

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ALFONSO VASQUEZ-PALAFIX,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

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No. _____

Judge: _____

COMPLAINT

INTRODUCTION

1. Plaintiff Alfonso Vasquez-Palafox brings this action against the United States of America for the illegal detention and assault suffered at the hands of Border Patrol Agents of the United States Border Patrol Station in Sandusky, Ohio.
2. Plaintiff seeks damages under the Federal Tort Claims Act for the torts of false imprisonment, assault, deprivation of civil rights through ethnic intimidation, negligent infliction of emotional distress, and intentional infliction of emotional distress.

PARTIES

3. Plaintiff Alfonso Vasquez-Palafox (“Palafox”) is a resident of Fremont, Sandusky County, Ohio. He is a Hispanic male. Palafox was restrained and interrogated by Border Patrol Agents, on November 3, 2009.

4. Defendant United States of America (“United States”) is the proper defendant for claims brought under the Federal Tort Claims Act.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1346(b).
6. On September 22, 2011, the Plaintiff Alfonso Vasquez-Palafox submitted an administrative claim for damages to the Office of the Chief Counsel, U.S. Customs and Border Protection, and to the Office of the General Counsel, U.S. Department of Homeland Security. *See* 28 U.S.C. §2675. As of the date of this filing no response to the Plaintiff’s complaints have been received from CBP or DHS. This Complaint is filed less than one year from the filing of those administrative complaints, and is therefore timely under 28 U.S.C. § 2401(b).
7. Venue is proper under 28 U.S.C. § 1402(b) and 28 U.S.C. § 1391(b) because this is the district where the Plaintiff resides and where a substantial part of the acts or omissions giving rise to the claims occurred.

FACTUAL ALLEGATIONS

8. Plaintiff Palafox was walking down a residential street in Fremont, Ohio, on November 3, 2009, after picking up his son from school. Plaintiff and his son were on their way home.
9. A Border Patrol vehicle passed them and then “turned around” so the two Agents in the vehicle could talk to Palafox.
10. A Border Patrol Agent on the passenger side first asked Palafox for directions. Plaintiff’s son was crying and wanted to run away.

11. Nonetheless the Agent asked Plaintiff a series of questions, including if he used drugs, knew of any people who sold drugs, knew of any Hispanics that worked in the area, where Palafox worked, where Palafox lived, and what state the field workers left to.
12. Palafox didn't ask the Agents any questions, because he was afraid and nervous
13. The Border Patrol Agent told Palafox, "Wait, wait, you know, let's talk a little bit more."¹
14. Border Patrol Agent Corona's tone was "very intimidating."
15. Throughout the interrogation by the Border Patrol Agent the other Border Patrol Agent driving the vehicle had his hand on his weapon.
16. This frightened Palafox and he did not know what might happen if he walked away: "I tried to, I tried to leave, but there was one question after the other, and I mean I felt that I refused to answer any of the questions or if I would have just walked away or tried to run, I mean you see all this news on the television about, you know, things that can happen, so I just stayed."
17. The Border Patrol Agent's questioning of Palafox lasted approximately 30 minutes.
18. Palafox believed that the reason the Border Patrol talked to him and detained him was because he was Hispanic.

FIRST CLAIM FOR RELIEF

Federal Tort Claims Act Claim For Assault

Plaintiff Alfonso Vasquez-Palafox against the United States of America

19. Plaintiff re-alleges and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

¹ The quoted material is from Palafox's deposition in the related case, Muñiz, et al. v. U.S. Border Patrol, et al. (N.D. Ohio; 3:09-cv-2865-JZ).

20. The Border Patrol Agents intentionally and nonconsensually treated the Plaintiff in a manner with the intent to cause injury or the intent to create fear of apprehension in the Plaintiff.
21. The conduct of the Border Patrol Agents was unreasonable in relation to any legitimate law enforcement objective.
22. The actions of the Border Patrol Agents constitute the tort of assault under the laws of Ohio.
23. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

SECOND CLAIM FOR RELIEF

Federal Tort Claims Act Claim For False Imprisonment

Plaintiff Alfonso Vasquez-Palafox against the United States of America

24. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
25. The Border Patrol Agents did not have any justification for confining the Plaintiff.
26. The conduct used to keep Palafox confined by the Border Patrol Agents was unreasonable in relation to any legitimate law enforcement objective.
27. The actions of the Border Patrol Agents constitute the tort of false imprisonment under the laws of Ohio.
28. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

THIRD CLAIM FOR RELIEF

Federal Tort Claims Act Claim For Intentional Infliction of Emotional Distress

Plaintiff Alfonso Vasquez-Palafox against the United States of America

29. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
30. The Border Patrol Agents engaged in extreme and outrageous conduct, acted intentionally and /or recklessly, and thereby caused severe emotional distress to the Plaintiff.
31. The actions of the Border Patrol Agents constitute the tort of intentional infliction of emotional distress under the laws of Ohio.
32. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

FOURTH CLAIM FOR RELIEF

Federal Tort Claims Act Claim For Negligent Infliction of Emotional Distress

Plaintiff Alfonso Vasquez-Palafox against the United States of America

33. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
34. The Border Patrol Agents engaged in negligent conduct, acted negligently, and thereby caused severe emotional distress to the Plaintiff.
35. The actions of the Border Patrol Agents constitute the tort of negligent infliction of emotional distress under the laws of Ohio.
36. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

FIFTH CLAIM FOR RELIEF

Federal Tort Claims Act Claim For Deprivation of Civil Rights Through Ethnic Intimidation

Plaintiff Alfonso Vasquez-Palafox against the United States of America

37. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
38. The Border Patrol Agents intentionally and nonconsensually treated the Plaintiff in an intimidating manner seeking to deprive the Plaintiff of his civil rights based on his being Hispanic.
39. The force and behaviors used by the Border Patrol Agents were unreasonable in relation to any legitimate law enforcement objective.
40. The actions of the Border Patrol Agents constitute the tort of deprivation of civil rights through ethnic intimidation.
41. Under the Federal Tort Claims Act, the United States of America is liable for these actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Assert jurisdiction over this matter;
2. Declare that the Plaintiff's rights were violated by the Defendant;
3. Award compensatory damages as to Defendant;
4. Award reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412; and,
5. Grant any other relief the Court deems appropriate.

Respectfully submitted,

By: /s/ Mark Heller
Mark Heller (0027027)

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