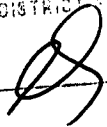


ORIGINAL

FILED

2011 JAN 24 PM 4: 00

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

1 Jason A. Davis (Calif. Bar No. 224250)
2 Davis & Associates
3 27281 Las Ramblas, Suite 200
4 Mission Viejo, CA 92691
5 Tel 949.310.0817/Fax 949.288.6894
6 E-Mail: Jason@CalGunLawyers.com

10 IN THE UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

13 '11 CVO 144

L NLS

14 IAN JAMES FARIAS, an individual,

15 Plaintiff,

16 vs,

17 CITY OF CALEXICO, a municipal entity,
18 CALEXICO POLICE DEPARTMENT, JAMES
19 LEE NEUHAHR, an individual, MARIO
20 ALCARAZ, an individual, and Does 1-10,
21 inclusive,

22 Defendants.

Case No:

COMPLAINT,
REQUEST FOR RELIEF,
AND DEMAND FOR JURY TRIAL

42 U.S.C. §§ 1983, 1988

23 COMPLAINT

24
25
26 COME NOW Plaintiff, Ian James Farias, by and through their undersigned counsel,
27 requests a jury trial and complains of Defendants as follows:
28

CR

VIA FAX

THE PARTIES

- 1
2 1. Plaintiff Ian James Farias is a natural person and a citizen and at all times relevant was a
3 resident of the City of Calexico, State of California, and a citizen of the United States of
4 America.
- 5 2. Defendant City of Calexico is, at all times relevant, a municipality duly organized under the
6 laws of the State of California. At all relevant times, the Defendant Calexico Police
7 Department was a branch or agency of the City.
- 8 3. Defendant James Lee Neujahr is the Chief of Police for the Calexico, and as such, he is
9 responsible for formulating, executing, and administering the City of Calexico's laws,
10 customs, practices, and policies at issue in this lawsuit; has enforced the challenged laws,
11 customs, and practices against plaintiff, and is in fact presently enforcing the challenged
12 laws, customs, and practices against Plaintiff. Defendant Neujahr is sued in both his
13 individual and official capacities.
- 14 4. Defendant Mario Alcaraz, is an officer for the City of Calexico's Police Department, and as
15 such, he is responsible for executing and administering the City of Calexico's laws, customs,
16 practices, and policies at issue in this lawsuit; has enforced the challenged laws, customs, and
17 practices against plaintiff, and is in fact presently enforcing the challenged laws, customs,
18 and practices against plaintiff. Defendant Alcaraz is sued in both his individual and official
19 capacities.
- 20 5. These Defendants, and DOES 1-10, were agents, servants and employees of each other, of
21 the other named Defendants, and were acting at all times within the full course and scope of
22 their agency and employment, with the full knowledge and consent, either expressed or
23 implied, of their principal and/or employer and each of the other named Defendants and each
24 of the Defendants had approved or ratified the actions of the other Defendants thereby
25 making the currently named defendants herein liable for the acts and/or omissions of their
26 agents, servants and/or employees.

JURISDICTION AND VENUE

- 27
28 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,

1 1343, 2201, 2202 and 42 U.S.C. § 1983.

2 7. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

3 **STATEMENT OF FACTS**

4 8. On or about January 28, 2010, Farias was traveling in his vehicle when he was stopped by
5 Defendant Alcaraz, for an alleged traffic violation.

6 9. At the time Farias was stopped, he was lawfully transporting an unloaded shotgun in the rear
7 of his vehicle.

8 10. During the stop, Alcaraz learned of the firearm in the rear of Farias' vehicle and arrested
9 Farias for an alleged violation of Penal Code section 12025(a)(1). See **Exhibit A**.

10 11. At the time of Farias' arrest, Penal Code section 12025(a)(1) stated: "A person is guilty of
11 carrying a concealed firearm when he or she does any of the following: Carries *concealed*
12 within any vehicle which is under his or her control or direction *any pistol, revolver, or other*
13 *firearm capable of being concealed upon the person.*"

14 12. At the time of Farias' arrest, the term "any pistol, revolver, or other firearm capable of being
15 concealed upon the person" was the statutory definition of "handgun." Penal Code section
16 12001(a)(2).

17 13. The shotgun found within Farias' vehicle was not concealed.

18 14. The shotgun found within Farias' vehicle was not a "handgun."

19 15. At the time of Farias' arrest, the California Department of Justice – Bureau of Firearms
20 published on their website a statement expressly denouncing the general applicability of
21 Penal Code section 12025 to shotguns, stating:

22 **TRAVELING WITH FIREARMS IN CALIFORNIA.**

23 ***

24 **SHOTGUNS AND RIFLES**

25 Nonconcealable firearms (rifles and shotguns) are not generally covered within the
26 provisions of California Penal Code section 12025 and therefore are not required to be
27 transported in a locked container. However, as with any firearm, nonconcealable firearms
28 must be unloaded while they are being transported. . . .

1 (See <http://www.ag.ca.gov/firearms/travel.php>.)

2 16. The California Department of Justice – Bureau of Firearms also publishes the California
3 Firearms Laws Booklet, which includes a chapter on “Possession and Transportation of
4 Concealed Weapons” that discusses Penal Code section 12025 in its subsection entitled
5 “Carrying a Concealed *Handgun* Without License on One’s Person or Concealed in a
6 Vehicle.” (Emphasis added.) (<http://ag.ca.gov/firearms/forms/pdf/Cfl2007.pdf>).

7 17. Alcaraz grabbed, handcuffed, and searched Farias’ person and vehicle.

8 18. Alcaraz transported Farias to the Police Department where he Farias was charged with
9 Violation of Penal Code section 12025(a)(1).

10 19. Farias was not charged with any traffic violations.

11 20. During his entire detention and arrest, Farias complied with all Defendants’ commands
12 without incident.

13 21. Defendants were either inadequately trained and instructed as to the definition of “handgun,”
14 or ignored the longstanding interpretation of the Penal Code section Penal Code section
15 12025(a)(1) on the Department of Justice’s website, which publicly clarified that Penal Code
16 section 12025 does not apply to standard length shotguns.

17 22. Defendants’ failure to train, instruct, and comply with the longstanding interpretation of the
18 term “handgun” amounts to deliberate indifference to the rights of persons with whom the
19 police come into contact, including Plaintiff.

20 23. Plaintiff never consented to having his being grabbed, handcuffed, disarmed, detained,
21 arrested, and his person and property seized and transported to the City of Calexico’s Police
22 Department Headquarters.

23 24. Defendants had no search warrant authorizing them to search Plaintiff’s person.

24 25. Defendants had no reason for seizing Plaintiff’s property or his person. Because California
25 law allows individuals to transport unloaded shotguns—and Plaintiff had done nothing to
26 arouse suspicion, create tumult or endanger anyone’s well-being—there were no articulable
27 facts to indicate either criminal activity or a threat to safety.

28 26. At no time during the incident did any Defendant reasonably believe that Plaintiff was

1 violating any law of the United States, the State of California, or the City of Calexico.

2 27. Defendants have and continue to engage in a pattern and practice of violating the
3 Constitutional rights of those who celebrate the right to keep and bear arms guaranteed by the
4 Second Amendment through speech and expressive conduct, including Plaintiff.

5 28. At all times material hereto, Defendants were acting under the color of state law.

6 29. At all times material hereto, the officers were acting as police officers for the Calexico Police
7 Department and the City of Calexico.

8 30. At all times material hereto, Defendants were acting in concert with each other.

9 31. As a direct result of Defendants' conduct, Farias incurred legal fees and costs and lost pre-
10 existing contractual career opportunities with the United States Navy.

11 32. Defendants were made aware of Farias' career opportunities, but failed to resolve the
12 underlying false arrest in a timely manner, causing Farias to lose his existing contract
13 with the United States Navy.

14 33. On or about September 3, 2010, nearly eight months after his initial arrest, the Calexico
15 Police Department signed Farias' Petition to Seal and Destroy Arrest Records pursuant to
16 Penal Code section 851.8(a), which includes a determination by the Calexico Police
17 Department that Farias "factually innocent." (Exhibit B.)

18 34. Due to the false arrest, the delay in determining whether to file any charges, and the delay in
19 issuing a factual finding of innocence, Farias lost his contract with the Navy.

20
21 **COUNT I**

22 **Unlawful Arrest and Unreasonable Search and Seizure
Brought under 42 U.S.C. §1983**

23 35. Paragraphs 1 through 34 are incorporated as though fully stated herein.

24 36. At all times on that evening, Plaintiff acted in accordance with all firearm statutes and
25 ordinances.

26 37. At no time did Defendants attempt to make a reasonable inquiry as to whether Defendant's
27 firearm was a "handgun."

28 38. During the encounter with Plaintiff, Defendants never had a reasonable belief that Plaintiff

1 was engaged in criminal activity, that Plaintiff had committed a crime, or that Plaintiff was
2 about to commit a crime.

3 39. During the encounter with Plaintiff, and without probable cause, Defendants seized Plaintiff,
4 searched Plaintiff, handcuffed him, disarmed him, harassed him, transported him to the City
5 of Calexico's Police Headquarters, and held him until Farias paid his bail.

6 40. During the encounter with Plaintiff, Defendants searched Plaintiff without reasonable
7 suspicion of a crime having taken place and without probable cause to justify the search or
8 seizure.

9 41. Defendants' actions during the encounter violated Plaintiff's rights protected by the United
10 States Constitution, including the First, Fourth, Eighth, and Fourteenth Amendments.

11 42. Defendants' actions during the encounter violated Plaintiff's rights, including those protected
12 by Article 1, Sections 1, 2, and 13 of the California Constitution.

13 43. As a direct and proximate result of Defendants' actions, Plaintiff has suffered compensable
14 damages in an amount to be determined at trial.

15
16 **COUNT II**

17 **Failure to Properly Train & Supervise**
18 **Brought under 42 U.S.C. §1983**

19 44. Paragraphs 1 through 34 and 36 through 43, are incorporated as though fully stated herein.

20 45. Defendants, as a matter of custom, practice, and policy failed to maintain adequate and
21 proper training for police officers in the department necessary to educate the officers as to the
22 Constitutional rights of arrestees, to prevent the consistent and systematic use of excessive
23 force by arresting officers, and to prevent the excessive force and extra judicial punishment
24 of potential arrestees by officers.

25 46. Defendants failed to provide adequate training to police officers that hold the power,
26 authority, insignia, equipment and arms entrusted to them.

27 47. Defendants failed to promulgate and enforce adequate policies and procedures related to
28 alternatives to verifying whether a firearm carried openly is unloaded.

48. Said custom, practice, and policy included a failure to adequately investigate, supervise, and

1 discipline offending officers, which fostered the custom, practice, and policy within the
2 Calexico Police Department, which resulted in the above pled facts.

3 49. Therefore, these Defendants, with deliberate indifference, disregarded a duty to protect the
4 public from official misconduct.

5 50. The failure to promulgate or maintain constitutionally adequate policies regarding training
6 was done with deliberate indifference to the right of Plaintiff and others in his position.

7 51. The lack of adequate training as to the officers in this case caused Plaintiff's damages.

8 PRAYER

9 WHEREFORE, Plaintiff requests that judgment be entered in his favor and against
10 Defendants as follows:

- 11 1. An order permanently enjoining defendants, their officers, agents, servants employees, and
12 all persons in active concert or participation with them who receive actual notice of the
13 injunction, from detaining or arresting anyone pursuant to Penal Code section 12025(a)(1)
14 (or its correlating revised section number, Penal Code section 25400) for carrying an
15 unloaded shotgun that does not meet the definition of "handgun" in a vehicle, absent
16 reasonable articulable suspicion or probable cause that a crime has occurred or is about to
17 occur;
- 18 2. An order compelling Defendants, to train and instruct their officers, agents, servants
19 employees, and all persons in active concert or participation with them as to both the terms
20 of any injunction issued as a result of this case and as to the legal definition of the term
21 "handgun" as it applies to California Penal Code section 12025 (or its correlating revised
22 section number, Penal Code section 25400).
- 23 3. Declaratory relief consistent with the injunction, including a declaration that Defendants
24 violated Plaintiff's Constitutional rights, including his First, Fourth, Eighth, and Fourteenth
25 Amendment rights, by detaining him and seizing his person and his firearm without probable
26 cause to believe that his firearm was contraband or evidence of any crime;
- 27 4. Award Plaintiff compensatory and incidental damages for Defendants' false arrest of
28 Plaintiff and seizing of Plaintiff's property;

- 1 5. Award Plaintiff punitive damages to protect the peaceable exercise and enjoyment of the
2 right or rights secured;
- 3 6. Award Plaintiff costs of suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988;
4 and
- 5 7. Any other further relief as the Court deems just and appropriate to protect the peaceable
6 exercise or enjoyment of the right or rights secured.

7
8 Date: January 24, 2011

Respectfully submitted,

9
10 Jason A. Davis (Calif. Bar No. 224250)
11 Davis & Associates
12 27281 Las Ramblas, Suite 200
13 Mission Viejo, CA 92691
14 Tel: 949.310.0817/Fax: 949.288.6894
15 E-Mail: Jason@CalGunLawyers.com

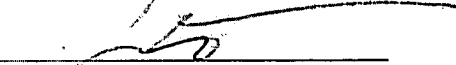
16
17 By: 
18 Jason A. Davis,
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

EXHIBIT A

IMPERIAL COUNTY SHERIFF'S OFFICE

PROPERTY BAG #:

BOOKING APPLICATION

ID NUMBER: 320034

ARRESTING AGENCY: Imperial

BOOKING NUMBER: 05170

DATE OF ARREST: 1/24/11

R-FILE NUMBER: _____

TIME OF ARREST: 08:00

F.B.I.#: _____

C.R. NUMBER: _____

DATE AND TIME BOOKED: 1/24/11

C.I.I.#: _____

DRIVERS LIC: _____

BAIL \$: _____

PLEASE PRINT OR TYPE

SOCIAL SECURITY: _____

LAST

FIRST

MIDDLE

AKA:

1st Case/Charge	2nd Case/Charge	3rd Case/Charge
CODE SECTION:		
DEFINITION:		
WARRANT/CASE #:		
COURT:		
4th Case/Charge	5th Case/Charge	6th Case/Charge
CODE SECTION:		
DEFINITION:		
WARRANT/CASE #:		
COURT:		

LOCATION OF ARREST

LOCATION OF VEHICLE

D.O.B.	AGE	HEIGHT	WEIGHT	HAIR	EYES	RACE	SEX	MARITAL STATUS				
								Mar.	Sin.	Div.	Wid.	Sep.

Place of Birth	COUNTY	STATE	U.S.A.	TIME LIVING IN:	# OF DEPENDENTS
----------------	--------	-------	--------	-----------------	-----------------

Scars, Marks, Tattoos: (Describe)

Residence Address: _____ City _____ State _____ How Long _____ Res. Telephone _____

Occupation: _____ Employer _____ Address _____ How Long _____ Telephone _____

In Case of Emergency Notify: _____ Relationship _____ Address _____ Telephone _____

WARRANTS CHECK

FEDERAL INFORMATION

Date In: LOCALS: _____ DMV: _____ WPS: _____ NCIC: _____ Initials: _____

I.N.S. HOLD

Fed. ID #: _____

A: _____

Currency:

\$ _____

Remarks:

PLEASE PRINT CLEARLY!!

Arresting Officer

Transporting Officer

Intake Control

Booking Officer/Clerk
(Entered in System)

Distribution: Records-(White), I.N.S/B.P (Green), Medical(Canary), Inmate (Pink), Arresting Agency(Goldenrod)

EXHIBIT B

State of California
 Record Management/Record Sealing Unit
 FORM BCII 8270 (Rev. 7/08)

Department of Justice

Record Sealing Unit
 P.O. Box 903417, Sacramento, CA 94203-4170

PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS (Penal Code 851.8)

Print or Type required information

FULL NAME OF PETITIONER Last Farias		First Ian		Middle James	
ALIASES	Date of Birth 5/27/90	DRIVER LICENSE NUMBER TX 29000810	SOCIAL SECURITY (OPTIONAL) 624368935		
STREET NUMBER 1215		STREET NAME Sterling Ave.		APARTMENT OR UNIT NUMBER	
CITY Calexico		COUNTY Imperial County		STATE CA	ZIP CODE 92231
DATE OF ARREST 1-28-10	NAME OF ARRESTING AGENCY Calexico Police Dept. Imperial County Sheriff's Office	AGENCY CASE NUMBER 10-0388	CHARGE(S) PC12025(a)(1)	DISPOSITION DA Declined	

[Signature] 05/19/2010
 SIGNATURE OF PETITIONER DATE

SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY/COURT WITH JURISDICTION FOR OFFENSE(S)

I have verified the above information to be accurate.

[Signature] 9/3/10
 SIGNATURE OF AGENCY OR COURT OFFICER DATE

NAME OF LAW ENFORCEMENT AGENCY OR COURT
JESUS J. SERRANO
 CITIZENSHIP OF PETITIONER

LAW ENFORCEMENT AGENCY CASE NUMBER OR COURT CASE NUMBER
10-0388
 PETITIONER OF PETITIONER

SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY (851.8(a) PC)

PETITION GRANTED PETITION DENIED
CALEXICO POLICE DEPT. 9/3/10
 PRINT OR TYPE NAME OF AGENCY DATE
[Signature] 9/3/10
 SIGNATURE OF AGENCY DATE

SECTION TO BE COMPLETED BY COURT OF JURISDICTION (851.8 (b), (c), or (d) PC)

PETITION GRANTED PETITION DENIED
 PRINT NAME OF JUDGE DATE
 SIGNATURE OF JUDGE

WAIVER: TIME RESTRICTION ON FILING WAIVED (851.8 (l) PC)

PRINT NAME OF AGENCY OFFICER OR JUDGE DATE
 SIGNATURE OF AGENCY OFFICER OR JUDGE

Distribution: Department of Justice, Record Sealing Unit, PO Box 903417, Sacramento, CA 94203-4170
 District Attorney
 Petitioner

(SEE REVERSE SIDE FOR MORE INFORMATION ON PENAL CODE § 851.8)

ORIGINAL

JS-44 (Rev. 12/07)

CIVIL COVER SHEET

FILED

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.)

2011 JAN 24 PM 3:59

I. (a) PLAINTIFFS
IAN JAMES FARIAS

DEFENDANTS
CITY OF CALEXICO, CALEXICO POLICE DEPARTMENT
JAMES LEE NEUHAHR, MARIO ALCARAZ, DOES 1-10

(b) County of Residence of First Listed Plaintiff Imperial County

County of Residence of First Listed Defendant Imperial County

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

Attorneys (If Known) CVO 144 L NLS

(c) Attorney's (Firm Name, Address, and Telephone Number)
Davis & Associates, 27281 Las Ramblas, Ste 200, Mission Viejo, CA 92691, 949-310-0817

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, 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 Recopened
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):
42 U.S.C. ss 1983, 1988

Brief description of cause:
Defendants Violated Plaintiffs Constitutional Rights. Unlawful Arrest, Search, & Seizure.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE

01/24/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 22388 AMOUNT \$350 APPLYING IFP JUDGE MAG. JUDGE

01-24-10

CR

FILED

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS022388
Cashier ID: nsiefken
Transaction Date: 01/24/2011
Payer Name: KNOX ATTORNEY SERVICES

CIVIL FILING FEE

For: IAN FARIAS V CITY OF CELEXICO
Case/Party: D-CAS-3-11-CV-000144-001
Amount: \$350.00

CHECK

Check/Money Order Num: 2345
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.