

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

ANASTASIO A. PRIETO,

Plaintiff,

vs.

KAREN P. TANDY, Administrator of the
United States Drug Enforcement Administration,
sued in her official capacity;
GARY T. APODACA, a United States
Drug Enforcement Administration Task Force Officer,
sued in his individual and official capacities,
JOSEPH MONTOYA, a United States
Drug Enforcement Administration Special Agent,
sued in his individual and official capacities,
JOHN DOE #1, a New Mexico Department
of Public Safety Officer, sued in his individual capacity,
JOHN DOE # 2, a New Mexico Department
of Public Safety Officer, sued in his individual capacity, and
JANE DOE, a New Mexico Department of Public Safety
Officer sued in her individual capacity,

JURY TRIAL DEMANDED

Defendants.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND FOR DAMAGES**

NATURE OF THE ACTION

Plaintiff Anastasio A. Prieto, through his counsel, Cid D. Lopez (of Gregory R. Kauffman, P.C., as Cooperating Attorney for the American Civil Liberties Union of New Mexico) and George Bach (American Civil Liberties Union of New Mexico), brings this action for injunctive and declaratory relief and for damages. As alleged with greater particularity below, plaintiff alleges that defendants have unlawfully taken approximately twenty three thousand, seven hundred dollars (\$23,700) in U.S. currency from him.

Defendants detained Mr. Prieto and seized his money without probable cause that he or his money were related in any way to any criminal activity or to any otherwise unlawful act. Defendants Apodaca and Montoya also fingerprinted and photographed Mr. Prieto. Accordingly, defendants violated Mr. Prieto's right to be free from unreasonable searches and seizures, secured by the Fourth Amendment to the United States Constitution.

JURISDICTION AND VENUE

1. This Court has jurisdiction because the rights sought to be protected herein are secured by the Fourth Amendment to the U.S. Constitution; this action is brought against defendant Does pursuant to 42 U.S.C. § 1983. Accordingly, jurisdiction is proper pursuant to 28 U.S.C. § 1331, Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949), Dugan v. Rank, 372 U.S. 609 (1963) and federal common law.
2. The unlawful acts alleged herein were committed within the jurisdiction of the United States District Court for the District of New Mexico.

PARTIES

3. Anastasio A. Prieto is a citizen of the United States and a resident of El Paso, Texas.
4. Defendant Karen P. Tandy is the administrator of the United States Drug Enforcement Administration ("DEA") and is responsible for the management and control of the DEA, the agency that is now in possession of Mr. Prieto's money. Defendant Tandy is sued in her official capacity.

5. Defendant Gary T. Apodaca is a DEA Task Force Officer. Upon information and belief, defendant Apodaca works out of DEA's Las Cruces, New Mexico office. Defendant Apodaca is sued in his individual and official capacities.
6. Defendant Joseph Montoya is a DEA Special Agent. Upon information and belief, defendant Montoya works out of DEA's Las Cruces, New Mexico office. Defendant Montoya is sued in his individual and official capacities.
7. Defendants John Doe # 1, John Doe # 2, and Jane Doe are employees of the New Mexico Department of Public Safety. They are sued in their individual capacities. At all times relevant, defendants Doe acted under color of state law.

FACTS

8. Mr. Prieto works as a long-distance truck driver out of El Paso, Texas. He owns his own truck and contracts with Schneider National Carriers to deliver goods around the country.
9. Mr. Prieto customarily keeps all of his savings with him in cash, because he is more comfortable holding all of his money in cash rather than depositing it at a bank. Mr. Prieto does not like to use banks.
10. On August 8, 2007, Mr. Prieto was traveling northeast on United States Highway 54 out of El Paso.
11. On August 8, 2007, Mr. Prieto passed through the United States Border and Customs Protection fixed checkpoint on Highway 54 without incident.
12. Shortly thereafter, Mr. Prieto pulled into the New Mexico weigh station at approximately 10:30 a.m.

13. While at the weigh station, a New Mexico Department of Public Safety officer stopped Mr. Prieto and informed him that he had a tire that was worn out on the trailer he was hauling.
14. Defendant John Doe # 1 asked if he could go into his truck and search his truck. Mr. Prieto consented to this search.
15. Defendant John Doe # 1 then inquired as to whether Mr. Prieto was in possession of any needles or cash in excess of \$10,000.
16. Mr. Prieto responded by saying that he was not in possession of any needles but that he was in possession of approximately \$23,700 in cash.
17. Defendant John Doe # 1 then took Mr. Prieto's \$23,700 from the truck.
18. Defendant John Does # 1 and # 2 contacted defendant Jane Doe, who arrived at the weigh station approximately an hour later.
19. Mr. Prieto attempted to show defendant Jane Doe income papers demonstrating that the money was his, but she rejected his efforts.
20. Defendant John Doe # 2 informed Mr. Prieto that seizing the money was routine.
21. At the request of defendant Does, U.S. Border Patrol agents came to the weigh station to search the truck with a drug-sniffing dog. The dog did not alert to the presence of any illegal substances.
22. Shortly thereafter, defendant Does contacted the U.S. Drug Enforcement Agency ("DEA") regarding the \$23,700.
23. After several hours, the DEA responded by sending defendants Apodaca and Montoya to the scene.

24. Defendant Apodaca arrived and obtained the \$23,700 in cash from the defendant Does and issued Mr. Prieto a Form DEA-12 ("Receipt for Cash or Other Items") (attached hereto as Exhibit 1).
25. Defendant Apodaca informed Mr. Prieto that he would probably get the money back "in a year from now."
26. Defendant Montoya then fingerprinted and photographed Mr. Prieto. Mr. Prieto objected to this, but defendant Montoya insisted upon fingerprinting and photographing Mr. Prieto.
27. Mr. Prieto was then informed that he was free to leave at approximately 4:00 p.m.
28. Mr. Prieto was cited only for the worn tire on the trailer, and otherwise not charged with any crime or unlawful act related to this incident. Mr. Prieto forwarded the citation to Schneider National Carriers, for payment, according to that company's policies.
29. Defendant Apodaca stated that Mr. Prieto will receive notice of federal forfeiture proceedings in approximately thirty days. Mr. Prieto will then have to pursue the administrative forfeiture proceeding in order to obtain the return of his money.
30. As a direct and proximate result of the defendants' conduct set out above, Mr. Prieto has suffered the loss of his savings (\$23,700) as well as mental distress, humiliation, fear, anxiety, and emotional suffering.
31. Mr. Prieto needs the money he had saved to pay bills and his quarterly taxes, and to perform maintenance on his truck so that he can continue his livelihood.
32. Defendants' conduct was willful, wanton, malicious, and in utter disregard for Mr. Prieto's legal rights.

COUNT I-FOURTH AMENDMENT CLAIM
(UNREASONABLE SEIZURES BY STATE ACTORS – 42 U.S.C § 1983)

33. Mr. Prieto hereby realleges and incorporates by reference each of the allegations set forth in the preceding paragraphs.
34. Mr. Prieto had and continues to have a right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures.
35. Mere possession of approximately \$23,700 does not establish probable cause for a search or seizure.
36. Defendant Does, while acting under color of state law, violated this right when they detained Mr. Prieto and seized his \$23,700 without probable cause to believe that either Mr. Prieto or the \$23,700 was connected to criminal activity or any unlawful act.
37. Defendant Does are liable for compensatory and punitive damages owed Mr. Prieto because of the unlawful seizure of his moneys.

COUNT II-FOURTH AMENDMENT CLAIM
(UNREASONABLE SEIZURES BY FEDERAL ACTORS)

38. Mr. Prieto hereby realleges and incorporates by reference each of the allegations set forth in the preceding paragraphs.
39. Mr. Prieto had and continues to have a right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures.
40. Mere possession of approximately \$23, 700 does not establish probable cause for a search or seizure.

41. Defendants Tandy, Apodaca, and Montoya (the “federal defendants”) violated this right when they seized Mr. Prieto’s \$23,700 without probable cause to believe that either Mr. Prieto or the \$23,700 was connected to criminal activity or any unlawful act.
42. The federal defendants are violating Mr. Prieto’s right to be free from unreasonable seizures by continuing the seizure of his money pending the outcome of an administrative proceeding. Without having probable case for a seizure, compelling Mr. Prieto to undergo the administrative proceeding to obtain return of his moneys is unreasonable under the Fourth Amendment. The administrative proceeding is not an adequate remedy at law.
43. The federal defendants’ acts, set forth herein, were and continue to be unconstitutional and accordingly, beyond their respective official powers, and injunctive relief is therefore appropriate.

COUNT III-FOURTH AMENDMENT CLAIM
(UNREASONABLE SEARCH AND SEIZURE–
DEFENDANTS APODACA AND MONTOYA)

44. Mr. Prieto hereby realleges and incorporates by reference each of the allegations set forth in the preceding paragraphs.
45. Mr. Prieto had and continues to have a right under the Fourth Amendment to the United States Constitution to be free from unreasonable searches.
46. Mere possession of approximately \$23,700 does not establish probable cause for a search or seizure.

47. Defendants Apodaca and Montoya violated this right when they detained Mr. Prieto and searched Mr. Prieto's person by fingerprinting and photographing him without probable cause to believe that Mr. Prieto was connected to any criminal activity or unlawful act.
48. Defendants Apodaca and Montoya are liable for compensatory and punitive damages owed Mr. Prieto because of the unlawful search and seizure of his person.
49. The federal defendants' acts, set forth herein, were and continue to be unconstitutional and accordingly, beyond their respective official powers, and injunctive relief is therefore appropriate.

PRAYER FOR RELIEF

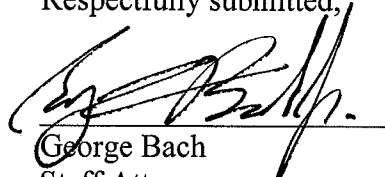
WHEREFORE plaintiff respectfully requests:

- A. That, pursuant to 28 U.S.C. §§ 2201-02, the Court declare that the federal defendants' search and seizure of Mr. Prieto on August 8, 2007, without probable cause, violated Mr. Prieto's rights secured by the Fourth Amendment to the United States Constitution;
- B. That, pursuant to 28 U.S.C. §§ 2201-02, the Court declare that the federal defendants' continued seizure of Mr. Prieto's moneys, without probable cause, pending the outcome of an administrative proceeding by the federal defendants on August 8, 2007, violates Mr. Prieto's rights secured by the Fourth Amendment to the United States Constitution;
- C. That the Court enter an injunction against the federal defendants to remedy the Fourth Amendment violations, ordering the federal defendants to return all of Mr.

Prieto's money immediately, and to destroy or return all records of fingerprints or photographs taken of Mr. Prieto on August 8, 2007;

- D. Compensatory damages against defendants Apodaca and Montoya for their unlawful search and seizure of Mr. Prieto;
- E. Compensatory damages against defendants Does for their unlawful seizure of Mr. Prieto and his money;
- F. Punitive damages against defendants Apodaca, Montoya, and Does for their malicious, wanton, willful, reckless, and knowing violation of Mr. Prieto's constitutional rights under the Fourth Amendment in an amount sufficient to deter defendants Apodaca, Montoya, Does and other law enforcement officers from violating the constitutional rights of others;
- G. Trial by jury on all issues so triable;
- H. Pre- and post-judgment interest as allowed by law;
- I. Plaintiff's reasonable attorney's fees, expenses, and costs of this action pursuant to 42 U.S.C. § 1988, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C § 2412(b); and
- J. Any other further relief as may be just and equitable.

Respectfully submitted,



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OF COUNSEL

Attorneys for Plaintiff

RECEIPT FOR CASH OR OTHER ITEMS

G-DEP IDENTIFIER

FILE TITLE	FILE NUMBER	FILE DATE	FILE TYPE	FILE STATUS
100-100000-100000	100-100000-100000	100-100000-100000	100-100000-100000	100-100000-100000

DATE _____

200

SPS-527-6950

Q	A	DESCRIPTION OF ITEM(S)
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PURPOSE (If Applicable)

US CURRENCY	UNDETERMINED AMOUNT OF US CURRENCY

1 Plastic Container

NAME AND TITLE (Print or Type)

NAME AND TITLE (Print or Type)

Electronic Form Version Designed in JetForm 5.2 Version

PLAINTIFF'S EXHIBIT

Aug. 17 2007 02:42PM P1

FAX NO. :

FROM: