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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (Hon. Anthony J. Battaglia)

11 SILVESTRE ESTRADA, a minor, by and)
12 through his proposed guardian ad litem)
13 EMILY PRIETO; OLGA TOVAR;)
14 FRANCISCO MADARIAGA; and)
15 JAIME MADARIAGA-GONZALEZ,)

16 Plaintiffs,)

17 v.)

18 UNITED STATES OF AMERICA and)
19 DOES 1-10)

20 Defendants.)

Case No. 22-cv-373-AJB (BGS)
FIRST AMENDED COMPLAINT

21 COME NOW Plaintiffs, by and through their attorney of record, and hereby
22 allege:

23 This lawsuit for money damages is brought pursuant to the provisions of the
24 Federal Tort Claims Act (28 U.S.C. §§ 2671-80).

25 **JURISDICTION**

26 1. Federal jurisdiction is founded upon the existence of a federal question. The
27 claims for relief arise under the provisions of the Federal Tort Claims Act
28 (“FTCA”), over which this Court has jurisdiction under 28 U.S.C. § 1346(b)(1).

VENUE

2. Venue in the Southern District of California is proper under 28 U.S.C. § 1391(e).
All the events complained of occurred in this district.

PARTIES

3. This action arises from the shooting death of SILVESTRE-VARGAS as outlined
below. There are 5 Plaintiffs:

- 1 a. The death of SILVESTRE ESTRADA VARGAS as set forth in this
2 Complaint resulted in the creation of the ESTATE OF SILVESTRE
3 ESTRADA VARGAS which brings suit by his successor in interest, his
4 minor son, SILVESTRE ESTRADA (DOB 8/30/2013) , in accordance
5 with California Code of Civil Procedure § 377.30.
- 6 i. SILVESTRE ESTRADA’s mother, EMILY PRIETO, has been
7 appointed as his Guardian ad Litem. He seeks all damages
8 authorized by law.
- 9 b. Decedent's mother, OLGA TOVAR, brings suit for a California
10 Constitution based deprivation of a recognized liberty interest (right to
11 family association) through official conduct. She seeks all damages
12 authorized by law. At all material times mentioned herein she was a U.S.
13 citizen.
- 14 c. FRANCISCO MADARIAGA and JAIME MADARIAGA-GONZALEZ
15 bring suit for assault and battery. They each seek all damages authorized
16 by law. At all times mentioned herein they were both Mexican citizens
17 present in the United States.
- 18 4. Defendant UNITED STATES OF AMERICA (hereinafter “UNITED STATES”)
19 is a sovereign entity which has waived sovereign immunity in certain cases as set
20 forth in the Federal Tort Claims Act (28 U.S.C. §§ 1346, 2671-80)
- 21 5. At all material times mentioned herein, DOES 1-10 (not sued herein) were
22 employed by the United States Department of Homeland Security, U.S. Customs
23 and Border Protection (“CBP”), and as such were duly constituted federal law
24 enforcement officers charged with enforcing the laws of the United States of
25 America and in doing the acts hereinafter described acted within the course and
26 scope of their employment. Their acts were done under the color and pretense of
27 the statutes, ordinances, regulations, customs and usages of the United States.
- 28 6. Plaintiffs are informed and believe and therefore allege that at all times

1 mentioned herein DOES 1-10 were the agents, servants, and/or employees of the
2 UNITED STATES and was, in doing the acts herein alleged, acting within the
3 course and scope of this agency and/or employment, and with the permission,
4 consent and authority of the UNITED STATES, and that each is responsible in
5 some manner for the occurrences hereinafter alleged; and that Plaintiffs' injuries
6 were proximately caused by the actions of each.

- 7 7. The filing of an administrative claim is a prerequisite to filing any claims under
8 the Federal Tort Claims Act. Plaintiffs timely submitted claims on the
9 designated form to the appropriate federal agency (CBP) and said claims were
10 timely denied in writing on February 2, 2022 prior to the filing of this action.

11 **GENERAL ALLEGATIONS**

- 12 8. On May 14, 2021, at approximately 10:15 PM, in Campo, California, a Border
13 Patrol agent assigned to the El Cajon Sector Station attempted to stop a vehicle
14 suspected of being involved in migrant smuggling. The driver of the vehicle,
15 SILVESTRE ESTRADA VARGAS, DOB 6/30/94 ("Decedent"), failed to yield,
16 and after a brief pursuit, the vehicle stopped in a Circle-K gas station parking lot
17 at the intersection of State Route 94 and Buckman Springs Road in Campo.
18 Present in the vehicle from the outset were cousins FRANCISCO
19 MADARIAGA and JAIME MADARIAGA-GONZALEZ.
- 20 9. Without any legal justification or threat to their safety, an unknown number of
21 Border Patrol agents (DOES 1-10) discharged their firearms at the vehicle from
22 a flanking position. The vehicle was moving slowly, and did not attempt to run
23 down the agents. The vehicle's egress was blocked. The Decedent, who was
24 unarmed and had one hand of the steering wheel and the other hand holding a
25 telephone up to his ear, was struck by an unknown number of bullets, and was
26 subsequently transported to a local hospital where he was pronounced dead
27 shortly after arrival. FRANCISCO MADARIAGA and JAIME MADARIAGA-
28 GONZALEZ were in the direct line of fire and fortunately were uninjured.

- 1 10. Decedent presented no threat to Defendants. He was not driving in a threatening
2 manner.
- 3 a. A video captured on a civilian witness' cell phone is concurrently
4 submitted with this filing and is expressly incorporated into the allegations
5 of this complaint.
- 6 11. The San Diego County Sheriff's Department Homicide Division, the Federal
7 Bureau of Investigation (FBI), the San Diego County Medical Examiner's
8 Office, the Department of Homeland Security Office of Inspector General, and
9 CBP's Office of Professional Responsibility (CBP OPR) all responded to the
10 scene and began an investigation.

11 **FIRST CLAIM FOR RELIEF**
12 **WRONGFUL DEATH**
13 **(FTCA - SILVESTRE ESTRADA, AS SUCCESSOR IN INTEREST TO**
14 **SILVESTRE ESTRADA VARGAS AGAINST UNITED STATES ONLY)**

- 15 12. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 11 as
16 though fully set forth herein.
- 17 13. SILVESTRE ESTRADA VARGAS' death was caused, in whole or in part, by
18 the conduct of the agents of the UNITED STATES.
- 19 14. Defendants were negligent or deliberately indifferent in causing SILVESTRE
20 ESTRADA VARGAS' death.
- 21 15. As a direct and proximate result of the negligence, carelessness, recklessness,
22 wantonness and unlawfulness of the Defendants, and each of them, and the
23 resulting death, as aforesaid, Plaintiff SILVESTRE ESTRADA has sustained
24 severe and serious injury to his person, all to his damage in a sum within the
25 jurisdiction of this Court and to be shown according to proof.
- 26 16. As a direct and proximate result of the conduct of the Defendants, and each of
27 them, in causing the death of his father, SILVESTRE ESTRADA VARGAS, has
28 been deprived of the society and comfort of his father and has been caused the
loss of future services, earnings and protection of said parent, to his great loss

1 and damage in an amount to be shown according to proof.

2 17. The actions described herein legally, proximately, foreseeably and actually
3 caused Plaintiff to suffer damages in the form of emotional distress, pain and
4 suffering, and further damages according to proof to the extent allowed by
5 California Code of Civil Procedure § 377.34.

6 **SECOND CLAIM FOR RELIEF**
7 **SURVIVAL ACTION FOR ASSAULT/BATTERY**
8 **(FTCA - SILVESTRE ESTRADA against UNITED STATES only)**

9 18. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 11 as
10 though fully set forth herein.

11 19. The unknown CBP agents sued herein as DOES 1-10 assaulted SILVESTRE
12 ESTRADA VARGAS by brandishing and pointing weapons at him and then
13 shooting him an unknown number of times, resulting in his death. These
14 officers intended and caused harmful or offensive contact to occur.

15 20. The harmful or offensive contact was not privileged nor consented to and was
16 excessive, unreasonable and done with deliberate indifference to the rights and
17 safety of SILVESTRE ESTRADA VARGAS and was done with the intent to
18 inflict punishment, above and beyond the reason for using the force in the first
19 place.

20 21. The actions described herein legally, proximately, foreseeably and actually
21 caused Decedent, acting though his next of kin, to suffer damages in the form of
22 emotional distress, pain and suffering, and further damages according to proof.

23 **THIRD CLAIM FOR RELIEF**
24 **ASSAULT/BATTERY**
25 **(FTCA - FRANCISCO MADARIAGA and JAIME MADARIAGA-**
26 **GONZALEZ Against UNITED STATES only)**

27 22. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 11 as
28 though fully set forth herein.

29 23. The unknown CBP agents sued herein as DOES 1-10 assaulted FRANCISCO
30 MADARIAGA and JAIME MADARIAGA-GONZALEZ by brandishing and

1 pointing and discharging firearms at them. These officers intended and caused
2 harmful or offensive contact to occur. Whilst SILVESTRE ESTRADA
3 VARGAS was shot an unknown number of times and killed, FRANCISCO
4 MADARIAGA and JAIME MADARIAGA-GONZALEZ saw and heard bullets
5 whizzing by them and were afraid they would be shot and killed. These officers
6 intended and caused harmful or offensive contact to occur.

7 24. The harmful or offensive contact was not privileged nor consented to and was
8 excessive, unreasonable and done with deliberate indifference to the rights and
9 safety of FRANCISCO MADARIAGA and JAIME MADARIAGA-
10 GONZALEZ and was done with the intent to inflict punishment, above and
11 beyond the reason for using the force in the first place.

12 25. The actions described herein legally, proximately, foreseeably and actually
13 caused Decedent, FRANCISCO MADARIAGA and JAIME MADARIAGA-
14 GONZALEZ to suffer damages in the form of emotional distress, pain and
15 suffering, and further damages according to proof.

16 **FOURTH CAUSE OF ACTION**
17 **NEGLIGENCE**

18 **(FTCA - SILVESTRE ESTRADA, AS SUCCESSOR IN INTEREST**
19 **TO SILVESTRE ESTRADA VARGAS, FRANCISCO MADARIAGA**
20 **and JAIME MADARIAGA-GONZALEZ Against UNITED STATES**
21 **only)**

22 26. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 11 as
23 though fully set forth herein.

24 27. In doing the acts alleged herein, Defendant UNITED STATES, as a result of the
25 actions of its officers and investigative agents, DOES 1-10, acted negligently
26 and breached its duty of due care to Plaintiffs with foreseeably injurious
27 consequences.

28 28. A reasonably prudent law enforcement officer would have known, or in the
exercise of reasonable diligence should have known, that the Decedent and
Plaintiffs were not subject to the use of excessive force to effectuate any

1 detention or arrest, and that the use of such deadly force was completely
2 unwarranted and unlawful.

3 29. The actions described herein legally, proximately, foreseeably and actually
4 caused Decedent, acting though his next of kin, FRANCISCO MADARIAGA
5 and JAIME MADARIAGA-GONZALEZ to suffer damages in the form of
6 emotional distress, pain and suffering, and further damages according to proof.

7 **FIFTH CLAIM FOR RELIEF**
8 **BANE ACT: CALIFORNIA CIVIL CODE § 52.1**
9 **(FTCA - All Plaintiffs Against UNITED STATES only)**

10 30. Plaintiffs refer to and incorporate by reference Paragraphs 1 through 11 as
11 though fully set forth herein.

12 31. The California Legislature declared that it violates our state civil rights for any
13 person to interfere with the exercise or enjoyment by an individual of his/her
14 rights secured by the United States Constitution or state or federal law. This
15 includes any interference of these rights by threats, intimidation, coercion, or
16 attempted threats, intimidation, or coercion.

- 17 a. SILVESTRE ESTRADA VARGAS, FRANCISCO MADARIAGA and
18 JAIME MADARIAGA-GONZALEZ have the right to be free from
19 excessive force under Article I, section 13 of the California Constitution.
20 b. Plaintiffs SILVESTRE ESTRADA and OLGA TOVAR have the right to
21 the familial love, society and companionship of SILVESTRE ESTRADA
22 VARGAS which is protected by the Article I, section 7 of the California
23 Constitution.

24 32. DOES 1-10 interfered with Plaintiffs' and Decedent's rights by the intentional
25 use of deadly force as alleged above.

26 33. This interference with Plaintiffs' and Decedent's rights was perpetrated in
27 violation of Article I, sections 7 & 13 of the California Constitution, and is the
28 proper subject of a cause of action under California Civil Code § 52.1 insofar as
there has been a waiver of sovereign immunity.

1 34. Defendant UNITED STATES is liable for the conduct of DOES 1-10 under the
2 Federal Torts Claim Act.

3 35. The actions described herein legally, proximately, foreseeably and actually
4 caused Plaintiffs ESTRADA and TOVAR to suffer damages in the form of the
5 loss of familial love, society, companionship, moral and financial support,
6 emotional distress, pain and suffering, and further damages according to proof.

7 36. The actions described herein legally, proximately, foreseeably and actually
8 caused Plaintiffs FRANCISCO MADARIAGA and JAIME MADARIAGA-
9 GONZALEZ to suffer damages in the form of emotional distress, pain and
10 suffering, and further damages according to proof.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs and Decedent pray for judgment against Defendant
13 UNITED STATES as follows:

- 14 1. For general and special compensatory damages against Defendant UNITED
15 STATES in an amount to be proven at trial to the extent allowed by applicable
16 law;
- 17 2. To the extent allowed by law, for the statutory civil penalties set forth in
18 California Civil Code § 52.1;
- 19 3. For costs of suit; and
- 20 4. For such other and further relief as the Court deems proper.

21 Respectfully Submitted,

22 Dated: June 27, 2022

23 s/Keith H. Rutman
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