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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

ANGEL MENDIVIL PEREZ,

Plaintiff,

vs.

THE UNITED STATES OF  
AMERICA  
AND AN UNKNOWN AGENT OF  
THE  
U.S. BORDER PATROL

Defendants.

Case No.:

COMPLAINT  
(Federal Tort Claims Act  
and "Bivens" Claim)

Assigned to:  
Honorable

Plaintiff alleges:

1. This Court has jurisdiction to hear this Complaint pursuant to 28 U.S.C. § 1346 (b)(1). Venue is proper within the District of Arizona pursuant to 28 U.S.C. § 1402 (b) because acts referred to herein occurred within the District of Arizona or because the plaintiff resides in this judicial district.

1           2.     This case is also brought alternatively pursuant to Bivens and the  
2 Fourth  
3           and Fifth Amendments to the United States Constitution. See *Bivens v.*  
4 *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S.  
5 388(1971) and the Federal Tort Claims Act. The Court has jurisdiction under  
6 28 U.S. § 1331. The name or specific identity of the defendant agent is not  
7 known nor has it been disclosed to plaintiff.

8  
9           3.     The plaintiffs Angel Mendivil Perez is a citizen of the United State  
10 residing in Tucson, Arizona. The acts complained of herein were committed by  
11 an employee of the United States of America while acting within the scope of  
12 his office or appointment.

13  
14           4.     Pursuant to 28 U.S.C. § 2675(a) the plaintiffs mailed a claim by  
15 Certified or Registered mail to the U.S. Customs and Border Protection and the  
16 Department of Homeland Security. The claim was received on January 15, 2020  
17 and by the Department of Homeland Security on January 16, 2020 by U.S.  
18 Customs and Border Protection. Plaintiff has not received a formal denial of his  
19 claim and more than six months has passed. The Border Patrol is an agency  
20 within the U.S. Customs and Border Protection agency, which itself is located  
21 within the Department of Homeland Security.

22  
23           5.     On or about February 7, 2019 while driving a vehicle from Nogales,  
24 Arizona into the Republic of Mexico at the DeConcini Port of Entry, Angel  
25 Mendivil Perez was shot in the back of his head by an employee agent of the  
26 United States believed to have been employed by the U.S. Customs and Border  
27 Protection agency.

1           6.     On information and belief Mr. Mendivil had been requested by the  
2 government agent to produce his driver's license to the agent when instead of  
3 doing so Mr. Mendivil drove away intending to cross into Mexico, whereupon  
4 the unknown

5 ///

6 Border Patrolman promptly fired his pistol at Mr. Mendivil which bullet passed  
7 through the back window of the vehicle into the top of his head.

8  
9           7.     The defendants' action in using deadly force against Mr. Mendivil  
10 was unreasonable and excessive and was unnecessary to defend against bodily  
11 injury or deadly force. The agent and or officers acted intentionally with the  
12 specific purpose of causing harm or death to Mr. Mendivil without legal  
13 justification.

14  
15           8.     Defendants acted under color of law.

16  
17           9.     The firing of the shot was a battery committed in Arizona without  
18 justification.

19  
20           10.    After being shot in his head and rendered unconscious, Mr.  
21 Mendivil's vehicle continued into the Republic of Mexico where, it struck a  
22 barrier before passing any Mexican border officials.

1 11. Mr. Mendivil, due to his head injury, has no memory of the  
2 shooting. He has not been able to obtain information of the precise location of  
3 the shooter or of his vehicle at the point of impact. Therefore, he has filed this  
4 claim alternatively. What is certain is that he was struck prior to entry into  
5 Mexican jurisdiction or encountering any Mexican officials.

6  
7 12. The Unknown Border Patrol Agent was acting within the scope of  
8 his employment thereby giving rise to liability of the United States, pursuant to  
9 the principles of respondeat superior and by act of Congress pursuant to 28  
10 U.S.C. § 1346.

11  
12  
13 13. Although believed to be dead at the scene Mr. Mendivil survived  
14 and has severe permanent injuries proximately caused by the bullet to his brain.  
15 He has suffered general and special damages and will continue to do so in the  
16 future for the permanent injuries.

17  
18 14. Mr. Mendivil had been entering Mexico to take groceries to his  
19 pregnant fiancé who is now his wife and mother of his daughter.

20  
21 **COUNT ONE**  
22 **CAUSE OF ACTION**

23 15. The foregoing allegations are re-alleged and incorporated here by  
24 reference.

25  
26 16. Plaintiff requests monetary damages including punitive damages  
27 pursuant to the Federal Tort Claims Act.

1  
2 17. At the time of shooting defendants were not in danger of bodily  
3 harm from Mr. Mendivil.

4  
5 18. In shooting Mr. Mendivil defendants acted intentionally and used  
6 unreasonable and excessive force with the purpose of causing harm to Mr.  
7 Mendivil without legal justification.

8  
9 19. This claim is brought against all defendants.

10  
11 **COUNT TWO**

12 **VIOLATION OF THE FOURTH AMENDMENT**

13  
14 20. The foregoing allegations are re-alleged and incorporated herein by  
15 reference.

16  
17 21. Defendants' actions violated the Fourth Amendment's prohibition  
18 against seizures with excessive and unreasonable force.

19  
20 22. This claim is brought against all defendants.

21  
22 **COUNT THREE**

23 **VIOLATION OF THE FIFTH AMENDMENT**

24  
25 23. The foregoing allegations are re-alleged and incorporated herein by  
26 reference.

1           24. At the time Mr. Mendivil was shot, defendants were not in danger  
2 of fatal or bodily harm from Mr. Mendivil or anyone else.

3  
4           25. In shooting Mr. Mendivil defendants acted intentionally,  
5 maliciously, and used unreasonable and excessive force, with the purpose to  
6 cause harm to Mr. Mendivil without legal justification. Defendants' actions  
7 were unnecessary to achieve any legitimate law enforcement objectives.

8  
9           26. Defendants' actions were grossly excessive and deliberately  
10 indifferent and shocked the conscience, in violation of the substantive due  
11 process component of the Fifth Amendment.

12  
13           27. This claim is brought against all defendants.

14  
15   JURY DEMAND

16 Plaintiff demands a trial by jury in this action of his claims triable by jury.

17  
18   RELIEF

19 Wherefore, Plaintiff respectfully requests relief as follows:

20           28. A declaration that Defendants actions violated the Constitution.

21  
22           29. Trial by jury.

23  
24           30. Damages, including special, general and punitive damages, in an  
25 amount to be proven at trial.

26           31. Damages alternatively pursuant to the Federal Tort Claims Act.  
27

1 32. Costs and reasonable attorney fees.

2  
3 33. Such other relief as the Court deems just and equitable.

4  
5 DATED this 4th day of February, 2021.

6  
7 **RISNER & GRAHAM**

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9 By /s/ William J. Risner  
10 William J. Risner  
11 Attorney for Plaintiffs  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

<p><b>Plaintiff(s): Angel Mendivil Perez</b></p> <p>County of Residence: Pima County Where Claim For Relief Arose: Santa Cruz</p> <p>Plaintiff's Atty(s): <b>William J Risner Risner &amp; Graham 100 N. Stone Ave, Ste 508 Tucson, Arizona 85701 5206227494</b></p>	<p style="text-align: center;"><b>The United Sttes of America and an Defendant(s): Unknown Agent of the U.S. Border Patrol</b></p> <p>County of Residence: Outside the State of Arizona</p> <p>Defendant's Atty(s): <b>Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 202-514-2000</b></p>
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**II. Basis of Jurisdiction:                    2. U.S. Government Defendant**

**III. Citizenship of Principal  
Parties (Diversity Cases Only)**

Plaintiff:- **1 Citizen of This State**  
Defendant:- **N/A**

**IV. Origin :                                    1. Original Proceeding**

**V. Nature of Suit:                        360 Other Personal Injury**

**VI. Cause of Action:                    28 U.S.C. § 2346 Border Patrolman shot Plaintiff in the head while he was  
crossing at Nogales, AZ into Mexico**

**VII. Requested in Complaint**

Class Action: **No**  
Dollar Demand:  
Jury Demand: **Yes**

**VIII. This case is not related to another case.**



**Signature:** /s/ William J. Risner

**Date:** 2/4/2021

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014