages against these Defendants in their individual capacities, pursuant to Bivens

Bivens – Excessive force in violation of the 4th Amendment.

39. Plaintiff re-alleges and incorporates by reference paragraphs 1-38 above.

40. At all times relevant to this action, Defendants Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent were acting under color of federal law.

41. The Fourth Amendment to the U.S. Constitution provides that each person has a right to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, including detentions and searches performed with excessive force.

42. By committing the above-described acts Defendants Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent violated Plaintiff Oscar Almaguer's right to be free from the use of excessive force as guaranteed by the Fourth Amendment. Defendants' use of excessive force during the detention and search was objectively unreasonable under the circumstances.

43. Because Defendants Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent acted in clear violation of well-settled law at the time their conduct was performed, of which a reasonable person would have been aware, Defendants are not entitled to a good faith defense or official immunity defense.

44. Defendants' Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent use of excessive force caused Mr. Almaguer's injuries including emotional distress, mental anguish, humiliation, loss of dignity, and physical pain.

45. Defendants Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent performed the above-described acts knowingly, intentionally, maliciously, with deliberate, reckless or callous indifference to Plaintiff Oscar Almaguer's civil and constitutional rights and/or with intent to injure, harass, and oppress Mr. Almaguer. Accordingly, Plaintiff Oscar Almaguer is entitled to punitive damages against each Defendant.

46. Violations of Plaintiff Oscar Almaguer's Fourth Amendment rights by Defendants Agents J. Castillo, M. Rudd and Unknown CBP Agent give rise to a cause of action for damages against these Defendants in their individual capacities, pursuant to Bivens

Bivens – Denial of substantive due process in violation of the 5th Amendment.

47. Plaintiff re-alleges and incorporates by reference paragraphs 1-46 above.

48. At all times relevant to this action, Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent were acting under color of federal law.

49. The Fifth Amendment to the U.S. Constitution requires that no person shall be deprived of life, liberty, or property without due process of law.

50. By committing the above-described acts Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent violated Plaintiff Oscar Almaguer's right to substantive due process as guaranteed by the Fifth Amendment.

51. Because Defendants acted in clear violation of well-settled law at the time their conduct was performed, of which a reasonable person would have been aware, Defendants are not entitled to a good faith defense or official immunity defense.

52. In performing the above-described acts, Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent caused Mr. Almaguer's injuries including emotional distress, mental anguish, humiliation, loss of dignity, and physical pain.

53. Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent performed the above-described acts knowingly, intentionally, maliciously, with deliberate, reckless or callous indifference to Plaintiff Oscar Almaguer's civil and constitutional rights and/or with intent to injure, harass, and oppress Mr. Almaguer. Defendants' conduct shocks the

contemporary conscience. Accordingly, Plaintiff Oscar Almaguer is entitled to punitive damages against each Defendant.

54. Violations of Plaintiff Oscar Almaguer's Fifth Amendment rights by Defendants gives rise to a cause of action for damages against these Defendants in their individual capacities, pursuant to Bivens.

DAMAGES

55. Mr. Almaguer seeks damages for the emotional distress, mental anguish, humiliation, loss of dignity, and physical pain he suffered as a result of Defendants' conduct.

56. Mr. Almaguer is entitled to actual, compensatory, and punitive damages.

JURY TRIAL DEMAND

57. Mr. Almaguer demands a jury trial on his Bivens claims.

PRAYER AND RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court provide the following relief:

- a) Award Plaintiff Almaguer actual, compensatory, and punitive damages, in an amount to be determined at trial, against Defendants Agent J. Trevino, Agent J. Castillo, Agent M. Rudd and Unknown CBP Agent for claims arising under the U.S. Constitution;
- b) Award Plaintiff Almaguer any other relief that this Court deems just and proper at law or in equity.

Respectfully submitted,

TEXAS RIOGRANDE LEGAL AID, INC.

/s/ Peter McGraw

Peter McGraw

Attorney in Charge for Plaintiff

State Bar No. 24081036

S.D. Tex. No. 2148236

316 South Closner Blvd.

Edinburg, Texas 78539

Phone: (956) 393-6230

Fax: (956) 383-4688

pmcgraw@trla.org

Susan L. Watson

Texas RioGrande Legal Aid, Inc.

311 Plus Park, Ste. 135

Nashville, TN 37217

Tel: (615) 750-1200

Fax: (615) 366-3349

Federal ID No. 567690

Texas Bar No. 24028115

swatson@trla.org