

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**ELIJAH BARRIENTOS,**  
*Plaintiff,*

**VS.**

**JASON TYE, in His Individual Capacity,**  
*Defendant.*

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**CASE NO. 1:25-cv-1078-DAE**

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Elijah Barrientos ("Plaintiff") complaining of Jason Tye, in His Individual Capacity, ("Defendant"), respectfully showing:

**1. Jurisdiction / Venue / Parties.**

1.1 This action is brought under 42 U.S.C. § 1983, 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3).

1.2 Venue is proper in this Court under 28 U.S.C. § 1391(b) as this is the judicial district in which a substantial part of the events or omissions giving rise to this action occurred.

1.3 Plaintiff, Elijah Barrientos, is a citizen of the State of Texas.

1.4 Defendant, Jason Tye, may be served at his place of employment, Texas Department of Public Safety, 5805 North Lamar Blvd., Austin, Texas 78752, or by any other manner authorized by the Federal Rules of Civil Procedure and/or other applicable law. Each of the acts complained of herein arise from the conduct of Defendant while acting under color of state law and was committed within the scope of his employment and/or authority with the Texas Department of Public Safety.

## **2. Statement of Facts.**

2.1 This is a civil rights action pursuant to 42 U.S.C. § 1983. Otherwise, on or about July 10, 2023, Plaintiff Elijah Barrientos was pulled over by Defendant Jason Tye, a trooper with the Texas Department of Public Safety, near a parking lot located at 8800 North Park Drive, Austin, Texas. On information and belief, Plaintiff had one or more outstanding warrants for his arrest at the time of the occurrence.

2.2 After Plaintiff brought his vehicle to a stop, Plaintiff exited the vehicle and began fleeing on foot. Defendant gave chase, and during said chase, Defendant tripped and fell. When Defendant rose back to his feet, he pointed his firearm at Plaintiff and pulled the trigger while Plaintiff's back was to Defendant and while Plaintiff was attempting to climb a fence. The bullet struck Plaintiff in his arm and was mere inches from potentially killing him.

2.3 At the time of the occurrence in question, Plaintiff was unarmed and was not posing an immediate threat of serious harm to Defendant or any civilians.

2.4 Each of Defendant's acts and/or omissions occurred while in the course and scope of his employment with the Texas Department of Public Safety and under color of state law. Defendant's acts amounted to an excessive and/or unnecessary use of force which were unreasonable under the circumstances and proximately caused Plaintiff personal injuries.

## **3. Demand for Relief.**

3.1 The allegations contained in Paragraphs 2.1 through 2.4 are incorporated herein fully. Plaintiff demands relief under 42 U.S.C. § 1983 for the deprivation of his rights, privileges or immunities secured by the United States Constitution.

Defendant, acting under color of state law and in the course and scope of his employment with the Texas Department of Public Safety, violated Plaintiff's rights, privileges and immunities secured by the Fourth Amendment of the Constitution, incorporated and applied to the states through the Fourteenth Amendment of the Constitution, including but not limited to the right to be free from unreasonable seizures. Said violations include but are not limited to when Defendant –

- Pointed his firearm at Plaintiff despite Plaintiff posing no immediate threat of serious danger to him or any other person present during the occurrence in question;
- Discharged his firearm despite Plaintiff posing no immediate threat of serious danger to him or any other person present during the occurrence in question;
- Shot Plaintiff despite Plaintiff posing no immediate threat of serious danger to him, or any other person present during the occurrence in question;
- Intended to kill Plaintiff despite Plaintiff posing no immediate threat of serious danger to him, or any other person present during the occurrence in question.

3.2 Defendant's actions were excessive, unreasonable under the circumstances and violated the Fourth Amendment of the Constitution.

3.3 Such acts and/or omissions committed by Defendant proximately caused personal injuries and damages to Plaintiff for which Plaintiff seeks recovery from Defendants in all elements recoverable under the substantive laws of the State of Texas, all such amounts to be determined by a duly-empaneled jury, and including but not limited to for the past and in reasonable probability the future: physical pain, mental anguish, physical impairment, and medical care expenses.

3.4 Such acts and/or omissions committed by Defendant were motivated by evil intent and/or involved a reckless or callous indifference to Plaintiff's federally

protected rights for which Plaintiff seeks the recovery of punitive damages against Defendant to the maximum extent permitted by applicable law.

3.5 Plaintiff pleads all matters herein supplementally and/or in the alternative, in order that these pleadings may effectuate the maximum degree of recovery available under applicable law against Defendant.

3.6 Plaintiff seeks prejudgment and post-judgment interest to the greatest extent permitted by applicable law.

3.7 Plaintiff also seeks all reasonable attorneys' fees and costs to which he is entitled pursuant to 42 U.S.C. § 1988.

3.8 Plaintiff respectfully demands a trial by jury and has paid any required fee.

#### **4. Prayer.**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to answer and appear herein, and that upon final jury trial, Plaintiff recover from Defendant all actual damages and punitive damages allowed under federal law and the substantive laws of the State of Texas within the jurisdictional limits of this Court, plus costs of court, reasonable attorneys' fees, prejudgment and post-judgment interest, and other relief to which Plaintiff may be justly entitled at law and in equity.