

1 Eugene G. Iredale: SBN 75292
email: eiredale@iredalelaw.com
2 Julia Yoo: SBN 231163
email: jyoo@iredalelaw.com
3 Lauren I. Freidenberg: SBN 312428
email: lfreidenberg@iredalelaw.com
4 **IREDALE & YOO, APC**
105 West F Street, Fourth Floor
5 San Diego, CA 92101-6036
6 (619) 233-1525
(619) 233-3221 Fax
7

8 Attorneys for Plaintiffs JESUS CASTELLANOS and RAQUEL CASTELLANOS

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 JESUS CASTELLANOS, an
12 individual, and RAQUEL
13 CASTELLANOS, an individual

14 Plaintiff,

15 v.

16 THE UNITED STATES OF
17 AMERICA, and DOES 1 – 15,
18 inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

CASE NO.

COMPLAINT FOR:

- 1) Excessive Force (*Bivens*)
- 2) Retaliation (*Bivens*)
- 3) Unlawful Detention and False Arrest (*Bivens*)
- 4) Assault (Federal Tort Claims Act)
- 5) Battery (Federal Tort Claims Act)
- 6) Negligence (Federal Tort Claims Act)
- 7) Intentional Infliction of Emotional Distress (Federal Tort Claims Act)
- 8) Bane Act, Cal. Civ. Code § 52.1 (Federal Tort Claims Act)

**JURY TRIAL IS HEREBY
DEMANDED PURSUANT TO FRCP
RULE 38**

1 COME NOW Plaintiffs JESUS CASTELLANOS and RAQUEL
2 CASTELLANOS, through their attorneys of record, Iredale and Yoo, APC, and
3 allege and complain as follows:

4 **INTRODUCTION**

5 On December of 2017, at the Calexico Port of Entry, Doe CBP agents
6 brutalized Plaintiff Jesus Castellanos, then 75 years old, causing multiple rib
7 fractures and fracturing his elbow. These agents shoved Mr. Castellanos from
8 behind and punched him repeatedly while Mr. Castellanos lay on the ground in
9 handcuffs. Agents took Mr. Castellanos to a holding cell. Due to the injuries
10 inflicted by the CBP agents, Mr. Castellanos was taken to the emergency room.
11 Plaintiff Raquel Castellanos, then 71 years old and suffering from dementia,
12 witnessed the agents shove and beat her husband. CBP agents refused to provide
13 Mrs. Castellanos with any information as to where her husband had been taken,
14 despite her pleas.

15 **I.**
GENERAL ALLEGATIONS

16 1. This cause of action is brought under *Bivens v. Six Unknown Named*
17 *Agents*, 403 U.S. 388 (1971), the Federal Tort Claims Act, and California state
18 law to redress the violation of Jesus Castellanos and Raquel Castellanos' rights
19 under the Constitution of the United States and California law.

20 2. Jurisdiction is based upon 28 U.S.C. § 1331 and 28 U.S.C. §
21 1346(B).

22 3. This Court has supplemental jurisdiction over any pendent state law
23 claims under 28 U.S.C. § 1367(a).

24 4. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the Southern
25 District of California because the acts or omissions which form the basis of
26 Plaintiffs' claims occurred in Imperial County, California.

27 5. Mr. Castellanos timely filed his FTCA Claim on January 12, 2017
28 and complied with the claims procedure as required under 28 U.S.C. § 2675.

1 13. Plaintiffs are truly ignorant of the true names and capacities of
2 DOES 1-15, inclusive, and/or is truly ignorant of the facts giving rise to their
3 liability and will amend this complaint once their identities as well as the facts
4 giving rise to their liability have been ascertained.

5 **III.**
FACTS

6 14. Plaintiffs Jesus Castellanos and Raquel Castellanos reallege all prior
7 paragraphs of this complaint and incorporate the same by reference as if fully set
8 forth herein.

9 15. Plaintiff Jesus Castellanos is 75 years old. He is a retired tractor
10 driver. Plaintiff Raquel Castellanos is 72 years old. She is a retired field worker.
11 They have been married for over 50 years. They reside in the City of Imperial
12 within the County of Imperial, California.

13 16. On December 17, 2017, at approximately 9:00 P.M., the Castellanos
14 family entered the United States at the Calexico Port of Entry. Plaintiffs Mr.
15 Castellanos and Mrs. Castellanos were accompanied by their adult son, Marco
16 Castellanos.

17 17. Mr. and Mrs. Castellanos were in the secondary inspection area with
18 their son, Marco.

19 18. Marco received a text message from his sister and looked down at
20 his phone. Marco began to place the phone back into his pocket.

21 19. A CBP officer confronted Marco, and yelled something to the effect
22 of, "You cannot be taking a f*cking video of me!"

23 20. Marco explained that he was not taking a video, and stated that he
24 was not doing anything wrong.

25 21. The CBP officer continued to yell at Marco, saying words to the
26 effect of "Give me your goddam phone, you son of a b*tch, mother*cker!"

27 22. Marco was stunned and replied that he was not under any obligation
28 to give the agent his phone.

1 23. Marco requested a supervisor. Marco said "do not touch me," when
2 the CBP officer immediately rushed towards him, and slammed Marco against the
3 fence.

4 24. Approximately seven (7) to eight (8) more CBP agents rushed over
5 and tackled Marco down to the ground.

6 25. Mr. Castellanos pleaded with the CBP officers to stop, and said "He
7 hasn't done anything."

8 26. In response, approximately two (2) or three (3) DOE agent(s) shoved
9 Mr. Castellanos with such force that he was thrown over a bench. Mr.
10 Castellanos fell face down on the ground. While Mr. Castellanos was on the
11 floor, face down, DOE agent(s) 1-3 twisted his arm so violently that he felt an
12 intense pain in his arm, and cried out in agony. The handcuffs were placed so
13 tightly on Mr. Castellanos' wrists that he suffered lacerations.

14 27. It is upon information and belief that two more DOE officers came
15 over after Mr. Castellanos was handcuffed, and face down on the floor. DOE
16 CBP agents 1-5 began to repeatedly punch him in the ribs. Mr. Castellanos
17 suffered multiple rib fractures.

18 28. Mrs. Castellanos witnessed CBP officers tackling and beating her
19 husband. Mrs. Castellanos pleaded with them to stop hurting her elderly husband.
20 The DOE CBP agent(s) ordered her to "shut up."

21 29. DOE CBP agent(s) took Mr. Castellanos and Marco to holding cells.

22 30. Mr. Castellanos informed the DOE CBP agent(s) that they hurt his
23 arm. In response, the DOE CBP agent intentionally bent his arm.

24 31. Mr. Castellanos requested to speak with a supervisor. He informed
25 the supervisor that he needed medical attention. An ambulance was called, and
26 arrived approximately 30 minutes later. Mr. Castellanos was taken to the
27 hospital.

28

1 41. Mr. Castellanos witnessed the agents tackle Marco, and begged them
2 to stop. Without warning, a DOE CBP agent(s) believed to be 1-3 shoved Mr.
3 Castellanos with such force that he fell face forward over a bench and injured his
4 elbow. DOE CBP agent(s) believed to be 1-3 handcuffed Mr. Castellanos so
5 tightly that his wrists had lacerations.

6 42. When Mr. Castellanos was in handcuffs, face down, and helpless,
7 DOE CBP agent(s) 1-5 punched Mr. Castellanos in the ribs. Mr. Castellanos
8 suffered multiple rib fractures.

9 43. DOE CBP agent(s) believed to be 6-15 failed to intervene and to
10 protect Mr. Castellanos, despite witnessing the excessive force employed by the
11 other agents. DOE CBP agent(s) 6-15 had the ability to intervene to halt this
12 unconstitutional conduct. Their refusal to intervene violated their constitutional
13 and moral duty to protect and serve the public.

14 44. DOE CBP agents 1-15 acted under color of state law in violating the
15 Fourth Amendment's proscription on the use of excessive force, and/or failed to
16 intervene to prevent such force.

17 45. At all times herein, DOE CBP agents 1-15 were acting within their
18 scope and employment as law enforcement officers with the U.S. Customs and
19 Border Protection employed by defendant UNITED STATES OF AMERICA.

20 46. DOE CBP agents 1-15, acting under color of federal law, knew that
21 the use of excessive force in these circumstances was illegal under clearly
22 established law.

23 47. The conduct alleged herein caused Mr. Castellanos to be deprived of
24 his civil rights that are protected under the United States Constitution, California
25 Constitution, and federal and state laws. The actions of the DOE CBP agents 1-
26 15 have legally, proximately, foreseeably, and actually caused Mr. Castellanos to
27 suffer physical injury, emotional distress, pain and suffering, and further damages
28 according to proof at the time of trial.

1 48. The conduct alleged herein was done in with oppression, fraud,
2 malice, and/or deliberate or reckless disregard of Mr. Castellanos' constitutionally
3 protected rights, justifying an award of exemplary damages against DOE CBP
4 agents 1-15 in an amount according to proof at the time of trial in order to defer
5 DOE CBP agents 1-15 from engaging in similar conduct and to make an example
6 by way of monetary punishment.

7 **SECOND CAUSE OF ACTION**
8 **RETALIATION (*Bivens*)**

9 **(By PLAINTIFF JESUS CASTELLANOS against DOE DEFENDANTS 1-15)**

10 49. Plaintiffs Mr. Castellanos and Mrs. Castellanos reallege all prior
11 paragraphs of this complaint and incorporates the same by reference as if fully set
12 forth herein.

13 50. The First Amendment protects a significant amount of verbal
14 criticism and challenge directed at police officers. The freedom of individuals
15 verbally to oppose or challenge police action without thereby risking arrest is one
16 of the principal characteristics by which we distinguish a free nation from that of
17 a police state.¹

18 51. The Constitution prohibits government officials from retaliating
19 against a person for the exercise of constitutional or statutory rights. This
20 prohibition against retaliation, retaliatory action or retaliatory punishment is
21 clearly established law.

22 52. Neither Marco nor Mr. Castellanos had committed a crime. Marco
23 had simply looked at his cell phone.

24 53. Mr. Castellanos vocalized his concerns and his fear for the safety of
25 his son, whom he had witnessed get slammed into a wall and then tackled.

26
27
28

¹ See *Ford v. City of Yakima*, 706 F.3d 1188, 1192-1193 (9th Cir. 2013).

1 54. Mr. Castellanos had a right to be free from law enforcement action
2 motivated by retaliatory animus.

3 55. DOE CBP agents believed to be 1-5 violated Mr. Castellanos' First
4 Amendment rights. DOE CBP agent(s) retaliated against Mr. Castellanos when
5 they shoved him, intentionally handcuffed him so tight that it caused lacerations,
6 and punched Mr. Castellanos in the ribs causing multiple rib fractures while he
7 was handcuffed.

8 56. DOE CBP agents believed to be 1-5 falsely arrested Mr. Castellanos
9 in retaliation for exercising his right to question their conduct.

10 57. DOE CBP agent(s) 1-5 took Mr. Castellanos to a detention cell,
11 where he remained for almost 45 minutes before being transferred to a hospital.

12 58. DOE CBP agent(s) believed to be 6-15 failed to intervene despite
13 witnessing the aforementioned unconstitutional conduct of DOE CBP agents.

14 59. The conduct of DOE CBP agents believed to be 1-15 would chill
15 and/or silence a person of ordinary firmness from future First
16 Amendment activities.

17 60. DOE CBP agents 1-15 acted under color of state law in violating the
18 First Amendment's proscription against retaliation.

19 61. At all times herein DOE CBP agents 1-15 were acting within their
20 scope and employment as law enforcement officers with the U.S. Customs and
21 Border Protection under the authority of the UNITED STATES OF AMERICA.

22 62. DOE CBP agents 1-15, acting under color of federal law, knew that
23 retaliating against a citizen who invoked their right to the freedom of speech
24 under the First Amendment in these circumstances was illegal under clearly
25 established law.

26 63. The conduct alleged herein caused Mr. Castellanos to be deprived of
27 his civil rights that are protected under the United States Constitution, California
28 Constitution, and federal and state laws. The actions of the DOE CBP agents 1-

1 15 have legally, proximately, foreseeably, and actually caused Mr. Castellanos to
2 suffer physical injury, emotional distress, pain and suffering, unjust deprivation of
3 his liberty and freedom, and further damages according to proof at the time of
4 trial.

5 64. The conduct alleged herein was done in with oppression, fraud,
6 malice, and/or deliberate or reckless disregard of Mr. Castellanos' constitutionally
7 protected rights, justifying an award of exemplary damages against DOE CBP
8 agents 1-15 in an amount according to proof at the time of trial in order to defer
9 DOE CBP agents 1-15 from engaging in similar conduct and to make an example
10 by way of monetary punishment.

11 **THIRD CAUSE OF ACTION**

12 **UNLAWFUL DETENTION AND FALSE ARREST (*Bivens*)**

13 **(By PLAINTIFF JESUS CASTELLANOS against DOE DEFENDANTS 1-15)**

14 65. Plaintiffs Mr. Castellanos and Mrs. Castellanos reallege all prior
15 paragraphs of this complaint and incorporates the same by reference as if fully set
16 forth herein.

17 66. Mr. Castellanos had a clearly established right under the Fourth
18 Amendment to be free from unreasonable seizure and unlawful arrest.

19 67. DOE CBP agents believed to be 1-15 violated Mr. Castellanos' right
20 when they arrested him, and detained him in a holding cell without probable
21 cause.

22 68. DOE CBP agents believed to be 1-5 beat Mr. Castellanos, and then
23 took him to a holding cell where he was released only because he required
24 medical attention.

25 69. There were no particular facts and circumstances that would warrant
26 a reasonable officer to conclude that Mr. Castellanos had committed a crime.

27 70. There was no individualized suspicion to justify a seizure or
28 detention of Mr. Castellanos.

1 85. DOE CBP agents 1-5 acted with an intent to cause harmful and/or
2 offensive bodily contact when they intentionally handcuffed Mr. Castellanos too
3 tight, causing lacerations.

4 86. DOE CBP agents 1-5 acted with an intent to cause harmful and/or
5 offensive bodily contact when they punched Mr. Castellanos in his ribs even
6 though he was handcuffed, compliant, and not resisting, causing multiple rib
7 fractures.

8 87. The harmful and/or offensive bodily contact did in fact occur.

9 88. The harmful or offensive contact was not privileged, and it was not
10 consented to by Mr. Castellanos.

11 89. The harmful or offensive contact employed by DOE CBP agents 1-5
12 was not reasonable, and caused physical discomfort and injury to Mr. Castellanos.

13 90. As a direct consequence of DOE CBP agents 1-5's actions, Mr.
14 Castellanos was deprived of his civil rights that are protected under the California
15 Constitution and state laws. The actions of DOE CBP agents 1-5 have legally,
16 proximately, foreseeably, and actually caused Mr. Castellanos to suffer physical
17 injury, emotional distress, pain and suffering, and further damages according to
18 proof at the time of trial.

19 91. DEFENDANT the UNITED STATES OF AMERICA is responsible
20 for the conduct of DOE CBP agents under the Federal Tort Claims Act.

21 **SIXTH CAUSE OF ACTION**
22 **NEGLIGENCE (FTCA)**
23 **(By PLAINTIFFS against DEFENDANT UNITED STATES OF**
24 **AMERICA)**

25 92. Plaintiffs Mr. Castellanos and Mrs. Castellanos reallege all prior
26 paragraphs of this complaint and incorporates the same by reference as if fully set
27 forth herein.

1 93. DOE CBP agents believed to be 1-5 had a duty to Plaintiffs to act
2 with ordinary care and prudence so as not to cause harm or injury to them.

3 94. DOE CBP agents 1-5 had a duty to act with reasonable care in
4 exercising their arrest and detention authority. These DEFENDANTS had a duty
5 to act with reasonable care in acting within the bounds of the Constitution as it
6 concerns the freedom of speech, the use of force, and the prevention of any
7 extreme or outrageous conduct.

8 95. DOE CBP agents 1-5 failed to act with ordinary care and breached
9 the aforementioned duties when they, employed excessive force in retaliation to
10 Mr. Castellanos' pleading to stop hurting his son, and falsely arrested and
11 detained Mr. Castellanos.

12 96. DOE CBP agents 1-5 actions fell below the standard of care and
13 breached their duties to Mr. Castellanos.

14 97. DOE CBP agents 1-5 should have known of the probability of
15 causing Mrs. Castellanos to suffer emotional distress, whom witnessed them beat
16 her husband and son. When Mrs. Castellanos asked what was going on as her
17 husband and son were being taken away in handcuffs, the agents told her to "shut
18 up."

19 98. Mrs. Castellanos asked CBP agents what was going on, but not one
20 would answer her.

21 99. Mrs. Castellanos was 71 years old at the time of the incident and was
22 suffering from dementia. Mrs. Castellanos relied heavily on her husband to assist
23 her in her daily activities. Mrs. Castellanos was terrified to be left alone without
24 her husband and son. None of the CBP agents informed her as to her family's
25 status despite her pleas to figure out what was going on.

26 100. The actions of CBP agents believed to be 1-5 failed to act with
27 ordinary care and breached their duties to Mrs. Castellanos.

1 101. DEFENDANT the UNITED STATES OF AMERICA is liable for
2 the conduct of DOE CBP agents under the Federal Tort Claims Act.

3 102. DOE CBP agents 1-5's breach of their duty, described herein, was a
4 substantial factor in causing Mr. Castellanos' unlawful seizure, unlawful arrest,
5 assault, and battery, including, but not limited to, serious emotional and physical
6 distress and injuries. DOE CBP agents 1-5's breach of their duty, described
7 herein, was a substantial factor in causing Mrs. Castellanos' emotional distress
8 and injuries.

9 103. This violation of Plaintiffs' rights under California state law caused
10 damages according to proof at the time of trial.

11 **SEVENTH CAUSE OF ACTION**
12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (FTCA)**
13 **(By PLAINTIFFS against DEFENDANT UNITED STATES OF AMERICA)**

14 104. Plaintiffs Mr. Castellanos and Mrs. Castellanos reallege all prior
15 paragraphs of this complaint and incorporates the same by reference as if fully set
16 forth herein.

17 105. DOE CBP agents believed to be 1-5 intended to cause Mr.
18 Castellanos and Mrs. Castellanos emotional distress, and acted with reckless
19 disregard of the probability that Mr. Castellanos and Mrs. Castellanos would
20 suffer emotional distress, knowing that they were present and saw the CBP agents
21 tackle their son to the ground.

22 106. The conduct of DOE CBP agents believed to be 1-5 that caused Mr.
23 Castellanos' unlawful detention, false arrest, and physical injuries in retaliation
24 for his asserting his Constitutional rights constitutes extreme and outrageous
25 conduct.

26 107. By engaging in these acts as alleged herein, DOE CBP agents 1-5
27 acted willfully and/or in reckless disregard of the probability of causing Mr.
28 Castellanos to suffer emotional distress.

1 108. By engaging in these acts as alleged herein, DOE CBP agents 1-5
2 acted willfully and/or in reckless disregard of the probability of causing Mrs.
3 Castellanos to suffer emotional distress, who witnessed the agents tackle, punch,
4 and arrest her husband.

5 109. By engaging in these acts as alleged herein, DOE CBP agents 1-5
6 knew of the probability of causing Mrs. Castellanos to suffer emotional distress,
7 whom witnessed them beat her husband. When Mrs. Castellanos asked what was
8 going on as her husband was being taken away in handcuffs, the agents told her to
9 “shut up.”

10 110. Mrs. Castellanos asked CBP agents what was going on, but not one
11 would answer her.

12 111. Mrs. Castellanos was 71 years old at the time of the incident and was
13 suffering from dementia. Mrs. Castellanos relied heavily on her husband to assist
14 her in her daily activities. Mrs. Castellanos was terrified to be left alone without
15 her family. None of the CBP agents informed her as to her family’s status despite
16 her pleas to figure out what was going on.

17 112. The actions of DOES CBP agents believed to be 1-5 amounts to
18 extreme and outrageous conduct that exceeds all bounds tolerated by a civilized
19 society.

20 113. The actions of DOE agents 1-5 have legally, proximately,
21 foreseeably, and actually caused Mr. Castellanos and Mrs. Castellanos to suffer
22 severe emotional distress.

23 114. The actions of DOE agents believed to be 1-5 was a substantial
24 factor in causing Mr. Castellanos and Mrs. Castellanos’ severe emotional distress.

25 115. DEFENDANT the UNITED STATES OF AMERICA is liable for
26 the conduct of DOE CBP agents under the Federal Tort Claims Act.

27 116. This violation of Plaintiffs’ rights under California state law caused
28 damages according to proof at the time of trial.

1 **PRAYER FOR RELIEF**

2 Plaintiffs Jesus Castellanos and Raquel Castellanos pray for judgment as
3 follows:

- 4 1) For compensatory general and special damages in an amount in
5 accordance with proof.
6 2) For punitive damages as permitted by law.
7 3) For reasonable costs of suit as permitted by law.
8 4) For any other relief that is just and proper.
9

10 **JURY DEMAND**

11 Pursuant to the Seventh Amendment of the U.S. Constitution and Rule 38
12 of the Federal Rules of Civil Procedure, Plaintiffs Jesus Castellanos and Raquel
13 Castellanos demand a jury trial in this action as to the first three causes of action.
14

15 DATED: October 10, 2018

Respectfully submitted,

16 **IREDALE AND YOO, APC**

17 /s/ Eugene Iredale

18 **EUGENE G. IREDALE**

19 **JULIA YOO**

20 **LAUREN I. FREIDENBERG**

21 Attorneys for Plaintiffs **Jesus Castellanos**
22 **and Raquel Castellanos**
23
24
25
26
27
28