

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DIANA ARUTINOVA, and
EDGAR MANUKIAN,

Plaintiffs,

v.

No. _____

THE UNITED STATES OF AMERICA,
JARRELL W. "JAY" PERRY,
a United States Drug Enforcement Administration Agent,
JOHN DOE #1, and JOHN DOE #2,
each in their individual capacities,

JURY TRIAL DEMANDED

Defendants.

**COMPLAINT FOR DAMAGES TO REMEDY FEDERAL CIVIL
RIGHTS VIOLATIONS AND COMMON LAW TORTS**

Plaintiffs Diana Arutinova and Edgar Manukian bring this Complaint pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680, and under the Fourth and Fifth Amendments to the United States Constitution pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for damages resulting from constitutional and common law torts.

JURISDICTION AND VENUE

1. This court has jurisdiction pursuant to 28 U.S.C. §§ 1343 and 1346(b)(1).

Ms. Arutinova and Mr. Manukian have properly and timely exhausted their administrative remedies under the FTCA, and this action is timely filed. Venue is proper because the acts complained of occurred exclusively in New Mexico.

PARTIES

2. Plaintiff Diana Arutinova is a citizen of the Republic of Georgia, a Permanent Resident Alien in the United States, and a resident of Burbank, California.
3. Plaintiff Edgar Manukian is a citizen of the Republic of Georgia, a Permanent Resident Alien in the United States, and a resident of Burbank, California.
4. At all times material to the allegations in the complaint, Defendant Jarrell W. “Jay” Perry was employed by the United States Drug Enforcement Administration (DEA) as a special agent.
5. Upon information and belief, Defendants John Doe #1 and John Doe #2 are law enforcement officers assigned to the same DEA interdiction unit as Defendant Perry.
6. Defendant United States of America is the party subject to suits arising from the wrongful acts of employees of the federal government while acting within the scope of their office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act occurred.

ALLEGATIONS PERTINENT TO ALL COUNTS

7. On August 17, 2005, Mr. Manukian bought two tickets, one for himself and one for Ms. Arutinova, on the Amtrak web site, paying with a credit card. The tickets were for travel starting the following day, one way from Los Angeles, California to Denver, Colorado. Mr. Manukian and Ms. Arutinova intended to travel from Los Angeles to Raton, New Mexico by train, and from Raton to Denver, by bus.
8. On August 17, 2005, Mr. Manukian also bought two tickets, again for himself and Ms. Arutinova, on the Southwest Airlines web site for the return trip from Denver to Burbank, California, on August 21, 2005.

9. Upon information and belief, there is a DEA task force in Albuquerque, New Mexico that reviews Amtrak ticket purchase records and uses the information it obtains from those records to target certain passengers for questioning and search when the train stops at the Albuquerque station.
10. On August 18 and 19, 2005, Ms. Arutinova and Mr. Manukian were passengers on the Amtrak Southwest Chief 4, a train traveling from Los Angeles to Denver, in car 0430, sleeping roomette 12.
11. On August 19, 2005, at around 2:30 PM, their train stopped in Albuquerque for approximately forty minutes.
12. Ms. Arutinova and Mr. Manukian left the train briefly to stretch their legs and look at the things for sale on the train platform.
13. After ten to fifteen minutes, Ms. Arutinova and Mr. Manukian reboarded the train and returned to their roomette.
14. At around 3:00 PM, Doe #1 knocked on the roomette door.
15. Doe #1 asked for Plaintiffs' identification and tickets and asked Mr. Manukian whether they had any luggage in the luggage area. Mr. Manukian replied that they did.
16. Doe #1 instructed Mr. Manukian to follow him to the luggage area. Mr. Manukian complied, and Ms. Arutinova followed as well.
17. During the walk down the hall, Doe #1 asked Mr. Manukian whether he and Ms. Arutinova were carrying anything illegal, including guns, bombs, or drugs. Mr. Manukian replied that they were not.
18. Doe #1 told the Ms. Arutinova and Mr. Manukian that they were "suspicious."
19. When the Doe #1, Mr. Manukian and Ms. Arutinova arrived at the luggage area of the train car, they were joined by Agent Perry and John Doe #2.

20. Doe #1 asked which bags belonged to Ms. Arutinova and Mr. Manukian.
21. Mr. Manukian pointed out their two bags.
22. Doe #1 said that he needed to search the bags.
23. Mr. Manukian asked why, and Doe #1 said that they search everyone's luggage.
24. When Mr. Manukian stated that they had nothing illegal in their bags, Agent Perry became belligerent, yelling at Mr. Manukian and insisting that he allow them to search the bags.
25. Intimidated, and feeling that he had no choice, Mr. Manukian pulled the two bags down and set them on the floor.
26. Doe #1 and Agent Perry then searched the bags while Doe #2 guarded the exit.
27. Doe #1 rifled through the smaller of the two bags containing Ms. Arutinova's and Mr. Manukian's shoes, pulling out each shoe and twisting it roughly and gratuitously. Mr. Manukian asked Doe #1 not to damage their belongings. Doe #1 ignored the request and continued in the same manner.
28. Turning to the next bag containing Ms. Arutinova's and Mr. Manukian's clothes, Doe #1 removed each article in turn and tossed it on the floor.
29. Doe #1 removed a smaller bag that he found inside the bag he was searching. He then opened it and discovered Ms. Arutinova's bras and underwear. While Ms. Arutinova and Mr. Manukian watched, Doe #1 pulled each bra and pair of underwear out one by one, examining them with an exaggerated smile.
30. Mr. Manukian asked Doe #1 what he was doing and told him that the bag contained Ms. Arutinova's personal things.
31. Doe #1 responded, "Oh, really? I didn't know," and continued in the same manner, with the same lascivious smile directed at both Mr. Manukian and Ms. Arutinova.

32. Perry and Doe #2 joined in, laughing, making coarse remarks, and addressing Mr. Manukian and Ms. Arutinova with inappropriate epithets, such as "asshole" and "bitch."

33. When Doe #1 was finished with his search, all of Mr. Manukian's and Ms. Arutinova's clothing and shoes were on the train car floor.

34. Picking up their things, Mr. Manukian said, "that's it." Doe #2 responded by asking whether Mr. Manukian was going to let them finish searching.

35. After putting their belongings back into their bags, Mr. Manukian requested defendants' names and badge numbers, and asked for the names of their "watch commanders." In response, Perry became extremely angry.

36. Perry pushed Mr. Manukian toward the train door and said, "You want my name? What are you gonna do about it, asshole?" He then threw his business card at Mr. Manukian.

37. Perry jabbed Mr. Manukian and grabbed him by the arms. In response to Mr. Manukian's request that he stop, Perry became irate and moved toward Mr. Manukian.

38. Frightened by Perry's attack on Mr. Manukian, Ms. Arutinova stepped between them.

39. Perry grabbed Ms. Arutinova's right arm, pushed her against the wall, and shook her so hard that her head struck the wall.

40. Perry dragged Ms. Arutinova by the arm back down the hall toward the roomette. He shook her so hard along the way that her head struck the wall two or three more times. He stopped only when Ms. Arutinova began to scream.

41. Leaving Ms. Arutinova in front of the roomette, Perry returned to the luggage area, and all three defendants exited the train.

42. Perry had used so much force when he grabbed Ms. Arutinova that her right arm hurt and was discolored. With a camera Mr. Manukian had purchased for the trip, Ms.

Arutinova and Mr. Manukian tried to take a picture of her arm.

43. After stepping out onto the platform where the light was better, Mr. Manukian took one photo of Ms. Arutinova's arm, and then saw that the defendants were there, walking away.

44. Mr. Manukian took one or two photos of Perry, Doe #1, and Doe #2 walking away.

45. One of the defendants glanced back and noticed Mr. Manukian taking photos, and all three defendants turned around and walked back to Mr. Manukian and Ms. Arutinova.

46. Perry yelled at Mr. Manukian, "What the hell are you doing taking pictures of us? Give me that camera!" as Perry grabbed Mr. Manukian's arm. Ms. Arutinova took the camera from Mr. Manukian and stuck it in the back of her waistband.

47. Perry then moved within inches of Ms. Arutinova and shouted, "Give me the camera!"

48. Ms. Arutinova responded, "It's my camera. I'm not giving it to you," and stepped back, pressing her back against the train. While Perry was standing in front of her, Doe #1 reached behind her and grabbed the camera out of her waistband.

49. Doe #1 touched Ms. Arutinova in the process of snatching the camera.

50. Mr. Manukian demanded that they return the camera as Perry, Doe #1, and Doe #2 fled into the train station, but the three defendants ignored him and took the camera with them.

51. Ms. Arutinova's arm took about two weeks to heal. During that time, she was in pain and was unable to fully use her arm.

52. Ms. Arutinova also suffered from headaches, nightmares, insomnia, and anxiety for several weeks.

53. Ms. Arutinova, whose responsibilities as a plebologist required her to use her right

arm to draw blood from her patients, was unable to work during this time because her arm injury prevented her from using her right arm, and because of the insomnia, anxiety, and emotional distress she suffered as a result of her encounter with Perry, Doe #1, and Doe #2.

54. Ms. Arutinova was unable to take the time off she needed to recover, and she was forced to quit her job.

55. Ms. Arutinova was unable to take a new job until October, 2005.

56. As a direct and proximate result of Defendants' conduct set forth above, Ms. Arutinova and Mr. Manukian suffered physical and psychological injuries for which they are entitled to compensation.

**COUNT I
RETALIATION FOR PROTECTED SPEECH - FIRST AMENDMENT
(PERRY, DOE #1)**

57. Ms. Arutinova and Mr. Manukian reallege the allegations in paragraphs 1-56.

58. Perry's and Doe #1's actions against Ms. Arutinova and Mr. Manukian (set forth above) were in retaliation for Ms. Arutinova's and Mr. Manukian's speech in opposition to Perry's and Doe's unlawful conduct toward Ms. Arutinova and Ms. Manukian, in violation of the First Amendment to the United States Constitution.

**COUNT II
EXCESSIVE FORCE - FOURTH AMENDMENT
(PERRY and DOE #1)**

59. Ms. Arutinova and Mr. Manukian reallege the allegations in paragraphs 1-58.

60. As described above in the body of the complaint, and in the FTCA counts, Perry used excessive force against Ms. Arutinova during and after the unlawful search, in violation of Ms. Arutinova's Fourth Amendment right to be free from the use of excessive by law enforcement officers.

61. As described above in the body of the complaint, and in the FTCA counts, Perry used excessive force against Mr. Manukian during and after the unlawful search, in violation of Mr. Manukian's Fourth Amendment right to be free from the use of excessive by law enforcement officers.

62. As described above in the body of the complaint, and in the FTCA counts, Doe#1 used excessive force against Ms. Arutinova during and after the unlawful search, in violation of Ms. Arutinova's Fourth Amendment right to be free from the use of excessive by law enforcement officers

**COUNT III – UNREASONABLE SEARCH AND SEIZURE OF PROPERTY
FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(PERRY, DOE #1)**

63. Ms. Arutinova and Mr. Manukian reallege the allegations in paragraphs 1-62.

64. Perry and Doe #1 violated Ms. Arutinova's and Mr. Manukian's Fourth Amendment right to be free from unreasonable searches of their property by searching their luggage without either reasonable suspicion or probable cause to believe that they had committed any crime and without reasonable suspicion or probable cause to believe that their luggage contained any contraband or evidence of criminal activity.

65. Doe #1 violated Ms. Arutinova's and Mr. Manukian's Fourth Amendment rights to be free from unlawful seizure of their property by seizing Ms. Arutinova's and Mr. Manukian's camera without probable cause.

**COUNT IV
CONSPIRACY TO VIOLATE CONSTITUTIONAL RIGHTS
(PERRY, DOE #1, DOE #2)**

66. Ms. Arutinova and Mr. Manukian reallege the allegations in paragraphs 1-65.

67. Perry, Doe #1, and Doe #2 acted in concert throughout the incident.

68. Perry, Doe #1, and Doe #2 agreed with each other, through words and conduct, to engage in action as described herein which violated Ms. Arutinova's and Mr. Manukian's constitutional rights.

COUNT V
BATTERY - FEDERAL TORT CLAIMS ACT
(PERRY and DOE #1)

69. Ms. Arutinova and Mr. Manukian reallege the allegations in paragraphs 1-68.

70. Defendants do not have immunity from this claim because it has been waived by the Federal Tort Claims Act for law enforcement officers.

71. Perry battered Mr. Manukian by pushing, jabbing, and grabbing Mr. Manukian by the arms after he requested Defendants' names, their badge numbers, and the name of their supervisor.

72. Perry battered Ms. Arutinova by grabbing her arm, pushing her against the wall, and banging her head against the wall multiple times.

73. Perry battered Mr. Manukian by grabbing his arm while demanding that he give up the camera.

COUNT VI
ASSAULT - FEDERAL TORT CLAIMS ACT
(PERRY)

74. Ms. Arutinova and Mr. Manukian reallege the allegations in paragraphs 1-73.

75. Defendants do not have immunity from this claim because it has been waived by the Federal Tort Claims Act for law enforcement officers.

76. Perry assaulted Ms. Arutinova by stepping within inches of her, forcing her to press her back against the train, and demanding that she give up the camera. Perry's actions caused Ms. Arutinova, whom Perry had just grabbed, shaken, and slammed against the wall inside the train, to reasonably fear that Perry would strike, grab, or touch her again

in an offensive and unwanted manner.

**COUNT VII
CONVERSION - FEDERAL TORT CLAIMS ACT
(DOE #1)**

77. Ms. Arutinova and Mr. Manukian reallege the allegations in paragraphs 1-76.

78. Doe #1 converted Mr. Manukian's camera when he took possession of it and failed to return it when Mr. Manukian demanded that he do so.

79. As a direct and proximate result of Doe's conduct set forth above, Ms. Arutinova and Mr. Manukian lost their personal property for which they are entitled to be compensated.

PRAYER FOR RELIEF

WHEREFORE, Ms. Arutinova and Mr. Manukian respectfully request that the Court enter judgment in their favor, including:

1. compensatory damages against Defendants in an amount sufficient to make up for all of the harm that Defendants' unlawful conduct caused, including medical expenses, the cost of the camera, lost wages, and physical and psychological injuries;
2. punitive damages against Defendants for their malicious, wanton, willful, reckless, and knowing violation of Ms. Artinova's and Mr. Manukian's constitutional rights under the First Amendment and Fourth Amendment in an amount sufficient to deter Defendants and other law enforcement officers from violating the constitutional rights of others;
3. attorneys' fees and costs of suit;
4. a jury trial on all issues so triable;
5. any further relief the Court deems just and proper.

Respectfully submitted,

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