

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANASTACIO GRANILLO,

Plaintiff,

v.

CASE 2:21-cv-00777 GJF-SMV

UNITED STATES OF AMERICA,

Defendant.

JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN

Pursuant to FED. R. CIV. P. 26(f), a meeting was held on December 16, 2021 at 10:00 AM and was attended by: Maria Martinez Sanchez, Rebecca Sheff, and Zoila Alvarez Hernández for Plaintiff; and Cassandra Casaus Currie for Defendant.

NATURE OF THE CASE

This is an action brought by Plaintiff, Anastacio Granillo, pursuant to the Federal Tort Claims Act for compensatory damages, attorney's fees, and costs based on the tortious conduct of federal employees, including investigative and law enforcement officers, acting within the scope of their office or employment. 28 U.S.C. § 1346(b)(1), 2671. Plaintiff alleges the following claims against Defendant United States of America: 1) Assault; 2) Battery; 3) False Arrest and/or Imprisonment; and 4) Negligence.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiff does not intend to move to amend or for joinder of parties at this time but reserves the right to do so in the event new evidence surfaces that would warrant such amendment or joinder of parties.

Plaintiff should be allowed until January 31, 2022 to move to amend the pleadings and until January 31, 2022 to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

Defendant intends to file: a dispositive motion to dismiss for lack of jurisdiction.

Defendant should be allowed until February 14, 2022 to move to amend the pleadings and until February 14, 2022 to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District and that the United States District Court for the District of New Mexico has jurisdiction over the parties and the subject matter.

The parties are willing to further stipulate to the following facts: None.

PLAINTIFF'S CONTENTIONS

On June 18, 2019, Plaintiff Anastacio Granillo, was assaulted by Oscar Orrantia, a U.S. Customs and Border Protection (“CBP”) officer, upon entering the United States from Mexico at the Columbus Port of Entry in New Mexico. Officer Orrantia became extremely upset after Mr. Granillo suggested to him that CBP open an additional lane to process vehicles as it was sweltering hot. Officer Orrantia accused Mr. Granillo of throwing a container of medication at him and ultimately extracted Mr. Granillo from his vehicle in a violent manner and slammed him against a wall, injuring him. Officer Orrantia did this despite Mr. Granillo posing no threat or danger to him. An ambulance was eventually called and an EMT informed Mr. Granillo that Officer Orrantia has a history of being violent to other individuals crossing the border.

Mr. Granillo later learned that Officer Orrantia was advised by a supervisor that he had improperly escalated the situation, failed to call for assistance, and failed to act in a peaceful and

professional manner, and that the supervisor warned Officer Orrantia that he could lose his job over such an incident when there was no reason to suspect illegal activity or any other sort of threat.

Since the date of the incident, Mr. Granillo has suffered from chronic short term memory loss and developed increased weakness in his hands and legs. Due to the incident, Mr. Granillo has also experienced an influx of mood swings in which he gets extremely upset at unpredictable moments. This did not occur prior to his head injury caused by Officer Orrantia. Further, Mr. Granillo also has begun to experience anxiety and developed extreme fear about experiencing another abusive encounter with CBP officers.

DEFENDANT'S CONTENTIONS

Defendant generally denies Plaintiff's allegations. The conduct of the Plaintiff proximately caused the damages alleged herein, not a negligent act or omission of an employee of the United States acting within the scope and course of employment. The United States and its agents, employees, and representatives exercised due care and diligence at all times and in all matters alleged in the Complaint, and no act or failure to act by the United States or its personnel was the proximate cause of the alleged damages or loss claimed by Plaintiff. Plaintiff failed to exhaust some of his claims administratively. Plaintiff's claims are barred by the customs duty exception to the FTCA. If Plaintiff is entitled to damages, he is limited to those set forth in his SF-95. The United States is entitled to have its liability for Plaintiff's damages, if any, reduced according to New Mexico law of comparative fault. Defendant may have additional defenses which are not yet known to Defendant, but which may become known through future discovery.

PROVISIONAL DISCOVERY PLAN

The parties jointly propose to the Court the following discovery plan: *(Use separate paragraphs or subparagraphs as necessary if parties disagree.)*

List all witnesses who, at this time, you think will either testify or be deposed, giving their name, title, address and a brief summary of their testimony. It is insufficient to list witnesses' addresses, save for clients, "in care of counsel."

List all documents which you believe, at this time, will be exhibits at the trial.

List all experts who you believe, at this time, will testify at the trial, giving their name, address, area of expertise, and a brief summary of the anticipated testimony.

PLAINTIFF'S WITNESSES

At this time, Plaintiff anticipates deposing or receiving testimony from the following witnesses. However, because initial disclosures have not yet been made and discovery has not yet been exchanged, Plaintiff reserves the right to amend or supplement its list of witnesses:

- 1) Anastacio Granillo
c/o Maria Martinez Sanchez
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103

Mr. Granillo is the Plaintiff in the case and may testify about the claims set forth in the Complaint.

- 2) Oscar Orrantia
c/o Cassandra Casaus Currie
P.O. Box. 607
Albuquerque, NM 87103

Officer Orrantia is the CBP officer who is at the heart of the claims in Mr. Granillo's Complaint and may testify about the incidents described in the Complaint.

- 3) Alfredo Nevares
(575) 399-9285

Mr. Nevares was a passenger in Mr. Granillo's vehicle and witnessed the incidents that gave rise to this lawsuit from inside the vehicle. He may testify regarding his observations of the incidents described in the Complaint.

- 4) CBP Supervisor(s), name(s) unknown
c/o Cassandra Casaus Currie
P.O. Box. 607
Albuquerque, NM 87103

The CBP supervisor(s) referenced in the Complaint who witnessed a portion of the incidents described in the Complaint and/or who ultimately reprimanded may testify about their observations of those incidents. This likely includes more than one person.

- 5) Perla Nuñez
(575) 652-2579

Ms. Nuñez was the emergency medical technician (“EMT”) that is referenced in the Complaint. Ms. Nuñez was a witness to a portion of the incidents described in the Complaint and may testify about her observations of those incidents.

- 6) Any other CBP personnel that witnessed all or a portion of the incidents described in the Complaint.
- 7) Any as yet unidentified expert witness or witnesses.
- 8) Any witness named and/or identified by other parties.
- 9) Any other witness identified during the discovery process including rebuttal witnesses.

PLAINTIFF’S EXHIBITS

At this time, Plaintiff anticipates offering the following exhibits as evidence at trial.

Plaintiff reserves the right to amend or supplement its list of trial exhibits:

- 1) CBP US DHS – TECS Incident Log Report dated June 18, 2019.
- 2) Luna County Sheriff’s Department incident report dated June 20, 2019.
- 3) CBP Use of Force Policy, Guidelines and Procedures Handbook dated May 2014.
- 4) Supervisory CBP Officer Report dated June 19, 2019.
- 5) Columbus Fire Dept. - EMS Medical Records for Plaintiff dated June 18, 2019.
- 6) Mimbres Memorial Hospital - Medical Records for Plaintiff dated June 20, 2019.
- 7) Plaintiff’s medical records relevant to the injuries resulting from the incidents set forth in Plaintiff’s Complaint.

- 8) Plaintiff's photographs of injuries resulting from the incidents set forth in Plaintiff's Complaint.
- 9) Any documents in the possession of CBP related to Plaintiff or any of the allegations listed in Plaintiff's Complaint.
- 10) Any other documents produced by any law enforcement agency in connection to the facts that form the basis of Plaintiff's Complaint.

DEFENDANT'S WITNESSES

At this time, Defendant anticipates deposing or receiving testimony from the following witnesses. However, because initial disclosures have not yet been made and discovery has not yet been exchanged, Plaintiff reserves the right to amend or supplement its list of witnesses:

- 1) CBP Officer Oscar Orrantia
c/o Cassandra Casaus Currie
P.O. Box. 607
Albuquerque, NM 87103

Officer Orrantia was stationed at the port of entry on June 18, 2019, and may testify about the events that took place in relation to the claims set forth in Plaintiff's Complaint.

- 2) Plaintiff Anastacio Granillo
c/o Maria Martinez Sanchez
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103

Anastacio Granillo is the Plaintiff in this litigation may testify about the events that took place in relation to the claims set forth in his Complaint.

- 3) All witnesses identified by Plaintiff, identified in the course of discovery, necessary to authenticate documents, or necessary for rebuttal.

DEFENDANT'S EXHIBITS

At this time, Plaintiff anticipates offering the following exhibits as evidence at trial. Plaintiff reserves the right to amend or supplement its list of trial exhibits:

- 1) Plaintiff's Standard Form 95.

- 2) Any exhibits identified by Plaintiff, identified in the course of discovery, or necessary for rebuttal.

Experts: The parties have yet to identify expert witnesses. The parties will disclose experts and will provide expert reports in accordance with the deadlines set by this Court.

Discovery will be needed on the following subjects:

Plaintiff will require discovery for his contentions and in order to establish all contested facts as to liability, injuries, or mechanisms of injury, related expert testimony and to authenticate any contested documents or trial exhibits. **Defendant** will require discovery on all matters alleged in Plaintiff's Complaint, Plaintiff's theories of liability and damages, and Defendant's defenses.

Maximum of 25 interrogatories, including all discrete subparts, by each party to any other party. (Responses due 30 days after service.)

Maximum of 25 requests for production, including all discrete subparts, by each party to any other party. (Response due 30 days after service.)

Maximum of _____ requests for admission by each party to any other party. (Response due 30 days after service.)

Maximum of 10 depositions by Plaintiff and 10 depositions by Defendant.

Each deposition (other than that of Plaintiff and experts) limited to maximum of four (4) hours unless extended by agreement of the parties. Depositions of Plaintiff and experts limited to seven (7) hours, unless otherwise stipulated or ordered by the Court.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff by April 15, 2022.

from Defendant by May 16, 2022.

Supplementation under Rule 26(e) due by the close of discovery.

All discovery commenced in time to be complete by July 10, 2022.

PRETRIAL MOTIONS

Plaintiff intends to file: Motions in limine, motion for summary judgment, discovery motions, and other motions permitted by the Federal Rules of Civil Procedure.

Defendant intends to file: Motion to Dismiss and/or Motion for Summary Judgment, motions in limine, discovery motions, and other motions consistent with the Federal Rules of Civil Procedure.

ESTIMATED TRIAL TIME

The parties estimate trial will require 4 days.

This is a non-jury case.

This is a jury case.

The parties request a pretrial conference 30 days before trial or at the Court's convenience.

SETTLEMENT

The possibility of settlement in this case cannot be evaluated prior to the discovery of evidence in this case. The parties request a settlement conference four to eight weeks before the close of discovery.

APPROVED WITHOUT EXCEPTIONS
(note exceptions above)

Maria Martinez Sanchez
For Plaintiff

Cassandra Currie
For Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of January, 2022, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Maria Martinez Sanchez
Rebecca Fae Sherman Sheff
Zoila Alvarez Hernández
ACLU of New Mexico
Post Office Box 566
Albuquerque, NM 87103
505-266-5915, Ext. 1024
505-266-5916
msanchez@aclu-nm.org
rsheff@aclu-nm.org
zalvarez@aclu-nm.org

Counsel for Plaintiff

and

Cassandra Casaus Currie
P.O. Box. 607
Albuquerque, NM 87103
(505) 224-1530
cassandra.currie@usdoj.gov

Counsel for Defendant