

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GERARDO VAZQUEZ-MENTADO :

Plaintiff,

FIRST AMENDED
COMPLAINT

-vs- :

MORGAN BUITRON, JAVIER LORENZO and
JOHN DOES 1 and 2, individually and in
their official capacities as U.S. Border
Patrol Agents; KEVIN OAKS, Chief Border
Patrol Agent, Buffalo Sector in his
individual capacity; and the
UNITED STATES OF AMERICA,

Civil Action
No. 5:12-CV-797-LEK-ATB

Defendants. :

I. PRELIMINARY STATEMENT

1. Plaintiff is a naturalized U.S. citizen. On September 29, 2009, he was wrongfully arrested and detained for 90 minutes by defendant Border Patrol Agents Buitron, Lorenzo and John Does 1 and 2, despite his continuous pleas that he was a U.S. citizen.

2. Plaintiff's action for damages, declaratory relief and attorney's fees is based upon the Fourth Amendment to the U.S. Constitution and the Federal Torts Claims Act, 28 U.S.C. §2671 et seq.

II. JURISDICTION AND VENUE

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331, this being an action arising under the Fourth

Amendment to the U.S. Constitution.

4. Jurisdiction is also conferred upon this Court by 28 U.S.C. §1346(b), this being an action arising under the Federal Torts Claims Act.

5. Venue in the Northern District of New York is proper under 28 U.S.C. 1391(e)(1), as a substantial part of the events or omissions giving rise to the claim occurred here, and plaintiff resides here.

III. PARTIES

6. Plaintiff GERARDO VAZQUEZ-MENTADO (VAZQUEZ) is a naturalized U.S. citizen. He resides in Oswego, New York. Attached hereto and marked as Exhibit A is a true and accurate copy of his Certificate of Naturalization, showing he was naturalized in Syracuse, New York on June 10, 1998.

7. Defendants MORGAN BUITRON and JAVIER LORENZO were at all times relevant to this complaint, U.S. Border Patrol agents stationed at the Oswego, New York Border Patrol Station.

8. Defendants JOHN DOE 1 and 2 were at all times relevant to this complaint, U.S. Border Patrol agents stationed at the Oswego, New York Border Patrol Station.

9. Defendants BUITRON, LORENZO and JOHN DOE 1 and 2 are responsible for enforcing the immigration laws of the United States, in conformance with federal and state law.

10. Defendant KEVIN OAKS was, at all times relevant to

this complaint, the Chief U.S. Border Patrol agent for the Buffalo, New York Border Patrol Sector. In this capacity, he was responsible for the supervision and training of all Border Patrol agents in the Buffalo Border Patrol sector, including defendants BUITRON, LORENZO and JOHN DOE 1 and 2. Defendant OAKS was also responsible for promulgating and establishing rules, policies, procedures, orders and customs for the Buffalo Border Patrol sector.

11. Defendant UNITED STATES OF AMERICA is a sovereign nation that has consented to be sued for the torts of its employees where a private person would be liable under the laws of the place where the tort occurred. Said defendant's employees who committed torts against VAZQUEZ are defendants BUITRON, LORENZO and JOHN DOE 1 and 2.

IV. STATEMENT OF FACTS

12. In the week prior to September 29, 2009, VAZQUEZ noticed, on several occasions, a Border Patrol vehicle parked around the corner from his residence on Middle Road, Oswego, New York.

13. On the morning of September 29, 2009, VAZQUEZ drove his 2002 Chevy van from his house on Middle Road, Oswego, New York, into the city of Oswego.

14. During this trip, VAZQUEZ was abiding by all the applicable vehicle and traffic laws of the state of New York.

15. With VAZQUEZ in his van during this trip were his

wife Cherrie Vazquez and their two children.

16. Cherrie and the two children are all U.S. citizens by birth.

17. When VAZQUEZ parked his van on Draper Street in Oswego, defendants BUITRON and LORENZO parked their vehicle, with its lights flashing, behind VAZQUEZ' van.

18. Defendants BUITRON and LORENZO approached VAZQUEZ' van and asked him to provide identification. They were in official uniform and were armed.

19. Pursuant to the defendants' request, VAZQUEZ produced his New York State driver's license. Attached hereto and marked as Exhibit B is a true and accurate copy of it. His driver's license notes that his name is Gerardo Vazquez.

20. Defendant BUITRON or LORENZO took VAZQUEZ' license, looked at it and said "You are Gerardo Vasquez-Mentado, you are illegal." He ordered VAZQUEZ out of the van.

21. After VAZQUEZ exited his van, he was searched and handcuffed by the defendant BUITRON or LORENZO, in the presence of his wife and two children.

22. Both VAZQUEZ and his wife repeatedly told defendants BUITRON and LORENZO that VAZQUEZ was a U.S. citizen.

23. Both VAZQUEZ and his wife also told defendants BUITRON and LORENZO that he had a valid New York driver's license.

24. In response, defendants BUITRON and LORENZO again

said that VAZQUEZ was illegal.

25. Upon information and belief, defendants BUITRON and LORENZO did not check the validity of VAZQUEZ' driver's license.

26. Cherrie Vazquez asked defendants BUITRON and LORENZO why they stopped VAZQUEZ. Said defendants refused to answer her question.

27. Cherrie Vazquez told defendants BUITRON and LORENZO that she was a U.S. citizen.

28. VAZQUEZ told defendants BUITRON and LORENZO that the handcuffs were too tight. They told VAZQUEZ not to move his arms and not to worry about it.

29. Upon information and belief, defendants BUITRON and LORENZO did not comply with applicable laws, policies and procedures in investigating the immigration status of VAZQUEZ prior to detaining and arresting him.

30. VAZQUEZ, as a naturalized U.S. citizen, was not required by law to have in his possession proof of his U.S. citizenship.

31. Cherrie Vazquez offered to return to their home and return, with VAZQUEZ' naturalization certificate and U.S. passport.

32. Defendants BUITRON and LORENZO told her that they could not wait, and that they had to take VAZQUEZ to their office.

33. Defendants BUITRON and LORENZO placed VAZQUEZ, still handcuffed, into the rear of an Oswego Police Department car.

34. An Oswego Police officer took VAZQUEZ in that car to the Border Patrol station in Oswego, New York, followed by defendants BUITRON and LORENZO in their vehicle.

35. Upon information and belief, defendants BUITRON and LORENZO made no effort to investigate VAZQUEZ' claim of U.S. citizenship, prior to having him transported to their station in Oswego.

36. Before placing VAZQUEZ in the police car, defendants BUITRON and LORENZO did not ask him any questions to determine if he was a U.S. citizen.

37. Upon arriving at the Border Patrol station, VAZQUEZ was released from his handcuffs. However, at all times while he remained at the station, he was under arrest and was not free to leave.

38. At the Border Patrol station when VAZQUEZ arrived were defendants JOHN DOE 1 and 2, in uniform and armed.

39. At the Border Patrol station, VAZQUEZ was fingerprinted and his pictures were taken by defendants JOHN DOE 1 and 2.

40. At the Border Patrol station, VAZQUEZ was questioned, for the first time, about his claim to U.S. citizenship, by defendants JOHN DOE 1 and 2.

41. Said defendants showed VAZQUEZ a piece of paper on which appeared the name of Gerardo Vasquez-Mentado with the same

date of birth as VAZQUEZ. The defendants told VAZQUEZ that he was that person and that they had arrested him in Texas in 1993.

42. VAZQUEZ replied that he was a permanent resident in 1993 and was living in Oswego.

43. VAZQUEZ also told said defendants that his last name was spelled differently than the name on the piece of paper.

44. At the station, VAZQUEZ showed defendants JOHN DOE 1 and 2 his New York State pistol permit, which did not indicate that he was an alien. Attached hereto and marked as Exhibit C is a true and accurate copy of his current pistol permit.

45. In spite of his continued assertions that he was a U.S. citizen, his responses to specific questions posed by the defendants which supported his assertion, and the documents he showed to the defendants, VAZQUEZ was not released from custody by the defendants until his wife arrived at the Border Patrol station with his Naturalization Certificate and U.S. passport. Attached hereto and marked as Exhibit D is a true and accurate copy of his U.S. passport.

46. VAZQUEZ was detained by the four defendant Border Patrol agents for approximately 90 minutes, from the time of his initial encounter with the defendants on Draper Street until his release at the Border Patrol station.

47. Upon information and belief, on September 29, 2009, none of the defendants possessed a warrant for VAZQUEZ' arrest.

48. On September 29, 2009, defendants did not have probable cause to arrest VAZQUEZ as an alien unlawfully in the United States.

49. In the alternative to paragraph 48, on September 29, 2009, defendants did not have a reasonable suspicion, based on specific, articulable facts, together with the rational inferences from those facts, that VAZQUEZ was an alien unlawfully in the United States.

50. Upon information and belief, there exists in the Buffalo, New York sector of the U.S. Border Patrol a pattern and practice of unlawful detentions and/or arrests of U.S. citizens by the U.S. Border Patrol.

51. Upon information and belief, defendant OAKS has trained and supervised the four defendant Border Patrol agents in a manner which encouraged the violations complained of herein, or, in the alternative, failed to train and supervise said defendants in a manner adequate to prevent the violations complained of herein.

52. Upon information and belief, defendant OAKS has promulgated policies, established customs, and issued orders which resulted in the violations set forth herein.

53. Defendant OAKS knew or should have known that his acts or failure to act would result in the violations set forth herein.

54. The defendants' actions were within the scope of their employment.

55. VAZQUEZ has suffered emotional and mental distress and anguish and invasion of his privacy as a result of defendants' actions.

56. VAZQUEZ has exhausted his administrative remedies to the extent required by law.

VI. STATEMENT OF CLAIMS

CLAIM ONE - BIVENS ACTION

57. VAZQUEZ re-alleges and incorporates paragraphs 1 through 56 of this complaint as if fully set forth herein.

58. The defendants, in their individual capacities, violated VAZQUEZ' right to be secure in his person and effects, and subjected him to unlawful search, seizure and arrest, in violation of the Fourth Amendment to the U.S. Constitution.

CLAIM TWO - FTCA CLAIM

59. VAZQUEZ re-alleges and incorporates paragraphs 1 through 56 of this complaint as if fully set forth herein.

60. Defendant BUITRON, LORENZO, and JOHN DOES 1 and 2 actions constitute a false arrest and imprisonment of the plaintiff. Because said defendants acted within the scope of their employment, the defendant United States of America is responsible for their acts, pursuant to the Federal Torts Claims Act, 28 U.S.C. §2671 et seq.

VI. PRAYER FOR RELIEF

WHEREFORE, petitioner prays that this Court:

1. Accepts jurisdiction over this action and;
2. Issues a declaratory judgement stating that the defendants' actions violated VAZQUEZ' right to be secure in his person, and to be free from unreasonable searches, seizures and arrests, under the Fourth Amendment to the U.S. Constitution;
3. Enter a judgement for \$10,000 in compensatory damages in favor of VAZQUEZ against the defendants.
4. Award VAZQUEZ his costs of litigation and reasonable attorney's fees pursuant to 28 U.S.C. §§2412 and 2678.
5. Grant such other and further relief as this Court may deem just and proper.

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