

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**A. R. JR., A. R.,
And F. R., minor children**

By their next friend, Teresa Romero,

Plaintiffs,

No.

v.

Demand for Jury Trial

**BRYAN ACEE, GREGORY WATTERSON,
DAVID KICE and FEDERAL OFFICERS
JOHN DOE Nos. 1-8,
in their Individual Capacities.**

Defendants.

COMPLAINT

I. Introduction

1. This case challenges Federal Bureau of Investigation (“FBI”) agents indiscriminately tossing flash bang stun grenades into a small trailer where minor children were sleeping when the agents knew or should have known that the minor children were present. The grenade(s) exploded causing shrapnel to enter the head and shoulder area of ten-year-old Plaintiff A.R. Jr. and causing severe emotional trauma to both A.R. Jr., his nine-year-old brother, Plaintiff A. R., and his twelve year old sister, F.R. who also was cut by shrapnel. The use of the flash bang grenade(s) under the totality of the circumstances was objectively unreasonable and constituted an unlawful seizure. In fact, these violations of Plaintiffs’ constitutional rights occurred because Defendants conduct was not only objectively unreasonable but rose to the level of willful, reckless and malicious conduct, which directly caused Plaintiffs to suffer serious

physical and emotional injuries. This case is brought against the individual Defendants for violating Plaintiffs' rights under the Fourth Amendment to the United States Constitution. Plaintiffs seek compensatory and punitive damages and such other relief as the Court deems appropriate.

II. Parties and Jurisdiction

2. Plaintiff A.R. Jr. is a twelve-year-old resident of Dona Ana County, New Mexico. He is represented in this lawsuit by his next friend, Teresa Romero who is his grandmother and legal custodian.

3. Plaintiff A.R. is an eleven-year-old resident of Dona Ana County, New Mexico. He is represented in this lawsuit by his next friend, Teresa Romero who is his grandmother and legal custodian.

4. Plaintiff F. R. is a fourteen-year-old resident of Dona Ana County, New Mexico. She is represented in this lawsuit by her next friend, Teresa Romero who is her grandmother and legal custodian.

5. Defendant Bryan Acee was, at all times material hereto, employed as an agent with the Federal Bureau of Investigation ("FBI"), United States Department of Justice, and acted under color of law and in his capacity as a federal law enforcement officer. He is sued in his individual capacity.

6. Defendant Gregory Watterson was, at all times material hereto, employed as an agent with the Federal Bureau of Investigation ("FBI"), United States Department of Justice, and acted under color of law and in his capacity as a federal law enforcement officer. He is sued in his individual capacity.

7. Defendant David Kice was, at all times material hereto, employed as an agent with the Federal Bureau of Investigation (“FBI”), United States Department of Justice, and acted under color of law and in his capacity as a federal law enforcement officer. He is sued in his individual capacity.

8. Defendants Federal officers John Does 1-8 were, at all times material hereto, employed as agents with the Federal Bureau of Investigation (“FBI”) agents, United States Department of Justice, and acted under color of law and in their capacities as federal law enforcement officers. These defendants were members of the FBI SWAT Team that executed the entry into Plaintiffs’ home and threw the grenades into the trailer. Their identities are not yet known. They are sued in their individual capacities.

9. Jurisdiction over all the claims is present under 28 U.S.C. §§1331,1343, and 1346.

III. Facts Regarding The Investigation Of Abel Romero Sr. And the Procurement of The Search Warrant For Plaintiffs’ Home.

10. From approximately February 5, 2013, through March 20, 2013, Defendants Acee and Watterson led an investigation into Plaintiffs’ father, Abel Romero Sr., then 29 years of age. Mr. Romero had sole custody of Plaintiffs. Mr. Romero lived in a small trailer in Anthony, New Mexico, with his 47-year-old mother, Teresa, his 60 year old step father Rosalio Ramirez, who bought and sold scrap metal, his younger sister, Perla Ramirez, and his three minor children.

11. Mr. Romero was suspected of being a street drug dealer. Defendants used an informant from El Paso, Texas, to purchase small amounts of drugs from Mr. Romero. Defendants also had the informant solicit Mr. Romero to obtain and sell him guns. The last purchase of contraband occurred on February 19, 2013.

12. Around April 29, 2013, Defendants decided to seek a warrant to search the trailer and a warrant to arrest Mr. Romero. Defendants knew that no other residents of the house were known to be violent and had no reason to believe that any of them would resist an FBI search team as it executed a search warrant. Defendants also knew that Mr. Romero often left the house by himself and could easily be arrested away from the house so that the search warrant could then be executed without any potential harm to the children or other residents. Defendants also knew that Mr. Romero, who had an extensive arrest record, had no record of using firearms and had no record of physically resisting police officers. Defendants also knew from their informant that Mr. Romero did not generally store firearms in the trailer but would obtain them from other sources and store them outside the house.

13. Most significantly, based on wiretaps, direct conversations with the informant and the “numerous occasions” they had conducted surveillance of the trailer, during the course of their investigation Defendants Acee and Watterson had learned that Mr. Romero had minor children living in the small trailer. At the same time, Defendants had no information as to where in the trailer any of the three minor children slept.

14. On or about April 29, 2013, Defendant Acee prepared an application to obtain a search warrant for Plaintiffs’ home and presented it to a magistrate. The search warrant application presented facts for the purpose of procuring the issuance of a no-knock warrant that could be served any time of the day and stated that a SWAT Team would serve it. While stating that Mr. Romero had “prior arrests for assaultive behavior with weapons”, the warrant omitted that firearms had never been involved, a fact known to Defendants Acee and Watterson. While the warrant alleged that a no

knock warrant was needed because “Mr. Romero or another occupant may arm themselves or otherwise engage in violent resistance,” the warrant omitted the facts that Defendants had no information suggesting that Mr. Romero had ever used firearms or otherwise “violently resisted” a police officer and had no information that remotely suggested that Mr. Romero’s minor children or his mother, step-father or sister, presented such a threat.

15. Most significantly, Defendant Acee omitted: a) the fact that minor children were living in the trailer and were likely to be home when the warrant was executed and b) omitted the fact that during the entry into the home Defendants intended to use explosive devices, namely the type of grenades used by the United States military for urban warfare operations, and the explosive devices would or might be thrown or otherwise placed into rooms where Defendants Acee and Watterson knew or should have known that minor children were highly likely to be sleeping. Defendant Acee also omitted the fact that he and Defendant Watterson knew that Mr. Romero often left the house by himself and could easily be arrested away from the house so that the search warrant could then be executed without any potential harm to the children or other residents. On April 29, 2013, a magistrate approved the issuance of the search warrant and also approved the issuance of a warrant to arrest Mr. Romero.

16. Plaintiffs submit that had the search warrant application contained all the facts described above, particularly the fact that explosive devices were going to be used at a residence where it was known minor children would be, that under the totality of the circumstances present no reasonable magistrate would have authorized the indiscriminate use of explosive devices. Upon information and belief, Plaintiffs allege

that Defendant Watterson was familiar with the contents of the search warrant application before it was submitted to the magistrate and had approved it.

IV. The Facts Regarding The Pre-Dawn Entry Into Plaintiffs' Home.

17. The search warrant was executed in the early morning hours of May 8, 2013. Based on standard federal law enforcement procedures, Plaintiffs allege that on or about May 7, or May 8, 2013, Defendants gathered for a briefing concerning the plan to conduct a pre-dawn execution of the warrant to search Plaintiffs' home. Upon information and belief, because it is standard federal law enforcement procedure, Plaintiffs allege that Defendants received an operational plan for the execution of the search warrant as part of the briefing. Defendants Acee and Watterson, as the lead agents on the investigation, provided the SWAT Team members and the search team leader, Defendant Kice, with all the material information in their possession regarding the house that was the target of the search. This included but was not limited to the purpose of the search warrant, all information known about the place to be searched, and the persons expected to be present at 5:00am when the warrant was to be served. Additionally, there was discussion on the manner in which the warrant would be executed, including a discussion of the duties of each entry team member, what type of devices would be used to make the entry and who would use them. Moreover, Plaintiffs allege, upon information and belief, Defendants Acee, Watterson and/or FBI agents not yet identified, had conducted surveillance on the home during the twenty four hour period preceding the warrant execution in order to ascertain who might be at the targeted home at the time the warrant was going to be executed and this information was communicated to all Defendants.

18. Defendants knew from their investigation that it was highly likely there were minor children inside the trailer. They did not know who was sleeping in which rooms of the trailer because they had made no effort to determine this prior to the dynamic entry but knew or should have known that one or more of the minor children would be in the room(s) where they were going to throw the flashbang grenade(s).

19. During the briefing, Defendants Acee and/or Watterson or an FBI agent not yet identified informed the SWAT Team defendants and Defendant Kice that the FBI had information that minor children lived at the residence, that it was highly likely the minor children who lived there would be present at the time the warrant was to be executed, and that Defendants did not know where in the trailer they would be sleeping. Alternatively, Plaintiffs allege that Defendants Acee and/or Watterson recklessly and with deliberate indifference to the rights of Plaintiffs failed to inform the agents who would be conducting the entry of these material facts. However, the search warrant itself was reviewed at the briefing and it informed Defendants that employees of the New Mexico Department of Children, Youth and Families, an agency that conducts home visits solely in reference to minor children, had made a visit to the house. Thus, at minimum, Defendants knew that children were living at the house.

19. Defendants had decided to enter Plaintiffs' home prior to dawn and to use explosive devices to do so. Defendants decided to use what is believed to be 1 Bang BTV-EL grenade(s) with a 1.5 delay. The grenades used were incendiary devices capable of causing fire when in contact with flammable materials, capable of inflicting significant burns and, depending where and how they are used, to cause shrapnel to fly. The manufacturer advertises these grenades as "high performance stun grenades"

producing “blinding flashes” and “deafening noise” appropriate for “military operations in urban terrain”. Defendants knew from their training and/or instruction that flash bang grenades can be extremely dangerous and officers using them require significant training on how to use them before being allowed to do so. In fact, courts have described these devices as “bombs.” Prior to May 2013, courts had noted that these explosive devices can kill if they land on a person, especially a child. Defendants knew from their training and instruction that these explosive devices were never to be used in a room where minor children were believed to be located, were not to be used in rooms where it was not known who was likely to be in the rooms and were not to be indiscriminately tossed into a room.

20. By 5:00a.m, Defendants had gathered outside of Plaintiffs’ home. It was still dark. The trailer had three bedrooms, a living room and a kitchen. Because Plaintiffs had only recently been reunited with their dad, Plaintiffs and Mr. Romero were sleeping together in the living room. Plaintiff A.R. Jr. was sleeping on a couch and Plaintiff F.R. was sleeping on a couch on the opposite side of the room. Plaintiff A. R. was sleeping on a mattress set out on the floor. There was a door leading into a small living room and both plaintiffs were located within a few feet of the door. There was a large, glass console/entertainment center located near the door, in close proximity to Plaintiffs.

21. At approximately 5:00am, the SWAT Team defendants conduct a military type entry into the trailer. Defendants knew that there were minor children inside the trailer, had no idea who was sleeping in which rooms of the trailer because they had made no effort to determine this prior to the dynamic entry, but knew or should have known that one or more of the minor children would be in the room(s) where they were

throwing the flashbang grenades. The living room door was blown apart with an explosive device, busting the glass in the console and the north window and causing shrapnel to fly about in the living room. Shrapnel flew with such force that some pieces actually went through the interior wall just above the couch where Plaintiff A.R. Jr. was asleep and created a hole on the outside wall of the trailer. There was broken glass all over the floor. Although the doors opening to the three bedrooms were shut, including the doors to the two bedrooms located at the end of a hallway from the living room, the windows in all three bedrooms were shattered from the explosions. On information and belief, Plaintiffs allege that multiple grenades were thrown into the house. Plaintiffs heard several loud explosions. The explosive devices were placed or thrown into the rooms blindly without Defendants looking to see who was present or otherwise knowing who was present before igniting them.

22. Ten-Year old Plaintiff A.R. Jr. was asleep on the couch which faced the door. Fortuitously, Plaintiff happened to be sleeping on his left side with his back to the exploding door. Shrapnel, from the grenade or the door or perhaps the glass, hit him in the head and the upper shoulder area. The impact was such that Plaintiff could not breathe for a period of time. Blood was coming out of his head and shoulder area. Had young A.R. Jr. been sleeping on his other side and thus facing the door, he would likely have been blinded or even killed. Screaming and crying, Plaintiff was bleeding profusely, was in terrible pain, feared for his life, and was emotional traumatized by the explosion and the battery.

23. Nine year old Plaintiff A. R. woke up when the first explosion occurred and saw smoke when the door went down. Plaintiff was screaming and was terrified with

fear from the explosion that occurred within a few feet of him. Plaintiff feared he might be killed and was emotionally traumatized by the grenade explosions.

24. Twelve year old F.R. woke up when the first explosion occurred. She saw red smoke from the explosion that occurred in the living room in the immediate area where she had been sleeping. Plaintiff was terrified with fear from the explosion, feared she might be killed and was emotionally traumatized by the grenade explosions.

25. Defendants ordered all the occupants of the house go outside the house. Plaintiff F.R. was the first child to go out. Because she was ordered to immediately get out of the house, she was unable to put slippers on and her foot was cut by shrapnel from the exploding door or glass. Plaintiff A.R. Jr. was unable to get up at first because of the sharp pain in his upper back area. When he did get up, his shirt was drenched in blood. Mr. Romero, and his mother, stepfather, and adult sister were placed face down on the ground while the three minor children were permitted to sit. About 30 minutes after the entry, Defendant Kice and the search team began to search the premises. Plaintiff A.R. Jr., in great pain, continued to bleed profusely. At some point, an ambulance was called to transport him to the hospital. Plaintiff's clothes were covered in blood and he was allowed to change. Ultimately, Teresa Romero was permitted to drive Plaintiff to the hospital.

26. Defendant Kice or another agent took the blood soaked shirt, a pajama top, and it was never seen again by any member of Plaintiff's family. Additionally, when Defendant Kice wrote his report regarding the incident, he omitted the fact that there were three young, children at the residence at the time the flash bang grenades were thrown, describing them as merely as "siblings." Moreover, rather than disclose the fact

that a young child had been injured by the grenade attack, Defendant described Plaintiff A.R. Jr. as “a juvenile male”, a term that would have applied to a 17 year old.

27. After Defendants finally left the house, Mrs. Romero and the others surveyed the damage. The door had been completely destroyed. The console/entertainment center was destroyed. The floors, especially the living room floor, were covered with broken glass and debris. Numerous windows were blown out from one end of the trailer to the other. In the bedroom occupied by Mrs. Romero and Mr. Ramirez, glass lay all over the floor and clothing was strewn on top of it. The two bedrooms in the rear of the trailer were littered with broken window and mirror glass while the curtains in both rooms had holes in them. These bedrooms were located around 30-40 feet from the living room door. The living room ceiling was damaged in several areas. Metal shrapnel was stuck in numerous places in the living room walls. Some of the shrapnel had penetrated the inside wall and was stuck in the outside wall of the trailer. It took days to clean up the house. The Romero family received estimates to repair the damage that ranged from \$5500.00 to \$6250.00. The cost of replacing the entertainment center was an additional \$1500.00.

28. The conduct of Defendants described above was objectively unreasonable and violated the Fourth Amendment right of Plaintiffs A.R. Jr., A.R., and F.R. to be free from unreasonable force. As of May 8, 2013, the law was clearly established that persons had a Fourth Amendment right to be free from unreasonable force and that indiscriminately throwing grenades into an area without knowing who was likely to be located there, especially when it was known that young children lived in the home, constituted unreasonable force. No reasonable police officer could reasonably have

believed that the use of the type of explosive device used in the entry into Plaintiffs' home in the indiscriminate manner in was used, especially given that Defendants knew or should have known that little children were likely to be asleep in the house at the time of the entry, was lawful.

29. At all times material hereto, Defendants acted under color of federal law. Their conduct resulted in the unlawful seizure of Plaintiffs and was objectively unreasonable in all respects. Defendants' conduct described herein violated Plaintiffs' rights under the Fourth Amendment of the United States Constitution to be free from unreasonable seizures.

V. Damages

30. As a direct result of Defendants' conduct, Plaintiff A.R. Jr. suffered significant physical injury and significant pain from that injury and further suffered and continues to suffer severe emotional trauma that aggravated a pre-existing condition. Plaintiff further suffered the violation of his Fourth Amendment rights.

31. As a direct result of Defendants' conduct, Plaintiff F.R. suffered a cut to her foot and further suffered and continues to suffer severe emotional trauma that aggravated a pre-existing condition. Plaintiff further suffered the violation of her Fourth Amendment rights.

32. As a direct result of Defendants' conduct, Plaintiff A.R. suffered and continues to suffer severe emotional trauma that aggravated a pre-existing condition. Plaintiff further suffered the violation of his Fourth Amendment rights.

33. Because all Defendants acted willfully, oppressively, maliciously, and with deliberate indifference for Plaintiffs' constitutional rights, Plaintiffs are each entitled to an award of punitive damages against each of the individual defendants.

WHEREFORE, Plaintiffs pray for the following relief against Defendants and each of them:

1. Compensatory damages in an amount to be determined by the jury against the individual Defendants.
2. Punitive damages against each individual Defendant in an amount to be determined by the jury;
3. Pre-judgment and post-judgment interest;
4. Reasonable costs incurred herein; and
5. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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