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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

ARACELI RODRIGUEZ, individually
and as the surviving mother and personal
representative of the ESTATE OF J.A.,
Deceased,

Plaintiff,

v.

JOHN DOES 1–10, Agents of U.S.
Border Patrol, and DOES 11–20,
Officers of U.S. Customs and Border
Protection,

Defendants.

CASE NO. _____

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

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14 * *Pro hac vice motions forthcoming*

15 ** *Admitted pursuant to Ariz. Sup. Ct.*
16 *R. 38(f)*

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1 Plaintiff Araceli Rodriguez, through counsel, hereby complains and alleges the
2 following:

3 INTRODUCTION

4 1. This civil rights case involves the brazen and lawless killing of a sixteen-
5 year-old boy, J.A., by agents of the United States Border Patrol and/or officers of U.S.
6 Customs and Border Protection (CBP). The fatal shooting of J.A. is not an isolated
7 incident. United States Border Patrol agents have been responsible for multiple
8 unjustified deadly shootings and physical abuses along the U.S.-Mexico border over the
9 past several years. J.A.'s killing is one of the latest and most egregious of these incidents.

10 2. On the night of October 10, 2012, J.A., a Mexican national, was peacefully
11 walking along a street in his hometown of Nogales, Sonora, Mexico. The street on which
12 he was walking, Calle Internacional, runs parallel to the border fence. At approximately
13 11:30 pm, one or more U.S. Border Patrol agents and/or CBP officers standing on the
14 U.S. side of the fence opened fire. An autopsy report shows that J.A. was fatally hit with
15 ten bullets. At the time of the shooting, the agents and/or officers were not under threat
16 by J.A. or anyone else standing near him — much less in immediate danger of deadly or
17 serious bodily harm. J.A. death was senseless and unjustified.

18 3. J.A.'s mother, Araceli Rodriguez, brings this lawsuit for monetary
19 damages for the killing of her youngest son, alleging claims under the Fourth and Fifth
20 Amendments to the United States Constitution.

21 JURISDICTION AND VENUE

22 4. This case is brought pursuant to *Bivens* and the Fourth and Fifth
23 Amendments to the United States Constitution. *See Bivens v. Six Unknown Named*
24 *Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Court has jurisdiction
25 under 28 U.S.C. § 1331 (federal question jurisdiction).

26 5. Venue is proper in the District of Arizona because a substantial part of the
27 events complained of and giving rise to Plaintiff's claims occurred in this District. *See*
28 *28 U.S.C. §§ 1391(b), 1391(e), 1402(b)*.

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PARTIES

6. Plaintiff ARACELI RODRIGUEZ is a Mexican national currently residing in Nogales, Sonora, Mexico. She is the mother of the deceased, J.A. who was also a Mexican national. J.A. resided in Nogales, Sonora, Mexico at the time of his death. Plaintiff brings this lawsuit individually and as the surviving mother and personal representative of J.A.’s estate.

7. Plaintiff is unaware of the true names and capacities, whether individual or otherwise, of Defendant DOES 1–10, Agents of U.S. Border Patrol, and DOES 11–20, Officers of U.S. Customs and Border Protection (hereinafter “DOE Defendants”), inclusive, and therefore sues those Defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that these DOE Defendants, and each of them, are in some manner responsible and liable for the acts and/or damages alleged in this Complaint, and that among these DOE Defendants are those Border Patrol agents who shot J. A. as well as others who directly contributed to J.A.’s death, and that all of these Defendants acted under color of law. The Border Patrol is an agency within the U.S. Customs and Border Protection agency, which itself is located within the Department of Homeland Security. Plaintiff will amend this Complaint to allege the DOE Defendants’ true names and capacities when they have been ascertained.

JURY DEMAND

8. Plaintiff demands a trial by jury in this action on each of her claims triable by jury.

FACTS

J.A.'s Death

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3 9. On the night of October 10, 2012, after playing basketball in his
4 neighborhood with his girlfriend and friends, J.A. was walking by himself down the
5 sidewalk on Calle Internacional, a street that runs alongside the border fence on the
6 Mexican side of the border between the United States and Mexico. Because Calle
7 Internacional is a main thoroughfare, with commercial and residential buildings,
8 residents of the town frequently walk down that street.

9 10. According to an eyewitness who was walking behind J.A. on Calle
10 Internacional on that night, at approximately 11:30 pm, one or more U.S. Border Patrol
11 agents and/or CBP officers, stationed on the U.S. side of the fence, opened fire.
12 According to various reports, anywhere from 14 to 30 shots were fired. Upon
13 information and belief, the agents and/or officers did not issue any verbal warnings
14 before opening fire.

15 11. The agents and/or officers hit J.A. and he collapsed where he was shot, in
16 front of a medical office on the corner of Calle Internacional and Calle Ingenieros. He
17 was found moments later lying in a pool of his own blood.

18 12. J.A. was shot approximately ten times and virtually all of those shots
19 entered his body from behind.

20 13. Upon information and belief, no one else was shot.

21 14. Just prior to the shooting, J.A. was visible and not hiding; an observer could
22 see that he did not pose a threat. He was doing nothing but peacefully walking down the
23 street by himself when he was gunned down. He was not committing a crime, nor was
24 he throwing rocks, using a weapon, or in any way threatening U.S. Border Patrol agents
25 or anyone else. Furthermore, no one near J.A. at the time of the shooting was throwing
26 rocks or threatening U.S. Border Patrol agents in any manner (or threatening anyone else).

27 15. At the moment he was shot, J.A. was walking on the southern side of Calle
28 Internacional, directly across the street from a sheer cliff face that rises approximately

1 25 feet from street level. The cliff is approximately 30 feet from where J.A. was standing
2 when shot. The border fence, which is approximately 20–25 feet tall, runs along the top
3 of the cliff. Thus, at the location where J. A. was shot, the top of the fence towers
4 approximately 50 feet above street level on the Mexican side. The fence itself is made
5 of steel beams that are 6.5 inches in diameter. Each beam is approximately 3.5 inches
6 apart. The agents and/or officers who shot J.A. were firing from the U.S. side of the
7 fence. (A photograph from Google Maps of the border fence and the corner where J.A.
8 was killed is attached to this Complaint as Exhibit A.)

9 16. According to an emergency police dispatch, a Border Patrol agent phoned
10 authorities in Mexico approximately five minutes after shots were fired. The agent
11 informed Mexican authorities that there were shots fired on the borderline and that
12 someone was wounded on the Mexican side, but the agent did not identify the shooters.

13 17. At the time of the shooting, J.A. lived in Nogales, Sonora, Mexico,
14 approximately four blocks from where he was shot. Because J.A.'s mother was away
15 for work, his grandmother was often with him in Nogales, Mexico to care for him. His
16 grandmother and grandfather live in Arizona and were lawful permanent residents of the
17 United States at the time of the shooting. They are now U.S. citizens. Upon information
18 and belief, the agent(s) and/or officer(s) who shot J.A. did not know whether J.A. was a
19 U.S. citizen or whether he had significant contacts with the United States.

20 18. Defendants' actions in killing J.A. were unreasonable and excessive, and
21 were unnecessary to defend against bodily injury or deadly force. The agents and/or
22 officers acted intentionally with the specific purpose of causing serious harm and/or
23 death to J.A, without legal justification.

24 19. Defendants acted under color of law.

25 **Systemic Problems of Abuse at the Border by U.S. Agents**

26 20. J.A.'s killing by Defendants is unfortunately not a unique event, but part
27 of a larger problem of abuse by Border Patrol agents in Nogales and elsewhere.
28

1 21. The U.S.-Mexico border area in Mexico is unlike other areas of Mexico.
2 U.S. Border Patrol agents not only control the U.S. side of the fence, but through the use
3 of force and assertion of authority, they also exert control over the immediate area on the
4 Mexican side, including where J.A. was shot.

5 22. U.S. control of the Mexican side of the border fence in Nogales and other
6 areas along the Southern border is apparent and longstanding, and recognized by persons
7 living in the area.

8 23. Border Patrol agents use guns, non-lethal devices and other weapons, as
9 well as military equipment and surveillance devices to target persons on the Mexican
10 side of the border. For example, U.S. surveillance cameras are mounted along the border
11 fence, monitoring activity on the Mexico side of the fence. One such camera, with a
12 clear line of sight over Calle Internacional, is mounted approximately 150 feet from the
13 location where J.A. was shot. Additionally, Border Patrol agents have opened fire into
14 Nogales from the U.S. side on prior occasions and are known to launch non-lethal
15 devices such as pepper spray canisters into Nogales neighborhoods from the U.S. side of
16 the border fence. By shooting at individuals on the Mexican side, and using weapons
17 and devices with a range extending to the Mexican side of the border area, the United
18 States, through the Border Patrol, controls the area immediately adjacent to the
19 international border fence on the Mexican side. This control extended to the street, Calle
20 Internacional, where J.A. was killed.

21 24. U.S. Border Patrol agents, with force, exercise control over areas on the
22 Mexican side adjacent to the international border fence. U.S. Border Patrol agents make
23 seizures on the Mexican side of the fence. U.S. Bureau of Customs and Border Protection
24 officials are authorized to be on Mexican soil to conduct pre-inspection of those seeking
25 admission to the United States. U.S. Border Patrol helicopters fly in Mexican airspace
26 near the border and swoop down on individuals, inundating those individuals with dust
27 and debris. Thus, as the Chief of the U.S. Border Patrol has acknowledged, U.S. border
28 security policy “extends [the nation’s] zone of security outward, ensuring that our

1 physical border is not the first or last line of defense, but one of many.” *Securing Our*
2 *Borders—Operational Control and the Path Forward: Hearing Before the Subcomm. on*
3 *Border and Maritime Security of the H. Comm. on Homeland Security*, 112th Cong. 8
4 (2011) (prepared statement of Michael J. Fisher, Chief of U.S. Border Patrol).

5 25. In recent years, physical abuse of persons near the border by U.S. Border
6 Patrol agents has been rampant in Nogales and elsewhere. The Border Patrol consistently
7 denies public access to basic information about its operations, including whether agents
8 responsible for abuse are disciplined in any way, thus shielding the agency and individual
9 agents from public accountability for abusive policies and practices. Even after many
10 fatal shooting incidents involving Border Patrol agents, the agency has refused to release
11 the names of those involved.

12 26. Based on an extensive investigation, the Arizona Republic found that
13 between 2010 and 2012, the year J.A. was killed, there were 487 “use of force incidents”
14 in the Border Patrol’s Tucson Sector, 233 of which occurred in the Nogales area. *See*
15 *Bob Ortega and Rob O’Dell, Force at the Border: Tucson Sector*, ARIZ. REPUBLIC (Dec.
16 16, 2013).

17 27. Reports also found that nationwide there were 15 deaths caused by Border
18 Patrol agents in 2011–2012 alone, five of which occurred in the Tucson Sector. Thirteen
19 of these deaths were caused by shootings. Another source found that CBP agents have
20 killed 28 people since 2010. From 2005 to 2014, Border Patrol agents caused 46 deaths
21 nationwide, according to media reports and data provided by the government.

22 28. A report by the American Immigration Council in May 2014 reviewed 809
23 complaints of alleged abuse by Border Patrol agents between 2009 and 2012 and found
24 that “CBP officials rarely take action against the alleged perpetrators of abuse.”
25 AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP
26 ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE 3 (2014). The report noted
27 that it was impossible to determine which cases had merit based on the data provided by
28

1 the government, but concluded that it was “astonishing that, among those cases in which
2 a formal decision was issued, 97 percent resulted in ‘No Action Taken.’” *Id.* at 1.

3 29. A former high ranking official at CBP has publicly stated: “With very
4 serious misconduct—borderline criminal activity—senior management often gave
5 Border Patrol agents a slap on the wrist or did nothing at all.” Andrew Becker, *Removal*
6 *of Border Agency’s Internal Affairs Chief Raises Alarms*, HUFFINGTON POST (June 12,
7 2014).

8 30. In response to continuing public interest and controversy surrounding
9 CBP’s use of force policies and practices, and in particular to a letter sent by 16 members
10 of Congress seeking information about CBP’s use of force policies, CBP commissioned
11 an external, independent review of its use of force policies and practices from the Police
12 Executive Research Forum (“PERF”), a non-profit research organization comprised of
13 experts on police practices. *See* POLICE EXEC. RESEARCH FORUM, U.S. CUSTOMS AND
14 BORDER PROTECTION USE OF FORCE REVIEW: CASES AND POLICIES (2013). PERF
15 reviewed all deadly force events from January 2010 through October 2012, including 67
16 case files related to CBP officers’ use of deadly force. PERF subsequently provided CBP
17 with a report and recommendations, detailing significant shortcomings in CBP use of
18 force policies and practices, including the following:

19 a) “It is not clear that CBP consistently and thoroughly reviews all use of deadly
20 force incidents.” (Report at 4);

21 b) Too many cases [involving shootings at rock throwers] do not appear to meet
22 the test of objective reasonableness with regard to the use of deadly force.”
23 (Report at 7);

24 c) Of the 25 case files PERF reviewed involving shots fired by Border Patrol
25 agents who responded to alleged rock throwing, “[s]ome cases seemed to be a
26 clear cut self-defense reaction to close and serious rock threats or assaults, while
27 other shootings were of more questionable justification. The more questionable
28 cases generally involved shootings that took place through the IBF [International

1 Border Fence] at subjects who were throwing rocks at agents from Mexico.”
2 (Report at 8).

3 31. In September 2013, a report by the Department of Homeland Security
4 Office of Inspector General noted that “many agents and officers do not understand use
5 of force and the extent to which they may or may not use force.” Department of
6 Homeland Security, Office of Inspector General, *CBP Use of Force Training and Actions*
7 *to Address Use of Force Incidents* (Redacted) 17 (2013).

8 32. Upon information and belief, the agents and/or officers responsible for
9 J.A.’s death are still employed by CBP and have not suffered disciplinary action.

10 **Harm Suffered by Plaintiff Because of Defendants’ Actions**

11 33. There is a real and actual controversy between Plaintiff and Defendants,
12 and Defendants’ actions were the proximate cause of the death of Plaintiff’s son.

13 34. Plaintiff and her son have suffered significant damages, in an amount to be
14 proven at trial.

15 **CAUSES OF ACTION**

16 **COUNT ONE**

17 **VIOLATION OF THE FOURTH AMENDMENT**

18 35. The foregoing allegations are re-alleged and incorporated herein by
19 reference.

20 36. At the time J.A. was fatally shot, Defendants were not in danger of fatal or
21 bodily harm from J.A. or anyone else.

22 37. In fatally shooting J.A., Defendants acted intentionally and used
23 unreasonable and excessive force with the purpose of causing harm to J. A. without legal
24 justification.

25 38. Defendants’ actions violated the Fourth Amendment’s prohibition against
26 seizures with excessive and unreasonable force.

27 39. This claim is brought against all Defendants.
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COUNT TWO

VIOLATION OF THE FIFTH AMENDMENT

40. The foregoing allegations are re-alleged and incorporated herein by reference.

41. At the time J. A. was fatally shot, defendants were not in danger of fatal or bodily harm from J.A. or anyone else.

42. In fatally shooting J. A., defendants acted intentionally, maliciously, and used unreasonable and excessive force, with the purpose to cause harm to J.A. without legal justification. Defendants' actions were unnecessary to achieve any legitimate law enforcement objective.

43. Defendants' actions were grossly excessive and deliberately indifferent, and shocked the conscience, in violation of the substantive due process component of the Fifth Amendment.

44. This claim is brought against all Defendants.

RELIEF

WHEREFORE, Plaintiff respectfully requests relief as follows:

45. A declaration that Defendants' actions violated the Constitution.

46. Trial by jury.

47. Damages, including punitive damages, in an amount to be proven at trial.

48. Costs and reasonable attorney fees.

49. Such other relief as the Court deems just and equitable.

50. Demand for jury trial.

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DATED: July 29, 2014

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