

1 The Gonzales Law Firm, P.C.
2 Richard J. Gonzales, Esq., Bar No. 004505
3 Bank of America Plaza
4 33 N. Stone Avenue, Suite 1410
5 Tucson, AZ 85701
6 Telephone: (520) 327-1121/FAX (520) 327-1667

7 The Pate Law Firm, LLC
8 Page A. Pate, Esq., Georgia State Bar No.565899
9 101 Marietta Street, Suite 3300
10 Atlanta, GA 30303
11 (404)223-3310/FAX (404)223-3392

12 Attorneys for the Plaintiff

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

15 Guadalupe Guerrero, individually as the
16 surviving mother of Carlos LaMadrid, and as
17 Successor-in-Interest to the Estate of Carlos
18 LaMadrid,

19 Plaintiff,

20 vs.

21 Unknown Named Agent of The United States
22 Border Patrol,

23 Defendants.

Case No.

COMPLAINT

(Bivens Action – Civil Rights)

Jury Trial Demanded

24 Plaintiff Guadalupe Guerrero (hereinafter “Ms. Guerrero” or “Plaintiff”), individually
25 as the surviving parent of the deceased, Carlos LaMadrid and as Successor-in-Interest to the
26 Estate of Carlos LaMadrid (hereinafter “Decedent” or “Mr. LaMadrid”), complains and alleges
27 as follows:

INTRODUCTION

28 1. Ms. Guerrero brings this action pursuant to Bivens v. Unknown Named Agents

1 of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), for violation of Mr. LaMadrid's
2 individual constitutional rights guaranteed by the Fourth, Fifth, and Fourteenth Amendments
3 of the United States Constitution.

4 2. On March 21, 2011, an Unknown Named Agent of the United States Border
5 Patrol (hereinafter "the Agent"), while acting within the course and scope of his employment
6 as a federal officer, used unlawful deadly force in shooting and killing Mr. LaMadrid.

7
8 3. At the time of the shooting, Mr. LaMadrid was completely defenseless. Mr.
9 LaMadrid was in the process of fleeing and climbing a ladder over a fence and had his back
10 turned to the Agent. Mr. LaMadrid had no weapon of any kind on or near his person, and he
11 was not threatening the Agent or any third party. The shooting was clearly in violation of Mr.
12 LaMadrid's rights under the United States Constitution.

13 4. The Supreme Court of the United States in *Bivens* held that a violation of a
14 person's constitutional rights by federal officers, acting under color of federal law, gives rise
15 to a federal cause of action for damages for the unconstitutional conduct. As such, victims of
16 a violation of the United States Constitution by a federal officer have a right under *Bivens* to
17 recover damages against the officer in federal court despite the absence of any statute
18 conferring such a right.

19
20 5. Ms. Guerrero further alleges that other Border Patrol agents (hereinafter referred
21 to "Unknown Border Patrol Agents"), while acting within the course and scope of their
22 employment with the United States Border Patrol, violated Mr. LaMadrid's rights guaranteed
23 by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution when Mr.
24 LaMadrid was shot and killed on March 21, 2011. Their names shall be added to this
25 Complaint as their identities become known.

26 6. Ms. Guerrero also alleges that supervisory personnel within the United States
27 Border Patrol and other agencies of the United States (hereinafter referred to "Unknown
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1 Supervisory Personnel”) had responsibility for the implementation of personnel and firearms
2 policies, supervision of the Douglas Border Patrol Station, and supervision of the Agent and
3 Unknown Border Patrol Agents.

4 7. It is believed that Unknown Supervisory Personnel have personal knowledge of
5 the facts alleged herein and have by action or inaction encouraged, permitted, and condoned
6 the unconstitutional acts of the Agent and Unknown Border Patrol Agents.

7
8 8. At all times herein mentioned, the Agent, Unknown Border Patrol Agents, and
9 Unknown Supervisory Personnel were, and are, investigative or law enforcement officers as
10 defined in 28 U.S.C. § 2680(h) of the United States Border Patrol, the United States Customs
11 and Border Protection, and/or the Immigration and Customs Enforcement Service, a
12 subdivision of the United States Department of Homeland Security, an agency of the United
13 States, acting within the course and scope of their employment with the United States.

14 **JURISDICTION**

15 9. Ms. Guerrero’s cause of action arises under Bivens for violations of Mr.
16 LaMadrid’s rights under the Fourth, Fifth, and Fourteenth Amendments to the United States
17 Constitution.

18 10. The jurisdiction of this Court is therefore founded on federal question
19 jurisdiction pursuant to 28 U.S.C. § 1331.

20 **VENUE**

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22 11. Venue is proper in the United States District Court, District of Arizona,
23 Tucson Division, pursuant to 28 U.S.C. § 1891(a)(2), because all acts, occurrences and injuries
24 complained of herein were caused and suffered in Cochise County, State of Arizona.

25 **PARTIES**

26 12. At all times herein mentioned, decedent Mr. LaMadrid was a citizen of the
27 United States of America.
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1 13. At all times herein mentioned, Ms. Guerrero is the surviving parent of the
2 decedent Mr. LaMadrid and his successor in interest. Ms. Guerrero claims damages under
3 Bivens for any and all actual, compensatory, and punitive damages to which she is entitled by
4 Federal law including loss of love, aid, comfort and society, loss of the value of Mr.
5 LaMadrid’s life, Mr. LaMadrid’s pain and suffering, attorney fees, and costs according to
6 proof at time of trial.

7
8 14. The United States is a sovereign governmental entity which has been engaged
9 in, among other things, controlling access into its sovereign territory, and preventing the entry
10 of undocumented individuals and controlled substances.

11 15. The United States of America performs these activities by and through the
12 following agencies: United States Border Patrol; U.S. Customs and Border Protection; U.S.
13 Immigration and Customs Enforcement (hereinafter referred to as “ICE”); U.S. Department
14 of Homeland Security; and U.S. Department of Justice.

15 16. At all times herein mentioned, the Agent was employed by the United States
16 Border Patrol. The acts of the Agent were done under the color and pretense of the statutes,
17 ordinances, regulations, customs, and usages of the United States of America. The Agent is
18 sued individually in his capacity as a federal officer within the meaning and scope of Bivens.

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20 17. At all times herein mentioned, the Agent is, and was, an investigative or law
21 enforcement officer, as defined in 28 U.S.C. § 2680(h), of the United States Border Patrol, the
22 U.S. Customs and Border Protection, and/or ICE, an agency of the United States of America,
23 acting within the course and scope of his employment with the United States of America.

24 18. Ms. Guerrero is informed and believes and thereon alleges that at all relevant
25 times herein mentioned, the U.S. Customs and Border Protection, was and is a subdivision of
26 the United States Department of Homeland Security – a U.S. Federal Government entity with
27 headquarters in Washington, D.C. and various branch offices throughout the country including
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1 this judicial district.

2 19. Ms. Guerrero is informed and believes and thereon alleges that, at all times
3 herein mentioned, the Agent, Unknown Border Patrol Agents, and Unknown Supervisory
4 Personnel were officers, employees, agents, and/or representatives of the United States Border
5 Patrol, the U.S. Customs and Border Protection, and/or ICE, which is a subdivision of the
6 United States Department of Homeland Security, a subdivision of the United States
7 Department of Justice, an agency for the United States of America.

8
9 20. Ms. Guerrero is informed and believes and thereon alleges that the Agent,
10 Unknown Border Patrol Agents, and Unknown Supervisory Personnel were acting within the
11 course and scope of employment of the United States Border Patrol, the U.S. Customs and
12 Border Protection, and/or ICE on March 21, 2011 when Mr. LaMadrid was wrongfully shot
13 to death by the Agent.

14 21. Ms. Guerrero is informed and believes and thereon alleges that, at all times
15 herein mentioned, Unknown Supervisory Personnel were supervising officers, managers,
16 employees, agents, representatives, or policy makers of the United States Border Patrol, the
17 U.S. Customs and Border Protection, and/or ICE with both apparent and actual authority for
18 setting down and implementing United States Border Patrol operating policies, procedures
19 and practices.

20
21 22. Ms. Guerrero is informed and believes and thereon alleges that Unknown
22 Supervisory Personnel instituted and maintained the existence of the United States Border
23 Patrol policies, practices and procedures; the purpose of some of which was to approve, ratify
24 and condone acts of misconduct of agents within the ranks of the United States Border Patrol.

25 23. Unknown Supervisory Personnel have ignored a pattern of constitutional
26 violations at the Douglas Border Patrol Station, and despite knowledge of such violations,
27 failed to act to prevent the violation of Mr. LaMadrid's constitutional rights by the Agent.
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1 Patrol Agents arrived at the scene.

2 32. Upon information and belief, the Agent and Unknown Border Patrol Agents had
3 no knowledge of why the Douglas Police Department was in pursuit of the Avalanche or the
4 circumstances which gave rise to the pursuit.

5 33. The Avalanche stopped at or near Cochise Avenue and the border fence. At that
6 point in time, Mr. LaMadrid and Jesus Manuel Chino Lino exited the vehicle and ran to a
7 ladder propped up against the border fence.

8 34. The Agent also stopped and exited his vehicle.

9 35. The Agent then drew his sidearm and took aim at Mr. LaMadrid who was in the
10 process of climbing the ladder.

11 36. In an appalling use of excessive force, the Agent intentionally fired at least three
12 shots at Mr. LaMadrid.

13 37. Three bullets from the Agent's sidearm struck Mr. LaMadrid in the back causing
14 Mr. LaMadrid to fall to the ground.

15 38. At the time the Agent discharged his weapon, Mr. LaMadrid was unarmed, had
16 his back turned to the Agent, was in the process of climbing a ladder, and was of no threat
17 whatsoever to the Agent or any third party.

18 39. Officers from the Douglas Police Department surrounded Mr. LaMadrid soon
19 thereafter and handcuffed Mr. LaMadrid's hands and feet.

20 40. Officers then dragged and/or carried Mr. LaMadrid to the rear of a law
21 enforcement vehicle and called for an ambulance.

22 41. The ambulance, however, was initially sent to the wrong location thereby
23 delaying its arrival.

24 42. Prior to the ambulance's arrival, law enforcement provided inadequate first aide
25 to Mr. LaMadrid despite the obvious gunshot wounds that Mr. LaMadrid had sustained.
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1 43. Mr. LaMadrid was eventually transported to Southeast Arizona Medical Center
2 followed by Sierra Vista Health Center where surgeons discovered two bullets in Mr.
3 LaMadrid's back and one bullet in his thigh.

4 44. At or about 4:57 p.m., Mr. LaMadrid was pronounced dead on the operating
5 table. The cause of death was attributed to the gunshot wounds he sustained to his back
6 approximately five hours earlier.

7 45. For the majority of the time between 12:10 p.m. and 4:57 p.m. on March 21,
8 2011, Mr. LaMadrid was conscious and aware of his surroundings and endured the full extent
9 of the pain and suffering associated with being shot in the back three times.

10 46. While in the hospital, Ms. Guerrero and other family members attempted to see
11 Mr. LaMadrid and to learn of his condition from hospital staff. Their attempts, however, were
12 thwarted by law enforcement officers who denied them access.

13 47. Ms. Guerrero alleges, upon information and belief, that it is the custom and
14 practice for United States Border Patrol agents to use unlawful excessive force, including the
15 use of firearms, on Mexican citizens and United States citizens of Mexican descent and for the
16 agents to then refuse or fail to file reports about such abuses in violation of United States
17 Border Patrol policy. Ms. Guerrero further alleges that the supervisors in the United States
18 Border Patrol are aware of this custom and practice and that it is in violation of written
19 policies. Supervisors and officials of the United States Border Patrol have refused and failed
20 to take any appropriate steps for violation of firearms and excessive force policies, thereby
21 tacitly condoning disregard of written policies by the agents.

22 48. Ms. Guerrero alleges, upon information and belief, that a significantly higher
23 number of shootings have in fact occurred along the international border between the United
24 States and Mexico, however, many of these shootings and other acts of physical and verbal
25 abuse of Mexican citizens and United States citizens of Mexican descent have gone unreported
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1 by United States Border Patrol agents. The United States Border Patrol has had reason to
2 know of the significant number of unreported incidents and have failed to investigate the
3 information concerning abuses by their agents.

4 49. The supervisors at the Douglas Border Patrol station knew or should have known
5 of the pattern of shootings and other abuses in violation of written policies and did nothing to
6 prevent future abuses.

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8 **FIRST CLAIM FOR RELIEF FOR VIOLATION OF CIVIL RIGHTS**
9 **UNDER COLOR OF LAW (BIVENS ACTION)**

10 50. Ms. Guerrero re-alleges the preceding paragraphs as though fully restated herein.

11 51. This claim for relief is brought pursuant to Bivens for violations of Mr.
12 LaMadrid's rights under the Fourth and Fifth Amendments of the United States Constitution
13 when the Agent, while acting in the course and scope of his employment, used unlawful
14 deadly force in shooting and killing Mr. LaMadrid. This claim for relief is to redress a
15 deprivation, under color of authority, statute, ordinance, regulation, policy, custom, practice,
16 or usage of a right, privilege and immunity secured to Ms. Guerrero and Mr. LaMadrid by the
17 Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

18 52. During all times mentioned herein, the Agent acted under color and pretense of
19 federal statutes, ordinances, regulations, policies, practices, customs and usages of the United
20 States of America.

21
22 53. On March 21, 2011, Mr. LaMadrid possessed the right under the Fourth
23 Amendment to be free from unreasonable seizures and excessive force by law enforcement
24 officers without probable cause, the right to be free from unreasonable searches and seizures
25 of his person, and the right to be free from the unlawful taking of his life.

26 54. On March 21, 2011, Mr. LaMadrid possessed the rights guaranteed by the Fifth
27 Amendment to not be deprived of life and liberty without Due Process of law, including but
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1 not limited to the right not to suffer physical harm from persons acting under the color of law
2 that is intentionally or wantonly inflicted or which is accomplished with deliberate, reckless,
3 or callous indifference to his constitutional rights.

4 55. On March 21, 2011, Mr. LaMadrid possessed the rights guaranteed by the Equal
5 Protection clause and the Due Process clause of the United States Constitution.

6 56. On March 21, 2011, the Agent, while acting under color of Federal law as a
7 United States Border Patrol Agent, intentionally deprived Mr. LaMadrid of his Fourth
8 Amendment right to be free from unreasonable seizure by subjecting him to excessive force
9 by fatally shooting Mr. LaMadrid in the back.

10 57. On March 21, 2011, the Agent, while acting under color of Federal law as a
11 United States Border Patrol Agent, intentionally violated Mr. LaMadrid's rights guaranteed
12 by the Fifth Amendment to not be deprived of life and liberty without Due Process of law,
13 including but not limited to the right not to suffer physical harm from persons acting under
14 color of law that is intentionally or wantonly inflicted or which is accomplished with
15 deliberate, reckless, or callous indifference to his constitutional rights. While acting under
16 color of Federal law as a United States Border Patrol Agent, the Agent was motivated by evil
17 intent and conduct in which he engaged in by use of excessive force in lethally shooting Mr.
18 LaMadrid and said conduct involved reckless or callous indifference to the Constitutional
19 rights of Mr. LaMadrid.
20

21 58. The Agent, by using such unreasonable force, caused injury and damage to Mr.
22 LaMadrid ultimately resulting in his death.
23

24 59. At the time of the March 21, 2011 shooting, Mr. LaMadrid was not engaged in
25 any assaultive behavior toward the Agent or any other persons.

26 60. The execution style shooting by the Agent was entirely unjustified by any action
27 of Mr. LaMadrid and said shooting constituted an unreasonable and excessive use of force in
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1 violation of Mr. LaMadrid's guaranteed rights under the Fourteenth Amendment of the United
2 States Constitution which protects pre-trial detainees from punishment.

3 61. The Agent and Unknown Border Patrol Agents, and each of them, acted
4 specifically with the intent to deprive Mr. LaMadrid of the following rights and privileges
5 guaranteed under the United States Constitution:

- 6 (1) Freedom from unreasonable seizures, in the form of the use of excessive
7 force;
8
9 (2) Freedom from a deprivation of liberty without Due Process of law;
10 (3) Freedom from punishment prior to conviction for any crime; and
11 (4) Equal protection of the laws.

12 62. After being shot multiple times in the back, Mr. LaMadrid suffered severe
13 internal injuries resulting in death. Mr. LaMadrid suffered severe physical, emotional, and
14 psychological damage as a result of the conduct of the Agent and Unknown Border Patrol
15 Agents.

16 63. The Agent and Unknown Border Patrol Agents subjected Mr. LaMadrid to the
17 aforementioned deprivations by either actual malice or deliberate indifference and disregard
18 of Mr. LaMadrid's civil rights.

19 64. As a direct and proximate result of the aforementioned acts of the Agent and
20 Unknown Border Patrol Agents, Mr. LaMadrid and Ms. Guerrero suffered general damages
21 in the form of conscious pain and suffering, the loss of the value of Mr. LaMadrid's life, and
22 the loss of aid comfort, love, and society, and for special damages for the loss of economic
23 support and funeral and burial expenses, for which Ms. Guerrero seeks compensatory damages
24 against the Agent in his individual capacity.
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27 . . .
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**SECOND CLAIM FOR RELIEF FOR SUPERVISORIAL
RESPONSIBILITY FOR VIOLATIONS OF CIVIL RIGHTS UNDER
COLOR OF LAW (BIVENS ACTION)**

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3 65. Ms. Guerrero re-alleges the preceding paragraphs as though fully restated herein.

4 66. This claim for relief is brought pursuant to Bivens for violations of Mr.
5 LaMadrid's rights under the Fourth and Fifth Amendments of the United States Constitution.

6 67. On and before March 21, 2011, Unknown Supervisory Personnel implemented
7 and maintained customs, policies, and/or practices to encourage the use of excessive force by
8 Border Patrol agents. Unknown Supervisory Personnel intentionally, deliberately, and/or were
9 indifferent to the violation of the constitutional rights of persons in the same situation as and
10 including Mr. LaMadrid.

11
12 68. On March 21, 2011, Unknown Supervisory Personnel were supervising
13 personnel and officers, with supervisory authority over the Agent and other Unknown Border
14 Patrol Agents, and participated in, encouraged, fostered, condoned, and ratified the conduct
15 of the Agent when the Agent used unlawful deadly force in shooting and killing Mr.
16 LaMadrid, notwithstanding that Mr. LaMadrid was defenseless, had no weapon of any kind,
17 and was not threatening the Agent or any other third party.

18
19 69. As a direct and proximate result of the Unknown Supervisory Personnel's
20 intentional, deliberate, and/or indifference to the use of excessive force by Border Patrol
21 agents, Mr. LaMadrid met his untimely death on March 21, 2011.

22 70. By consciously and deliberately overlooking the use of excessive force by
23 Border Patrol agents, Unknown Supervisory Personnel established a pattern, custom, and
24 practice of condoning and ratifying such misconduct and criminal activity, and established a
25 tolerated pattern of constitutional violations amongst their subordinate officers including the
26 Agent. The condoning of misconduct by Unknown Supervisory Personnel was so
27 comprehensive and well known that the Agent was emboldened to blatantly violate the
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1 constitutional rights of Mr. LaMadrid and to commit crimes such as the unlawful shooting and
2 killing of Mr. LaMadrid.

3 71. Because of their failure to prevent the continuing constitutional violations by the
4 subordinates and because the establishment of the policies and practices described above as
5 well as their failure to adequately train their subordinates, Unknown Supervisory Personnel
6 are individually liable for the constitutional violations committed by the Agent inclusive and
7 for the injuries to Mr. LaMadrid and Ms. Guerrero as a result of the March 21, 2011 shooting
8 and killing of Mr. LaMadrid.

9
10 72. Because of their acts and/or omissions in their failure to prevent the continuing
11 constitutional violations by their subordinates and because of their establishment of the
12 policies and practices described above as well as their failure to adequately train their
13 subordinates, Unknown Supervisory Personnel are liable for their own independent acts and/or
14 omissions which were a contributing factor in causing the constitutional violations which
15 caused the injuries to Mr. LaMadrid and Ms. Guerrero as a result of the March 21, 2011
16 shooting and killing of Mr. LaMadrid.

17 73. The aforementioned acts of Unknown Supervisory Personnel were willful,
18 wanton, malicious and oppressive.

19
20 **PRAYER**

21 74. Therefore, Ms. Guerrero for each and every cause of action above demands the
22 following relief, jointly and severally, against all defendants:

- 23 (a) For compensatory general damages, including, but not limited to, Mr. LaMadrid's
24 conscious pain and suffering, the loss of love, aid, comfort and society of Mr.
25 LaMadrid, and the loss of the value of Mr. LaMadrid's life to himself, and special
26 damages, including, but not limited to, loss of financial support, funeral and burial
27 expenses;
28

THE GONZALES LAW FIRM, P.C.

BANK OF AMERICA PLAZA
33 NORTH STONE AVENUE, SUITE 1410
TUCSON, ARIZONA 85701-1438
TELEPHONE: (520) 327-1121 • FACSIMILE: (520) 327-1667

- (b) Exemplary damages, against defendants, for the intentional acts described above or for those done recklessly or with deliberate indifference, in an amount sufficient to deter and to make an example of those defendants.
- (c) Reasonable attorneys' fees and expenses of litigation, including those fees permitted by a Bivens action.
- (d) Costs of suit necessarily incurred herein;
- (e) Prejudgment interest according to proof; and
- (f) Such relief as the Court deems just or proper.

DATED this 31 day of May, 2012.

THE GONZALES LAW FIRM, PC
THE PATE LAW FIRM, L.L.C.



Richard Gonzales, Esq.
Page A. Pate, Esq.
Attorneys for Plaintiff

PLAINTIFF'S DEMAND FOR JURY TRIAL

Ms. Guerrero demands a trial by jury as to Defendant Unknown Named Agent of the United States Border Patrol, pursuant to Bivens and its progeny.

DATED 31 day of May, 2012.

THE GONZALES LAW FIRM, PC
THE PATE LAW FIRM, L.L.C.



Richard Gonzales, Esq.
Page A. Pate, Esq.
Attorneys for Plaintiff