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8  
9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT  
 11 SOUTHERN DISTRICT OF CALIFORNIA  
 12

13 MARCO A. REYES,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA; DOE  
 17 CBP OFFICERS 1-30, INDIVIDUALLY  
 18 AND IN THEIR OFFICIAL  
 19 CAPACITIES, inclusive,

20 Defendants.  
21  
22  
23  
24  
25

Civil No. '20CV1752 WQHLL

**COMPLAINT FOR:**

1. **Bivens: Excessive Force;**
2. **Bivens: Illegal Arrest;**
3. **Bivens: Falsification of Evidence;**
4. **Violations of Rehabilitation Act;**
5. **FTCA: False Imprisonment;**
6. **FTCA: Assault;**
7. **FTCA: Battery;**
8. **FTCA: Negligence;**
9. **FTCA: Bane Act;**
10. **FTCA: Intentional Infliction of Emotional Distress.**

**DEMAND FOR JURY TRIAL ON  
NON-FTCA CLAIMS**

1 **I. INTRODUCTION.**

2 1. Without reason or justification, U.S. Customs and Border Protection  
3 Officers at the Otay Mesa Port of Entry severely beat, injured, and arrested  
4 Plaintiff Marco Reyes, a disabled veteran. After throwing Plaintiff to the ground,  
5 officers forced Plaintiff's arms behind his back beyond their range of motion,  
6 despite his pleas that he had a disability that prevented him from placing his hands  
7 in that position. Plaintiff suffered severe arm and shoulder injury as a result. The  
8 officers also beat Plaintiff until they fractured his ribs and caused other serious  
9 injuries throughout his body. Following the beating, the officers arrested Plaintiff  
10 and took him into custody, falsified documents about the nature of the encounter  
11 with him, and held him in custody until shortly before what would have been his  
12 arraignment. No charges were ever filed. This lawsuit follows.

13 **II. JURISDICTION AND VENUE.**

14 2. This is a civil action where jurisdiction is founded on a federal question  
15 under 28 U.S.C. § 1331.

16 3. Plaintiff's claims arise in this judicial district where the events or  
17 omissions giving rise to this complaint occurred, namely the Otay Mesa Port of  
18 Entry, which is situated in the Southern District of California.

19 4. Venue is proper in the United States District Court for the Southern  
20 District of California under 28 U.S.C. § 1391.

21 5. Plaintiff filed timely administrative claims against the federal  
22 defendants under 28 U.S.C. §§ 1346, and 2671-2680 (the Federal Tort Claims  
23 Act), on or about September 4, 2019. The United States denied the claims on or  
24 about March 24, 2020.  
25

1 **III. PARTIES.**

2 6. Plaintiff Marco A. Reyes is and was, at all times relevant to this  
3 lawsuit, a resident of the State of California, County of San Diego, and a citizen of  
4 the United States. He was traveling into the United States through the Otay Mesa  
5 Port of Entry on August 2, 2018.

6 7. At all times relevant herein, Customs and Border Protection (“CBP”)  
7 was a sub-agency of the Department of Homeland Security, which in turn is an  
8 agency of defendant United States of America.

9 8. Defendants Doe CBP Officers 1-30, at all times relevant herein, were  
10 officers and/or agents of the CBP. The true names of these officers are currently  
11 unknown. These defendants were on duty at the Otay Mesa Port of Entry on  
12 August 2, 2018 and participated in the unlawful beating and arrest of Plaintiff that  
13 gave rise to this Complaint. These defendants include, but are not limited to, the  
14 CBP officer that falsely accused Plaintiff of assaulting him, the officers that pushed  
15 Plaintiff to the ground and severely beat him, the officers that forced Plaintiff’s  
16 hands behind his back and injured his arm, and the officers that took Plaintiff into  
17 custody. At all times relevant herein, these defendants were acting in an official  
18 capacity and under color of law.

19 **IV. FACTS SUPPORTING CAUSES OF ACTION.**

20 9. On August 2, 2018, at approximately 4:00 p.m., Plaintiff was in his car  
21 in one of the vehicle lanes at the Otay Mesa Port of Entry, waiting to cross into the  
22 United States.

23 10. The Otay Mesa Port of Entry is located at 9777 Via De La Amistad,  
24 San Diego, CA 92154.

25 11. Due to an incident in a nearby vehicle lane, an unknown CBP officer  
asked Plaintiff to step out of his car.

1 12. Plaintiff is a veteran of the United States Armed Forces.

2 13. Plaintiff has significant hearing loss from his days of military service  
3 and did not hear the command.

4 14. The unknown CBP officer proceeded to knock on Plaintiff's driver's  
5 side window and vaguely told him to stand "over there."

6 15. Plaintiff immediately complied, stepping out of his car and standing  
7 behind his vehicle.

8 16. The unknown CBP officer began yelling profanities at Plaintiff,  
9 accusing him of not following directions.

10 17. Plaintiff replied that there was no reason to treat him disrespectfully and  
11 stated that he was following directions.

12 18. The unknown CBP officer continued to use profanities against Plaintiff.

13 19. While using these profanities, the unknown CBP officer approached  
14 Plaintiff and bumped into him with his chest.

15 20. Plaintiff had not said or done anything to warrant being touched by the  
16 officer.

17 21. As Plaintiff raised his hand to gesture the unknown CBP officer to stop  
18 bumping into him, the officer bumped Plaintiff's hand.

19 22. The unknown CBP officer immediately accused Plaintiff of assaulting  
20 him, despite knowing that Plaintiff had done no such thing and that the accusation  
21 was false.

22 23. On information and belief, the unknown CBP officer called for backup  
23 assistance at that point.

24 24. A group of unknown CBP officers soon arrived at the area where  
25 Plaintiff and the officer were located.

1       25.     The officers immediately grabbed Plaintiff and pushed him to the  
2 ground.

3       26.     While holding Plaintiff to the ground, the officers grabbed Plaintiff's  
4 arms and tried to force him to put his hands behind his back.

5       27.     Plaintiff has a physical disability in his left hand, arm, and shoulder  
6 from a previous injury which limits the functioning of those joints, including the  
7 range of motion.

8       28.     The disability substantially limits Plaintiff's use of that arm. Plaintiff  
9 cannot perform many manual tasks with the arm and has trouble reaching, bending,  
10 and moving the hand, arm, and shoulder.

11       29.     Plaintiff informed the officers about his disability and explained that he  
12 could not move his hands behind his back due to the impairment.

13       30.     The officers ignored Plaintiff's pleas and instead began to beat him as  
14 he lay defenseless on the ground.

15       31.     Plaintiff had not said or done anything to warrant being beaten by the  
16 group of officers.

17       32.     The officers severely beat Plaintiff until they managed to force his  
18 hands behind his back, causing a severe injury to his left arm and shoulder.

19       33.     Plaintiff also suffered broken ribs and other serious injuries to his body  
20 from the officers' beating.

21       34.     After beating Plaintiff and forcing his hands behind his back, the  
22 officers handcuffed him and took him into custody at the Port of Entry.

23       35.     On information and belief, the incident between Plaintiff and Doe CBP  
24 officers was captured by video cameras at the Port of Entry.  
25

1 36. After the incident, other federal law-enforcement officials responded to  
2 interview Plaintiff, and the involved CBP officials, about this use-of-force incident  
3 at the border.

4 37. As a regular part of an investigation of that kind, investigating federal  
5 law enforcement agents obtained and retained a copy of the video camera footage  
6 involving Plaintiff and CBP officials from the Port of Entry that day.

7 38. On information and belief, at least one of the officers who used force  
8 against Plaintiff made oral statements to investigating agents about the use-of-force  
9 incident involving Plaintiff.

10 39. On information and belief, some of the oral statements given to  
11 investigating agents by CBP officers were belied by the videotaped evidence and  
12 the accounts of other witnesses.

13 40. On information and belief, at least one of the officers who used force  
14 against Plaintiff also created written reports alleging that Plaintiff had committed a  
15 federal offense in assaulting or resisting CBP officers.

16 41. Any written report claiming that Plaintiff assaulted a CBP official or  
17 unlawfully resisted arrest is false, and constitutes falsification of evidence.

18 42. On information and belief, after Plaintiff was taken into custody, the  
19 United States Attorneys Office for the Southern District of California received a  
20 prosecution referral for Plaintiff, seeking to charge him with assault on a federal  
21 officer.

22 43. On information and belief, that prosecution referral included false  
23 statements about Plaintiff and his actions at the border.

24 44. Plaintiff was ultimately released from custody without explanation.

25 45. Plaintiff was not charged with assaulting an officer or any other crime.

1 46. Plaintiff's injuries, particularly to his left shoulder, have required and  
2 continue to require repeated medical attention and surgical intervention.

3 47. Plaintiff has been in constant pain and suffering since the beating, and  
4 his treatment remains ongoing at the Veteran's Administration.

5 **V. CAUSES OF ACTION.**

6 **FIRST CAUSE OF ACTION:**

7 ***Bivens* action: Excessive Force**

8 **(Unknown CBP Officer Does 1-30)**

9 48. Plaintiff reasserts, re-alleges, and incorporates herein by reference each  
10 and every allegation contained in the preceding paragraphs.

11 49. This cause of action is based upon *Bivens v. Six Unknown Federal*  
12 *Narcotics Agents*, 403 U.S. 388 (1971).

13 50. Plaintiff had a Fourth Amendment right to be free from unreasonable  
14 searches and seizures, including the use of excessive force.

15 51. Defendants violated that right by pushing Plaintiff to the ground,  
16 severely beating him, and forcing Plaintiff's hands behind his back beyond his  
17 range of motion, causing a severe injury to his arm and shoulder.

18 52. These defendants were not acting in good faith, were acting under color  
19 of law, and violated Plaintiff's Fourth Amendment rights.

20 53. These defendants are sued in their individual capacities for the purposes  
21 of this cause of action.

22 54. Defendants' actions were the legal, foreseeable, and proximate cause of  
23 Plaintiff's injuries, and caused damages to him in an amount to be proven at trial.  
24  
25





1 64. Plaintiff had a Fifth Amendment right to Due Process, and to be free  
2 from the fabrication of evidence by officers acting under color of law.

3 65. Defendants violated that right by falsifying written reports about  
4 Plaintiff, by claiming that Plaintiff assaulted and/or resisted officers unlawfully,  
5 and making similar claims to federal law enforcement agents investigating this  
6 incident.

7 66. These defendants were not acting in good faith, were acting under color  
8 of law, and violated Plaintiff's Fourth Amendment rights.

9 67. These defendants are sued in their individual capacities for the purposes  
10 of this cause of action.

11 68. Defendants' actions were the legal, foreseeable, and proximate cause of  
12 Plaintiff's injuries, and caused damages to him in an amount to be proven at trial.

13 **FOURTH CAUSE OF ACTION:**

14 **Rehabilitation Act (29 U.S.C. § 701 et seq.)**

15 **(United States of America)**

16 69. Plaintiff reasserts, re-alleges, and incorporates herein by reference each  
17 and every allegation contained in the preceding paragraphs.

18 70. Plaintiff is an individual with a disability. Specifically, Plaintiff is  
19 disabled within the meaning of the Rehabilitation Act in his left hand, arm, and  
20 shoulder.

21 71. Plaintiff has a right under the Rehabilitation Act to be from  
22 discrimination by reason of his disability.

23 72. The CBP, as an agency of the United States, had a duty under the  
24 Rehabilitation Act to refrain from arresting Plaintiff for reasons related to his  
25 disability.

1 73. The CBP, as an agency of the United States, had a duty under the  
2 Rehabilitation Act provide Plaintiff a reasonable accommodation upon learning of  
3 Plaintiff's disability.

4 74. The CBP violated these duties by arresting Plaintiff for reasons related  
5 to his disability and forcing Plaintiff's hands behind his back despite knowing that  
6 Plaintiff could not perform that movement due to his disability.

7 75. Defendants could have relied on alternate or less severe means to  
8 restrain Plaintiff instead of violently forcing his hands behind his back and  
9 severely injuring his left arm and shoulder.

10 76. Defendants' actions caused Plaintiff greater injury and indignity during  
11 the process as compared to other arrestees.

12 77. Defendants' actions violated the Rehabilitation Act and foreseeably and  
13 proximately caused damages to Plaintiff in an amount to be proven at trial.

14 **FIFTH CAUSE OF ACTION:**

15 **FTCA: False Imprisonment**

16 **(All defendants)**

17 78. Plaintiff reasserts, re-alleges, and incorporates herein by reference each  
18 and every allegation contained in the preceding paragraphs.

19 79. Defendants intentionally deprived Plaintiff's freedom of movement by  
20 force, threats of force, menace, and duress.

21 80. Defendants arrested Plaintiff, or contributed to his arrest, in their  
22 official capacity and in the scope of their employment as CBP Officers of the  
23 United States of America.

24 81. Plaintiff was not allowed to leave for an appreciable time.

25 82. Plaintiff did not consent to be imprisoned.

1 83. Defendants' actions were a substantial factor in causing harm to  
2 Plaintiff, and he suffered damages in an amount to be proven at trial.

3 **SIXTH CAUSE OF ACTION:**

4 **FTCA: Assault**

5 **(All defendants)**

6 84. Plaintiff reasserts, re-alleges, and incorporates herein by reference each  
7 and every allegation contained in the preceding paragraphs.

8 85. Defendants created a reasonable apprehension in Plaintiff of immediate  
9 harmful or offensive contact. Specifically, Defendants bumped into Plaintiff,  
10 pushed him to the ground, severely beat him while he lay on the ground, and  
11 forced his arms beyond their range of movement.

12 86. Plaintiff reasonably believed that he was about to be touched by  
13 Defendants in a harmful or offensive manner.

14 87. Defendants acted without privilege or Plaintiff's consent.

15 88. Defendants acted in their official capacity and in the scope of their  
16 employment as CBP officers of the United States of America.

17 89. Defendants' actions were a substantial factor in causing harm to  
18 Plaintiff, and he suffered damages in an amount to be proven at trial.

19 **SEVENTH CAUSE OF ACTION:**

20 **FTCA: Battery**

21 **(All defendants)**

22 90. Plaintiff reasserts, re-alleges, and incorporates herein by reference each  
23 and every allegation contained in the preceding paragraphs.

24 91. Defendants acted with an intent to cause harmful or offensive contact  
25 with the person of Plaintiff and the intended harmful or offensive contact did in  
fact occur. Specifically, Defendants bumped into Plaintiff, pushed him to the

1 ground, severely beat him while he lay on the ground, and forced his arms beyond  
2 their range of movement.

3 92. Defendants acted without privilege or Plaintiff's consent.

4 93. Defendants acted in their official capacity and in the scope of their  
5 employment as CBP officers of the United States of America.

6 94. Defendants' actions were a substantial factor in causing harm to  
7 Plaintiff, and he suffered damages in an amount to be proven at trial.

8 **EIGHTH CAUSE OF ACTION:**

9 **FTCA: Negligence**

10 **(All defendants)**

11 95. Plaintiff reasserts, re-alleges, and incorporates herein by reference each  
12 and every allegation contained in the preceding paragraphs.

13 96. Defendants had a duty to use reasonable care in interacting with a  
14 citizen. Defendants had a duty to use reasonable care in performing an arrest, and  
15 only using such force as was required by the circumstances. Defendants had a duty  
16 to avoid needlessly and negligently harming Plaintiff during an arrest. Defendants  
17 had a duty to provide accurate and true information in reports about incidents at the  
18 Port of Entry.

19 97. Defendants breached all these duties by bumping into Plaintiff, pushing  
20 him to ground, forcing his arms beyond their range of movement, recklessly  
21 harming him, arresting him without reasonable suspicion or probable cause, and  
22 presenting false information in reports about the incident with Plaintiff.

23 98. Defendants acted in their official capacity and in the scope of their  
24 employment as CBP Officers of the United States of America.

25 99. Defendants' actions were a substantial factor in causing harm to  
Plaintiff, and he suffered damages in an amount to be proven at trial.



1 107. Defendants intended to cause, and did cause, Plaintiff to experience  
2 severe physical injury and emotional distress and each acted with a reckless  
3 disregard of the probability that Plaintiff would suffer injuries.

4 108. Defendants acted in their official capacity and in the scope of their  
5 employment as CBP Officers of the United States of America.

6 109. Plaintiffs suffered severe distress, and Defendants' conduct was a  
7 substantial factor in causing Plaintiff's severe distress.

8 110. As a result, Plaintiff suffered damages in an amount to be proven at  
9 trial.

10 **PUNITIVE DAMAGES:**

11 **(Unknown CBP Officer Does 1-30)**

12 111. Plaintiff reasserts, re-alleges, and incorporates herein by reference each  
13 and every allegation contained in the preceding paragraphs.

14 112. In pushing Plaintiff to the ground, severely beating him, forcing  
15 Plaintiff's hands behind his back beyond his range of motion, which caused a  
16 severe injury to his arm and shoulder, arresting him without reasonable suspicion  
17 or probable cause, and falsifying evidence against him, Defendants Unknown CBP  
18 Officer Does 1-30 acted with malice and oppression and with a willful and  
19 conscious disregard of Plaintiff's rights and safety.

20 113. Defendants' conduct was despicable and subjected Plaintiff to cruel and  
21 unjust hardship in conscious disregard of his rights.

22 114. Defendants' despicable conduct resulted in excruciating pain, suffering,  
23 distress, emotional distress, and humiliation to Plaintiff, in violation of his  
24 constitutional rights. Defendants are liable for punitive damages accordingly.  
25

1 **VI. RELIEF REQUESTED.**

2 115. For general damages and compensatory damages in an amount  
3 according to proof;

4 116. For punitive damages against the individual defendants;

5 117. Civil penalties as provided by law;

6 118. Monetary damages as provided by law;

7 119. Attorneys’ fees under the Rehabilitation Act (29 U.S.C. § 701 et seq.)  
8 and Cal. Civ. Code § 52.1;

9 120. Legal interest on all damages awards from the date of judicial demand  
10 until paid;

11 121. Costs of suit;

12 122. And for such other and further relief as the Court may deem proper.

13 **VII. JURY DEMAND.**

14 Plaintiff hereby respectfully demands that a trial by jury be conducted with  
15 respect to all non-FTCA issues presented herein.

16  
17  
18 Respectfully submitted,

19  
20 SCOTT TRIAL LAWYERS, APC

21  
22 Dated: September 8, 2020

23 /s/ Timothy A. Scott  
24 /s/ Nicolas O. Jimenez  
25 TIMOTHY A. SCOTT  
NICOLAS O. JIMENEZ  
Attorneys for Plaintiff