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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JESS CABE,)	Case No.
)	
Plaintiff,)	COMPLAINT
)	
vs.)	
)	
THREE UNKNOWN NAMED AGENTS)	Assigned to:
OF UNITED STATES IMMIGRATION)	
AND CUSTOMS ENFORCEMENT,)	
)	
Defendants.)	

Plaintiff, JESS CABE (“Cabe”), by and through counsel undersigned, for his complaint alleges as follows.

PARTIES

1. Plaintiff Jess Cabe was at all times relevant to this complaint a resident of the State of Arizona.
2. Defendants, Three Unknown Named Agents of United States Immigration and Customs Enforcement (the “Agents”) were, on information and belief, at all times relevant to the this complaint, residents of the State of Arizona.
3. On information and belief, the Agents, at all times relevant to this complaint, were acting in the course and scope of their employment with United States Immigration and Customs Enforcement, and were acting under color of authority of the United States government.

JURISDICTION

1
2 4. Jurisdiction is proper in this Court pursuant to 28 U.S.C.A. § 1331 as the
3 complaint arises under the Constitution of the United States, as well as under the laws of
4 the United States.

5 5. Jurisdiction is proper in this Court for any state claims pursuant to 28
6 U.S.C.A. § 1367.

VENUE

7
8 6. Venue is proper in this Court pursuant to 28 U.S.C.A. § 1391 (b) because
9 all of the events and or omissions giving rise to Plaintiff's action occurred within the District
10 of Arizona.

GENERAL ALLEGATIONS

11
12 7. Plaintiff Cabe, was at all times relevant to this complaint, employed as a
13 full-time United States Border Patrol Agent. Cabe continues to be so employed.

14 8. On September 6, 2007, at approximately 10:45 p.m., Cabe was driving his
15 privately owned vehicle to work at the Nogales, Arizona, Border Patrol Agency. Cabe was
16 driving through a rural area near Arivaca, Arizona, and was dressed in his full official
17 Border Patrol Rough Duty Uniform.

18 9. As Cabe was driving his vehicle, he noticed two vehicles approaching him
19 from behind. Cabe was "pinched," or forced off the road, by the two vehicles.

20 10. When Cabe came to a stop, he noticed that the two vehicles were a grey
21 minivan, and a pickup truck. The minivan had a flashing blue light in the back window.

22 11. Cabe noticed that the minivan had a State of Arizona commercial plate,
23 but was otherwise unmarked, as was the pickup truck.

1 12. When all three vehicles came to a stop, two men exited the minivan, one
2 from each side of the vehicle. The men exited the vehicle and had their weapons drawn
3 and trained on Cabe's head. These two men approached Cabe's vehicle from opposite
4 sides of his vehicle.

5 13. Cabe was able to note that the man on the left side of the vehicle had a
6 tactical light attached to his weapon, which light illuminated Mr. Cabe, which indicated to
7 Cabe that the men were with an official law enforcement agency.

8 14. As the two men approached from the front of the vehicle, a third man
9 exited the pickup truck, which was behind Cabe's vehicle. The third man approached
10 Cabe, also with his gun drawn and trained on Cabe.

11 15. Cabe was able to notice that none of the three men were in any official
12 uniform. All three men were all dressed in solid black body armor. One of the men had
13 a small police patch; the man who approached from the pickup truck had a small I.C.E.
14 patch.

15 16. As the man approached from the pickup, he yelled out "La Migra" to the
16 other two individuals, referring to Cabe. That individual continued to approach the vehicle,
17 and ordered Cabe to open the door and trunk of his vehicle. Cabe, fearing for his life,
18 complied.

19 17. The two men who had approached from the front of their vehicle
20 maintained their weapons trained on Cabe, while the third man searched the interior of
21 Cabe's vehicle, as well as the trunk of the vehicle.

22 18. While the third man searched the vehicle, Cabe was in fear for his life,
23 and believed that he was being robbed by these three individuals.

24 19. After the third man finished searching the interior and trunk of the vehicle,
25 he holstered his weapon.

1 20. Eventually, Cabe was allowed to start his vehicle, and leave the scene.
2 During the time of the incident, Cabe was not allowed to leave the scene and was held at
3 gunpoint.

4 21. On information and belief, the three men did not possess a valid warrant
5 to stop and search the vehicle.

6 22. On information and belief, the three men did not have probable cause or
7 to conduct the stop and search of the vehicle.

8 23 On information and belief, the three men did not have reasonable
9 suspicion to stop Cabe's vehicle.

10 24. Upon arriving at the border patrol station where he worked, Cabe reported
11 the incident to his supervisor.

12 25. Cabe was informed that I.C.E. agents were working in the general area on
13 a covert operation. Cabe believes that the operation is referred to as a "secret squirrel
14 operation," and that the agents were engaged in that operation.

15 26. As a result of the incident, Cabe has suffered emotional and psychological
16 injuries, including a diagnosis of Posttraumatic Stress Disorder.

17
18 **FEDERAL CLAIMS**

19 **COUNT ONE**

20 **Illegal Search and Seizure in Violation of the Fourth Amendment**

21 27. Plaintiff incorporates paragraphs 1 through 26 above as if fully set forth
22 herein.

23 28. The conduct of the defendants described above constituted an illegal search
24 and seizure in violation of the Fourth Amendment to the Constitution of the United States.

25 Such acts were intentional or in reckless disregard of or in deliberate indifference to the
26 plaintiff's constitutional rights as set forth above.

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29. As a proximate result of this conduct, the plaintiff has suffered harms and injuries as specified below.

STATE TORT CLAIMS
COUNT ONE

Intentional Infliction of Emotional Distress

30. Plaintiff incorporates paragraphs 1 through 29 above as if fully set forth herein.

31. The conduct of the defendants as described above was extreme and outrageous.

32. The acts of the defendants caused plaintiff to suffer severe emotional distress.

33. The defendants intended to cause such distress or recklessly disregarded the near certainty that such distress would result from their acts.

34. As a result of the defendants' conduct the plaintiff suffered harms and injuries as more fully described below.

COUNT TWO
Negligence

35. Plaintiff incorporates paragraphs 1 through 34 above as if fully set forth herein.

36. Defendants owed a duty to plaintiff not to engage in conduct that would subject plaintiff to psychological and emotional damage.

37. Defendants through their actions, breached their duty to plaintiff.

38. As a direct result of their actions and inactions, Defendants have caused plaintiff to suffer damages.

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39. Plaintiff's damages include loss of income, loss of business opportunities, emotional distress, and loss of income, the full extent of which are not presently known but will be proven at trial.

COUNT THREE

False Imprisonment

40. Plaintiff incorporates paragraphs 1 through 39 above as if fully set forth herein.

41. Defendants acted intentionally to restrain Cabe to an area with the defendants control.

42. Defendants acted without lawful authority and without the consent of Cabe.

43. Defendants' acts resulted in the direct restrain of Cabe's liberty and freedom of movement, either by actual force or fear of force.

44. Defendants' acts would have caused a reasonably prudent person in the same situation as Cabe to believe that he was restrained.

45. Cabe was aware of and harmed by the restraint of his freedom of movement.

COUNT FOUR

Assault

46. Plaintiff incorporates paragraphs 1 through 45 as if fully set forth herein.

47. Through their acts, Defendants intended to cause Cabe apprehension of an immediate harmful or offensive contact.

48. Through their acts, Defendants did cause Cabe apprehension of an immediate harmful or offensive contact.

1 49. As a result of Defendants' acts, Cabe has suffered damages
 2 including emotional injury, psychological damages, and other damages to be proven
 3 at trial.

4 **DAMAGES**

5 50. Plaintiff incorporates paragraphs 1 through 49 above as if fully set forth
 6 herein.

7 51. As a result of each and every count alleged in this Complaint, plaintiff has
 8 suffered damages including, but not limited to: limitations on his liberty, psychological
 9 and emotional damage, stress and anguish, and other damages the extent of which
 10 are not fully known but will be proven at trial.

11 WHEREFORE, plaintiff prays for relief as follows:

- 12 1. For compensatory damages in an amount to be deemed just and
- 13 reasonable;
- 14 2. For special damages in an amount supported by the evidence;
- 15 3. For an award of punitive damages;
- 16 4. For plaintiff's reasonable costs and attorney's fees;
- 17 5. For a jury trial on all issues raised herein;
- 18 6. For any other relief deemed just and proper under the circumstances.

19
 20 Dated this 3rd day of September, 2009.

21
 22 /S/ DAVID MONROE QUANTZ
 23 Attorney for Plaintiff

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jess Cabe

(b) County of Residence of First Listed Plaintiff Pima (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) David Monroe Quantz, 4779 E. Camp Lowell Dr. Tucson, AZ 85712 (520) 323-0250

DEFENDANTS

United States Immigration and Customs Enforcement

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 28-u.s.c.a. Statute 1331
Brief description of cause: Illegal Search and Seizure

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/04/2009 SIGNATURE OF ATTORNEY OF RECORD /S/ DAVID MONROE QUANTZ

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

1 **DAVID MONROE QUANTZ, P.L.C.**
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3 David Monroe Quantz
State Bar No: 006028
4 david@quantzlawfirm.com
Attorney for Plaintiff
5

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF ARIZONA
8

9 JESS CABE,) Case No.
10 Plaintiff,)
11 vs.) SUMMONS IN A CIVIL ACTION
12 THREE UNKNOWN NAMED AGENTS)
OF UNITED STATES IMMIGRATION) Assigned to:
13 AND CUSTOMS ENFORCEMENT,)
14 Defendants.)
15 _____)

16 **WARNING:** This is an official document from the Court which may
17 affect your rights. Read it carefully. If you do not understand this document,
contact an attorney for help.

18 **TO: UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT**

19 _____
20 _____

21 A lawsuit has been filed against you.

22 Within 20 days after service of this summons on you (not counting the day you
23 received it)–or 60 days if you are the United States or a United States agency, or an
24 officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or
25 (3)–you must serve on the Plaintiff an answer to the attached complaint or a motion
26 under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be
27 served on the Plaintiff’s attorney whose name and address is:
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(520) 323-0250 (telephone)
(520) 323-0283 (fax)

If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint. You also must file your answer or motion with the Court.

Name of Clerk of the Court

Deputy Clerk's signature