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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JESUS CASTRO ROMO,

Plaintiff,

-vs-

THE UNITED STATES OF AMERICA,

Defendant.

NO.

COMPLAINT
(Federal Tort Claims Act)

Assigned to:

Plaintiff alleges: I.

This Court has jurisdiction to hear this Complaint pursuant to 28 U.S.C. § 1346 (b).
Venue is proper within the District of Arizona pursuant to 28 U.S.C. § 1402 (b) because all
acts referred to herein occurred within the District of Arizona.

II.

The plaintiff Jesus Castro Romo is a citizen of Mexico residing in Nogales, Sonora.
The acts complained of herein were committed by employees of the United States of
America while acting within the scope of their office or appointment.

III.

Pursuant to 28 U.S.C. § 2675 the plaintiff mailed a claim by Certified or Registered
mail to the U.S. Customs and Border Protection. The claim was received by that agency on

1 April 1, 2011. On October 25, 2011, plaintiff received a formal denial of his claim.

2 IV.

3 On or about November 16, 2010, Jesus Castro Romo entered the United States
4 without documentation along with a group of other undocumented immigrants. The group
5 entered west of Nogales, Arizona. After, arriving at a clearing on higher ground the group
6 noticed Border Patrol agents on horseback down below. The group decided to head back
7 to Mexico. While heading back to Mexico, the agents on horseback detected the group and
8 chased them down. After a short attempt to flee, Mr. Castro Romo gave up and surrendered.
9 One agent still on horse back commanded Mr. Castro Romo to re-join the group. While Mr.
10 Castro Romo was walking with his hands on his head the Border Patrol agent while on his
11 horse, was hitting him on the head with his lasso. After warning the agent several times to
12 stop hitting him, Mr. Castro Romo could no longer take the pain from the lasso hitting his
13 scalp and ran. The agent still on his horse, again chased Mr. Castro Romo down and
14 bumped Mr. Castro Romo with the horse. Mr. Castro-Romo fell to the ground on his
15 stomach and face down. That is when Mr. Castro Romo felt a “warm” feeling on his back
16 after hearing a single gun shot. He had been shot by the agent. The Agent then yelled “Oh
17 fuck, Oh fuck” and left the scene.

18 V.

19 The Unknown Border Patrol Agent was acting within the scope of his
20 employment thereby giving rise to liability of the United States, pursuant to the
21 principles of *respondeat superior* and by act of Congress pursuant to 28 U.S.C. §1346.

22 VI.

23 The shooting of Mr. Castro Romo resulted from the negligent use of the officer’s
24 firearm or was excessive force, either of which would give rise to a cause of action under
25 Arizona law for money damages under those circumstances.

26 VII.

Mr. Castro Romo was left at the scene for approximately 1 hour and a half. Mr.

1 Castro Romo then was airlifted to the University Medical Center in Tucson, Arizona,
2 where he was put immediately in surgery. Mr. Castro Romo went through three (3)
3 surgeries in total. Mr. Castro Romo was discharged from the University Medical Center
4 on November 26, 2010.

5 VIII.

6 Mr. Castro Romo has suffered from extreme pain and is continuing to suffer from
7 constant pain. His injuries are permanent. The full extent of the permanence is not
8 known at this time. It is clear, however, that his employment possibilities will be
9 restricted to jobs that have minimal physical requirements.

10 IX.

11 Mr. Castro Romo is the provider for his family with two children and two
12 children from his previous marriage. He has lost income and will continue to lose
13 income as a result of his loss of earning capacity.

14 Mr. Castro Romo is suffering greatly emotionally and mentally due to this
15 shooting. The shooting and the resultant injuries combined with his inability to assist his
16 family's needs has enhanced his mental suffering in addition to his physical suffering.

17 Wherefore, Plaintiffs pray for judgment against the United States of America as
18 follows:

- 19 1. For his general and special damages incurred herein in a sum deemed
20 reasonable and just;
- 21 2. For his assessable costs incurred herein; and
- 22 3. For such other and further relief as seems proper in the premises.

23 DATED this _____ day of January, 2012.

24 **RISNER & GRAHAM**

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26 By: s/William J. Risner

William J. Risner
Attorneys for Plaintiff

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