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14 KEBIN REYES, a minor, by and through his
father and guardian, NOE REYES

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

19 KEBIN REYES, a minor, by and through his
20 guardian *ad litem* NOE REYES,

21 Plaintiff,

22 v.

23
24 NANCY ALCANTAR, San Francisco Field Office
Director for Detention and Removal Services,
25 Immigration Customs Enforcement, in her
individual capacity, and DOES 1 through 50
26 inclusive,

27 Defendants.
28

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE FOURTH AND FIFTH
AMENDMENTS TO THE UNITED
STATES CONSTITUTION**

DEMAND FOR JURY TRIAL

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1 Plaintiff KEBIN REYES, by and through his guardian *ad litem*, NOE REYES, alleges as
2 follows:

3 **JURISDICTION**

4 1. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(4),
5 and 28 U.S.C. § 1367.

6 **VENUE**

7 2. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391.

8 **INTRADISTRICT ASSIGNMENT**

9 3. Assignment to the San Francisco or Oakland Division of this Court is proper under
10 Local Rule 3-2(d) because a substantial part of the events or omissions giving rise to Plaintiff's
11 claims occurred in Marin County.

12 **THE PARTIES**

13 4. Plaintiff KEBIN REYES (also referred to hereinafter as "Kebin") is a United States
14 citizen of Guatemalan descent. He is seven years old and resides within the Northern District of
15 California. Pursuant to Federal Rule of Civil Procedure 17(c), Plaintiff brings this action by and
16 through NOE REYES (also referred to hereinafter as "Mr. Reyes"), who is Plaintiff's father and
17 also resides within the Northern District of California. Plaintiff, who is a minor, is not competent
18 to bring this action on his own behalf. Mr. Reyes is willing and able to act as Plaintiff's guardian
19 *ad litem* and will conduct this litigation at all times in Plaintiff's best interests.

20 5. Defendant NANCY ALCANTAR is Field Office Director in San Francisco,
21 California for Immigration and Customs Enforcement, Office of Detention and Removal
22 Operations. At all relevant times, ALCANTAR was acting under color of federal law and is sued
23 in her individual capacity.

24 6. At all relevant times, Defendants DOES 1 through 50 (also referred to hereinafter
25 as the "DOE defendants"), each of whom Plaintiff sues in his or her individual capacity, were
26 agents, employees, or otherwise representatives of United States Immigration and Customs
27 Enforcement (also referred to hereinafter as "ICE") or other federal agencies. At all relevant
28 times, DOES 1 through 50 were acting under color of federal law. Plaintiff is informed and

1 believes and thereon alleges that that many, if not all, of DOES 1 through 50 are residents of the
2 Northern District of California. Plaintiff is informed and believes and thereon alleges that DOES
3 1 through 50, inclusive, are legally responsible for the wrongs committed against Plaintiff, as
4 alleged herein. When Plaintiff becomes aware of the true identities of one or more DOE
5 defendants, Plaintiff will amend his complaint to add or substitute them as named Defendants.

6 7. Plaintiff is informed and believes and thereon alleges that each of the Defendants
7 caused, and is liable for the unconstitutional and unlawful conduct and resulting injuries, by,
8 among other things, personally participating in said conduct or acting jointly with others who did
9 so; by authorizing, acquiescing or setting in motion policies, plans or actions that led to the
10 unlawful conduct; by failing to take action to prevent the unlawful conduct; by failing or refusing
11 with deliberate indifference to maintain adequate training and supervision; and/or by ratifying the
12 unlawful conduct taken by employees under their direction and control. Plaintiff is informed and
13 believes and thereon alleges that Defendants' actions were pursuant to a policy, custom, or usage
14 of ICE or other related federal agencies.

15 **FACTS GIVING RISE TO THE CLAIMS**

16 8. On March 6, 2007, Defendants seized Kebin, a United States citizen, and took him
17 into their custody, without lawful cause and without a warrant for his arrest, at his residence in San
18 Rafael, California.

19 9. Defendants arrived at Kebin's residence in the early morning hours of March 6,
20 2007. Armed and wearing clothes bearing the word "police," Defendants entered the residence
21 and demanded the immigration papers and passports of Kebin and his father. Upon information
22 and belief, Defendants did not have lawful authorization or a valid warrant for entering the home.
23 Kebin's father provided Defendants with Kebin's U.S. passport, identifying Kebin as a United
24 States citizen. Kebin's father truthfully answered the questions asked of him.

25 10. Defendants informed Kebin's father that they were taking him into custody.
26 Despite being placed on notice that Kebin is a United States citizen, Defendants instructed his
27 father to waken Kebin because they were going to seize him as well. Kebin's father requested
28 repeatedly that Defendants permit him to make a phone call to a family member living nearby who

1 could care for Kebin so that he would not be taken into forced custody. But Defendants refused to
2 permit Kebin's father to make a phone call. Defendants seized Kebin and his father. Defendants
3 took Kebin and his father to an ICE office in San Francisco and held them there against their will.

4 11. At the ICE office, Kebin's father again requested to make a phone call to arrange
5 for Kebin's care, but Defendants did not allow him to make a phone call. Defendants told Kebin
6 that he would only need to stay at the ICE office for an hour or two. Instead, they held him in a
7 locked room all day against his will. Kebin thought he was in jail. Defendants refused to give
8 Kebin any food, other than bread and water. Kebin was hungry and crying. He did not know
9 when he would be free to leave.

10 12. That afternoon, a family member and family friend who had learned about the
11 incident from others in the neighborhood, came to the ICE office to seek Kebin's release and to
12 bring Kebin home. Defendants forced Kebin to remain in custody, without cause, for several more
13 hours, until evening, before they released him.

14 13. As a direct and proximate result of Defendants' conduct, Kebin has been harmed.
15 His harm includes but is not limited to:

16 (a) being detained, arrested or seized and being detained and held for a period
17 of approximately 12 hours;

18 (b) being deprived of food, other than bread and water, for a period of
19 approximately 12 hours;

20 (c) being denied the opportunity to make a phone call or to have one made for
21 him to arrange for his care;

22 (d) pain and suffering; and

23 (e) being subject to intimidation and inflicted with emotional and mental
24 distress.

25 14. Plaintiff is informed and believes and thereon alleges that the above-described acts
26 of Defendants were done knowingly, intentionally, maliciously, with deliberate, reckless or
27 callous indifference to Plaintiff's security, freedom, and civil and constitutional rights, or with
28 intent to injure, harass, and oppress Plaintiff. Accordingly, Plaintiff is entitled to an award of

1 punitive damages against Defendants.

2 **FIRST CLAIM FOR RELIEF**

3 **(Violation of Fourth Amendment and Title 8 United States Code Section 1357)**

4 **(Against All Defendants)**

5 15. Plaintiff hereby incorporates paragraphs 1 through 14 above and each allegation
6 therein as though fully set forth herein.

7 16. The Fourth Amendment to the United States Constitution provides that each person
8 has the right to be secure in his or her person, houses, papers, and effects, against unreasonable
9 searches and seizures.

10 17. By committing the above-described acts, Defendants violated Plaintiff's rights
11 under the Fourth Amendment to the United States Constitution.

12 18. The conduct of Defendants violated clearly established constitutional or other
13 rights of which Defendants knew, or of which a reasonable public official should have known.
14 Defendants exceeded their authority to make detentions, seizures and arrests, including the
15 limitations set forth in Title 8 United States Code Section 1357.

16 19. Plaintiff has no effective administrative mechanism or other remedy at law by
17 which to seek the proper measure of damages for these constitutional wrongs.

18 **SECOND CLAIM FOR RELIEF**

19 **(Violation of Fifth Amendment)**

20 **(Against All Defendants)**

21 20. Plaintiff refers to and incorporates paragraphs 1 through 19 as though fully set forth
22 herein.

23 21. The Fifth Amendment to the United States Constitution requires that no person
24 shall be deprived of life, liberty or property without due process of law.

25 22. By committing the above-described acts, Defendants violated Plaintiff's rights
26 under the substantive due process and/or procedural due process clauses of the Fifth Amendment
27 to the United States Constitution.

28 23. The conduct of Defendants violated clearly established constitutional or other

1 rights of which defendants knew, or of which a reasonable public official should have known.

2 24. Plaintiff has no effective administrative mechanism or other remedy at law by
3 which to seek the proper measure of damages for these constitutional wrongs.

4 **ADDITIONAL CLAIMS FOR RELIEF**

5 25. In addition to filing this Complaint, Plaintiff is presenting a claim pursuant to the
6 Federal Tort Claims Act seeking relief from the United States of America. If the claim is denied,
7 Plaintiff will amend this Complaint to seek monetary damages from the United States of America
8 for various torts committed.

9 **PRAYER**

10 Plaintiff prays that judgment be entered in his favor and the following relief be granted
11 against each and every Defendant:

- 12 1. Actual and compensatory damages in an amount to be determined;
13 2. Punitive or exemplary damages against Defendants Alcantar and DOES 1-50 to the
14 extent permitted by law;

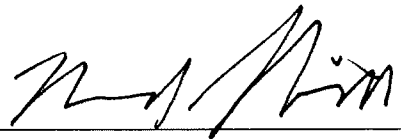
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3. Attorneys' fees and costs of suit, pursuant to all applicable statutory, common law,
or constitutional provisions; and
4. Such relief as the Court may deem just and proper.

Dated: April 26, 2007

COBLENTZ, PATCH, DUFFY & BASS LLP

By: 
Howard A. Slavitt

Attorneys for Plaintiff
KEBIN REYES, a minor, by and through his
father and guardian, NOE REYES

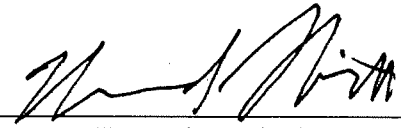
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable to the full extent permitted by law.

Dated: April 26, 2007

COBLENTZ, PATCH, DUFFY & BASS LLP

By: 
Howard A. Slavitt

Attorneys for Plaintiff
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