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**RE: Notice of Claims for Damages under the Federal Tort Claims Act for  
Willy Wender Aceituno**

Dear Counsel:

The American Civil Liberties Union of North Carolina Legal Foundation (“ACLU-NC”), Southern Coalition for Social Justice (“SCSJ”), and Tin Fulton Walker & Owen, PLLC (“TFWO”) submit this notice of claims, on behalf of Willy Wender Aceituno against the United States Customs and Border Protection, United States Border Patrol, United States Immigration and Customs Enforcement, and any other Department of Homeland Security (DHS) agencies (collectively, “immigration agents”) involved in the incidents described below. Enclosed please find the Claim for Damage, Injury, or Death - Standard Form 95 (Exhibit A), as well as other supporting exhibits.

Mr. Aceituno, a United States citizen, submits this complaint pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671-2680, seeking damages arising from the actions of the immigration agents during an incident that occurred on or about November 15, 2025, in Charlotte, North Carolina. As described herein, the incidents resulted in physical, emotional, and psychological harm caused directly by the unlawful and excessive actions of immigration agents acting within the scope of their official duties.

## **I. STATEMENT OF FACTS**

On the morning of November 15, 2025, Mr. Aceituno was traveling alone to work. On his way, he stopped at Baleada Bar & Grille, a Honduran restaurant, near Archdale Drive and South Boulevard in Charlotte, North Carolina to pick up food.

As Mr. Aceituno walked toward the restaurant, he was approached by four armed immigration agents wearing face masks and sunglasses. Their uniforms said “border patrol” on the front and back. The armed and masked agents surrounded Mr. Aceituno and positioned him with his back against an agency vehicle. The agents questioned Mr. Aceituno about his legal status and asked for his last name. The agents stated that they were trying to determine whether he was lawfully present in the United States. Mr. Aceituno produced his North Carolina Real ID driver’s license. After several minutes, the agents confirmed that Mr. Aceituno was a U.S. citizen with no criminal record, returned his identification, and drove away. This initial encounter lasted approximately fifteen (15) minutes. Bystanders observed and recorded the interaction and questioned why Mr. Aceituno was being detained if the immigration agents were searching for criminals. It seems that the only reason Mr. Aceituno was stopped, detained, and questioned is because he is Latino.

After the agents left, Mr. Aceituno entered Baleada Bar & Grille to retrieve his food. He then returned to his vehicle, a 1998 Ford F-150 registered in his name, fastened his seatbelt, and prepared to leave the parking lot. A group of armed immigration agents again intercepted him. One unmarked agency vehicle pulled directly in front of his truck while another unmarked vehicle positioned itself behind him, blocking his exit. Mr. Aceituno was scared and confused.

The second encounter escalated immediately. Three armed agents wearing masks and sunglasses that concealed their identities quickly approached Mr. Aceituno’s vehicle. Mr. Aceituno began recording the encounter on his phone. Unlike the first encounter, the agents did not ask questions or request documents. One of the agents aggressively stated, “open the window!” while holding a baton. Mr. Aceituno asked why they needed to see his papers again and stated that he had already identified himself. The immigration agents did not respond to his questions and instead threatened to break the door or window if he did not comply.

Ignoring everything Mr. Aceituno was trying to communicate, the immigration agents proceeded to shatter the driver’s side window with a baton. The agent yelled, “get out,” and Mr. Aceituno asked, “why did you do this, sir? Why are you doing this?” One agent reached for Mr. Aceituno’s phone and knocked it to the ground. Mr. Aceituno felt

defenseless, scared, and shocked by what was happening. His Real ID was in his pocket, but he decided not to try to reach for it because he was worried the agents would think he was reaching for a weapon. He again stated that he had already identified himself and told the agents to check his wallet.

After shattering the window of Mr. Aceituno's vehicle, the immigration agents forcibly removed him. One immigration agent placed an elbow around Mr. Aceituno's throat while another pulled him from the truck. Two immigration agents threw him onto the pavement while he repeatedly explained that they had already stopped him five minutes ago. An immigration agent immediately pushed and rolled Mr. Aceituno onto his back against the pavement. The agent then forcefully pushed and rolled him on to his stomach. Mr. Aceituno repeatedly stated that he was a citizen. Because the immigration agents had shattered the window moments earlier, broken glass covered Mr. Aceituno's clothing and cut his skin, breaking his skin and causing him to bleed. His forehead, eyebrows, chest, and both of his shoulders were bleeding. As the federal agents continued to violently manhandle Mr. Aceituno, bystanders shouted that his identification had already been checked. One bystander can be heard on video telling the immigration agents, "they just IDed him," "he already IDed himself," "don't you guys f\*\*\*ing coordinate with each other?," "why do you guys keep stopping the same guy?," "they already stopped this man," and telling the agents that Mr. Aceituno's ID was in his wallet.<sup>1</sup>

As he was being assaulted, Mr. Aceituno was terrified and started to think of his father. When Mr. Aceituno was a child, his father was taken by the Honduran government. The government broke down his door, put him in a car, and took him away. His father has been missing ever since. So, when the immigration agents broke his vehicle window and threw him to the ground, he felt like history was repeating itself. He was afraid that he would end up missing like his father.

Two immigration agents then handcuffed Mr. Aceituno behind his back, preventing him from accessing his wallet with his identification. At no time did they ask Mr. Aceituno for his identification, read him his rights, or explain why they were arresting him. Mr. Aceituno was then placed inside an unmarked SUV. There were four agents in the SUV; two agents were in the front and two were on the second row. Mr. Aceituno was placed in the middle seat of the second row between the two agents. There were two more rows of seats behind him that contained six to seven detained individuals who appeared to be Latino.

One agent began to drive the SUV away from the parking lot and Mr. Aceituno's vehicle. Throughout this ride in the SUV, Mr. Aceituno continued to state in English that he was a U.S. citizen and that his wallet contained proof of his citizenship. The immigration agents continued to ignore Mr. Aceituno's pleas to verify, for a second time in a matter of minutes, his citizenship. Mr. Aceituno was very afraid; he was in a vehicle with armed and masked agents and did not know where they were taking him.

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<sup>1</sup> THE CHARLOTTE OBSERVER, *Honduran-born U.S. citizen claims profiling, police misconduct at Charlotte restaurant on Saturday*, (YouTube, Nov. 15, 2025) [https://youtube.com/shorts/rdJTTj\\_OC3U?si=DfpNJia2HDktkWpn](https://youtube.com/shorts/rdJTTj_OC3U?si=DfpNJia2HDktkWpn).

While continuing to drive Mr. Aceituno and other unidentified men around Charlotte, the immigration agents briefly stopped at a predominantly African American church. The immigration agents did not linger, stating, “Nothing here,” because there were no Latino individuals present. When other detained individuals asked Mr. Aceituno to notify their families that they had been arrested, an immigration agent ordered them to “shut up.” When Mr. Aceituno objected to the immigration agents’ treatment of the detainees, the immigration agent again told him to “shut up.” Mr. Aceituno also continued to assert that he was U.S. citizen. The agents told him to “shut up” four times. The last time the agent told him to “shut up,” the agent got so close to Mr. Aceituno’s face that spittle flew on to Mr. Aceituno’s face. The behavior of the agent made Mr. Aceituno stop talking. He was too scared to continue to speak, fearful that the situation could escalate to physical violence again.

Eventually, an immigration agent took Mr. Aceituno’s wallet from his front pocket, entered his information into a small handheld device, and confirmed that Mr. Aceituno was a U.S. citizen with no criminal record.

After the federal agents finally confirmed his citizenship, Mr. Aceituno was uncuffed and released on the side of Archdale Drive and Park Road, a little over two miles away from his vehicle. Mr. Aceituno was bleeding and in pain. When he asked the agents to drive him back to his vehicle, the immigration agents refused and threatened to arrest him again if he did not walk away immediately. The immigration agents never told him why he had been arrested. The entire ride lasted about 15 minutes.

Injured, bleeding, confused, and scared, Mr. Aceituno walked approximately twenty to twenty-five minutes back to his truck. Mr. Aceituno cried during his walk. He looked at the glass on his chest and shirt. He noticed that his head and shirt had blood on them. He felt scared, panicked, and was worried that he would fall while walking. When people drove by, he felt embarrassed because he thought he looked like some sort of criminal who had just been beaten up.

When Mr. Aceituno returned to his truck, he found the window shattered, glass all over the front seat, and his key missing. Just before being handcuffed and forced into the agents’ SUV, an immigration agent had turned off Mr. Aceituno’s vehicle and was the last person to have his key. Mr. Aceituno was unable to use his vehicle until a replacement key was brought to him approximately two hours later.

At approximately 11:20 a.m., Mr. Aceituno called 911 and stated that he wished to make a police report. He was still in fear and in pain while waiting for the police to arrive. The Charlotte-Mecklenburg Police Department took about three to four hours to arrive. The police officer noted that “Aceituno suffered minor injuries on his arms that were consistent with being thrown onto the asphalt in the parking lot.” (Exhibit B) Video from the responding officer’s body-worn camera shows some of the injuries that Mr. Aceituno suffered. (Exhibit C)

After making the police report, Mr. Aceituno drove to Pineville Hospital, where he remained for approximately three to four hours and underwent medical testing. He continues to experience pain in his neck and arm.

Mr. Aceituno had never had any prior encounters with law enforcement until this traumatic event. That night, he didn't sleep. He spent most of the night crying and replaying what happened in his mind.

## **II. HARMS**

The actions of the immigration agents described above caused Mr. Aceituno to suffer physical injuries and severe emotional distress, as well as damage to and loss of his property. Being violently attacked inside his own vehicle, in broad daylight and full public view, and then handcuffed and effectively kidnapped, caused him to feel exposed, humiliated, and unsafe. What should have been an ordinary stop for breakfast while driving to work was transformed into a lengthy, terrifying, and degrading public ordeal that remains seared into his memory and has profoundly undermined his sense of security and belonging.

For the first two days after the incident, Mr. Aceituno could not sleep at all. This traumatic experience resulted in him being unable to work that day and missing an additional two weeks of work thereafter. He felt very helpless and was in deep fear any time he had to leave his home. He experiences flashbacks of the incident and knows that the violence he experienced will stay with him forever. He also feels anxious knowing that CBP or ICE can return at any point. Mr. Aceituno used to feel that having documents would keep him safe from the violence he sees on the news, but now he knows that it is not true. He doesn't feel safe in public, despite being a U.S. citizen.

Mr. Aceituno sustained injuries that required medical evaluation and he continues to experience ongoing pain in his neck and arm. The injuries impaired his ability to function normally and prevented him from working for the week following the incident, resulting in lost income.

Mr. Aceituno also experienced deprivation of his personal property and loss of mobility. When he returned to his truck, his vehicle key was missing. He was stranded without transportation for hours, compounding the distress and disorientation caused by the incident and prolonging his vulnerability in a public setting. It took another two weeks until he was able to fix his broken vehicle window.

The harm extended beyond Mr. Aceituno to his family. His wife witnessed the physical and emotional aftermath of the incident, including his injuries and pain following hospitalization. As a result, she has suffered significant emotional trauma, including fear for her husband's safety and a loss of trust in law enforcement.

Finally, the harms have been compounded by ongoing harassment and credible threats directed at Mr. Aceituno. Mr. Aceituno has received online threats, including statements such as, "I will finish what Border Patrol started," and "I know where you live."

Days later, Mr. Aceituno came home and smelled a very strong odor of gas. Four gas tanks that he left outside had been opened by someone unknown to him, creating a danger. The threatening messages he had received, plus the vandalism of his home, forced him to live in heightened fear for his personal safety and the safety of his family, intensifying the emotional distress caused by the original incident and continuing to affect his daily life. Due to these threats, Mr. Aceituno installed approximately \$500 worth of cameras around his home.

### **III. ARGUMENTS AND CLAIMS**

The FTCA permits individuals to bring claims against the United States for negligent or wrongful acts committed by federal employees acting within the scope of their official duties. 28 U.S.C. § 2674, *et seq.* Specifically, the FTCA waives the federal government’s sovereign immunity “under circumstances where local law would make a private person liable in tort.” *United States v. Olson*, 546 U.S. 43, 44 (2005) (citing 28 U.S.C. § 1346(b)(1)) (internal citations omitted). Claims asserting assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution are explicitly allowed by the FTCA against investigative or law enforcement officers of the federal government. 28 U.S.C.A. § 2680(h).

#### **a. False Arrest, False Imprisonment, and Abuse of Process**

Immigration agents falsely imprisoned and falsely arrested Mr. Aceituno. He was falsely imprisoned twice without legal justification or authority. He was falsely arrested during the second encounter, again without legal justification or authority. To the extent that the immigration agents misused their immigration verification process to punish Mr. Aceituno for asserting his rights and threatened Mr. Aceituno with re-arrest, that constitutes abuse of process.

False imprisonment is the illegal restraint of a person against his will. *Bartley v. City of High Point*, 846 S.E.2d 750, 755 (N.C. Ct. App. 2020), *aff’d*, 2022-NCSC-63, 873 S.E.2d 525. A restraint is illegal if not lawful or consented to. *Id.* A false arrest is an arrest without legal authority and is one means of committing a false imprisonment. *Id.* Abuse of process is the misuse of legal process for a non-legitimate purpose, and includes threats to use the legal process for improper purposes. *Fox v. City of Greensboro*, 866 S.E.2d 270, 292 (N.C. Ct. App. 2021); *Fuhs v. Fuhs*, 245 N.C. App. 367, 375, 782 S.E.2d 385, 390 (2016).

During the initial encounter, Mr. Aceituno was approached by four armed immigration agents for no apparent reason other than his Latino appearance. The agents surrounded him, positioned him with his back against an agency vehicle, and questioned him about his legal status and his last name. Standing in a semi-circle of agents with no physical path to leave, Mr. Aceituno was unlawfully restrained without legal justification and without his consent.

During the second encounter with agents, only minutes later, Mr. Aceituno was falsely imprisoned—again—and falsely arrested against his will. One agency vehicle

blocked the front of his truck while another blocked the rear. Agents shattered his window and forcibly removed him. One agent placed an elbow around his throat while another pulled him from the vehicle, causing him to strike the ground. He was pushed onto his back, then onto his stomach. Mr. Aceituno was handcuffed, placed inside a Border Patrol vehicle, seated between two agents, and then driven away. At no point was Mr. Aceituno free to leave. This seizure occurred despite Mr. Aceituno repeatedly informing them that he is a U.S. citizen and just, minutes earlier, had provided his REAL ID, which confirmed his citizenship. The agents lacked any lawful basis to detain, seize, arrest, restrain, or confine Mr. Aceituno by force. They arrested and continued detaining him to punish him for asserting his rights, initiating legal process for an improper purpose. And, after finally releasing Mr. Aceituno by leaving him on the side of a road, the agents threatened him with re-arrest when he simply asked them to take him back to his vehicle.

### **b. Assault and Battery**

An assault is defined as “an offer to show violence to another without striking him, and a battery is the carrying of the threat into effect by the infliction of a blow.” *Tuggles v. United States*, No. 1:18-CV-97, 2019 WL 954978, at \*8 (M.D.N.C. Feb. 27, 2019) (citing *Dickens v. Puryear*, 276 S.E.2d 325, 330 (N.C. 1981)). To establish a claim of assault and battery against a law enforcement officer, a plaintiff must demonstrate that the officer applied force that “was excessive under the given circumstances.” *Id.*

The immigration agents committed assault and battery against Mr. Aceituno. Without any legal justification, after being repeatedly told that Mr. Aceituno is a U.S. citizen, and after agents had reviewed his REAL ID just minutes prior, the agents shattered his vehicle window and forcibly removed him. One agent placed an elbow around Mr. Aceituno’s throat while another pulled him from the vehicle causing his body to strike the ground. Despite the fact that Mr. Aceituno did not physically resist, the agents forcibly pushed him onto broken glass causing multiple cuts and breaks in his skin. The force used was not only excessive, but entirely unwarranted, as Mr. Aceituno was not accused of any crime and had already established that he is United States citizen.

### **c. Intentional Infliction of Emotional Distress**

To state a claim for intentional infliction of emotional distress, (“IIED”), a plaintiff must allege “(1) extreme and outrageous conduct by the defendant, (2) which is intended to and does in fact cause (3) severe emotional distress.” *Lovo v. United States*, No. 1:22CV1008, 2024 WL 1349516, at \*7 (M.D.N.C. Mar. 29, 2024). A claim may also exist where the defendant's actions show reckless indifference to the likelihood that emotional distress may result. *Id.* (internal citations omitted). Conduct is extreme and outrageous when it goes beyond all possible bounds of decency, and is regarded as atrocious, and utterly intolerable in a civilized community. *Id.*

The “extreme and outrageous” element requires more than violence alone. *Id.*; see also *Dickens v. Puryear*, 276 S.E.2d 325–36 (N.C. 1981) (holding that a credible threat of future harm, when coupled with violence, satisfies the “extreme and outrageous” element); *Hensley v. Suttles*, 167 F. Supp. 3d 753, 768 (W.D.N.C. 2016) (explaining that

the “extreme and outrageous” test must also assess the severity of distress the defendant intended to instill in the victim through such actions).

Here, the immigration agents’ conduct constitutes extreme and outrageous behavior that caused Mr. Aceituno severe emotional distress. First, Mr. Aceituno was unjustifiably detained by armed, masked agents. Minutes later, he was violently attacked by armed, masked agents while sitting inside his own vehicle. These terrifying events occurred during what should have been an ordinary stop to purchase food before work. Being attacked left Mr. Aceituno feeling exposed, humiliated, and unsafe. The entire ordeal remains seared into his memory and has significantly undermined his sense of personal security and ability to move freely in public.

The emotional harm inflicted on Mr. Aceituno did not end with the physical attack. In the days that followed, Mr. Aceituno was subjected to ongoing online harassment and threats of future violence, forcing Mr. Aceituno to live in fear for his safety and the safety of his family, and to install security cameras at his home. The combination of a public, violent assault and subsequent threats of future violence has intensified Mr. Aceituno’s emotional distress, causing lasting fear, anxiety, and disruption to his daily life.

#### **d. Negligent Infliction of Emotional Distress**

A claim of negligent infliction of emotional distress requires that “(1) the individual engaged in negligent conduct; (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress; and (3) the individual's conduct, in fact, caused the plaintiff severe emotional distress.” *Pittman v. United States*, No. 5:10-CV-517-BO, 2012 WL 113568, at \*4 (E.D.N.C. Jan. 13, 2012)

The emotional distress suffered by Mr. Aceituno, as described in the IIED claim and incorporated herein, was also the foreseeable result of the immigration agents’ negligent conduct. The agents failed to exercise reasonable care under the circumstances, resulting in a violent confrontation while Mr. Aceituno was seated in his vehicle in broad daylight and in full public view. A reasonable person would have foreseen that such conduct created a substantial risk of causing not only physical injury but also severe emotional distress to the victim.

As a direct and proximate result of the agents’ negligent actions, Mr. Aceituno suffered the severe emotional distress previously described, including persistent fear, anxiety, humiliation, and disruption to his daily life.

#### **e. Trespass to Chattels**

A successful action for trespass to chattel requires the party bringing the action to demonstrate that they had either actual or constructive possession of the personal property or goods in question at the time of the trespass, and that there was an unauthorized, unlawful interference with or dispossession of the property. *See Fordham v. Eason*, 521 S.E.2d 701, 704 (N.C. 1999).

Here, Mr. Aceituno had actual possession of his truck, which is registered in his name, and he was seated in the driver's seat at the time of the incident. During the immigration agents' attack on Mr. Aceituno, they unlawfully removed him from his truck, interfered with his ability to drive away, and ultimately dispossessed him of the vehicle. When he was finally able to return to his vehicle, he discovered that his vehicle key was missing. In addition, the agents shattered the driver's side window, impairing his use and possession of the truck, and constituting an unauthorized interference with his chattel.

#### **f. Conversion**

The tort of conversion is an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights. *See Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 723 S.E.2d 744, 747 (N.C. 2012). There are two elements of a conversion claim: ownership by the plaintiff and wrongful possession or conversion by the defendant. *Id.*

Here, Mr. Aceituno is the owner of his truck, and the immigration agents committed a conversion when they broke his driver's side window. This act physically altered the condition of the truck, diminished its value, and interfered with Mr. Aceituno's exclusive right to possess and use his property.

#### **g. Negligent Supervision**

A claim for negligent supervision is recognized in North Carolina when the plaintiff proves: (1) the specific negligent act on which the action is founded; (2) incompetency, either by inherent unfitness or previous specific acts of negligence from which incompetency may be inferred; (3) either actual notice to the master of such unfitness or bad habits, or constructive notice, by showing that the master could have known the facts had he used ordinary care in oversight and supervision; and (4) that the injury complained of resulted from the incompetency proved. *See Taft v. Brinley's Grading Servs., Inc.*, 738 S.E.2d 741, 750 (N.C. Ct. App. 2013).

Here, all immigration agents are federal employees whose duties involve direct contact with the public in the course of conducting DHS immigration enforcement activities. The agents' use of excessive force to remove Mr. Aceituno from his truck, breaking his driver's side window, unlawfully arresting him, reflect a systemic custom, pattern, and practice of violent enforcement against community members. This pattern demonstrates both inherent unfitness and prior specific acts of negligence, which supervisory authorities either knew or could have known through the exercise of ordinary care. The resulting injuries and property damage to Mr. Aceituno directly flow from this failure in supervision, establishing a viable claim for negligent supervision.

## **h. The Discretionary Function Exception**

The FTCA’s waiver of sovereign immunity excludes claims “based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.” *Blanco Ayala v. United States*, 982 F.3d 209, 214 (4th Cir. 2020) (citing 28 U.S.C. § 2680(a)). Courts apply a two-part framework to determine whether the discretionary function exception bars a claim. First, consider whether the challenged acts “are discretionary in nature” meaning they involve “an element of judgment or choice.” *Id.* Importantly, “federal officials do not possess discretion to violate constitutional rights or federal statutes.” *Medina v. United States*, 259 F.3d 220, 225 (4th Cir. 2001) (quotation marks and citations omitted); *see also Blanco Ayala*, 982 F.3d at 214 (explaining that the exception does not apply when a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow). Second, determine whether the challenged governmental actions and decisions were based on considerations of public policy. *Blanco Ayala*, 982 F.3d at 214. When statutes, regulations, or agency guidelines grant discretion to a government agent, it must be presumed that the agent’s acts are grounded in policy when exercising that discretion. *Id.* This analysis does not inquire whether policy considerations were “actually contemplated” in making a decision. *Id.* at 215. Rather, the question is whether the nature of the challenged decision, viewed objectively, is “one which we would except inherently to be grounded in considerations of policy.” *Id.*

The discretionary function exception does not bar Mr. Aceituno’s FTCA claims. The agents’ conduct was not discretionary because federal law does not permit immigration agents to arrest U.S. citizens, detain people without reasonable suspicion of unlawful presence, or conduct warrantless arrests without probable cause and an individualized assessment of flight risk. Moreover, federal law does not permit immigration agents to use force against a United States citizen who has presented valid proof of citizenship and is not suspected of any crime. The agents had no lawful basis to shatter his vehicle window, forcibly remove him, or apply a chokehold, and no statute, regulation, or policy authorizes such conduct. Even if the conduct could be characterized as discretionary, it is not susceptible to policy analysis. The use of violent force against Mr. Aceituno did not implicate social, economic, or political policy considerations, but instead constitutes excessive force in a routine encounter.

As explained in more detail below, the immigration agents’ actions violate the Constitution and mandatory federal regulations. Accordingly, the discretionary function exception does not apply, and the FTCA’s waiver of sovereign immunity remains intact.

## **i. Violation of the Fourth Amendment (unlawful seizure)**

Longstanding U.S. Supreme Court precedent establishes that “[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest,” and those performed by immigration officials. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975) (citation omitted). “[W]henver a police officer accosts an individual and restrains his freedom to walk away,

he has ‘seized’ that person.” *Terry v. Ohio*, 392 U.S. 1, 16 (1968). “[T]he Fourth Amendment requires that the seizure be ‘reasonable.’” *Brignoni–Ponce*, 422 U.S. at 878. “[T]he reasonableness of such seizures depends on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.” *Id.*

Here, immigration agents unlawfully seized Mr. Aceituno twice.

During the initial encounter, when Mr. Aceituno walked toward the restaurant, he was approached by multiple immigration agents and detained for no apparent reason other than appearing Latino. Four immigration agents surrounded Mr. Aceituno, positioning him with his back against an agency vehicle, and began questioning him about his “legal status.” Mr. Aceituno stood at the center of a semi-circle of agents, with no physical opening through which he could leave. This seizure was unlawful, as the agents lacked any legal justification to stop and detain Mr. Aceituno, he did not consent to the restraint.

During the second encounter only minutes later, Mr. Aceituno was seized again by immigration agents while attempting to exit a parking lot. As outlined above, after Mr. Aceituno had already produced his REAL ID in his first encounter with agents minutes earlier, an agency vehicle pulled directly in front of his truck while another positioned itself behind him, effectively blocking his exit. Three agents approached Mr. Aceituno’s vehicle, and one began pounding on the vehicle and shouting commands to “open the door.” Agents then shattered Mr. Aceituno’s vehicle window and forcibly removed him from the truck. One agent placed an elbow around Mr. Aceituno’s throat while another pulled him from the vehicle, throwing him to the pavement. Then he was handcuffed and shoved into the back of a SUV. At no point did Mr. Aceituno have any means of leaving the scene.

Under these circumstances, Mr. Aceituno was plainly detained and seized within the meaning of the Fourth Amendment. The seizure was unreasonable and unsupported by probable cause. Moreover, during the unlawful seizure, agents employed excessive force. Each of these actions, independently and collectively, constitutes a violation of Mr. Aceituno’s Fourth Amendment rights.

## **ii. Violation of the Fourth Amendment (excessive force)**

The Fourth Amendment prohibition on unreasonable seizures bars law enforcement officers from using excessive force to seize a free citizen. *E.W. by and through T.W. v. Dolgos*, 884 F.3d 172, 179 (4th Cir. 2018). Claims that law enforcement officials have used excessive force—deadly or not—during an arrest, investigatory stop, or other seizure are analyzed under the Fourth Amendment’s “objective reasonableness” standard. *Graham v. Connor*, 490 U.S. 386, 399 (1989). The test set is whether a reasonable officer in the same circumstances would have concluded that the level of force used was justified. *See Evans v. City of Lynchburg*, 766 F. Supp. 3d 614, 619 (W.D. Va. 2025). Courts assess objective reasonableness by considering (1) the severity of the crime at issue, (2) whether the individual posed a threat to the safety of the officers or

others, and (3) whether the individual was actively resisting arrest or attempting to flee. *Id.*

The immigration agents' use of force against Mr. Aceituno was objectively unreasonable. First, the severity of the alleged offense was minimal. The agents were engaged in civil immigration enforcement, were not responding to a violent crime, and lacked probable cause to believe Mr. Aceituno was unlawfully present, or had committed any offense, much less a serious one. Rather than asking questions or allowing him to show his identification, the agents immediately escalated the encounter. Immigration enforcement is civil in nature and does not justify the use of violent force. The agents appeared uninterested in Mr. Aceituno's documentation and instead proceeded directly to a physical attack.

Second, Mr. Aceituno posed no immediate threat to the safety of the agents or others. He was seated in his vehicle, did not brandish a weapon, make threatening movements, or engage in aggressive behavior. Nothing about Mr. Aceituno's conduct suggested imminent danger that would justify forcibly removing him from the vehicle or breaking the driver's side window.

Third, Mr. Aceituno was not actively resisting arrest or attempting to flee. He was boxed in and surrounded by agents, leaving him no opportunity to flee. Moreover, his movements did not indicate an intention to flee. Instead, he informed the agents multiple times that he was just stopped by agents only minutes prior, that he has documentation, and that he is a citizen.

Viewed objectively, no reasonable officer in the same position would have concluded that such force was justified. Accordingly, the agents' conduct constitutes excessive force in violation of the Fourth Amendment.

### **iii. Violation of the Fifth Amendment (Substantive Due Process)**

Government actors may not "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend XIV. The Due Process Clause "centrally concerns the fundamental fairness of governmental activity." *N.C. Dep't of Revenue v. Kimberley Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 268 (2019). It is intended to prevent government officials "from abusing [their] power." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 840 (1998) (citations omitted) (brackets in original). "[T]he touchstone of due process is protection of the individual against arbitrary action of government" and "the exercise of power without any reasonable justification in the service of a legitimate governmental objective." *Id.* at 845–46 (citations omitted).

Among other protections, the Due Process Clause safeguards liberty in its most literal sense—shielding individuals from unjustified government intrusions on their freedom of movement. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); see also *Ingraham v. Wright*, 430 U.S. 651, 673

(1977) (“Among the historic liberties so protected was a right to be free from and to obtain judicial relief for unjustified intrusions on personal security.”). As the U.S. Supreme Court held over a century ago: “No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891) (affirming the fundamental “right ... to be let alone”); *Cf. Obergefell v. Hodges*, 576 U.S. 644, 663 (2015) (affirming the centrality of protecting “individual dignity and autonomy”).

Due process also forbids governmental conduct that “shocks the conscience.” *Rochin v. California*, 342 U.S. 165, 172 (1952). Abusive government actions “are, in and of themselves, antithetical to fundamental notions of due process.” *Parratt v. Taylor*, 451 U.S. 527, 545 (1981) (Blackmun, J., concurring) (citations omitted); *see also Fernandez v. Leonard*, 784 F.2d 1209, 1215–16 (1st Cir. 1986) (noting importance of preventing “abusive government conduct”) (internal quotation marks and citations omitted). Courts have described this forbidden conduct as “offensive to human dignity,” – *Rochin*, 342 U.S. at 174—an unjustified exercise of power lacking any legitimate governmental purpose.

Here, the brutality inflicted on Mr. Aceituno is the precisely the type of conduct the U.S. Supreme Court has condemned as unconstitutional. The violent detention and arrest of Mr. Aceituno violated the Fifth Amendment because these actions served no legitimate governmental purpose and were clearly excessive. Such conduct shocks the conscience, undermines the principles of due process, and cannot be justified under the law.

#### **iv. Violation of the Standards for Enforcement Activities**

The standards for immigration agents’ enforcement activities are codified, in relevant part, in 8 C.F.R. § 287.8 (Standards for Enforcement Activities). During the immigration agents’ interactions with Mr. Aceituno, the regulations were violated as follows:

##### **1. Warrantless Arrest**

The immigration agents failed to obtain a judicial warrant and lacked the requisite articulable facts to act without one. Their actions violated 8 C.F.R. § 287.8(c)(2)(ii), which states: “A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.” *See also* 8 U.S.C. § 1357. The burden rests with the government to demonstrate that the escape likelihood prong is satisfied, meaning that officers had reason to believe the individual was likely to escape before a warrant could be obtained. *United States v. Santos-Portillo*, No. 7:18-CR-10-1H, 2019 WL 3047427, at \*3 (E.D.N.C. May 31, 2019), *report and recommendation adopted*, No. 7:18-CR-10-1H, 2019 WL 3059774 (E.D.N.C. July 10, 2019), *aff’d*, 997 F.3d 159 (4th Cir. 2021).

For the reasons outlined above, there was no probable cause to believe that Mr. Aceituno was likely to escape or that he could have done so under the circumstances

preceding his arrest. Furthermore, prior to his arrest, Mr. Aceituno had already produced his REAL ID, demonstrating that he posed no flight risk. The warrantless seizure, detention, and arrest were unlawful.

## **2. Failure to State Reason for the Arrest**

As DHS's own regulations state, at the time of the arrest, the designated immigration agent shall, as soon as it is practical and safe to do so: (A) Identify himself or herself as an immigration agent who is authorized to execute an arrest; and (B) State that the person is under arrest and the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii). In Mr. Aceituno's case, the immigration agents failed to comply with this requirement. At no point did they inform Mr. Aceituno of the reason for his arrest. Their failure to follow this procedural safeguard contributed to the confusion and fear Mr. Aceituno experienced, especially considering that Mr. Aceituno had already shown immigration agents his REAL ID.

## **3. Illegal Use of Force**

As courts and law enforcement agencies alike have recognized, the use of force by law enforcement must be necessary under the circumstances and must never exceed what is necessary to carry out their lawful activities. Under 8 C.F.R. § 287.8(a)(iii): A designated immigration officer shall always use the minimum non-deadly force necessary to accomplish the officer's mission and shall escalate to a higher level of non-deadly force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

As DHS's own regulations reflect, the use of force is a grave measure that must be reserved exclusively for the most exigent and exceptional circumstances, where detention or arrest is legally proper, and where it is necessary, proportionate, and clearly justified under the law. Anything less undermines public trust, endangers lives, and violates the fundamental constitutional protections that shield individuals from arbitrary and excessive violence.

In this case, the immigration agents abused their power and unjustifiably escalated the encounter into violence. Mr. Aceituno was not physically resisting, yet the agents used a weapon to strike and shatter his window, destroying his property. The agents further escalated their excessive use of force by forcibly removing Mr. Aceituno from the vehicle. They then threw Mr. Aceituno to the pavement on top of the shattered glass while forcing his arms behind his back, all while members of the community shouted that his identification had already been checked and he was a U.S. citizen. At no point did the situation warrant the level of violence and excessive force inflicted by the agents. These circumstances constitute serious violations of the standards for immigration agent enforcement activities as codified in 8 C.F.R. § 287.8.

Ultimately, the immigration agents blatantly violated Mr. Aceituno's constitutional rights, as well as codified standards for immigration enforcement activities. This

egregious and patently unlawful conduct renders the discretionary function defense entirely inapplicable.

#### **IV. DAMAGES AND REQUESTED RELIEF**

For the reasons outlined above, Mr. Aceituno respectfully requests:

- 1) Damages in the amount of \$1,250,000.00;
- 2) Attorneys' fees and costs as permitted by law;
- 3) Such other and further relief as may be just, proper, and equitable.

#### **V. CONCLUSION**

For the reasons outlined above, Mr. Aceituno respectfully brings this action under the FTCA, seeking compensation for the extraordinary harm he suffered at the hands of the federal government.

Sincerely,

*Michela Delgado*

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