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12  
13 IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
14 AT SPOKANE

15 MOHANAD ELSHIEKY,  
16 Plaintiff,  
17 v.  
18 UNITED STATES OF AMERICA,  
19 Defendant.

Case No. \_\_\_\_\_

COMPLAINT FOR  
DAMAGES

**INTRODUCTION**

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1. Plaintiff Muhanad Saleh, A.K.A. Mohanad Elshieky (Mr. Elshieky) is a Libyan national who received asylum in the United States in October 2018. Despite having lawfully entered and being lawfully present in the United States, United States Customs and Border Protection (CBP) officers singled out Mr. Elshieky based on his North African appearance and unlawfully detained him after he boarded a domestic bus at the Spokane Intermodal Center on January 27, 2019.

2. The CBP agents who detained Mr. Elshieky had no reasonable suspicion, much less probable cause, to believe that Mr. Elshieky had violated or was violating any law, including immigration laws, when they unlawfully seized him. On the contrary, Mr. Elshieky produced two valid forms of identification that confirmed his lawful presence, his Oregon driver’s license and his employment authorization document (EAD). A CBP agent nevertheless ordered Mr. Elshieky off the bus and detained him. When Mr. Elshieky pointed out that he had provided a valid EAD, which is issued by U.S. Citizenship and Immigration Services (USCIS), the officers responded that “illegals fake these [documents] all the time and use them.” He repeatedly tried to explain his legal status and that he had been granted asylum, but the officers condescendingly dismissed his explanations and refused to allow him to re-board the bus.

3. Mr. Elshieky was unlawfully restrained, was deeply disturbed that agents of the United States government refused to acknowledge immigration documents issued by USCIS, and desperately feared that he would be deported back to Libya.

1 4. After detaining Mr. Elshieky for twenty minutes, the CBP agents  
2 eventually whispered amongst themselves and ultimately decided they would “let  
3 him go this time,” implying they were doing him a favor — even though Mr.  
4 Elshieky was at all times lawfully present and the CBP officials had no basis to  
5 seize him.

6 5. CBP’s unlawful detention caused Mr. Elshieky to suffer loss of liberty,  
7 significant humiliation, fear, trauma, stress, disruption, emotional distress,  
8 economic loss, and other damages.

9 6. Mr. Elshieky brings this action under the Federal Tort Claims Act  
10 (FTCA), 28 U.S.C. §§ 1346(b) and 2671-2680, to vindicate his rights.

11 **JURISDICTION**

12 7. This action arises under the Constitution and laws of the United States,  
13 including the FTCA. This court has jurisdiction over the subject matter of this  
14 complaint pursuant to 28 U.S.C. §§ 1331 (federal question statute) and 1346(b)  
15 (United States as a defendant).

16 **EXHAUSTION**

17 8. Pursuant to 28 U.S.C. § 2675(a), Mr. Elshieky submitted an  
18 administrative tort claim to Customs and Border Protection (CBP) on April 25,  
19 2019. A redacted copy of Mr. Elshieky’s administrative claim is attached hereto as  
20 **Exhibit 1**. A copy of the government’s receipt of acknowledgment of the claim is  
21 attached as **Exhibit 2**.

22 9. CBP issued a final disposition denying the claim on September 11,  
23 2019. 28 U.S.C. § 2675(a). A copy of CBP’s final disposition is attached as

1 **Exhibit 3.** Plaintiff has thus exhausted all available administrative remedies and is  
2 filing this complaint in accordance with the FTCA.

3 **VENUE**

4 10. Venue in the U.S. District Court for the Eastern District of Washington  
5 is proper under 28 U.S.C. § 1402(b). The acts and omissions central to this  
6 complaint occurred in Spokane County.

7 **PARTIES**

8 11. Plaintiff Mohanad Elshieky is a resident of New York City, where he  
9 works as a professional comedian. Mr. Elshieky is of North African descent.

10 12. Defendant United States of America is the appropriate defendant for  
11 claims brought pursuant to the FTCA. 28 U.S.C. § 1346(b).

12 **FACTS**

13 **Mr. Elshieky's Immigration Status**

14 13. Mr. Elshieky is a citizen of Libya who entered the United States on a J-  
15 1 exchange student visa in June 2014. Prior to leaving Libya, Mr. Elshieky spent  
16 some time working as an English teacher at a school funded by the U.S. State  
17 Department and as a translator for international journalists. He also helped run a  
18 local radio program.

19 14. Shortly after arriving in the United States, civil war erupted in Libya.  
20 Two major Libyan airports were bombed, and Mr. Elshieky was notified that people  
21 were looking for him in Libya, had raided his room, and were searching for  
22 documents to prove his allegiance to one of the warring factions.

1 15. Due to his work as an interpreter and English teacher, as well as his  
2 radio program, Mr. Elshieky could not safely return to Libya. As a result, he sought  
3 asylum in the United States, and, in October 2018, U.S. Citizenship and  
4 Immigration Services (USCIS) granted his application. Thus, when Mr. Elshieky  
5 was unlawfully seized by CBP officers, he was lawfully present in the United  
6 States. Mr. Elshieky has applied for long-term permanent residency, and his  
7 application is currently pending.

### 8 **Spokane Intermodal Center**

9 16. The Spokane Intermodal Center is a transportation facility located at  
10 221 W. First Ave., Spokane, WA 99201. The Intermodal Center contains the  
11 Greyhound bus station.

12 17. At the time of Mr. Elshieky's unlawful detention, all buses that arrived  
13 at and departed from the Spokane Intermodal Center traveled purely domestic  
14 routes. In other words, no bus arrived at the Spokane Intermodal Center on a route  
15 that came from an international border, nor did any bus route departing the Spokane  
16 Intermodal Center go to an international border. The Intermodal Center is  
17 approximately 107 miles south of the Canadian border by highway.

### 18 **Unlawful Restraint and Detention**

19 18. Mr. Elshieky works as a comic writer and stand-up comedian. At the  
20 time of the incident, Mr. Elshieky was based out of Portland, Oregon, and  
21 frequently traveled to other regions to perform stand-up comedy.

22 19. On the morning of January 27, 2019, Mr. Elshieky was returning home  
23 to Portland following a stand-up comedy performance the night before at

1 Washington State University in Pullman, Washington. Mr. Elshieky's trip home,  
2 which he took by Greyhound bus, was purely domestic and included no  
3 international border crossings. His first bus from Pullman arrived in Spokane  
4 shortly after 8:00 AM. Mr. Elshieky's second bus was scheduled to depart at 11:30  
5 AM, so he briefly left the station to buy breakfast and otherwise waited for the bus  
6 at the Spokane Intermodal Center. When the bus arrived, Mr. Elshieky loaded his  
7 baggage, boarded, and took a window seat near the back of the bus.

8 20. Soon after he had sat down, Mr. Elshieky noticed two CBP officers  
9 board the bus. Initially, he believed they were Greyhound employees sent to match  
10 passengers' IDs to their tickets. One officer stood at the front of the bus near the  
11 driver, while the other began moving towards the back of the bus. This second  
12 officer (CBP Agent 1) selectively questioned individuals on board. One man, who  
13 appeared to be of Hispanic descent, was questioned by the officer until he produced  
14 a U.S. passport. Two other people, both also of apparent Hispanic descent, were  
15 forced to exit the bus after the CBP officer questioned them. Mr. Elshieky does not  
16 recall the CBP officer questioning any Caucasian passengers.

17 21. CBP Agent 1 arrived at Mr. Elshieky's seat and asked him for  
18 identification. Mr. Elshieky promptly produced his valid, unexpired Oregon state  
19 driver's license.

20 22. The State of Oregon requires proof of lawful presence in the United  
21 States before issuing a driver's license to a resident. Or. Rev. Stat. § 807.021(1).

22 23. After reviewing Mr. Elshieky's license, CBP Agent 1 asked whether  
23 Mr. Elshieky was a United States citizen. When Mr. Elshieky responded that he

1 was not and that he was a citizen of Libya, the officer's demeanor shifted. He  
2 placed one hand on the seat in front of Mr. Elshieky and another on the seat beside  
3 him, blocking Mr. Elshieky's exit and restraining his movement from the seat.

4 24. CBP Agent 1 then asked Mr. Elshieky to produce a passport, but Mr.  
5 Elshieky responded that he did not have one with him. After hearing his response,  
6 the officer inquired whether Mr. Elshieky had any other form of identification, and  
7 Mr. Elshieky produced his original employment authorization document (EAD)  
8 issued by the USCIS. After Mr. Elshieky presented both his EAD and his Oregon  
9 driver's license, CBP Agent 1 ordered Mr. Elshieky to follow him off the bus. Mr.  
10 Elshieky complied and exited the bus with the officer.

11 25. Outside the bus, four or five additional CBP officers were questioning  
12 the two other individuals of color who had been ordered off the bus. One of these  
13 additional officers (CBP Agent 2) approached Mr. Elshieky and CBP Agent 1.  
14 Despite having been provided with Mr. Elshieky's driver's license and EAD, the  
15 officers proceeded to further question Mr. Elshieky.

16 26. Mr. Elshieky informed the officers that he was lawfully present in the  
17 United States, as he had arrived in the United States on a J-1 visa in 2014. He  
18 explained that he then applied for asylum, and that USCIS had recently granted him  
19 asylum in October 2018.

20 27. The officers then asked if Mr. Elshieky had his asylum approval  
21 document with him. He informed the officers that he does not carry the approval  
22 notice, a paper document, but pointed out that he had a valid, USCIS-issued EAD  
23 based on his asylum application, with all of his information on it.

1 28. Instead of acknowledging his valid work permit, the officer retorted  
2 that “illegals fake these [documents] all the time and use them.” When Mr.  
3 Elshieky tried again to explain his status to the officers, they disparagingly  
4 dismissed his explanations and claimed that “we’ve heard this all before” and that  
5 “illegals say that all the time.”

6 29. After Mr. Elshieky repeated that he was lawfully present in the United  
7 States, CBP Agent 2 took his EAD and made a phone call.

8 30. Mr. Elshieky was unable to hear the entire phone conversation that  
9 followed, but he did hear the officer reading off the information from his EAD to  
10 the person on the other end of the line. He was also able to hear that the person on  
11 the phone verified that some record of Mr. Elshieky was in the system.

12 31. However, after the phone call ended, CBP Agent 2 claimed that there  
13 were no records of Mr. Elshieky’s asylum grant and that all they knew was that Mr.  
14 Elshieky had arrived on a now-expired J-1 visa.

15 32. Mr. Elshieky responded by once again informing the officers that  
16 USCIS had granted him asylum in October of 2018, but the officers insisted there  
17 were no records of his asylum case, ignoring the obvious evidence presented by Mr.  
18 Elshieky’s EAD.

19 33. Mr. Elshieky gave up trying to convince the officers about his status,  
20 and instead stated that he wished to speak to his lawyer and wanted his paperwork  
21 back. In response, CBP Agent 1 yelled at Mr. Elshieky to take his hands out of his  
22 pockets.



1 34. Mr. Elshieky complied, but he sensed that the officers' frustration was  
2 growing as he attempted to assert his lawful status and right to counsel. As a result,  
3 he became quiet.

4 35. The officers then consulted one another, whispering for a time. At the  
5 end of their conversation, the officers informed Mr. Elshieky that they would "let  
6 him go this time," implying they were doing him a favor — even though Mr.  
7 Elshieky was at all times lawfully present and the CBP officials had no grounds to  
8 detain him.

9 36. The CBP officers' detention of Mr. Elshieky lasted around 20 minutes.  
10 After the officers let him go, Mr. Elshieky boarded the bus, which by now was late  
11 because of the CBP officers' detention of Mr. Elshieky. The bus immediately left  
12 after Mr. Elshieky boarded for the second time.

### 13 **Consequences of Unlawful Arrest**

14 37. As a direct result of the CBP officers' actions, Mr. Elshieky suffered  
15 significant emotional harm. At the time of the seizure, Mr. Elshieky feared he  
16 would be unlawfully deported and was afraid that he would be unable to contact  
17 anyone for assistance. Shaken by the officers' actions and considering the  
18 frightening events that had just occurred, Mr. Elshieky burst into tears when he re-  
19 boarded the bus and was consumed by anxiety during his 6.5 hour bus ride to  
20 Portland.

21 38. The events of that day have also produced lasting emotional trauma for  
22 Mr. Elshieky. Mr. Elshieky believed that obtaining asylum would end his fear of  
23

1 returning to Libya. Instead, the officers' actions have resulted in recurring  
2 nightmares for Mr. Elshieky that continue to this day.

3 39. The events of January 27, 2019, also reignited Mr. Elshieky's  
4 symptoms of post-traumatic stress disorder, making him fearful once more that he  
5 might end up in Libya, unable to flee to safety in the United States.

6 40. Moreover, in the two weeks immediately following the incident, Mr.  
7 Elshieky had to cancel several of his shows as a professional comedian. After  
8 trying to do one show, Mr. Elshieky realized the emotional trauma that he  
9 experienced on January 27, 2019, made him unable to perform effectively.

10 41. Mr. Elshieky publicized the CBP officers' actions shortly after the  
11 incident, frustrated at the unlawful and degrading treatment that he had received.  
12 After publicizing these wrongful activities, Mr. Elshieky became the target of  
13 hateful, xenophobic, and smearing messages that exacerbated the emotional harm  
14 he experienced because of the officers' actions.

15 42. In addition, the CBP officers' actions offended Mr. Elshieky's sense of  
16 dignity and belonging. Despite having finally obtained asylum — and the safety  
17 that status provides — the CBP officers treated Mr. Elshieky as someone without  
18 rights and without a voice. Instead, they profiled him as "illegal," disregarded his  
19 valid, original documentation, and disparaged his repeated attempts to detail his  
20 lawful status.

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1 **FIRST CLAIM FOR RELIEF**

2 **Federal Tort Claims Act – False Arrest**

3 43. Mr. Elshieky re-alleges and incorporates by reference each and every  
4 allegation contained above as though fully set forth herein.

5 44. Under Washington law, the tort of false arrest is committed when a  
6 plaintiff demonstrates the defendant’s “unlawful violation of a person’s right of  
7 personal liberty or the restraint of that person without legal authority.” *Bender v.*  
8 *City of Seattle*, 99 Wn.2d 582, 591 (1983).

9 45. CBP agents restrained and interfered with Mr. Elshieky’s liberty of  
10 movement by restricting him to his bus seat during questioning, taking his  
11 identification documents, and removing him from the bus for further questioning.  
12 CBP agents used displays of force and authority to ensure that Mr. Elshieky did not  
13 feel free to leave. The agents did so without a warrant, probable cause, or  
14 reasonable suspicion to believe that Mr. Elshieky had committed or was committing  
15 an offense against the United States.

16 46. CBP restrained and detained Mr. Elshieky for unlawful reasons, based  
17 on his race. State and federal law prohibit these reasons for initiating a seizure or  
18 restraint of a person’s movement.

19 47. CBP restrained Mr. Elshieky without legal authority, committing the  
20 state tort of false arrest.

21 48. CBP’s foregoing actions caused Mr. Elshieky to suffer harm, including  
22 but not limited to loss of liberty, significant humiliation, fear, trauma, stress,  
23 disruption, emotional distress, economic loss, and other damages.

1 49. Defendant United States of America is liable for these acts and  
2 omissions under the FTCA.

3 **SECOND CLAIM FOR RELIEF**

4 **Federal Tort Claims Act – False Imprisonment**

5 50. Mr. Elshieky re-alleges and incorporates by reference each and every  
6 allegation contained above as though fully set forth herein.

7 51. Under Washington law, a false imprisonment claim involves similar  
8 elements as those required to establish a false arrest. *See Bender v. City of Seattle*,  
9 99 Wn.2d 582, 591 (1983).

10 52. CBP officers unlawfully restrained and interfered with Mr. Elshieky's  
11 liberty of movement by restricting him to his bus seat during questioning, taking his  
12 identification documents, and removing him from the bus for further questioning.  
13 CBP officers used displays of force and authority to ensure that Mr. Elshieky did  
14 not feel free to leave. The officers did so without a warrant, probable cause, or  
15 reasonable suspicion to believe that Mr. Elshieky had or was committing an offense  
16 against the United States.

17 53. CBP restrained and detained Mr. Elshieky for unlawful reasons, based  
18 on his race. State and federal law prohibit these reasons for initiating a seizure or  
19 restraint of a person's movement.

20 54. CBP restrained, detained, arrested, and imprisoned Mr. Elshieky  
21 without legal authority, committing the state tort of false imprisonment.

1 55. CBP’s foregoing actions caused Mr. Elshieky to suffer harm, including  
2 but not limited to loss of liberty, significant humiliation, fear, trauma, stress,  
3 disruption, emotional distress, economic loss, and other damages.

4 56. Defendant United States of America is liable for these acts and  
5 omissions under the FTCA.

6 **THIRD CLAIM FOR RELIEF**

7 **Federal Tort Claims Act – State Civil Rights Tort**

8 57. Mr. Elshieky re-alleges and incorporates by reference each and every  
9 allegation contained above as though fully set forth herein.

10 58. Under the FTCA, the United States is liable “to the claimant in  
11 accordance with the law of the place where the act or omission occurred.”  
12 28 U.S.C. § 1346(b)(1).

13 59. Washington law recognizes a right to be free from discrimination  
14 based on race, color, or national origin under the Washington Law Against  
15 Discrimination (WLAD). RCW 49.60.030(1).

16 60. Under Washington law, this right to be free from discrimination  
17 includes “[t]he right to the full enjoyment of any of the accommodations,  
18 advantages, facilities, or privileges of any place of public resort, accommodation,  
19 assemblage, or amusement.” RCW 49.60.030(1)(b). Such places include “any  
20 place . . . for public conveyance or transportation on land, water, or in the air,  
21 including the stations and terminals thereof.” RCW 49.60.040(2). “Full  
22 enjoyment” of the place includes being admitted to the place “without acts directly  
23

1 or indirectly causing persons . . . to be treated as not welcome, accepted, desired, or  
2 solicited.” RCW 49.60.040(14).

3 61. Washington law provides a private cause of action to recover money  
4 damages for individuals who have been injured by a violation of their right to be  
5 free from discrimination. RCW 49.60.030(2).

6 62. The Ninth Circuit has recognized that an FTCA claim can arise based  
7 on a violation of the state tort of “[i]nterference with the civil rights of the  
8 plaintiffs.” *See, e.g., Xue Lu v. Powell*, 621 F.3d 944, 950 (9th Cir. 2010). This  
9 Court has similarly recognized that such claims are cognizable. *Segura v. United*  
10 *States*, --- F. Supp. 3d ---, 2019 WL 6255482, at \*4 (E.D. Wash. Nov. 22, 2019).

11 63. CBP officers violated Mr. Elshieky’s right to be free from  
12 discrimination when two CBP agents, at least one of whom was armed, interfered  
13 with Mr. Elshieky’s full enjoyment of the Spokane Intermodal Center by singling  
14 out Mr. Elshieky and removing him from the bus in front of the other passengers  
15 based only on Mr. Elshieky’s race. Mr. Elshieky was one of three people of color  
16 who were removed from the bus for questioning, and the CBP agents treated Mr.  
17 Elshieky differently than they treated other passengers because Mr. Elshieky is a  
18 person of color. The CBP agents also accused Mr. Elshieky of having falsified  
19 documents because he is a person of color.

20 64. CBP acted based on discriminatory and retaliatory reasons explicitly  
21 prohibited by law.

22 65. CBP’s foregoing actions caused Mr. Elshieky to suffer harm, including  
23 but not limited to, loss of liberty, significant humiliation, fear, trauma, stress,

1 disruption, emotional distress, economic loss, and other damages as a result of the  
2 discrimination to which he was subjected by CBP. As a result of CBP's  
3 discriminatory treatment of him, Mr. Elshieky had to miss work, has suffered  
4 nightmares, and has a renewed fear of being forced to return to Libya.

5 66. Defendant United States of America is liable for these acts and  
6 omissions under the FTCA.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully requests relief as follows:

- 9 a. Trial by judge on all claims so triable.
- 10 b. Compensatory damages in an amount to be proven at trial.
- 11 c. Costs and reasonable attorneys' fees.
- 12 d. The right to conform the pleadings to the proof and evidence presented  
13 at trial.
- 14 e. Such other relief as the Court deems just and equitable.

15  
16 DATED this 14th day of February, 2020.

17  
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