

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS,
LAREDO DIVISION

Osbaldo Garcia and Juana Edith Garcia,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. _____
	§	JURY
The United States of America,	§	
<i>Defendant.</i>	§	

PLAINTIFFS’ ORIGINAL COMPLAINT

A. Parties

1. Plaintiff, Osbaldo Garcia (hereinafter “Mr. Osbaldo Garcia,” “Osbaldo,” “Ozzie,” “Garcia,” or “Plaintiff”), is an individual who maintains his primary residence in Cameron County, Texas.
2. Plaintiff, Juana Edith Garcia (hereinafter “Mrs. Garcia”), is an individual who maintains her primary residence in Cameron County, Texas.
3. Defendant, the United States of America, may be served by delivering a copy of the summons and of the complaint to the United States Attorney for the Southern District of Texas—Laredo Division and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States, and also to the U.S. Drug Enforcement Administration. The Defendant, the United States of America, may also be served by sending a copy of the summons and of the complaint by registered or certified mail to the civil-process clerk at the United States Attorney’s office for the Southern District of Texas—Laredo Division, and to the Attorney General of the United States, and to the U.S. Drug Enforcement Administration.

B. Jurisdiction

4. The court has jurisdiction over the lawsuit under 28 U.S.C. §1346(b) because the suit involves a claim against the United States for injury, personal injury, loss of liberty, wrongful

incarceration, and wrongful arrest, caused by the negligent acts and/or wrongful acts and/or omissions of one or several United States government employees, including, but not limited to, Will R. Glaspy, Special Agent in Charge of the DEA Houston Division, as well as other officers, agents and employees (under Mr. Glaspy's supervision) of the United States of America, specifically, the United States Drug Enforcement Administration, as well as federal, state, and local law enforcement officers from other agencies who may have been deputized as federal agents while attached to the U.S. Drug Enforcement Administration, while acting within the scope of their employment. As alleged below, the actions and/or omissions of these governmental agents took place in Laredo, Texas and Tomball, Texas and resulted in the wrongful arrest and wrongful incarceration of the Plaintiff in Tomball, Texas, as well as the commencement of a wrongful prosecution—under indictment—against the Plaintiff, in a Federal District Court in the Southern District of Texas—Laredo Division.

C. Venue

5. Venue is proper in this judicial district under 28 U.S.C. §1402(b) because the Plaintiffs reside in this judicial district, and pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts and/or omissions giving rise to the claims occurred in this district.

D. Exhaustion of Administrative Remedies

6. Plaintiff timely presented this claim in writing to the United States Drug Enforcement Administration, the Federal Bureau of Investigation, the U.S. Marshals Service, Homeland Security Investigations, and Immigration and Customs Enforcement.¹ However, the agencies have

¹At the time the Plaintiffs presented their claims, Plaintiffs were unsure of which federal law enforcement agency was responsible for Osbaldo Garcia's arrest, although the plaintiffs suspected it was primarily the D.E.A. Federal Tort Claims on Standard Form-95 were therefore delivered to the D.E.A., the F.B.I., H.S.I., U.S. Marshals Service, and ICE on January 29, 2019. Because the Plaintiffs presented their written tort claims to these agencies on January 29, 2019, the six-month period given to the agencies by 28 U.S.C. §2675(a) to make final disposition of the claims ended on July 29, 2019. Failure of the agencies to make a final disposition of the claims by July 29, 2019 can be deemed a

not provided a final decision in writing.

E. Table of Contents for Exhibits

*DC CM/ECF LIVE-US District Court-Texas Southern CRIMINAL DOCKET
Printed December 26, 2018*.....*Exhibit A*

*Bench Warrant for the Arrest of Osbaldo Garcia A/K/A: Valdo, Baldo
Without Indictment Attached (Docket Entry No. 27 in 5:17-cr-00039)*.....*Exhibit B*

Indictment.....*Exhibit C*

Order Appointing Federal Public Defender.....*Exhibit D*

Order for Partial Reimbursement of Court Appointed Counsel.....*Exhibit E*

Appearance Bond & Conditions of Release.....*Exhibit F*

Notice of Setting for Initial Appearance.....*Exhibit G*

Motion to Substitute Counsel.....*Exhibit H*

Order on Motion to Substitute Counsel.....*Exhibit I*

Motion to Adopt Pretrial Order of Release on Bond.....*Exhibit J*

Order on Defendant’s Motion to Adopt Pretrial Release on Bond.....*Exhibit K*

Notice of Setting for Arraignment.....*Exhibit L*

Defendant’s Written Waiver of Arraignment.....*Exhibit M*

Order on Waiver of Arraignment.....*Exhibit N*

Agreed Motion to Dismiss.....*Exhibit O*

Order on Motion to Dismiss.....*Exhibit P*

U.S. Marshal’s Receipt of Order on Motion to Dismiss.....*Exhibit Q*

“final denial” by the claimants. See 28 U.S.C. §2675(a). Upon receipt of the Plaintiffs’ written tort claims, the federal agencies, including the D.E.A., could have elected to do one of the following: (1) make an offer of settlement to the Plaintiffs; (2) immediately issue a written and final denial of the tort claim, and offer nothing to the Plaintiffs; or (3) do nothing and provide no written response to the Plaintiffs. If, for example, the D.E.A. decides to do nothing and provide no written response, then pursuant to § 2675(a), the Plaintiffs can deem the D.E.A.’s failure “to make a final disposition of a claim” a final denial and pursue the filing of a lawsuit. As of July 29, 2019, the D.E.A. (as well as all other federal agencies served) had not made a final disposition of the claim. The plaintiffs have also received no correspondence from the D.E.A.

Order to Disburse Cash Bond.....*Exhibit R*

Honorable Discharge from U.S. National Guard.....*Exhibit S*

U.S. Coast Guard Certificate of Basic Military Training: August 1999.....*Exhibit T*

U.S. Coast Guard Personal Commendation: March 2001.....*Exhibit U*

U.S. Coast Guard Unit Commendation: April 2001.....*Exhibit V*

Newspaper Article: “Coast Guard Gunfire Disables Drug Boat”.....*Exhibit W*

U.S. Coast Guard Appointment to Boatswain’s Mate Third Class: July 2001.....*Exhibit X*

U.S. Coast Guard Certification as Boat Crewmember: July 2001.....*Exhibit Y*

U.S. Coast Guard Certification as Coxswain: February 2002.....*Exhibit Z*

U.S. Coast Guard Interim Certification as Crewmember: April 2002.....*Exhibit A1*

U.S. Coast Guard Good Conduct Award: July 2002.....*Exhibit B1*

U.S. Coast Guard Unit Commendation: July 2003.....*Exhibit C1*

U.S. Coast Guard Unit Commendation Ribbon: August 2003.....*Exhibit D1*

Honorable Discharge from the U.S. Coast Guard.....*Exhibit E1*

FLETC Certificate of Completion CBP Basic Training Program: July 2004.....*Exhibit F1*

FLETC Qualification as Sharpshooter: July 2004.....*Exhibit G1*

Certificate in DHS Security Awareness: May 2005.....*Exhibit H1*

Certificate in Iraq Fact Orientation Seminar: December 2007.....*Exhibit I1*

Certificate in BSR Special Security and Antiterrorist Driving Course: December 2007..*Exhibit J1*

Certificate in Foreign Affairs Counter Threat Course: December 2007.....*Exhibit K1*

CBP Letter in Recognition of Service in Baghdad Iraq: September 2008.....*Exhibit L1*

CBP Letter in Acknowledgement of Iraq Service Medal: January 2009.....*Exhibit M1*

CBP Memo re: Denial of Request for Outside Employment: October 2009.....*Exhibit N1*

Personal Assessment and Selection Training Course: December 2011.....*Exhibit O1*

AT Level 1 Awareness Training: December 2011*Exhibit P1*
International Instruction Certification Course: December 2011*Exhibit Q1*
Certification of Training Range Safety Officer: September 2012*Exhibit R1*
CBP Letter in Acknowledgement of Iraq Service Medal: January 2013*Exhibit S1*
Pacer Query Search for Osbaldo Garcia*Exhibit T1*

F. Factual Allegations

Background of Claimant

7. Mr. Osbaldo Garcia was born in 1976 in Fresno, California. He is 42 years old. Mr. Garcia is married to Juana Edith Garcia, a legal permanent resident. They have been married for over 20 years. Together, Mr. and Mrs. Garcia share two children—one is currently 17 years old and a junior in high school, while the other is 13 years old and in the 8th grade.

8. Mr. Garcia was raised in Roma, Texas where he graduated from high school in 1995. Instead of seeking a higher education, Mr. Garcia made the conscious decision to serve his country by joining the Army National Guard. Mr. Garcia attended boot camp for the National Guard between his junior and senior years of high school—an act of discipline that many at that age are unable and unwilling to do. During his service with the Army National Guard (see Exh. S), Mr. Garcia completed an eleven-week course as a Chemical Operations Specialist and was awarded a National Defense Service Medal and an Army Service Ribbon. Mr. Garcia was honorably discharged from duty with the Army National Guard on or about 1999 to start Active Duty with the U.S. Coast Guard.

9. Thereafter, Mr. Garcia joined the United States Coast Guard in an effort to further his career while continuing to serve his country as part of America’s maritime first responders. On August 27, 1999, Mr. Garcia successfully completed an eight-week course in Basic Military

Training with the U.S. Coast Guard. (Ex. T). Mr. Garcia served in the Coast Guard on active duty from July of 1999 to July of 2003. During this time, Mr. Garcia proved to be a valuable asset as a Spanish-speaker assigned to the Florida straits. In April of 2001, Mr. Garcia's unit received a Coast Guard Unit Commendation—the highest peacetime unit award presented to Coast Guard units that distinguish themselves by valorous or extremely meritorious service. (Ex. V). As a unit, Mr. Garcia's outfit was commended for exceptional and meritorious service from October 1999 to October 2000. *Id.* During this period, the unit in which Mr. Garcia served executed numerous rescue and law enforcement missions including—rescuing 200 migrants; participating in 12 search and rescue cases; conducting over 70 law enforcement boardings; seizing two go-fasts outfitted for smuggling and arresting three persons; saving five people on board a vessel—three of which needed first aid and one of which was a heart attack patient who was medevac'd; deescalating a highly volatile interdiction of Cuban migrants; seizing over 230 pounds of marijuana, 11 kilos of cocaine, and 105 pounds of hash oil; and skillfully delivering warning shots and disabling fire to end a fourteen-hour pursuit of a go-fast with contraband netting significant intelligence, three arrests and over 750 pounds of marijuana. *Id.*

10. In addition to this commendation as a unit, Mr. Garcia was personally recognized for his performance of duty while on assignment from September 1999 to April 2001 in the Florida Straits. (Ex. U). In a personal letter of commendation, Captain J.L Nimmich recognizes Mr. Garcia as a skillful Spanish interpreter who “unfailingly answered the call at all hours.” *Id.* Captain Nimmich goes on to highlight his performance in several successful missions as part of the Alien Migrant Interdiction Operations while still contributing at high levels as a Rescue and Survival Petty Officer and Underway Quartermaster of the Watch. *Id.* In one of various missions in the Florida Straits, Mr. Garcia contributed to the seizure of one thousand pounds of marijuana—a notable

accomplishment for which Mr. Garcia and his unit were photographed and published in a Florida newspaper. (Ex. W).

11. Mr. Garcia's exceptional work ethic was rewarded as he moved up the ranks in the Coast Guard. On July 1, 2001, Mr. Garcia was promoted to the rank of Boatswain's Mate Third Class. (Ex. X). In July of the same year, Mr. Garcia received a certification as a Boat Crewmember for his superior knowledge of duties and seamanship skills. (Ex. Y). In February of 2002, Mr. Garcia successfully completed a four-week course of instruction to become a coxswain—an officer in charge of a vessel and all personnel on board. (Ex. Z). In April of 2002, Mr. Garcia received an interim certification as a crewmember on a 47-foot lifeboat. (Ex. A1). In July of the same year, Mr. Garcia was again recognized for his work and dedication with a good conduct award. (Ex. B1).

12. After successfully fulfilling his duties in the Florida Straits, Mr. Garcia was assigned to the Gulf of Mexico and stationed in Port O'Connor Texas. Again, Mr. Garcia was recognized for his exceptional work ethic. In July of 2003, the unit Mr. Garcia served with was presented with the Coast Guard Unit Commendation, Mr. Garcia's second unit commendation in two years, for the extraordinary improvement of operational readiness and material condition of U.S. Coast Guard Station Port O'Connor, Texas. (Ex. C1). A month later, Mr. Garcia was presented with a Coast Guard Unit Commendation Ribbon. (Ex. D1).

13. During all of his years with the Coast Guard, Mr. Garcia was never the subject of a reprimand. To the contrary, Mr. Garcia was awarded the National Defense Service Medal, Coast Guard Special Operations Service Ribbon, Coast Guard Sea Service Ribbon, Rifle Marksmanship Ribbon, and the Pistol Marksmanship Ribbon in addition to the awards described above. (Ex. E1) On July 3, 2003, Mr. Garcia was honorably discharged from the U.S. Coast Guard. *Id.*

14. After a successful career with the Coast Guard, Mr. Garcia returned to the Rio Grande Valley. Not yet satisfied with the years of service he already contributed to his country, Mr. Garcia sought to challenge himself yet again by joining another division of the Department of Homeland Security—U.S. Customs and Border Protection (CBP). During his service with the Coast Guard in the Florida Straits, Mr. Garcia's daily missions meant putting his life at risk in an effort to protect the U.S. border, thus a career with CBP would be no different. Nevertheless, Mr. Garcia deeply identified with the work he was doing for his country. So, in 2004, Mr. Garcia began his career with CBP.

15. On July 12, 2004, Mr. Garcia successfully completed the CBP Basic Training Program at the Federal Law Enforcement Training Center in Charleston, South Carolina. (Ex. F1). Additionally, Mr. Garcia qualified as a Sharpshooter during his initial training in Charleston. (Ex. G1). As he did in the Coast Guard, Mr. Garcia moved up the ranks with CBP acquiring the title of Senior Border Patrol Agent and obtaining invaluable knowledge and skills along the way. In May of 2005, Mr. Garcia successfully completed a DHS Security Awareness Training. (Ex. H1). In December of 2007, Mr. Garcia successfully completed several trainings including an Iraq FACT Orientation Seminar, a BSR Specialty Security and Antiterrorist Driving Course, and a Foreign Affairs Counter Threat Course in preparation for a detail assignment in Baghdad, Iraq. (Ex. I1-K1).

16. From January 31, 2008 to July 30, 2008, Mr. Garcia volunteered in a CBP program entitled Embedded Police Mentor that would send him overseas to Iraq. In the six months Mr. Garcia was on duty in Iraq, he made a lasting impression that resulted in a letter personally addressed to him by former Deputy Commissioner of CBP David V. Aguilar—the nation's highest-ranking border patrol agent. (Ex. L1). In the letter, Commissioner Aguilar commends Mr. Garcia for his outstanding service while on detail and highlights Mr. Garcia's instrumental contributions in

“transforming the Department of Border Enforcement Border Guards into a skillful and professional law enforcement entity. Your input and indispensable expertise have undeniable benefited the Iraqi Government by assisting in laying the foundation for democracy....” *Id.* Commissioner Aguilar goes on to praise Mr. Garcia for his proven leadership, assertive mindset, astounding sense of duty, exceptional instructional skills, unparalleled work ethic, and persistent dedication to duty. *Id.* In January of 2009, Mr. Garcia was again commended for his reconstruction efforts in Iraq and awarded the Iraq Service Medal. (Ex. M1) In 2009, Mr. Garcia requested outside employment with CBP, but his request was denied. The denial cited his valuable experience that was needed in the Rio Grande Valley. (Ex. N1).

17. While on detail in Iraq, Mr. Garcia received an offer to work for DynCorp—a private military service contractor. Mr. Garcia made the decision to separate from CBP and was set to deploy to Iraq with DynCorp in January of 2010, but for unforeseeable reasons his contract fell through. Instead, Mr. Garcia obtained his commercial driver’s license (CDL) and began work for Pumpco Energy Services from June of 2010 to November of 2011. As part of his CDL certifications, Mr. Garcia was required to obtain a federal physical, which includes drug testing. Moreover, the hazmat certification requires a criminal background check. Mr. Garcia passed both requirements without issue.

18. In November of 2011, Mr. Garcia deployed to Afghanistan with DynCorp where he trained the Afghan police force until May of 2013. In Afghanistan, Mr. Garcia received various trainings in the areas of prevention of sexual harassment, stress management, manipulations and marksmanship skills of presented weapons, region-specific cultural awareness, new employee orientation, U.S. mission in Afghanistan, deadly force policy, trafficking in persons, foreign corrupt policies, human right of civpol/travel safety, tactical combat casualty care, team building, convoy operations, land navigation, surveillance detection/hostage survival, weapons retention,

IED awareness, range safety officer, and international instructor certification among others. (See Exhs. O1-S1).

19. During his deployment in 2013, Mr. Garcia received news that his father was in bad health. As the only male in a position to care for his father, Mr. Garcia made the decision to leave Afghanistan and return to the Rio Grande Valley to care for his ailing father. In June of 2013, Mr. Garcia began work for Kodiak Pipeline where his schedule allowed him to take consecutive days off to be with his father. In January of 2014, Mr. Garcia's father passed away. Thereafter, Mr. Garcia interviewed and negotiated a contract with the Federal Bureau of Prisons. He was employed at the Three Rivers Federal Correctional Institution for two months before realizing that the terms of his employment were misrepresented in his contract.

20. Subsequently, Mr. Garcia moved to Houston to work for Extreme Petroleum where he drove a tank truck and delivered diesel. Mr. Garcia was employed by Extreme Petroleum until December 2015. In 2016, Mr. Garcia began working as an independent truck driver in the Houston area. For convenience, he made the move to an RV park in Tomball, Texas. After regularly working as a truck driver, Mr. Garcia soon learned that he missed working for CBP and began the process to join the agency once more. On or around January of 2017, Mr. Garcia attended and passed an initial oral interview with CBP and was on track to rejoin his former agency.

Circumstances leading to Mr. Garcia's Injuries at the hands of the U.S. Drug Enforcement Administration (DEA) and other agencies listed above

21. On February 1, 2017, Mr. Garcia was living in an RV park located at 12706 Boudreaux Road in Tomball, Texas and working as an owner-operator truck driver. This particular Wednesday started out like any other day. Mr. Garcia woke up and went to work. On this day, he was tasked with a short-term haul that required picking up dirt and hauling it to the Houston area. After a day's work, Mr. Garcia headed back to his RV in Tomball. Like always, Mr. Garcia backed his 2005 Durango into his driveway. It was during this mundane routine that Mr. Garcia first

noticed an out of place vehicle in his neighborhood—a Ford Flex with an occupant in it. As Mr. Garcia prepared to put his truck in park, vehicles with red and blue flashing lights aggressively sped into his driveway immediately surrounding him. The Ford Flex was among the vehicles boxing him in. Mr. Garcia describes agents jumping out of the flashing vehicles with weapons drawn yelling, “put your hands up” and “show me your hands!” Mr. Garcia obeyed their orders and put his hands in the air. Realizing that he had yet to put his truck in park, Mr. Garcia instinctively reached for the gear causing panic among the officers. Mr. Garcia quickly explained that his truck was in gear. Seemingly fearing for their safety, an agent opened Mr. Garcia’s passenger door and put the truck in park himself.

22. Thereafter, Mr. Garcia was asked to step out of his vehicle to which he complied. He recounts stepping out of his truck frightened and worried that he could be shot. He was immediately brought down to the floor facedown and placed in handcuffs. Mr. Garcia clearly confused asked the agent, “Don’t you guys think this a little excessive for a ticket?” In the moment, Mr. Garcia’s only rationalization for this scenario was that he was being arrested for a pending ticket he was fighting in court. An agent replied, “You know what this is about. This is about the heroin in Pennsylvania.” Mr. Garcia still confused but instantly realizing the gravity of the situation responded, “Dude, I don’t know what you’re talking about.” To which an agent replied, “You should know better, you’re a Coastie.” Mr. Garcia was perplexed. The agent knew his military history when he seemingly referred to his service in the U.S. Coast Guard by calling him a “Coastie.” Yet, the agent was referring to a state, Pennsylvania, he had never visited or had a connection to whatsoever.

23. Mr. Garcia in an attempt to rectify a clear error offered up his home and truck to be searched stating, “Please go through my Durango and my RV. I voluntarily give you consent to go through

my Durango and RV. You are not going to find anything illegal!” He reassured the agents, “You’ve got the wrong guy.” An agent dismissed his plea and casually replied, “*They all say that.*”

24. After Mr. Garcia was placed in handcuffs, the agents picked him up off of the ground and he was told, “This is the thing, you can talk to a lawyer, or we can call the Special Agent in Charge. And he can come down here and talk to you. But if he comes down here, and you don’t tell him anything, you are just going to make him mad.” He was not read his Miranda Rights as he was being handcuffed with his face on the ground. He was not read his Miranda Rights when he was asked if he wanted to talk. Nonetheless, Mr. Garcia calmly replied, “I am not talking,” realizing that any attempts to explain would be futile.

25. The agents then walked Mr. Garcia to an F-150 and placed him in the front passenger seat. Seemingly unaware of where they were to take Mr. Garcia, the agents made comments stating, “You are going to Laredo tonight” and “No, you are going to Houston.” At some point, the agents grabbed Mr. Garcia’s cellphone and asked him, “Is this your phone?” His phone was confiscated. Mr. Garcia was not extended the courtesy of giving his wife and family a call, all of whom were hundreds of miles away in Harlingen completely unaware that he was being arrested for a crime he did not commit. In all, the ordeal lasted about an hour and half. All the while, the lights on the agents’ vehicles were flashing red and blue alerting anyone that passed Mr. Garcia’s RV that a criminal was being apprehended. Mr. Garcia recalls the humiliation he felt sitting in the front passenger seat of the F-150 as his neighbor drove by looking at him. Later, Mr. Garcia confessed that he was never able to talk to his neighbor again out of sheer embarrassment.

26. Eventually, Mr. Garcia was put into the Ford Flex and transported to the Joe Corley Detention Facility—a prison contracted by Immigration and Customs Enforcement located in Conroe, Texas. One agent was placed in charge of his transportation from the RV Park to the detention facility. Mr. Garcia sat in the back seat of the Ford Flex with his hands handcuffed behind

his back. If Mr. Garcia was in fact whom they believed him to be, an armed and dangerous criminal², why did the agents only utilize one agent during the transportation? In the thirty to forty-minute drive to the detention facility, Mr. Garcia sat in silence left consumed by his thoughts. He ran scenarios in his head. Have these people made up a story about me? Is someone setting me up? At around six or seven p.m., the Ford Flex arrived at the detention facility where two agents escorted Mr. Garcia through the sally port into the facility.

27. Back in Harlingen, Mrs. Garcia had been trying to reach her husband for hours. At around six or seven p.m., she had begun to notice that he was out of reach. Her calls and texts went unanswered. Little did she know that her husband was being escorted into a detention facility. At around eleven p.m. that same night, Mrs. Garcia received a phone call from a Houston area number—it was her husband calling from the Joe Corley Detention Facility. Mr. Garcia told her, “Te voy a decir algo. Vas a pensar que es una broma. Estoy siendo cien porciento en serio. Me estan confundiendo. Estoy arrestado. No voy a poder salir.”³ Mr. Garcia went on to explain to his wife that he was scheduled for a court hearing in Houston the next morning.

28. After the phone call, Mrs. Garcia immediately reached out to her nephew, Victor Castro, Jr., and explained what she had just learned from her husband. Mr. Castro looked up the number from which Mr. Garcia had called and verified that it belonged to an ICE facility in Conroe, Texas. Without hesitation, Mrs. Garcia made plans to drive up to Houston the same night. She made arrangements with her mother in McAllen to look after her two children and explained to them that she had to deliver paperwork to Houston as not to alarm them. Mrs. Garcia left Harlingen around 1 a.m. and made the five-hour drive to Houston in the early morning hours on February 2,

² Mr. Garcia later learned that he is now classified as “armed and dangerous.”

³ Translated into the English language, Mr. Garcia’s conversation with his wife went as follows, “I am going to tell you something. You’re going to think it’s a joke. I’m being one hundred percent serious. They are confusing me. I’m arrested. I will not be able to leave.”

2017. Mrs. Garcia drove through the fog, nervous and worried, and arrived at her sister-in-law's home in Houston at around 6 a.m. In the morning, Mr. Castro began making phone calls to figure out where the court hearing was to take place. Adriana Castro, Mr. Garcia's sister, was also on the phone making her own calls where she learned—aghast—that her brother was facing heroin and conspiracy charges.

29. All the while his wife was making arrangements to drive to Houston, Mr. Garcia was being turned over to the staff at the Joe Corley Detention Facility. Inside the facility, Mr. Garcia was told to take all his clothes off. He was placed in a small cell and told to change into prison garb. The small cell was cold and outfitted with a rubber mat presumably intended as a mattress. Mr. Garcia was not provided with a meal. Tired and hungry, Mr. Garcia tried to sleep, but heard nothing but the loud clanks of prison metal doors. Alone and unable to sleep, Mr. Garcia was again left to his own thoughts. He remembers praying in his cell and asking God for help. He thought about his children. He asked himself who made up this story about him. He thought that this was worse than his deployments in Afghanistan and Iraq—at least then he knew what he had gotten himself in to. He cried. He worried about the CBP employment interview that he was looking forward to. Would CBP hire him, after this? He also remembers stressing about the work he had lined up—cargo he was scheduled to deliver the next day (as a CDL driver) that would go undone. He thought about an upcoming doctor's appointment he would surely miss. He was also extremely worried for his safety and for his life. He was a former Border Patrol agent, being housed—on a mistaken arrest—in an immigration detention center for immigration violators. Would the other detainees find out he was former Border Patrol? Would they harm him if they found out? He wondered why the officers that arrested him would place his life in danger by placing him in such a detention center?

30. At three in the morning, Mr. Garcia was awakened by facility officers and escorted in shackles onto a bus with other inmates. Mr. Garcia had never dreamt of being in this position

before. He felt degraded and embarrassed. At this moment, the realization dawned on him like a baseball bat to the head—he was an inmate in custody. Despite his experiences on duty with the U.S. Coast Guard and CBP, he had never experienced fear like this. On February 2, 2017, Mr. Garcia was taken to his first court appearance in Houston, Texas before U.S. Federal Magistrate Judge, Nancy K. Johnson. (See Exh. A, pg. 5, docket sheet entry # 19). Mr. Garcia was taken—in chains—to what he perceived as a very intimidating place, given his circumstances: the Bob Casey United States Courthouse in Houston, Texas.

31. Once inside, Mr. Garcia was placed in a cell to await his hearing. At one point, Mr. Garcia was removed from his cell and photographed and fingerprinted. An hour or so later, Mr. Garcia was again removed from his cell and sat down in front of an agent from the U.S. Marshal Service. The agent explained to Mr. Garcia that he was there to ask him some questions.

32. The interview was being videotaped.

33. The agent then explained to him, “I am going to ask you some questions, but they are going to be in Spanish.” Mr. Garcia, who at this point had been 100% compliant, responds, “I am not going to answer you in Spanish.” The agent replied, “You have to answer them in Spanish because the paper has the questions in Spanish.” Mr. Garcia hungry, sleep-deprived, and his patience waning replied, “Well, I don’t give a fuck. You need to get the paper in English. I am not going to answer anymore, because I don’t even know what I am here for.”

34. The agent went on to ask him where he was born, his mother’s maiden name, and date of birth amongst other things. Eventually, Mr. Garcia said, “You know what? I am done.” The agent, seemingly sympathizing with Mr. Garcia’s frustration, told him, “Ozzie, I will talk to you, but outside.” Mr. Garcia was escorted to the hallway where the agent explained, “This is about you driving heroin to Pennsylvania.” Mr. Garcia cried out of anger and responded, “They have the wrong guy.” The agent replied, “They are saying that they are 100% sure.” Thereafter, Mr. Garcia

was walked out into the courtroom where he saw his wife and family for the first time since his arrest.

35. Mrs. Garcia recalls the shock of seeing her husband in shackles and an orange jump suit. She felt impotent. She had no clue as to how to help him. Mrs. Garcia and her family originally believed that Mr. Garcia's detention was an immigration matter. They erroneously believed that it would all be quickly cleared up with his birth certificate. Once in the courtroom, Mrs. Garcia realized that this was much more serious. She contemplated what she would tell the children. "How long will it take to prove his innocence?" she thought to herself.

36. Although completely innocent of any wrongdoing whatsoever, Mr. Garcia was nevertheless placed before U.S. Magistrate Judge Johnson and had his rights explained to him for the first time since this nightmare started on his driveway. (See Exh. A, pg. 5, docket sheet entry # 19.) He was made to execute a financial affidavit, thus opening up his private, financial matters to court officers. (Id.) He was assigned a Federal Public Defender to defend him against the extremely serious criminal charges for which he had been hauled into custody. (Ex. D) In the courtroom, Mr. Garcia explained to his public defender that they had the wrong guy. Mr. Garcia's public defender then conferred with the prosecutor and reiterated the same—they had the wrong guy. The prosecutor disagreed and countered that they were 100% sure he was the one.

37. Once his hearing had commenced, the prosecutor told the judge, out loud, "He is a former Border Patrol agent, your Honor." The judge upset by this reckless revelation asked the prosecutor, "Are you serious?! Did you just tell this whole court that he is a former Border Patrol agent?"⁴ The judge went on to ask if Mr. Garcia's semi-tractor-trailer, listed on his financial disclosure affidavit, was used to transport drugs. The judge continued with her questioning asking if Mr. Garcia owned any weapons to which the prosecutor answered, "Yes, he has two." At the point that the judge

⁴ The courtroom was full of other detainees that had driven on the bus with Mr. Garcia.

recited the punishment range associated with the crimes he was being accused of, Mr. Garcia started crying. In tears, he told his public defender over and over again, “They have the wrong guy.” Eventually, the court set a bond in the amount of US\$50,000.00 for his release. (Ex. F) A deposit of \$1,000.00 was required of him. (Id.) Mr. Garcia had to undergo the painful task of asking his wife and two sisters to act as his sureties for his release. (Id.)

38. Mr. Garcia was also ordered to reimburse the government for his court appointed attorney. Mr. Garcia was ordered to pay \$250.00 per month to the Clerk of the U.S. District Court, up to an amount of \$3,000.00. (Ex. E). Mr. Garcia was also ordered to hand over possession of his weapons to another family member and ordered to turn over his U.S. passport. (Ex. F).

39. After the day’s hearings were complete, Mr. Garcia was transported back to the Joe Corley Detention Facility alongside all the other inmates. He describes the ride back to the detention center as uncomfortable since his fellow inmates now knew he was a former Border Patrol agent. Mr. Garcia was now on alert knowing that he may have very well detained or previously deported the individuals he was now confined with. Once back at Joe Corley, Mr. Garcia was processed to be released.

40. During this time, Mrs. Garcia and her sister-in-law turned over Mr. Garcia’s passport and scrambled to come up with the \$1,000 so that they could be deposited with the registry of the court. (Exh. A, pg. 5 at docket entry #23). As they were depositing the money with the registry, Mrs. Garcia overheard federal workers discussing her husband’s case. Amongst themselves, the federal workers at the courthouse said, “How are they going to prove his innocence?” and “They all say that. Be thankful he’s a U.S. citizen otherwise he would have already been deported.” Even the courthouse staff seemed to realize the severity of Mr. Garcia’s charges. Mrs. Garcia and her family then made their way to the Joe Corley Detention Center where they would await the release of Mr. Garcia.

41. At approximately 7 p.m. on February 2, 2017, Mr. Garcia was released from custody with an ankle monitor amongst other conditions. (Ex. F). Despite his release from detention, the imposition of an ankle monitor disrupted all aspects of his life from routine tasks like sleeping and showering to work responsibilities. Mr. Garcia recalls the humiliating decision he was forced to make in explaining to his children why he was wearing an ankle monitor. Most importantly, Mr. Garcia's travel was heavily restricted directly affecting his income as provider for his family. As previously noted, Mr. Garcia was ordered to turn over his U.S. passport. Moreover, his travel was restricted domestically to the Houston area. Mr. Garcia was only authorized to drive towards Harlingen, where his wife and children resided, and eventually Laredo, to attend his court hearings. These travel restrictions severely limited the contract work Mr. Garcia was able to take on as an owner-operator truck driver. On one occasion, Mr. Garcia was forced to turn down a contract that required travel to Beaumont, Texas due to his travel restrictions. The contract would have paid him \$95 an hour. Mr. Garcia's colleagues who were able to accept the contract clocked in a total of 105 hours of work. On this contract alone, Mr. Garcia lost out on about \$9,975.00 of income.

42. Mr. Garcia, although secure in his innocence, could still not shake the feeling that he was going to jail. With the thought of prison in the back of his mind, Mr. Garcia's only priority was to spend as much time with his family before it was too late. The thoughts of leaving his family consumed him. This anxiety prevented Mr. Garcia from working resulting in lost wages. His anxiety soon manifested into physiological symptoms; Mr. Garcia's extreme stress and anxiety resulted in hives breaking out all over his body. Mr. Garcia was consumed by what he perceived to be insurmountable charges. On one occasion while out on bond, Mr. Garcia was traveling through a CBP checkpoint. Due to his pending charges and their severity, Mr. Garcia was handcuffed by CBP agents and detained for an hour. He was fingerprinted and interrogated. He was forced to relive his traumatic arrest and wrongful incarceration as he explained the pending

charges to CBP agents. Mr. Garcia never dreamed that he would face these issues passing a routine CBP checkpoint as a military and CBP veteran. Mr. Garcia thought of all his years of service and the respect and legacy he built that would forever be tarnished. Unable to cope with these overwhelming thoughts, Mr. Garcia contemplated taking his own life.

43. Overwhelmed by the grave charges he was facing—and knowing full well that he was completely innocent of these charges—Mr. Garcia felt the urgent need to retain the services of a criminal defense attorney. Mr. Garcia retained the services of Attorney Roberto Balli at great expense. Mr. *Garcia* paid Attorney Roberto Balli in the amount of \$12,000 for representation in his criminal case. On February 13, 2017, Attorney Balli made an appearance in the Criminal Case and commenced to handle Mr. Garcia’s defense. (See Ex. A, pg. 5-6, docket sheet entry # 29; Ex. H).

44. On February 14, 2017, Mr. Garcia had to appear before another U.S. Magistrate Judge—Diana Song Quiroga at the Federal District Courthouse in Laredo, Texas. (Ex. A at page 6). Since Mr. Garcia was not living in Laredo, it was necessary to expend money in travel fees and hotel expenses for visits with his attorney and to attend hearings. At this hearing, Mr. Garcia’s wife, two sisters (Adriana Castro and Lydia Lopez⁵), and 82-year-old mother (Clara Garcia) were present to lend their support. On February 14th, Judge Song Quiroga advised Mr. Garcia of his rights and the charges he was facing. *Id.* A financial affidavit was executed, and the Court granted a Motion to Substitute Roberto Balli as his attorney of record. (Ex. I). The Court adopted the previous bond and conditions issued in Houston, Texas and amended the conditions to include travel to Webb County. (Ex. J & K). Further, the Court set the case for arraignment on February 21, 2017 at 10 am before Magistrate Judge Guillermo R. Garcia. (Ex. L).

⁵ Mr. Garcia’s sister—Lydia Lopez—passed away from cancer in 2018. She did not live to see the day that Mr. Garcia would clear his name and receive justice for the wrong that had been committed against him in her eyes.

45. On February 14, 2017, Attorney Roberto Balli electronically filed a Waiver of Presence at Arraignment and entered a plea of not guilty on Mr. Garcia's behalf. (Ex. M). On February 21st, the arraignment hearing did not move forward, and the Court accepted the previously filed waiver of presence at arraignment. (Exh. A, pg. 7, docket sheet entry # 39; Ex. N). During the course of his representation, Mr. Balli conducted discovery and consulted with prosecutors including Assistant U.S. Attorney Mary Lou Castillo. During discovery, Mr. Balli obtained audiotapes that purportedly implicated Mr. Garcia in the crimes at issue. The voice on the audiotapes contained the voice of a man speaking in Spanish. At some point, Mr. Garcia made the drive to Laredo, Texas to meet with his attorney and Assistant U.S. Attorney Mary Lou Castillo. During this meeting, Mr. Garcia was asked to speak in Spanish so that his Spanish and voice could be compared to the voice contained in the audiotapes created by the Defendants. **The voice on the audiotapes was clearly not Mr. Garcia's—and the government agreed.** The accent did not match.⁶ The cadence did not match.⁷ The pitch did not match. The ease of command of the Spanish language also clearly differed.⁸

46. On March 7, 2017—35 days after Mr. Garcia's initial arrest—Assistant U.S. Attorney Mary Lou Castillo filed an Agreed Motion to Dismiss Indictment. (Exh. A, pg. 7, docket sheet entry # 42; Ex. O). The next day, March 8, 2017, Judge Marina Garcia Marmolejo signed an Order dismissing the indictment with prejudice. (*Id.* at docket entry # 43; Ex. P). Even though the government was dismissing the case against Mr. Garcia—known as “Oz” or “Ozzie” amongst

⁶ The speaker on the audio tape—who was discussing criminal activity—had a Northern Mexico accent (also referred to as a “Norteño” accent), while Mr. Garcia's Spanish can be characterized as a Mexican-American accent (i.e. as the accent of someone of Mexican descent who grew up in the U.S. speaking mostly English).

⁷ The speaker on the audio tape—who was discussing criminal activity—spoke at a much more rapid pace than Mr. Garcia, when speaking Spanish. Mr. Garcia's Spanish is not as fast as the speaker on the audio tape.

⁸ Mr. Garcia, having grown up in the U.S. but on the border, can speak Spanish, but not with the ease and dominance that the speaker on the audio tape seemed to have over the Spanish language.

friends—the government continued to insist that Mr. Garcia was known as “Valdo” and “Baldo” by attaching the nicknames to the Motion to Dismiss. (Ex. O).

47. The United States Marshal Service received the order the same day it was signed. (*Id.* at docket entry #44). (Ex. Q)

48. On May 1, 2017, Judge Garcia Marmolejo signed an order to disburse bond in the amount of \$1,000 to Adriana Castro, Mr. Garcia’s sister. (*Exh. A* at pg. 7, docket entry #49; Ex. R). On June 29, 2017—147 days after it was deposited into the registry of the Court—Adriana Castro received the disbursement of bond in the amount of \$1,000. (Ex. A at pg. 8).

Mr. Garcia’s Name Has Been Irreparably Tainted in the Public Record

49. The United States Government commenced a criminal prosecution—through the Office of the U.S. Attorney—against Mr. Garcia. The criminal prosecution was under case no. 5:17-cr-00039 and was filed in the U.S. District Court in the Southern District of Texas (Laredo, Texas Division) (hereinafter referred to as the “Criminal Case”).

50. A query search of Mr. Garcia’s name—Osbaldo Garcia—on the publicly accessible PACER system will list Mr. Garcia as a “defendant” in two cases filed in the Federal District Court for the Southern District of Texas. (Ex. T1). As of January 28, 2019—almost two years after his wrongful arrest—Mr. Osbaldo Garcia’s name continues to be tainted.

51. When a visitor to the PACER system clicks on Mr. Osbaldo Garcia’s name after a search, the viewer is directed to a screen which yields two results for criminal cause numbers: 5:17-cr-00039 and 5:17-cr-00039-1. The first case is styled “USA v. Garcia, et al.” The publicly available Criminal Docket Sheet (attached hereto as Exhibit A) shows Mr. Garcia as “Defendant (1).” (see Exh. A, pg. 1). Said docket sheet shows that Mr. Garcia was charged with (a) “**conspiracy to possess with intent to distribute 1 kg. or more of heroin.**” (see Exh. A, pg. 2), and (b) “**possess[ion] with intent to distribute 1 kg. or more of heroin.**” (*Id.*) The same page also

shows that the penalty for these two counts is “10 yrs to Life and/or \$10 Million; \$100 CVF; at least 5 yrs TSR.” (Id.)

52. Anyone reading this publicly-available document would surmise that Mr. Garcia was being accused of some pretty serious charges: possession of 2.2 pounds of *heroin* or more.⁹ Moreover, anyone reading this publicly-available document would also see that Mr. Garcia was facing significant jail time, a significant fine, and a term of supervised release of at least 5 years. Although the docket sheet indicates that these two counts were “DISMISSED on Govt’s written motion,” (see Exh. A, pg. 2), the taint on Mr. Garcia’s name is impossible to erase.

53. The docket sheet also shows the existence of a co-defendant—Mr. Daniel Rodriguez Reyna. (See Exh. A, pg. 2). The docket sheet informs the public that Mr. Daniel Rodriguez Reyna was charged with the same things that Mr. Garcia was charged with. (See Exh. A., pg. 2-3). Quite detrimental to Mr. Garcia’s reputation is the fact that the docket sheet indicates the following “Disposition” for Mr. Daniel Rodriguez Reyna:

“...135 mos to serve concurrent to 135 mos in case 5:17cr40-3; 3 yrs srt, concurrent, comply with all immigration related conditions and all applicable, standard and mandatory conditions; \$100 s/a; fine waived; special condition, not to return to the United States illegally; waived appeal...”

54. Said “disposition” informs the public at large that Mr. Daniel Rodriguez Reyna—Mr. Garcia’s co-defendant—was sentenced to 135 months of jail time, or 11 years and 3 months. The following questions might start forming in the mind of a reader of this publicly-available document: Why is Mr. Garcia being implicated with this co-defendant who was sentenced to over 11 years of jail time? Why did the government of the United States of America accuse Mr. Garcia with possession of heroin? Surely, if they got Mr. Rodriguez Reyna for 11 years of jail time, then

⁹ 1 kilogram equals 2.20462 pounds.

the government should have had ample evidence to also indict Mr. Garcia, right? Did Mr. Garcia get off on a technicality? Is he really a heroin distributor? What is he in to?

55. All of these questions—and more—start creeping into the mind of anyone reading this docket sheet. Although the words “DISMISSED on Govt’s written motion,” inform the public that the indictment against Mr. Garcia was dismissed, this brief statement does not indicate to the public that the United States of America made a mistake in arresting Mr. Garcia when they wrongfully dragged him into this criminal prosecution. Mr. Garcia’s name listed on the criminal docket sheet is without a doubt damaging to his reputation, to his standing in the community, to his employment prospects, indeed, to his legacy. He has been defamed and libeled by the very same government he risked his life for over so many years.

56. It appears that on January 4, 2017, an arrest warrant was issued for the arrest of Daniel Rodriguez Reyna. (See Exh. A, pg. 4, docket entry # 8). The warrant is described as an “Indictment Warrant.” It appears then, that Mr. Daniel Rodriguez Reyna had been indicted by a Grand Jury and that the arrest warrant was issued as a result of the felony indictment. The same entry on the docket sheet also indicates that Mr. Daniel Rodriguez Reyna was arrested on January 27, 2017, because the warrant shows that it was returned executed on said date. (Id.)

57. Similarly, the docket sheet (Exh. A) also shows that a warrant was issued on January 4, 2017 against Mr. Garcia. (Id at pg. 5, docket entry # 27). The warrant against Mr. Garcia, however, was not returned executed until February 1, 2017—five (5) full days after Mr. Daniel Rodriguez Reyna’s warrant was executed. On information and belief, Mr. Garcia believes that Mr. Rodriguez Reyna was in the custody of the U.S. Government for five full days prior to Mr. Garcia’s apprehension on February 1, 2017.

58. The Bench Warrant against Mr. Garcia is attached hereto as Exhibit B. It shows that the United States Marshal’s office was directed to arrest Mr. Garcia and to be brought to a federal

magistrate judge to answer an indictment charging him with heroin trafficking. (See Exh. B). The Bench Warrant shows that it was received on January 4, 2017 by the U.S. Marshal Service. (Id.) The Bench Warrant also shows that Mr. Garcia was not arrested until February 1, 2017 by Deputy U.S. Marshal, William Gonzalez and that said arrest of Mr. Garcia occurred in Houston, Texas.

59. To an uninformed spectator of the general public, the indictment seems to indicate that the United States Government and its numerous law enforcement agents had enough evidence to accuse Mr. Garcia of engaging in a drug conspiracy. The publicly available indictment reads as follows:

Count One: Drug Conspiracy

Beginning from on or about March 12, 2014 and continuing to on or about March 26, 2014 in the Southern District of Texas, and elsewhere within the jurisdiction of this Court defendants,

Osbaldo Garcia, a/k/a "Valdo" a/k/a "Baldo";

A redacted second party; and

Daniel Rodriguez Reyna

did knowingly and intentionally conspire and agree together and with each other to possess with intent to distribute a controlled substance. This violation involved a quantity of 1 kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance.

Count Two: Possession with intent to distribute a controlled substance

Beginning from on or about March 12, 2014 and continuing to on or about March 19, 2014 in the Southern District of Texas, and elsewhere within the jurisdiction of this Court defendants,

Osbaldo Garcia, a/k/a "Valdo" a/k/a "Baldo";

A redacted second party; and

Daniel Rodriguez Reyna

Aided and abetted by each other did knowingly and intentionally possess with intent to distribute a controlled substance. This violation involved a quantity of 1 kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance. (See Indictment attached to Exhibit C).

60. Any person reading the indictment will undoubtedly ask, “Did the government of the United States observe Mr. Garcia participate with others in possessing and distributing heroin? They surely must have observed him committing a crime, if they decided to indict him, arrest him, and incarcerate him.” The question must be forcefully posed: Would anyone want his/her name listed on an indictment and criminal docket sheet both made part of the public record, if they were in fact, innocent?

61. Mr. Garcia’s name is found in countless places throughout the papers filed in said criminal case—all of which appear in the public domain. All of which make him look like a “drug dealer,” “drug importer,” “drug trafficker,” in effect, an all-around bad guy.

62. In addition to the taint that the PACER system casts on Mr. Garcia’s name and reputation, a simple background check will undoubtedly yield an arrest on his record dated February 1, 2017. In fact, Mr. Garcia interviewed with the Federal Bureau of Investigation sometime in 2018 and learned that he was classified as “armed and dangerous” in the National Center for Information on Criminals. Such a classification undoubtedly destroys any opportunity he has to rejoin DHS as a CBP agent or any other federal law enforcement agency for which he otherwise is highly qualified.

63. Moreover, Mr. Garcia fears this classification as “armed and dangerous” places him in grave danger. As a truck driver, Mr. Garcia is on the road and behind the wheel for the majority of his day. He fears that he could be injured or killed in a routine traffic stop that escalates to a dangerous situation after a law enforcement officer sees his “armed and dangerous” classification. He fears that any encounter with law enforcement—local, state, or federal—can escalate to a

traumatic situation due to his record and classification. Mr. Garcia will never feel safe again unless his current NCIC classification is changed or removed.

64. Mr. Garcia made a career of protecting his country. Yet, he found himself accused of directly jeopardizing the safety of American neighborhoods by distributing heroin. All the while, he remained guiltless.

65. One must sincerely ask: what evidence, if any, did the government agents really have against Mr. Garcia? If they were confident enough to go before a grand jury and ask for an indictment; *and* if they were confident enough to argue before a U.S. Magistrate Judge that there was enough probable cause to detain Mr. Garcia as a criminal; *and* if they indeed held Mr. Garcia for 24 hours; then *why drop the case against him in such a short time after his arrest with an unceremonial, unapologetic, silent, cold, motion to dismiss? Could it be that they had the wrong man after all?*

66. Despite the picture these publicly available documents paint to the world, Mr. Garcia is not a criminal; he is not a drug-dealer; he is not a drug-trafficker; he is not a zeta; he does not distribute heroin into the U.S. He should never have been put on the indictment. He should never have been arrested. He should have never had to spend 24 hours in jail. He has been wronged by the highest levels of law enforcement in this country. He has been dragged through the mud. His name has been dragged through the mud. His wife was made sick with worry. His reputation and legacy he so proudly built as an Army National Guardsman, as a Coast Guard service-member, and as a CBP veteran will forever be tarnished. He is owed an apology. He is owed an explanation. Which agent or agents arrived at the conclusion that this was the man they were looking for? **What kind of investigation, if any, did they do?** He deserves to be compensated for every hour he spent at the Joe Corley Detention Facility. He deserves to be compensated for the chains and shackles that were placed on him. He deserves to be compensated for the attorney's fees he had to dish out as

a result of the negligent arrest. He should be compensated for the amount of money he will need to expend to clean his record. He deserves to be compensated for his pain and suffering, mental anguish, and loss of liberty. He is owed a public-apology that will clear his name. He is owed the return of his impeccable service record. This should not be the way that a proven patriot is treated by the very government he so selflessly served. Even if Mr. Garcia had not devoted his life to his country, he still deserved better than the utter failure of Due Process that he was afforded.

The Drug Enforcement Administration's Basis (or Lack Thereof) For Arresting Mr. Garcia

67. Plaintiffs incorporate all of the allegations made hereinabove. Furthermore, Plaintiffs allege the hereinbelow pleaded allegations.

68. No Federal Agent or agent of the Defendant witnessed Mr. Garcia (the Plaintiff in this case) commit an offense in his/her presence from March 12, 2014¹⁰ through Feb. 1, 2017.

69. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had obtained a physical description (age, height, weight, hair color, eye color, complexion, facial features, tattoos, scars) of "The Other Osbaldo"¹¹ that was being investigated by the D.E.A. in connection with the investigation that resulted in the indictment attached herein as Exhibit C.

70. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had subjected any confidential informant(s) or cooperating source(s) that the DEA was employing in their investigation which resulted in the indictment attached herein as Exhibit C to a proper

¹⁰ March 12, 2014 is the date that the indictment (see Exhibit C) alleges the criminal conspiracy began; Feb. 1, 2017, is the date Mr. Garcia was arrested. A period of time spanning 35 and one-half months elapsed between the date the alleged criminal conspiracy started, and the date Mr. Garcia was arrested.

¹¹ Plaintiffs believe that the Defendants were investigating another individual who also had the name, "Osbaldo Garcia" or "Baldo Garcia." For ease of reference, this pleading will refer to the real target of the underlying criminal investigation as "The Other Osbaldo." It is not known by Plaintiffs if the name "Osbaldo" was ever actually uttered by anybody during the investigation, or if only the nickname "Baldo" or "Valdo" was used and an assumption was made that the nickname "Baldo" served as an alias for the name "Osbaldo." The nickname "Baldo" could also be used to refer to men with the name Baldomero, or Baldovino, or Ubaldo, or Waldo.

photo line-up identification procedure with a picture of The Other Osbaldo.

71. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had subjected any confidential informant(s) or cooperating source(s) that the DEA was employing in their investigation which resulted in the indictment attached herein as Exhibit C to a proper photo line-up identification procedure with a picture of Mr. Garcia (the Plaintiff in this case).

72. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had obtained or viewed any video surveillance of The Other Osbaldo engaging in any criminal activity.

73. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had obtained or viewed any video surveillance of Mr. Garcia (the Plaintiff in this case) engaging in any criminal activity.

74. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had secured or obtained an audio recording of an exemplar of Mr. Garcia's (the Plaintiff in this case) voice.

75. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had employed any confidential informant(s) or cooperating source(s) to contact Mr. Garcia (the Plaintiff in this case) either in person, or by telephone.

76. Audio recordings containing the voice of The Other Osbaldo and obtained by the Defendant or agent of the Defendant in connection with its investigation which resulted in the indictment attached herein as Exhibit C provided no link or connection whatsoever to Mr. Garcia (the Plaintiff) in this case.

77. Up until Feb. 1, 2017, the Defendant and/or agents of the Defendant did not have any evidence in the way of a phone record or a phone bill or a phone statement showing any telephone calls between the DEA's confidential informant(s) or cooperating source(s), on the one hand, and

Mr. Garcia (the Plaintiff in this case) on the other.

78. Up until Feb. 1, 2017, none of the specific phone number(s) being dialed by the confidential informant(s) or cooperating source(s) being employed by the DEA in their investigation that resulted in the indictment attached hereto as Exhibit C were linked to Mr. Garcia (the Plaintiff in this case).

79. Up until Feb. 1, 2017, none of the specific phone number(s) from which The Other Osbaldo was calling the confidential informant(s) or cooperating source(s) being employed by the DEA in their investigation that resulted in the indictment attached hereto as Exhibit C were linked to Mr. Garcia (the Plaintiff in this case).

80. Up until Feb. 1, 2017, none of the confidential informant(s) or cooperating source(s) being used by the DEA in the investigation that resulted in the indictment attached hereto as Exhibit C was asked if he/she knew if The Other Osbaldo had ever been in the Army National Guard.

81. Up until Feb. 1, 2017, none of the confidential informant(s) or cooperating source(s) being used by the DEA in the investigation that resulted in the indictment attached hereto as Exhibit C was asked if he/she knew if The Other Osbaldo had ever been in the U.S. Coast Guard.

82. Up until Feb. 1, 2017, none of the confidential informant(s) or cooperating source(s) being used by the DEA in the investigation that resulted in the indictment attached hereto as Exhibit C was asked if he/she knew if The Other Osbaldo had ever been in the U.S. Border Patrol.

83. Up until Feb. 1, 2017, none of the confidential informant(s) or cooperating source(s) being used by the DEA in the investigation that resulted in the indictment attached hereto as Exhibit C was asked if he/she knew if The Other Osbaldo had ever been a private military contractor in Iraq or Afghanistan.

84. Up until Feb. 1, 2017, none of the confidential informant(s) or cooperating source(s) being used by the DEA in the investigation that resulted in the indictment attached hereto as Exhibit C

was asked if he/she knew if The Other Osbaldo had ever been to Iraq or Afghanistan.

85. From March 12, 2014 through Feb. 1, 2017, no federal agent or agent of the Defendant had evidence of a shipment of heroin being linked to Mr. Garcia (the Plaintiff in this lawsuit) or to Mr. Garcia's semi-tractor-trailer registered under his name, or to a tractor-trailer being used by Mr. Garcia or to a company that Mr. Garcia worked for, or to Mr. Garcia's duly registered and properly issued CDL license.

86. From March 12, 2014 through Feb. 1, 2017, none of the actual contraband seized—the heroin—was seized at any property linked to Mr. Garcia (the Plaintiff in this case).

87. From March 12, 2014 through Feb. 1, 2017, none of the actual contraband seized—the heroin—was seized in any motor vehicle or commercial tractor trailer linked to Mr. Garcia (the Plaintiff in this case).

88. Up until Feb. 1, 2017, audio recordings containing the voice of The Other Osbaldo and obtained by the Defendants in connection with their investigation which resulted in the indictment attached herein as Exhibit C were never played to any of the countless fellow U.S. Border Patrol Agents, supervisors, secretaries, or other staff that worked with Mr. Garcia (the Plaintiff in this case) while he was at U.S. Border Patrol in an attempt to verify that Mr. Garcia was the man speaking on the recordings.

89. Up until Feb. 1, 2017, audio recordings containing the voice of The Other Osbaldo and obtained by the Defendants in connection with their investigation which resulted in the indictment attached herein as Exhibit C were never played to any of the countless fellow Army National Guard members, commanding officers, or civilian staff that worked with Mr. Garcia (the Plaintiff in this case) while he was at the Army National Guard in an attempt to verify that Mr. Garcia was the man speaking on the recordings.

90. Up until Feb. 1, 2017, audio recordings containing the voice of The Other Osbaldo and

obtained by the Defendants in connection with their investigation which resulted in the indictment attached herein as Exhibit C were never played to any of the countless fellow U.S. Coast Guard members, commanding officers, or civilian staff that worked with Mr. Garcia (the Plaintiff in this case) while he was at the U.S. Coast Guard in an attempt to verify that Mr. Garcia was the man speaking on the recordings.

91. Up until Feb. 1, 2017, audio recordings containing the voice of The Other Osbaldo and obtained by the Defendants in connection with their investigation which resulted in the indictment attached herein as Exhibit C were never played to any of the countless fellow co-workers or supervisors that worked with Mr. Garcia (the Plaintiff in this case) while he was at several transportation companies in an attempt to verify that Mr. Garcia was the man speaking on the recordings.

92. Up until Feb. 1, 2017, audio recordings containing the voice of The Other Osbaldo and obtained by the Defendants in connection with their investigation which resulted in the indictment attached herein as Exhibit C were never played to any of the fellow co-workers or supervisors that worked with Mr. Garcia (the Plaintiff in this case) while he was at the Federal Bureau of Prisons in an attempt to verify that Mr. Garcia was the man speaking on the recordings.

93. The packaging in which the heroin was packaged did not contain the fingerprints of Mr. Garcia (the Plaintiff in this lawsuit).

94. Up until Feb. 1, 2017, no confidential informant(s) or cooperating source(s) provided any Federal Agent or an agent of the Defendant with a photograph of Mr. Garcia (the Plaintiff in this lawsuit).

95. Up until Feb. 1, 2017, no confidential informant(s) or cooperating source(s) provided any Federal Agent or an agent of the Defendant with a photograph of The Other Osbaldo.

96. Up until Feb. 1, 2017, no confidential informant(s) or cooperating source(s) provided any

Federal Agent or an agent of the Defendant with an address or addresses for Mr. Garcia (the Plaintiff in this case).

97. Up until Feb. 1, 2017, no confidential informant(s) or cooperating source(s) provided any Federal Agent or an agent of the Defendant with a date of birth for Mr. Garcia (the Plaintiff in this case).

98. Up until Feb. 1, 2017, no confidential informant(s) or cooperating source(s) provided any Federal Agent or an agent of the Defendant with a social security number for Mr. Garcia (the Plaintiff in this case).

99. Up until Feb. 1, 2017, no Federal Agent or an agent of the Defendant had any evidence in the way of a phone record or a phone bill or a phone statement showing any telephone calls between the other named criminal defendants on the indictment attached hereto as Exhibit C, on the one hand, and Mr. Garcia (the Plaintiff in this case) on the other.

100. Federal Agents or an agent of the Defendant obtained Mr. Garcia's (the Plaintiff in this case) picture, from a source wholly unrelated to any criminal activity or from a source not in any way connected to the nefarious activities being investigated by the DEA in connection with the investigation that resulted in the indictment attached hereto as Exhibit C.

101. Federal Agents or an agent of the Defendant obtained Mr. Garcia's (the Plaintiff in this case) address, from a source wholly unrelated to any criminal activity or from a source not in any way connected to the nefarious activities being investigated by the DEA in connection with the investigation that resulted in the indictment attached hereto as Exhibit C.

102. Federal Agents or an agent of the Defendant obtained Mr. Garcia's (the Plaintiff in this case) date of birth, from a source wholly unrelated to any criminal activity or from a source not in any way connected to the nefarious activities being investigated by the DEA in connection with the investigation that resulted in the indictment attached hereto as Exhibit C.

103. Federal Agents or an agent of the Defendant obtained Mr. Garcia's (the Plaintiff in this case) social security number, from a source wholly unrelated to any criminal activity or from a source not in any way connected to the nefarious activities being investigated by the DEA in connection with the investigation that resulted in the indictment attached hereto as Exhibit C.

104. From March 12, 2014 through Feb. 1, 2017, no Federal Agent or agent of the Defendant had evidence in the form of a bank statement from a financial institution linked to Mr. Garcia (the Plaintiff in this lawsuit) showing deposit of any illicit drug monies used in the investigation which resulted in the indictment attached hereto as Exhibit C.

105. Federal Agents or agents of the Defendant had 35 and one-half months to attempt any one of the investigative techniques or actions, if not all, listed in paragraphs 68 through 104 hereinabove.

106. Based on the above-numbered paragraphs 68 through 104, Plaintiffs reasonably surmise, deduce, and allege that the Defendant and its agents did not inform the grand jury through testimony about the deficiencies identified in the above paragraphs 68 through 104, when the indictment attached hereto as Exhibit C was procured by the United States of America.

107. Based on the above-numbered paragraphs 68 through 104, Plaintiffs reasonably surmise, deduce, and allege that no employee, agent, officer, attorney, or representative of the United States of America informed the grand jury about the deficiencies identified in the above paragraphs 68 through 104, when the indictment attached hereto as Exhibit C was procured by the United States of America.

108. Federal Agents or agents of the Defendant did not have probable cause to believe that the person to be arrested—Mr. Garcia (the Plaintiff in this case)—had committed a felony from March 12, 2014 through Feb. 1, 2017.

Compensation for Wrongful Incarceration; Wrongful Prosecution; Defamation; Libel; Violation of Civil Rights; Infliction of Emotional Distress; Loss of Consortium; etc.

109. As a result of Defendants' conduct, Mr. Garcia has suffered damages including spending approximately 24 hours in Federal Custody, from 7pm on February 1, 2017 to 7pm on February 2, 2017, as an innocent man. Due to this miscarriage of justice, Mr. and Mrs. Garcia seek \$500,000.00 for each hour that he spent in custody, a sum of \$12 Million Dollars, to compensate him for his pain and suffering, emotional distress, loss of consortium, and mental anguish. Mrs. Garcia seeks \$100,000.00 for her pain and suffering, mental anguish, and emotional distress, as well as for loss of consortium. Moreover, Mr. Garcia is entitled to the \$12,000.00 he expended in hiring an attorney to defend his innocence during his wrongful incarceration. Mr. Garcia is requesting \$142.00 for the cost of the ankle-monitoring device he was forced to wear as a condition of his release. Mr. Garcia is requesting \$2,000.00 for the estimated cost of travel and hotel expenses expended to travel to Laredo to meet with his criminal defense attorney as well as to attend hearings. Mr. Garcia is requesting \$10,000.00 for future attorney fees he will undoubtedly expend to expunge his now tainted record. Mr. Garcia seeks an additional \$ 1,000,000.00 in damages for lost future wages. If Mr. Garcia would have been able to secure a job with the federal government in 2017, he would have earned an estimated \$50,000.00 more than what he will earn outside of the U.S. Government working as a CDL driver. The \$50,000.00 difference takes into account not only salary, but also valuable employment benefits such as retirement benefits, health insurance, and paid sick leave and vacation days. Mr. Garcia will be deprived of these additional \$50,000.00 per year for the next twenty (20) years—which equals a total of \$1,000,000.00. In total, Mr. Garcia is asking for a combined amount of \$13,024,142.00 as damages. Mrs. Garcia asks for an amount of \$100,000.00 for her damages.

110. The injuries suffered by Mr. Garcia and his wife are: loss of his liberty for 24 hours, pain and suffering, mental anguish, emotional distress, defamation of his name and character, harm to

his future employment prospects, attorney's fees he will have to expend in the future to clear his name, overall shame he was made to suffer.

G. Causes of Action

Count 1 – Negligence under Federal Tort Claims Act

111. Plaintiffs incorporate the allegations contained hereinabove in paragraphs 1 through 110. As alleged above, Plaintiffs suffered injury, during the time period Mr. Garcia was detained, and continuing thereafter through the present day. Plaintiffs suffered injury in the form of pain and suffering, mental anguish, emotional distress, defamation and libel of Mr. Garcia's name and character, harm to his future employment prospects, loss of income, attorney's fees he will have to expend in the future to clear his name, and the overall shame they were made to suffer. Mr. Garcia's exemplary record of service to his country was besmirched by the arrest.

112. The acts and/or omissions of the United States of America—through its federal employees—were wrongful and/or negligent. In fact, Plaintiffs would posit that it would be kind indeed to characterize the actions and/or omissions of the Defendant as mere negligence. The Defendant's actions and/or omissions go beyond mere negligence. The Defendant's actions and/or omissions appear to have been undertaken in conscious disregard of the United States Constitution and traditional notions of Due Process and fair play; in conscious disregard of the requirements of the Fourth Amendment, prescribing the right of Mr. Garcia to be secure in his person against unreasonable seizures, or to have no warrant issue against him but upon probable cause, describing the person to be seized; and in conscious disregard of the Fifth Amendment prohibiting the deprivation of Mr. Garcia's liberty without due process of law. The defendant and its agents had a duty to exercise ordinary care and utilize the criminal justice system in a reasonable and prudent manner while acting in the course and scope of their employment. The defendant had a duty to exercise ordinary care and conduct its criminal investigation of Mr. Garcia in a reasonable and

prudent manner. The Defendant's mistake did not occur during an adrenaline-inducing execution of a no-knock search warrant which might turn violent; nor during a particularly violent encounter with a suspect; nor during a hot pursuit; nor during a situation where an officer feared for their safety. The Defendant had 35 and one-half months' time to accumulate its articulable facts from which to create a reasonable suspicion or probable cause, or a decent enough case to go before a grand jury and request an indictment. The defendant had a duty to **conduct an investigation**. The defendant had a duty to base its decision to arrest on facts and not on mere suspicions, assumptions, or unsubstantiated hunches. The defendant had a duty to exercise ordinary care and utilize the information at its disposal—as obtained in its investigation—in a reasonable and prudent manner. *If you don't have enough to arrest, you don't arrest; you don't indict.* The defendant wholly failed to exercise said ordinary or due care. Not only did they not have enough evidence to clear the hurdle required for the issuance of an indictment, but they wholly failed to apprise the grand jury of all of the missing links which failed to establish a connection between Mr. Garcia and the criminal activity alleged in the indictment. One wonders: *what* did they tell the grand jury then? This failure on the part of the Defendant was the proximate cause of the Plaintiffs' injuries alleged herein. The failure of the Defendant is alleged in paragraphs 1 through 110 hereinabove. Under the laws of the State of Texas, a private person would be liable to plaintiff for these acts and/or omissions. Thus, under 28 U.S.C. §2674, the United States is liable to plaintiffs for their damages resulting from the injuries they sustained. Plaintiffs seek damages in the amounts pleaded hereinabove in this Original Complaint.

Defendant's Agents were not performing discretionary functions

113. Plaintiffs incorporate factual allegations contained hereinabove. While the Defendant's agents might have discretion as to **how** to conduct an investigation, or as to **what investigative methods to use** to investigate crime, the Plaintiffs are alleging that the Defendant failed to conduct

any investigation whatsoever of Mr. Garcia, prior to arriving at the conclusion that he was criminally responsible for the criminal conduct alleged in the indictment found at Exhibit C herein. The Defendant also wholly failed to conduct any investigation whatsoever *after* they identified him as Osbaldo Garcia and decided that he might be The Other Osbaldo. The Plaintiffs, through this lawsuit, are not trying to dictate **which** investigative methods the Defendant should have used, and which investigative methods should not have been used. The Plaintiffs are, however, demanding that the Defendant use **some** investigative methods, as opposed to none. Even an agent's discretionary function of deciding whom to arrest is governed by the U.S. Constitution. An agent does not have discretion to arrest anyone he wishes to arrest. The agent must have probable cause before he can seize the person. By procuring an indictment for a person for whom no investigation had been conducted, the agents acted outside the scope of their discretionary functions.

114. Although the Defendant would have had an element of judgment or choice in deciding which investigative techniques to use (had they conducted an investigation of Mr. Garcia), the minute they procured an indictment against Mr. Garcia without the use of any investigation whatsoever, their actions were subject to the direct control of Title 21 U.S.C. §878(a)(3)(A); also of Title 21 U.S.C. §878(a)(3)(B); also of the Fourth Amendment of the U.S. Constitution, prescribing the right of Mr. Garcia to be secure in his person against unreasonable seizures, or to have no warrant issue against him but upon probable cause, describing the person to be seized; also of the Fifth Amendment of the U.S. Constitution, prohibiting the deprivation of Mr. Garcia's liberty without due process of law.

115. While the Plaintiffs agree with aggressive enforcement of the drug laws—Mr. Garcia risked his life, after all, while in the U.S. Coast Guard and U.S. Border Patrol combatting illegal drug trafficking—the Plaintiffs disagree that this aggressiveness should be such that the U.S.

Constitution is pushed aside and ignored.

Defendants Failed to Exercise Due Care in the Execution of a Statute or Regulation

116. Plaintiffs incorporate herein all of the allegations contained hereinabove. Plaintiffs allege that the Defendant is also liable in tort under the FTCA because it failed to exercise due care in the execution of Title 21 U.S.C. §878(a)(3)(A); also of Title 21 U.S.C. §878(a)(3)(B); also of the Fourth Amendment of the U.S. Constitution, prescribing the right of Mr. Garcia to be secure in his person against unreasonable seizures, or to have no warrant issue against him but upon probable cause, describing the person to be seized; also of the Fifth Amendment of the U.S. Constitution, prohibiting the deprivation of Mr. Garcia's liberty without due process of law. The Defendant also failed to exercise due care in the execution and enforcement of the Controlled Substances Act. As DEA agents, they were tasked with investigating those who are suspected of violating the controlled substances act. Although they suspected Mr. Garcia of being a violator of the Controlled Substances Act, they failed to investigate him and find any evidence that he violated any provision of the Controlled Substances Act. Although their job was also to prepare to prosecute those who violate the controlled substances laws, the agents proceeded to prosecute without first ascertaining whether or not Mr. Garcia had indeed violated the Controlled Substances Act.

Count 2 – Expunction of arrest

117. Mr. Garcia incorporates all of the allegations contained hereinabove. Mr. Garcia argues that the allegations alleged herein show a *prima facie* case of exceptional circumstances giving rise to the need to have his fictitious and incorrect criminal record expunged by all federal agencies. He played no part in the Defendant's error. He contributed in no way to his wrongful arrest. He wasn't even in the wrong place at the wrong time. He was miles away removed from the illegal

activity. No evidence in the case linked him to the criminal activity. Yet, now the FBI's databases have him listed as having been arrested for heroin trafficking. He is even classified as armed and dangerous. This Court should order all federal agencies to correct the record. This is not a case where a defendant was arrested and convicted, and then reversed his conviction on a technicality or on a constitutional ground. Mr. Garcia was completely innocent. His life is now in danger as he fears being shot by a nervous, or over-zealous, or under-trained police officer who pulls him over and sees that he is dealing with an "armed and dangerous" individual.

H. Damages

118. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered the following injuries and damages:

- a. Incarceration for 24 hours;
- b. Money expended in the retention of criminal defense attorneys to represent him in the defense of the prosecution;
- c. Money that he will need to expend to clean his record;
- d. Pain and suffering in the past and future;
- e. Mental anguish;
- f. Loss of consortium in the past;
- g. Loss of Income in the past and future;
- h. Expunction of his record;
- i. Public Besmirching; and,
- j. Exposure to physical danger and loss of life in the past and in the future.

I. Attorney Fees & Costs

119. If Plaintiffs are entitled to an award of attorney fees and costs, Plaintiffs request same.

J. Jury Demand

120. Plaintiffs assert their right under the Seventh Amendment to the U.S. Constitution and demand, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues which can properly be submitted to a jury.

K. Prayer

121. For these reasons, Plaintiffs asks for judgment against Defendant for the following:
- a. Actual damages of \$13,024,142.00 for Mr. Garcia and \$100,000.00 for Mrs. Garcia.
 - b. Prejudgment and postjudgment interest, if allowed by law.
 - c. Reasonable attorney's fees, if allowed by law.
 - d. Costs of suit, if allowed by law.
 - e. All other relief the court deems appropriate, and to which Plaintiffs may be entitled.

Respectfully submitted,

**THE LAW OFFICE OF
NORBERTO CARDENAS III, PLLC**

By: /s/ Norberto Cardenas III
NORBERTO CARDENAS III
Attorney-in-charge
Tx SBN 24049716
Fed Id No. 1074772
6909 Springfield Ave., Ste. 101
Laredo, Texas 78041
(956) 726-0700 Tel.
(956) 726-0701 Fax
ncardenas@cardenaslaw.com
www.laredolawoffice.com

ATTORNEY FOR OSBALDO GARCIA AND JUANA
EDITH GARCIA