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15 *Attorneys for Plaintiff*

16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

18 **Carey L. Johnson**, a married man acting in  
19 his individual capacity,

20 Plaintiff,

21 vs.

22 **United States of America; Kirstjen M.**  
23 **Nielsen**, Secretary of the United  
24 States Department of Homeland Security;  
25 **Quintin Clarke**, an individual; **Teresa**  
26 **Andrade**, an individual; **R. Marillo**, an  
27 individual; **Thomas Ferguson**, an  
28 individual; **Hector Ibarra**, an individual; **N.**  
**Angeles**, an individual; **Carlos Fierro**, an  
individual; **John Delgado**, an individual;  
**Chantelle McCulloch**, an individual;  
**Alphonso Stephenson, Jr.**, an individual;  
**James Calapan**, an individual; **K.**

No. 3:18-cv-02178-BEN-WVG

**SECOND AMENDED  
COMPLAINT**

(Jury Trial Demanded)

- (1) *Bivens*: Unlawful Seizure and Excessive Use of Force;
- (2) Violation of Section 504 of the Rehabilitation Act;
- (3) FTCA: Assault and Battery;
- (4) FTCA: False Arrest;
- (5) FTCA: Negligence/Gross Negligence;
- (6) FTCA: Conversion;
- (7) FTCA: Intentional Infliction of Emotional Distress; and

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1 **Guisinger**, an individual; **Raul Cano**, an  
2 individual; **W. Thomas**, an individual; **E.**  
3 **Calderon**, an individual; **Sean Zeeck**, an  
4 individual; and  
5 **U.S. Border Patrol Agents John Does I-X**,  
6 officers with the United States Customs and  
Border Protection,  
7  
8 Defendants.

(8) FTCA: Violation of California  
Civil Code § 52.1

9 For his Complaint against Defendant, Plaintiff Cary Johnson alleges as follows:

10 **PARTIES**

11 1. Plaintiff Carey L. Johnson is a single man and was at all times relevant  
12 to this Complaint a resident of Contra Costa County, California, United States of  
13 America.

14 2. The Department of Homeland Security is a federal agency of Defendant  
15 United States of America and, at all relevant times, was operating in San Diego  
16 County, California.

17 3. Defendant Kirstjen M. Nielsen is the Secretary of the U.S. Department  
18 of Homeland Security, the agency of the United States government that operates the  
19 United States Customs and Border Protection (“CBP”), which was at all relevant  
20 times operating in San Diego County, California. Defendant Nielsen is responsible  
21 for the establishment and implementation of policy governing the operation of the  
22 CBP, and is responsible for the acts and omissions of her employees acting in the  
23 course and scope of their employment.

24 4. Defendant Quintin Clarke is an officer for the United States Customs  
25 and Border Protection and an employee of the United States. At all times relevant  
26 to this complaint, Defendant Clarke was acting within the course and scope of his  
27 employment as a U.S. Border Patrol Agent and under color of his authority as a  
28 federal law enforcement agent. Defendant Clarke is an individual and, upon  
information and belief, a resident of the State of California.

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1           5.     Defendant Teresa Andrade is an officer for the United States Customs  
2 and Border Protection and an employee of the United States. At all times relevant  
3 to this complaint, Defendant Andrade was acting within the course and scope of her  
4 employment as a U.S. Border Patrol Agent and under color of her authority as a  
5 federal law enforcement agent. Defendant Andrade is an individual and, upon  
6 information and belief, a resident of the State of California.

7           6.     Defendant R. Marillo is an officer for the United States Customs and  
8 Border Protection and an employee of the United States. At all times relevant to this  
9 complaint, Defendant Marillo was acting within the course and scope of his  
10 employment as a U.S. Border Patrol Agent and under color of his authority as a  
11 federal law enforcement agent. Defendant Marillo is an individual and, upon  
12 information and belief, a resident of the State of California.

13           7.     Defendant Thomas Ferguson is an officer for the United States Customs  
14 and Border Protection and an employee of the United States. At all times relevant  
15 to this complaint, Defendant Ferguson was acting within the course and scope of his  
16 employment as a U.S. Border Patrol Agent and under color of his authority as a  
17 federal law enforcement agent. Defendant Ferguson is an individual and, upon  
18 information and belief, a resident of the State of California.

19           8.     Defendant Hector Ibarra is an officer for the United States Customs and  
20 Border Protection and an employee of the United States. At all times relevant to this  
21 complaint, Defendant Ibarra was acting within the course and scope of his  
22 employment as a U.S. Border Patrol Agent and under color of his authority as a  
23 federal law enforcement agent. Defendant Ibarra is an individual and, upon  
24 information and belief, a resident of the State of California.

25           9.     Defendant N. Angeles is an officer for the United States Customs and  
26 Border Protection and an employee of the United States. At all times relevant to this  
27 complaint, Defendant Angeles was acting within the course and scope of his  
28 employment as a U.S. Border Patrol Agent and under color of his authority as a

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1 federal law enforcement agent. Defendant Angeles is an individual and, upon  
2 information and belief, a resident of the State of California.

3 10. Defendant Carlos Fierro is an officer for the United States Customs and  
4 Border Protection and an employee of the United States. At all times relevant to this  
5 complaint, Defendant Fierro was acting within the course and scope of his  
6 employment as a U.S. Border Patrol Agent and under color of his authority as a  
7 federal law enforcement agent. Defendant Fierro is an individual and, upon  
8 information and belief, a resident of the State of California.

9 11. Defendant John Delgado is an officer for the United States Customs  
10 and Border Protection and an employee of the United States. At all times relevant  
11 to this complaint, Defendant Delgado was acting within the course and scope of his  
12 employment as a U.S. Border Patrol Agent and under color of his authority as a  
13 federal law enforcement agent. Defendant Delgado is an individual and, upon  
14 information and belief, a resident of the State of California.

15 12. Defendant Chantelle McCulloch is a watch commander for the United  
16 States Customs and Border Protection and an employee of the United States. At all  
17 times relevant to this complaint, Defendant Clarke was acting within the course and  
18 scope of her employment as a U.S. Border Patrol Agent and under color of her  
19 authority as a federal law enforcement agent. Defendant McCulloch is an individual  
20 and, upon information and belief, a resident of the State of California.

21 13. Defendant Alphonso Stephenson, Jr., is an officer for the United States  
22 Customs and Border Protection and an employee of the United States. At all times  
23 relevant to this complaint, Defendant Stephenson was acting within the course and  
24 scope of his employment as a U.S. Border Patrol Agent and under color of his  
25 authority as a federal law enforcement agent. Defendant Stephenson is an individual  
26 and, upon information and belief, a resident of the State of California.

27 14. Defendant James Calapan is an officer for the United States Customs  
28 and Border Protection and an employee of the United States. At all times relevant

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1 to this complaint, Defendant Calapan was acting within the course and scope of his  
2 employment as a U.S. Border Patrol Agent and under color of his authority as a  
3 federal law enforcement agent. Defendant Calapan is an individual and, upon  
4 information and belief, a resident of the State of California.

5 15. Defendant K. Guisinger is an officer for the United States Customs and  
6 Border Protection and an employee of the United States. At all times relevant to this  
7 complaint, Defendant Guisinger was acting within the course and scope of his  
8 employment as a U.S. Border Patrol Agent and under color of his authority as a  
9 federal law enforcement agent. Defendant Guisinger is an individual and, upon  
10 information and belief, a resident of the State of California.

11 16. Defendant Raul Cano is an officer for the United States Customs and  
12 Border Protection and an employee of the United States. At all times relevant to this  
13 complaint, Defendant Cano was acting within the course and scope of his  
14 employment as a U.S. Border Patrol Agent and under color of his authority as a  
15 federal law enforcement agent. Defendant Cano is an individual and, upon  
16 information and belief, a resident of the State of California.

17 17. Defendant W. Thomas is an officer for the United States Customs and  
18 Border Protection and an employee of the United States. At all times relevant to this  
19 complaint, Defendant Thomas was acting within the course and scope of his  
20 employment as a U.S. Border Patrol Agent and under color of his authority as a  
21 federal law enforcement agent. Defendant Thomas is an individual and, upon  
22 information and belief, a resident of the State of California.

23 18. Defendant E. Calderon is an officer for the United States Customs and  
24 Border Protection and an employee of the United States. At all times relevant to this  
25 complaint, Defendant Calderon was acting within the course and scope of his  
26 employment as a U.S. Border Patrol Agent and under color of his authority as a  
27 federal law enforcement agent. Defendant Calderon is an individual and, upon  
28 information and belief, a resident of the State of California.

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1           19. Defendant Sean Zeeck is an officer for the United States Customs and  
2 Border Protection and an employee of the United States. At all times relevant to this  
3 complaint, Defendant Zeeck was acting within the course and scope of his  
4 employment as a U.S. Border Patrol Agent and under color of his authority as a  
5 federal law enforcement agent. Defendant Zeeck is an individual and, upon  
6 information and belief, a resident of the State of California.

7           20. Defendants U.S. Border Patrol Agents John Does I-X are law  
8 enforcement agents and employees of the United States whose identities are  
9 presently unknown to Plaintiff. Plaintiff will amend this complaint once their  
10 identities and facts giving rise to their liability have been ascertained. At all times  
11 relevant to this complaint, John Does I-X were acting within the course and scope  
12 of their employment as U.S. Border Patrol Agents and under color of their authority  
13 as federal law enforcement agents.

14           21. Defendants Clarke, Andrade, Marillo, Ferguson, Ibarra, Angeles,  
15 Fierro, Delgado, McCulloch, Stephenson, Calapan, Guisinger, Cano, Thomas,  
16 Calderon, Zeeck, and John Does I-X are collectively referred to herein as the  
17 “Officer Defendants.”

18           22. Plaintiff names the Officer Defendants in this matter in their individual  
19 capacities, as such term is used in the jurisprudence of 42 U.S.C. § 1983 and *Bivens*  
20 *v. Six Unknown Named Agents of Federal Narcotics Bureau*, 403 U.S. 388 (1971).

21           23. Defendants were agents, servants, and employees of each of the other  
22 named Defendants and were at all times within the full course and scope of their  
23 agency and employment, with the full knowledge and consent, either express or  
24 implied, of their principal and/or employer and each of the other named Defendants.  
25 Each of the Defendants approved or ratified the actions of the other Defendants,  
26 thereby making the currently named Defendants liable for the acts and/or omissions  
27 of their agents, servants, and/or employees.

28

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**JURISDICTION AND VENUE**

24. Plaintiff brings these causes of action under *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971), Section 504 of the Rehabilitation Act of 1973, the Federal Tort Claims Act, and California state law.

25. This Court has jurisdiction over Plaintiff’s federal law claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1346(b) (United States as defendant).

26. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. §1391(b) because the acts or omissions which form the basis of Plaintiff’s claims occurred in San Diego, California.

27. Notice of Plaintiff’s claims under the Federal Tort Claims Act were timely served upon Defendants pursuant to 28 U.S.C. § 2675. More than six (6) months have passed since this Notice of Claim was served upon the Defendants.

28. All conditions precedent to the filing of this suit have occurred or have been performed.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

29. Plaintiff Carey Johnson is a U.S. citizen who resides in the State of California, and due to health reasons, also maintains a home in Mexico.

30. Plaintiff is a U.S. military veteran with a disability under Section 504 of the Rehabilitation Act of 1973.

31. Plaintiff lives in Mexico for part of the year in order to help manage his disability, and he must cross the U.S./Mexico border to meet with care providers and conduct business.

32. “Sentri”—Secure Electronic Network for Travelers Rapid Inspection—is a CBP program that allows expedited clearance for pre-approved, low risk travelers upon arrival in the United States.

33. The only known procedure for requesting accommodation for emergency, medical or disability issues into the United States at the US/Mexico

1 border in San Diego is to approach the Senti gate and request permission to proceed  
2 to secondary inspection to obtain approval for expedited crossing.

3 34. On September 22, 2016 Plaintiff approached the Senti gate, presented  
4 his VA identification card with a disability designation and his passport and  
5 explained his need for a disability accommodation as a qualified disabled person,  
6 and was sent to secondary inspection, where he was told by a supervisor, Officer  
7 Alvino, that he should instead speak with an agent at the Otay Mesa Gate about  
8 formalizing his request for continuing and ongoing accommodation.

9 35. At the Otay Mesa Gate Plaintiff was informed by CBP agent, Defendant  
10 R. Marillo that the proper procedure was that one he already was employing; that is,  
11 to approach the agents at the Senti gate and present his ID card supporting his  
12 disability, along with his passport, and that he should be allowed to go through after  
13 being sent to secondary inspection.

14 36. Plaintiff was told that he would have to do this each time he needed to  
15 cross the border, and that the agent on duty would have discretion about whether or  
16 not to grant his request for disability accommodation.

17 37. Defendant Marillo later wrote a report about his interaction with  
18 Plaintiff that contained false or materially misleading information. Specifically,  
19 Defendant Marillo claimed in his report that Plaintiff was aggressive, belligerent,  
20 and a rule violator.

21 38. Defendant Marillo's falsified report caused or contributed to  
22 subsequent unlawful searches and seizures of Plaintiff, and Defendant Marillo's  
23 misconduct played a meaningful and integral role in the deprivation of Plaintiff's  
24 constitutional rights under the Fourth Amendment.

25 39. The very next day, on September 23, 2016, at approximately 8:30 a.m.,  
26 Plaintiff went to the Senti gate and presented his passport and ID to the agent and  
27 explained to him that he needed to proceed to secondary and speak to supervisor  
28 regarding his request for accommodations based upon his disability.



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1           40. While sitting in the car waiting to be processed, a couple of agents  
2 approached Plaintiff and started harassing him because of his request for  
3 accommodation, saying things like there was nothing wrong with him, and that they  
4 were veterans with Department of Defense ID cards too.

5           41. These agents soon left and their supervisor, believed to be Defendant  
6 Teresa Andrade, appeared and immediately became aggressive and abusive towards  
7 Plaintiff, and threatened to take Plaintiff's car for Senti lane violations, and then  
8 abruptly left, without considering Plaintiff's request.

9           42. Defendant Andrade's threatening and abusive behavior toward Plaintiff  
10 caused or contributed to subsequent unlawful searches and seizures of Plaintiff, and  
11 Defendant Andrade's misconduct played a meaningful and integral role in the  
12 deprivation of Plaintiff's constitutional rights under the Fourth Amendment.

13           43. As Plaintiff sat in his car waiting to be released, Defendant CBP Officer  
14 Thomas Ferguson approached his car and asked him what was going on.

15           44. Defendant Ferguson advised Plaintiff that he should present his VA  
16 disability award letter showing his true disability.

17           45. Approximately 45 minutes later, Plaintiff returned from his home in  
18 Mexico with his VA award letter, and explained to the Senti gate agent that he  
19 needed to go to "secondary" to talk to a supervisor and show them his disability  
20 paperwork.

21           46. Once again, Plaintiff was sent to "secondary" and as he sat in his car  
22 waiting to be processed, a male supervisor approached him in an aggressive manner,  
23 saying "So do you have the letter?"

24           47. When Plaintiff gave the male supervisor the paperwork, his Department  
25 of Defense ID and his passport, the supervisor dismissed Plaintiff's status and  
26 qualifications as a disabled veteran and began to chastise Plaintiff, telling him that  
27 there was nothing was wrong with him.

28           48. When Plaintiff asked the supervisor if he would give him something in

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1 writing saying he was disapproving Plaintiff’s request, so that he could challenge  
2 the denial and further document his disability accommodation requests, the  
3 supervisor disappeared into the building and sent 10 agents, including Defendant  
4 Ferguson, out to take him into custody.

5 49. Defendant Ferguson and the other agents who detained him told  
6 Plaintiff that he was being detained, but not arrested.

7 50. Defendant Ferguson and the other agents handcuffed Plaintiff and took  
8 him to a bench where he was shackled and left for 3 hours.

9 51. After 3 hours they told Plaintiff he could go, but that they were going  
10 to impound his car, and that he could only get his car back if he paid a fine of  
11 \$5,000.00.

12 52. Plaintiff paid the \$5,000.00 fine out of fear that something worse than  
13 having his car impounded would occur if he refused to pay.

14 53. The receipt Plaintiff was given when the money was taken from him  
15 that day falsely identified the \$5,000 as a fine for Senti lane violations.

16 54. On September 25, 2016, Plaintiff chose to cross the border by using the  
17 walk-through gate because he was afraid of a repeat of the events which had  
18 unfolded just days before.

19 55. When Plaintiff presented his passport to the agent, she looked at the  
20 screen and appeared startled as she looked back up, giving Plaintiff the impression  
21 that he had been somehow tagged in the electronic system used at the border  
22 crossing.

23 56. On October 21, 2016, at approximately 3:25 p.m., as Plaintiff was  
24 crossing the border at the Otay Mesa Crossing, he handed his passport to the agent,  
25 who said, “I see you like to use the Senti lane, huh?”

26 57. After extensively questioning Plaintiff, the agent took it upon himself  
27 to inspect the trunk of Plaintiff’s car and began to grill Plaintiff’s 8-year-old  
28 daughter, who was a passenger in the car, as to “who the person she was with was.”

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1 When the child responded that this person was her daddy, the agent even asked her  
2 if she was sure.

3 58. Plaintiff was frightened about being delayed for no apparent reason,  
4 and concerned that he was being targeted and tracked because he had requested to  
5 use the Senti lane for disability accommodations.

6 59. On October 31, 2016, Plaintiff was using the regular lanes, and began  
7 having an episode of severe anxiety attacks while crossing the border.

8 60. Two or more CBP agents, including Defendant Hector Ibarra and  
9 Defendant N. Angeles, physically abused Plaintiff by dragging him from his car,  
10 putting Tasers to his chest, wrenching his arms behind his back and piling up on top  
11 of him.

12 61. Plaintiff complained to the agents that they were hurting his back, and  
13 when they finally got off of him, he could not feel his legs and was suffering from  
14 extreme anxiety and fear of further abuse.

15 62. An ambulance then arrived and transported Plaintiff to the Scripps  
16 Hospital Chula Vista Emergency Room.

17 63. On November 1, 2016, Plaintiff was having severe emotional distress  
18 and was trying to reach the VA clinic in San Diego to seek help for his problem.  
19 Plaintiff had his daughter in the car with him, and he tried to get expedited crossing  
20 using the Senti lane due to the nature of his disability and due to the intensity of the  
21 symptoms he was experiencing.

22 64. Plaintiff's request for assistance was met with heckling and disbelief on  
23 the part of the agents—including Defendant Carlos Fierro, Defendant John Delgado,  
24 Defendant Quintin Clarke, and Defendant Chantelle McCulloch—who appeared not  
25 to believe he was having a crisis. Plaintiff asked them to call an ambulance, and  
26 they refused.

27 65. Based on the physical abuse Plaintiff had experienced the prior day, he  
28 was afraid to interact directly with the CBP agents, so he locked his doors and rolled

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1 up his windows out of fear of being beat up again.

2 66. When Plaintiff proceeded to call an ambulance on his cell phone, the  
3 911 operator asked to speak with the border agent, so Plaintiff lowered the window  
4 and handed the agent his phone.

5 67. After the CBP agents—including Defendant Carlos Fierro, Defendant  
6 John Delgado, Defendant Quintin Clarke, and Defendant Chantelle McCulloch—  
7 talked Plaintiff into unlocking his car and getting out, they verbally abused him,  
8 accused him of having a fake Department of Defense ID card, and threatened to have  
9 his privileges revoked.

10 68. The agents further informed Plaintiff that if he insisted on taking an  
11 ambulance to the hospital that they would be required to call CPS and put his  
12 daughter into foster care since he could not care for her and she would not be allowed  
13 to accompany him in the ambulance.

14 69. But for the intervention of the ambulance driver who had arrived on  
15 scene by that time, and who had called ahead to the VA Medical Center and  
16 requested approval to transport Plaintiff along with his daughter, the CBP agents  
17 would have had Plaintiff's daughter placed into foster care.

18 70. The CBP agents had requested that Plaintiff leave the keys to the car  
19 with them so that they could move it out of the way, and he complied, giving them  
20 his keychain with his car and house keys on it.

21 71. Plaintiff spent several days in the hospital, and upon being released  
22 from the hospital, CBP would not return his keys, and Plaintiff had to hire a  
23 locksmith to get into his house.

24 72. Plaintiff's agent was informed by CBP Agent Clarke at the San Ysidro  
25 Port that the vehicle had been seized for Senti lane violations and that it was going  
26 to be forfeited unless he paid a \$10,000.00 fine.

27 73. After Plaintiff was deprived of the use of his vehicle, he had to use a  
28 rental car for almost a year, which caused an extreme financial burden on his limited

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1 resources as a disabled veteran.

2 74. Plaintiff was eventually able to purchase another vehicle in order to  
3 have transportation, but had to continue making car and insurance payments on his  
4 confiscated vehicle.

5 75. After Plaintiff's car was confiscated, he avoided crossing the border  
6 using the driving lanes whenever possible, because he was in fear for his safety, and  
7 so he began using the San Ysidro Border foot lanes to cross, because he had been  
8 advised that this location had a special lane for people with disabilities and those  
9 requiring medical assistance.

10 76. At first, Plaintiff was allowed expedited crossing simply by showing  
11 his documentation, but then agents began to insist on calling a supervisor each time  
12 to get approval for Plaintiff's expedited crossing.

13 77. Some of the CBP agents took the position that Plaintiff was not entitled  
14 to accommodations and should wait in line to cross just like everyone else, and things  
15 began to get more difficult and time-consuming each time Plaintiff crossed, causing  
16 him great anxiety.

17 78. On the dates of December 1, 2016 and on December 7, 2016, the U.S.  
18 Border Agents and Private Security Guards working at the border asked the Mexican  
19 Police to arrest Plaintiff, making him afraid to attempt to cross the border thereafter.

20 79. Plaintiff had an attorney representing him engage in multiple  
21 conversations with CBP attorney Erik Gantzel, in which it was requested that CBP  
22 return Plaintiff's car, waive the "fines," and grant Plaintiff reasonable medical  
23 accommodations for his necessary border crossings, but CBP's attorney would not  
24 agree to do so.

25 80. After filing formal complaints with CBP on November 6, 2016,  
26 November 17, 2016, and December 10, 2016, the Fines, Forfeitures & Penalties  
27 Division reduced the initial \$5,000 fine to \$500, and refunded Plaintiff \$4,500 of the  
28 money he had paid.

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1           81. The second \$10,000 fine was reduced to \$1,000 and CBP said they  
2 would release Plaintiff’s car if he paid \$1,000 and signed a “hold harmless”  
3 agreement, which would forfeit his right to seek redress. Plaintiff declined to accept  
4 this offer because it asked him to plead guilty to charges which were not true.

5           82. On October 20, 2017 Plaintiff and his attorney had a phone conference  
6 with the Assistant Port Director of the San Ysidro Port of Entry, Sally Carillo, in an  
7 attempt to accommodate his written request for medical accommodation. Thereafter,  
8 things appeared to settle down for a while, and Plaintiff was harassed less and less  
9 when he was crossing the border.

10           83. Then on or about December 1, 2017, Plaintiff was crossing the border  
11 in the regular walk-through lanes, and upon presenting his passport, was told that he  
12 would need to go to secondary for additional screening. Plaintiff was made to wait  
13 an extraordinary amount of time, and when he questioned why he was being  
14 detained, he was thrown to the ground, roughed up, and handcuffed, before  
15 eventually being released and allowed to cross, with no explanation given as to why  
16 he had been singled out. The CBP agents involved in assaulting and wrongfully  
17 detaining Plaintiff on this occasion included Defendant Alphonso Stephenson, Jr.,  
18 Defendant James Calapan, Defendant Chief K. Guisinger, Defendant Raul Cano,  
19 Defendant W. Thomas, Defendant E. Calderon, and Defendant Sean Zeeck.

20           84. Plaintiff suffered multiple bruises, sprains, scarring on his body, and  
21 physical pain due to the brutal way in which he was treated by CBP.

22           85. Plaintiff also suffered anxiety and emotional distress due to the way in  
23 which he was treated by CBP, and he continues to suffer from emotional distress,  
24 mental anguish, humiliation, and anxiety when he is required to cross the border.

25           86. Plaintiff’s written request for ongoing medical accommodation was  
26 approved on January 5, 2018, allowing disability accommodation through the San  
27 Ysidro pedestrian lanes by showing the letter of approval and appropriate  
28 identification; however, it does not address the issue of crossing in an automobile,

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1 which is the primary mode of travel for Plaintiff.

2 87. As a result of Defendants’ actions described above, Plaintiff has  
3 suffered physical, psychological, and emotional injuries and has incurred, and will  
4 continue to incur, medical treatment and expenses to address those injuries.  
5 Defendants’ actions, including the unlawful seizure of Plaintiff’s 2009 Mercedes  
6 Benz E350, have also caused Plaintiff to suffer considerable economic losses  
7 because he has continued to make automobile, insurance, and registration payments  
8 for the 2009 Mercedes since it was seized on November 1, 2016. Plaintiff has also  
9 incurred the expense of renting a car for approximately nine (9) months following  
10 the unlawful seizure and the expense of purchasing a replacement vehicle. He has  
11 also incurred, and will continue to incur, the cost of hotel rooms and other incidental  
12 expenses as a result of having to cross the border on foot.

13  
14 **FIRST CAUSE OF ACTION**

15 ***Bivens*: Unlawful Seizure and Use of Excessive Force in Violation of the**  
16 **Fourth Amendment**  
17 **Against the Officer Defendants and John Does I-X**

18 88. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

19 89. Plaintiff brings the present civil rights violations against these  
20 individuals pursuant to *Bivens v. Six Unknown Named Agents of Federal Narcotics*  
*Bureau*, 403 U.S. 388 (1971).

21 90. The Fourth Amendment to the United States Constitution protects the  
22 “right of the people to be secure in their persons, houses, papers, and effects” and  
23 prohibits state actors from conducting unreasonable searches and seizures and from  
24 engaging in excessive force.

25 91. Each Officer Defendant was an integral participant in the deprivations  
26 of Plaintiff’s constitutional rights under the Fourth Amendment, and each Officer  
27 Defendant caused or contributed to the assaultive, abusive, and unreasonable  
28 searches and seizures of Plaintiff and his property. Between September 2016 and

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1 December 2017, the Officer Defendants violated Plaintiff’s constitutional rights by  
2 engaging in repeated instances of abuse, aggression, harassment, and intimidation in  
3 an apparent effort to punish or retaliate against Plaintiff for his persistence in  
4 requesting the reasonable accommodation to which he is entitled.

5 92. On or about September 22, 2016, Defendant R. Marillo wrote a report  
6 about his interaction with Plaintiff that contained false or materially misleading  
7 information, including that Plaintiff was allegedly aggressive, belligerent, and a rule  
8 violator. Defendant Marillo’s misconduct caused or contributed the unlawful  
9 searches and seizures of Plaintiff and his property, and Defendant Marillo was an  
10 integral participant in the deprivation of Plaintiff’s constitutional rights.

11 93. On September 23, 2016, Defendant Teresa Andrade became aggressive  
12 and abusive towards Plaintiff, threatened to take his car for alleged Senti lane  
13 violations, and left without considering Plaintiff’s request for an accommodation for  
14 his disability. Defendant Andrade’s misconduct caused or contributed the unlawful  
15 searches and seizures of Plaintiff and his property, and Defendant Andrade was an  
16 integral participant in the deprivation of Plaintiff’s constitutional rights.

17 94. On September 23, 2016, Defendant Ferguson and approximately nine  
18 (9) other CBP agents detained Plaintiff and handcuffed him to a bench for three (3)  
19 hours. Defendant Ferguson and the other agents threatened to impound Plaintiff’s  
20 car if he did not pay a \$5,000 fine. Plaintiff paid the fine out of fear for what might  
21 happen to him if he did not pay.

22 95. On October 31, 2016, Plaintiff was attempting to cross the border using  
23 the regular travel lanes when he began to experience a severe anxiety attack. While  
24 waiting for an ambulance to transport him to the hospital, Defendant Hector Ibarra,  
25 Defendant N. Angeles, and other unknown CBP agents, John Does I-X, violated  
26 Plaintiff’s constitutional rights by dragging Plaintiff from his vehicle, putting Tasers  
27 to his chest, wrenching his arms behind his back, and piling on top of him. The  
28 misconduct of Defendants Ibarra, Angeles, and John Does I-X caused Plaintiff



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1 physical and emotional suffering and distress, extreme anxiety, and fear.

2 96. Defendants Clarke, Fierro, Delgado, McCulloch, and John Does I-X  
3 violated Plaintiff’s constitutional rights on November 1, 2016, when they seized  
4 Plaintiff’s black 2009 Mercedes Benz E350 without probable cause when Plaintiff  
5 was taken from the border to the VA Medical Center in San Diego by ambulance.  
6 This violation is ongoing, and, to date, Plaintiff has been deprived of his vehicle for  
7 more than twenty-two (22) months.

8 97. Defendants Stephenson, Calapan, Guisinger, Cano, Thomas, Calderon,  
9 Zeeck, and John Does I-X violated Plaintiff’s constitutional rights on or about  
10 December 1, 2017, when they detained Plaintiff as he tried to cross the border in the  
11 regular walk-through lanes. When Plaintiff questioned why he was being detained,  
12 the Defendants threw Plaintiff to the ground, roughed him up, and handcuffed him,  
13 before eventually releasing him and allowing his to cross the border, with no  
14 explanation of why he had been singled out. As a result of Defendants’ abusive  
15 behavior, Plaintiff suffered numerous injuries, including bruises, sprains, scars,  
16 physical pain, anxiety, and emotional distress.

17 98. As a direct and proximate result of the Officer Defendants’ violations  
18 of Plaintiff’s constitutional rights as described herein, Plaintiff sustained special and  
19 general damages, including but not limited to, medical expenses, loss of use of his  
20 personal vehicle, costs to replace his vehicle, other economic losses, emotional  
21 distress, and attorneys’ fees.

22 **SECOND CAUSE OF ACTION**

23 **Violation of Section 504 of the Rehabilitation Act of 1973**  
24 **Against Defendant Kirstjen M. Nielsen**

25 99. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

26 100. The Rehabilitation Act of 1973 prohibits recipients of federal financial  
27 assistance, including government agencies such as the CBP, from discriminating  
28 against individuals with disabilities, and it requires that they provide services and

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1 support in the most integrated setting appropriate to the needs of individuals with  
2 disabilities.

3 101. As an individual with a disability, Plaintiff is covered by Section 504  
4 of the Rehabilitation Act and is entitled to receive services from CBP in a more  
5 integrated setting.

6 102. CBP can provide services to persons with disabilities in more integrated  
7 settings by making reasonable accommodations or modifications to its policies,  
8 programs, and services, including, for example, by modifying its policies with  
9 respect to allowing disabled individuals to use the Senti lane for expedited crossing  
10 at the US/Mexico border in San Diego.

11 103. CBP discriminated, and continues to discriminate, against Plaintiff by  
12 denying him a reasonable accommodation for his disability and failing to provide  
13 him services and support in a more integrated setting during his crossings at the  
14 US/Mexico border in San Diego, in violation of Section 504 of the Rehabilitation  
15 Act.

16 104. By reason of CBP’s discrimination, Plaintiff is entitled to all legal and  
17 equitable remedies available under the Rehabilitation Act.

18 105. Plaintiff is also entitled to an award of attorneys’ fees under 29 U.S.C.  
19 § 794(a)(1).

20 **THIRD CAUSE OF ACTION**  
21 ***FTCA: Assault and Battery***  
22 **Against the United States of America**

23 106. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

24 107. On or about October 31, 2016 and December 1, 2017, unknown CBP  
25 agents acted with an intent to cause harmful or offensive contact with Plaintiff, and  
26 the intended harmful or offensive contact did in fact occur.

27 108. The harmful or offensive contact was not privileged, nor did Plaintiff  
28 consent to it.



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**FIFTH CAUSE OF ACTION**  
***FTCA: Negligence/Gross Negligence***  
**Against the United States of America**

118. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

119. Defendants owe a duty of care to members of the public with whom they come into contact, including a duty to act with ordinary care and prudence so as not to cause harm or injury to an individual.

120. By engaging in the conduct described above, Defendants breached their duty of care to Plaintiff.

121. Under the Federal Tort Claims Act, the United States is the proper defendant for this cause of action.

122. As a result of Defendants’ negligence, Plaintiff suffered physical, emotional, and psychological injuries. He has incurred economic and non-economic damages, including but not limited to, medical expenses, emotional distress, pain and suffering, anxiety, and fear.

**SIXTH CAUSE OF ACTION**  
***FTCA: Conversion***  
**Against the United States of America**

123. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

124. Defendant Agent Clarke and other unknown CBP agents seized Plaintiff’s 2009 Mercedes Benz E350, unlawfully and without privilege or justification, on November 1, 2016.

125. Defendants intended to, and did, exercise dominion or control over Plaintiff’s vehicle.

126. Plaintiff has been deprived of possession and use of his vehicle since November 1, 2016.

127. Under the Federal Tort Claims Act, the United States is the proper defendant for this cause of action.

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1 128. Defendants’ unlawful and unauthorized custody, control, and retention  
2 of Plaintiff’s vehicle constitutes conversion, for which Plaintiff is entitled to  
3 damages.

4 **SEVENTH CAUSE OF ACTION**

5 ***FTCA: Intentional Infliction of Emotional Distress***  
6 **Against the United States of America**

7 129. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

8 130. Defendants acted with intent and/or recklessness when they engaged in  
9 repeated instances of abuse, aggression, harassment, and intimidation against  
10 Plaintiff between September 2016 and December 2017.

11 131. Defendants’ conduct was extreme and outrageous.

12 132. Under the Federal Tort Claims Act, the United States is the proper  
13 defendant for this cause of action.

14 133. Defendants’ conduct caused Plaintiff to suffer severe emotional  
15 distress, anxiety, fear, and humiliation, for which Plaintiff is entitled to damages.

16 **EIGHTH CAUSE OF ACTION**

17 **Violation of the Unruh Act, California Civil Code § 52.1**  
18 **Against the United States of America**

19 134. Plaintiff re-alleges the foregoing paragraphs as if fully set forth herein.

20 135. Plaintiff had a firmly established right to be free from excessive force  
21 under the Fourth Amendment to the United States Constitution, as well as the State  
22 Constitution of California.

23 136. The California Legislature has declared that it violates the state civil  
24 rights act for any person to interfere with the exercise or enjoyment by any individual  
25 of his rights secured by the United States Constitution or state of federal law. This  
26 includes any interference of these rights by threats, intimidation, coercion or  
27 attempted threats, intimidation, or coercion.

28 137. Defendants interfered with Plaintiff’s right to be free from excessive

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1 force.

2 138. Defendants committed this interference with Plaintiff’s rights in  
3 violation of California Civil Code § 52.1 and the Fourth Amendment.

4 139. Under the Federal Tort Claims Act, the United States is the proper  
5 defendant for this cause of action.

6 140. Due to the violation of Plaintiff’s rights by all Defendants, Plaintiff  
7 suffered economic and non-economic damages, including but not limited to, medical  
8 expenses, emotional distress, pain and suffering, anxiety, and fear.

9  
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs pray for judgment as follows:

12 A. For special damages, including but not limited to current and future  
13 medical fees and expenses, the reasonable value of converted property, and other  
14 economic losses;

15 B. For other general damages, including but not limited to loss of  
16 consortium, pain and suffering, and loss of enjoyment of life;

17 C. For all legal and equitable remedies available under the Section 504 of  
18 the Rehabilitation Act;

19 D. For taxable costs and pre- and post-judgment interest to the extent  
20 permitted by law;

21 E. For exemplary damages to the extent permitted by law;

22 F. For attorney’s fees and costs; and

23 G. Such other relief as the Court deems just and proper.

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RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of November, 2019.

By: s/Joel B. Robbins  
**ROBBINS & CURTIN, P.L.L.C.**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 6, 2019, I emailed the foregoing document to the following:

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By: /s/ Ronda Millea

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