



II.  
JURISDICTION AND VENUE

1. THIS IS AN ACTION UNDER 42 USC § 1983 ARISING FROM THE DEPRIVATION OF PLAINTIFFS CIVIL RIGHTS BY DEFENDANTS.
2. THE JURISDICTION OF THIS COURT IS PREDICATED ON 28 USC § 1331 AND 1343.
3. VENUE IS PROPER IN THE EASTERN DISTRICT BECAUSE THE EVENTS COMPLAINED OF TOOK PLACE IN THE CITY OF CLOVIS; COUNTY OF FRESNO.
4. PLAINTIFF HAS SUFFERED INJURIES TRACEABLE TO THE ACTIONS OF THE DEFENDANTS AND THIS ACTION IS A CASE OF CONTROVERSY OVER WHICH THE COURT HAS JURISDICTION UNDER ARTICLE III OF THE CONSTITUTION OF THE UNITED STATES.

III.  
PARTIES

5. PLAINTIFF LUPE NIETO JR. WAS SHOT BY CITY OF CLOVIS POLICE OFFICER ON NOVEMBER 19, 2009. PLAINTIFF IS AND WAS AT ALL TIMES MENTIONED A RESIDENT OF FRESNO COUNTY, CALIFORNIA.
6. DEFENDANT POLICE OFFICER DRAKE HODGE AT ALL TIMES HEREIN MENTIONED WAS A POLICE OFFICER EMPLOYED BY CLOVIS POLICE DEPARTMENT IN THE CITY OF CLOVIS.
7. DEFENDANT DRAKE HODGE IS A RESIDENT OF FRESNO COUNTY, CALIFORNIA. AT ALL TIMES HEREIN MENTIONED DEFENDANT WAS AN AGENT OF THE CITY OF CLOVIS, EMPLOYED AS A POLICE OFFICER AND ACTING WITHIN THE SCOPE AND COURSE OF HIS EMPLOYMENT AT CLOVIS POLICE DEPARTMENT IN THE CITY OF CLOVIS.
8. DEFENDANT WERE AT ALL TIMES MENTIONED IN THIS COMPLAINT ACTING UNDER COLOR OF STATE LAW.
9. DEFENDANT AND THE CITY OF CLOVIS ARE SUED IN BOTH THEIR OFFICAL AND INDIVIDUAL CAPACITIES.

IV.  
FACTS

10. ON NOVEMBER 19, 2009 PLAINTIFF WAS SHOT WITH A LETHAL ROUND BY CLOVIS CITY POLICE OFFICER DRAKE HODGE.
11. WHILE LUPE NIETO JR. WAS DETAINED AND IN COMPLIANCE WITH VARIOUS OFFICERS COMANDS WITH BOTH HIS HANDS CLEARLY AND VISIBLY HELD ABOVE HIS HEAD, CLOVIS POLICE OFFICERS POSITIONED BEHIND PLAINTIFF FIRED MULTIPLE LETHAL ROUNDS FROM DEPARTMENT ISSUED WEAPONS. OFFICER DRAKE HODGES ALSO POSITIONED BEHIND LUPE NIETO JR. FIRED HIS WEAPON CAUSING THE BULLET TO IMPACT PLAINTIFFS HAND.

1 12. PLAINTIFF HAD CLEARLY COMPLIED WITH ALL OFFICERS COMMANDS. DESPITE THIS FACT  
2 PLAINTIFF HAD SURRENDERED AND REPRESENTED ZERO THREAT AND WAS UNARMED A  
3 TOTAL OF THREE LIVE LETHAL ROUNDS WERE FIRED DIRECTLY AT PLAINTIFF, ONE OF  
4 THESE ROUNDS IMPACTED PLAINTIFFS HAND.

5 13. WITNESS ACCOUNTS ALSO DIFFER AS TO WHETHER PLAINTIFF WAS IN COMPLIANCE  
6 WITH VERBAL COMMANDS, ISSUED BY ARRESTING OFFICERS.

7 14. WITNESS ACCOUNTS ALSO DIFFER AS TO WHETHER LETHAL FORCE WAS THE APPROPRIATE  
8 FORCE USED, AGAINST PLAINTIFF.

9 15. ON NOVEMBER 19, 2009 PLAINTIFF WAS TAKEN TO COMMUNITY REGIONAL MEDICAL CENTER  
10 AND TREATED FOR A LETHAL BULLET ROUND TO THE HAND.

11 16. UPON RELEASE FROM THE HOSPITAL PLAINTIFF WAS TRANSPORTED TO FRESNO COUNTY JAIL  
12 AND BOOKED ON CRIMINAL ALLEGATIONS, CASE # F-09906564.

13 17. PLAINTIFF NOW HAS MARKEDLY LIMITED MOBILITY IN HIS LEFT HAND DUE TO THE INJURY  
14 SUSTAINED BY THIS LETHAL ROUND. PLAINTIFF PRIOR TO THIS INCIDENT WAS IN THE  
15 CONSTRUCTION FIELD IN ALL OF WHICH PLAINTIFF PERFORMED MANUAL LABOR.

16 18. THE CLOVIS POLICE DEPARTMENT IN THE CITY OF CLOVIS HAS A CLEARLY ESTABLISHED  
17 "USE OF FORCE" POLICY WHICH PROVIDES THAT LETHAL FORCE SHALL ONLY BE USED OR,  
18 ADMINISTERED BY POLICE OFFICERS WHEN GREAT BODILY HARM OR DEATH IS IMMINENT  
19 AND NON-LETHAL MEANS ARE INCAPABLE OF PREVENTING SUCH HARM.

20 19. NO NON-LETHAL FORCE WAS ATTEMPTED OR USED.

21 V.  
22 STATEMENT OF CLAIM  
23 DEPRIVATION OF CIVIL RIGHTS  
24 42 USC 31983

25 20. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE THE ALLEGATIONS CONTAINED  
26 IN PARAGRAPHS 1 THROUGH 19 AS THOUGH FULLY SET FORTH HEREIN.

27 21. DEFENDANTS ACTS AS HEREIN ALLEGED DEPRIVED PLAINTIFF OF HIS RIGHT GUARANTEED  
28 BY THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION TO BE FREE FROM  
CRUEL AND UNUSUAL PUNISHMENT AND DEPRIVED PLAINTIFF OF HIS RIGHT GUARANTEED  
BY THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION NOT  
TO BE DEPRIVED OF LIFE, LIBERTY, AND PROPERTY WITHOUT DUE PROCESS OF THE LAW.

29 22. IN DOING THE ACTS SET FORTH HEREIN, DEFENDANTS ACTED UNDER THE COLOR OF  
STATE LAW AND KNEW OR SHOULD HAVE KNOWN THAT THEIR CONDUCT CREATED AN  
UNREASONABLE RISK OF HARM TO PLAINTIFF, THAT THEIR CONDUCT DEPRIVED PLAINTIFF  
OF HIS CONSTITUTIONAL RIGHTS STATED ABOVE AND THAT THEIR CONDUCT WAS IN  
DIRECT CONTRAVENTION OF ESTABLISHED POLICIES AND PROCEDURES OF THE CLOVIS  
POLICE DEPARTMENT IN THE CITY OF CLOVIS.

1 23. AS A DIRECT FORESEEABLE RESULT OF DEFENDANTS VIOLATION OF PLAINTIFFS  
2 CONSTITUTIONAL RIGHTS, PLAINTIFF SUFFERED AND WILL CONTINUE TO SUFFER  
3 PAIN, PERMANENT DISFIGURMENT, EMOTIONAL DISTRESS, PARTIAL LOSS OF USE  
4 OF HIS LEFT HAND AND OTHER INJURIES.

5 24. DEFENDANTS ACTIONS WERE WILLFUL, INTENTIONAL, WANTON AND IN CONSCIOUS  
6 DISREGARD OF PLAINTIFFS RIGHTS.

7  
8 VI.  
9 RELIEF REQUESTED

10 WHEREFORE PLAINTIFFS PRAY FOR JUDGEMENT AS FOLLOWS:

11 1. A DECLARATION THAT THESE ACTS DESCRIBED ABOVE ARE IN VIOLATION OF THE  
12 FOURTH, EIGHTH AND FOURTEENTH AMENDMENTS WHICH GRANT CONSTITUTIONAL  
13 PROTECTIONS TO PLAINTIFF;

14 2. AN INJUNCTION ENJOINING DEFENDANTS, THEIR AGENTS, AND ALL PERSONS  
15 ACTING IN CONCERT WITH THEM, FROM SUBJECTING PLAINTIFF TO THE UNLAWFUL  
16 ACTS AND DEPRIVATIONS OF CONSTITUTIONAL RIGHTS DESCRIBED ABOVE;

17 3. AN AWARD OF COMPENSATORY AND PUNITIVE DAMAGES TO PLAINTIFF IN AN  
18 AMOUNT TO BE DETERMINED AT TRIAL;

19 4. PLAINTIFFS REASONABLE ATTORNEY FEES AND COSTS IF AND WHEN HE IS ABLE TO  
20 SECURE LEGAL COUNSEL TO REPRESENT HIM IN THIS MATTER, AND

21 5. FOR SUCH OTHER AND FURTHER RELIEF AS THE COURT DEEMS PROPER

22 DATED: 11-11-10

23  
24 Lupe Nieto Jr.  
25 LUPE NIETO JR. PROSE  
26  
27  
28

PROOF OF SERVICE

I hereby declare that I am over the age of 18 years of age, a resident of the State of California and not a party to the within cause of action. That on this date I did cause a true and correct copy of:

AMENDED COMPLAINT FOR DAMAGES  
(42 USC § 1987)  
DEMAND FOR JURY TRIAL

to be served on the parties to the action by:

depositing same in the U.S. Mail with first class postage prepaid and

addressed as follows:

UNITED STATES COURTS OFFICE OF THE CLERK,  
UNITED STATES DISTRICT COURT EASTERN DISTRICT  
OF CALIFORNIA  
FRESNO, CALIFORNIA 93721-1318

delivering same in person to the address as follows and placing into the control of the below listed party or representative:

by faxing said document to the following telephone number:

Executed this 12 day of NOVEMBER, 20 10, under penalty of perjury in Fresno, California.

Lupe Nieto Jr.

Declarant