

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

Julio Trujillo Santoyo,

Plaintiff,

v.

United States of America,

Defendant.

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CIVIL ACTION NO. 5:17-CV-54

PLAINTIFF’S ORIGINAL COMPLAINT

The Plaintiff, Julio Trujillo Santoyo, through counsel, respectfully brings this action under the Federal Tort Claims Act (FTCA) seeking damages against the Defendant for false imprisonment. As a result of the Defendant’s actions, the Plaintiff was unlawfully detained in the Bexar County Adult Detention Center (BCADC) from March 24, 2016 until June 8, 2016 without his consent, without notice of any charges, without a warrant, notice to appear in removal proceedings, or order of removal, and in violation of law. In furtherance of his claim the Plaintiff alleges as follows:

INTRODUCTION

1. The Plaintiff was unlawfully detained in the BCADC in San Antonio, Texas for 76 days after his State criminal charges were dismissed because officers of the Immigration and Customs Enforcement (ICE), who are employees of the Defendant and law enforcement officials as defined by 28 U.S.C. § 2680(h), acted in excess of their statutory authority. In violation of the Fourth and Fifth Amendments, and in violation of Texas tort law pertaining to false imprisonment, the Defendant’s ICE officers issued a detainer on January 20, 2016 which caused Bexar County to unlawfully detain the Plaintiff after his charges were dismissed. Exh. A, Immigration Detainer.

2. ICE's authority to issue detainers without a warrant is limited by statute. 8 U.S.C. § 1357(d); 8 U.S.C. § 1226; and 8 U.S.C. § 1357(a). However, ICE regularly exceeds its statutory authority by issuing detainers without a warrant, without a notice to appear in removal proceedings, without a final order of removal, and without providing the affected individual notice about the immigration detainer. ICE's detainer practice exceeds the authority granted to it under the Immigration and Nationality Act (INA).

3. Immigration detainers violate the Fourth Amendment because they result in an arrest and detention without a warrant. The detainers violate the due process clause of the Fifth and Fourteenth Amendments inasmuch as the affected individual is provided no notice about a pending charge and is not afforded a hearing or any process by which to challenge the detainer before any judicial or administrative authority.

4. Bexar County has no authority to arrest individuals for violations of the federal immigration laws. Nevertheless, Bexar County maintains a policy, practice, and custom of detaining individuals in the BCADC whenever ICE issues them a detainer request. Pursuant to this policy, practice, and custom, Bexar County detains individuals suspected of violating federal immigration law even when it lacks the authority to do so. ICE is aware of Bexar County's unlawful policy and colludes with Bexar County to detain individuals pursuant to ICE detainer requests even when the person's State criminal charges have been dismissed or when the affected individual has posted a bond.

5. The Plaintiff has filed a separate action against Bexar County as a result of the unlawful detention which he suffered, an action that also includes multiple claims for relief against certain officers of the Department of Homeland Security and ICE. *See* Plaintiff's First Amended Complaint, *Trujillo v. Bexar County*, No. 5:16-CV-855 OLG (W.D.T.X. Oct. 20, 2016), ECF Doc.

11.

5. ICE's immigration detainer was the direct and proximate cause for the Plaintiff to be wrongfully detained in the BCADC for approximately 76 days after his criminal charges were dismissed. Employees of the Defendant incorrectly alleged in their detainer that they had a final order of removal against the Plaintiff, and this resulted in Plaintiff's unlawful detention. In fact, no such final removal order existed. Furthermore, employees of the Defendant left the Plaintiff to languish in the BCADC for approximately 76 days without a warrant for arrest, without notice of any charges against him (there were none), without any opportunity to be considered for release on bond, and without any other legal process of any kind. In so doing, the Defendant caused the Plaintiff to be unlawfully detained for around 76 days.

6. The Plaintiff now brings this FTCA action to seek monetary damages against the Defendant, whose employees, as a result of their wrongful acts or omissions, would be liable under Texas law for committing the tort of false imprisonment against the Plaintiff. The FTCA provides this Court with jurisdiction to award monetary damages to redress an injury "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1); *see also* 28 U.S.C. § 2674. The FTCA expressly includes an action seeking damages for false imprisonment caused by "acts or omissions of investigative or law enforcement officers of the United States Government." 28 U.S.C. § 2680(h). This includes "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." *Id.*

7. The tort of false imprisonment, as defined by Texas law, includes three elements: (1)

willful detention; (2) without consent; and (3) without authority of law. *Wal-Mart Stores, Inc. v. Rodriguez*, 92 S.W.3d 502, 506 (Tex. 2002); *Sears, Roebuck Co. v. Castillo*, 693 S.W.2d 374, 375 (Tex. 1985). The Defendant caused the Plaintiff to be falsely imprisoned by unlawfully issuing a detainer against the Plaintiff and leaving him to languish in the BCADC for around 76 days. ICE knew or should have known that, as a direct and proximate result of the issuance and maintenance of an immigration detainer, the Plaintiff would remain detained in the BCADC. By so issuing the detainer, the Defendant willfully caused the Plaintiff to be detained without his consent and without any authority of law. Accordingly, this Court should award monetary damages to redress the Defendant's unlawful actions.

JURISDICTION

8. This action arises under the FTCA. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1346(b)(1); 2674; 2680(h).

9. Venue is proper in this district because the Plaintiff resides in Bexar County and all of the underlying events occurred in this district. 28 U.S.C. § 1391(b).

PARTIES

10. The Plaintiff is an adult who currently resides in Bexar County, Texas. He was unlawfully detained as a result of acts or omissions by Defendant in the BCADC for approximately 76 days after his State charges for misdemeanor assault were dismissed.

11. The Defendant United States of America is being sued pursuant to the FTCA for the acts or omission of its ICE employees who, while acting within the scope of their employment, willfully caused the Plaintiff to be detained without his consent and without any authority of law and thereby caused injury to the Plaintiff. These employees include Enrique Lucero, the former Field Office Director of the San Antonio Field Office for the ICE Office of Detention and Removal Operations.

He was the Field Office Director during the time period when the Plaintiff was illegally detained. Lucero was responsible for formulating and implementing policies applicable to the ICE San Antonio Field Office concerning the detention of prisoners. In this regard, Lucero was responsible for ensuring that these policies did not result in the unconstitutional detention of inmates at the BCADC as the result of a detainer request issued by ICE. Lucero was also responsible for ensuring that inmates detained at the BCADC as a result of ICE's detainer requests and policies were detained pursuant to and in accordance with federal regulations. Furthermore, Lucero was responsible for training and supervising his staff to ensure that those inmates held at ICE's request in the Bexar County Jail are detained pursuant to and in accordance with federal law and that their detention does not violate the Constitution. In this case, Lucero's acts or omission caused the Plaintiff's unlawful detention. The aforementioned employees also include Leonard Davis, the ICE officer who issued the immigration detainer against the Plaintiff which led to his unlawful detention. Lucero and Davis are both law enforcement officers of the Defendant as defined by 28 U.S.C. § 2680(h) and both were acting within the scope of their employment at all times relevant to this complaint.

FACTS

A. Immigration detainer requests generally.

12. ICE issues detainer requests to State and local law enforcement agencies (LEAs) when they desire to investigate whether an individual in the custody of an LEA violated federal immigration law. The detainer requests LEAs to detain individuals after their charges are dismissed, they posted a bond, or served their sentence to permit ICE time to assume custody.

13. ICE detainer requests carry no lawful mandate and the LEA who receives such a request is under no lawful obligation to abide by it. *See Galarza v. Szalczyk*, 745 F.3d 634, 640-45 (3d Cir.

2014) and 8 C.F.R. § 287.7 (“The detainer is a request that such agency advise the Department, prior to the release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.”). In fact, the Tenth Amendment prevents federal immigration officials from ordering state or local officials to imprison suspected immigration violators “at the request of the federal government.” *Galarza*, 745 F.3d at 643.

14. When an LEA continues to detain a person after their charges are dismissed, they posted bond, or they served their sentence, the LEA has re-arrested the individual without a warrant.

15. ICE detainer requests are issued to LEAs on forms I-247, I-247N, I-247D, and Form I-247-X. These forms are not warrants, enforceable orders, and are in no way binding upon the local LEA that receives it. Nor do immigration detainers require probable cause that the detainee committed a crime. In fact, immigration detainers are routinely used to detain individuals based upon suspected civil violations of the immigration laws.

16. ICE does not provide an administrative procedure for challenging the issuance of a detainer. Nor do many LEAs, including Bexar County, provide any process by which the affected individual can challenge the ICE detainer.

17. Immigration detainers are not subject to review by a neutral judge or magistrate, nor are they subject to the same procedural and substantive due process requirements and safeguards to which ordinary criminal detainers are subject.

18. The statutory authority for such detainers is located in 8 U.S.C. § 1357(d). Although the plain language of § 1357(d) plainly limits the use of detainers to individuals detained “for violation of any law relating to controlled substances,” ICE routinely issues detainers against individuals who are detained for offenses other than controlled substances violations.

19. Congress provided that ICE must obtain “a warrant issued by the Attorney General” to arrest an individual “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). ICE can only effectuate warrantless arrests for a violation of the immigration law when the officer has reason to believe that the individual “is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2). In violation of § 1357(a)(2), ICE routinely issues detainers—which are not warrants—that result in an individual’s arrest by an LEA without conducting an individualized determination about whether the person is likely to escape. *See, e.g., Moreno v. Napolitano*, No. 11-C-5452, 2016 U.S. Dist. LEXIS 136449 (N.D. Ill. Sep. 30, 2016) (interpreting § 1357(a)(2) to require an individualized determination that the detainee “is likely to escape” before a warrantless arrest pursuant to an ICE detainer can be effectuated).

20. Bexar County and ICE routinely collude to detain individuals without a warrant whenever ICE issues a detainer request.

21. In a sworn statement provided to this Court in a separate action, the Defendant Bexar County admitted that they have a policy, practice, and custom of detaining individuals pursuant to ICE detainer requests. Exh. C, Affidavit of Janette Torres at ¶¶ 5-7. Thus, it is the actual policy, practice, and custom of Bexar County to hold detainees with immigration detainers in the BCADC awaiting pick-up by the federal immigration authorities, even when such people have had bond posted on their behalf, have paid their fines, have no additional charges pending against them, and are not subject to any judicial order requiring or authorizing their continued detention.

22. On March 23, 2016, former Bexar County Sheriff Susan Pamerleau testified before the Texas State Senate on border security that there were 90 people detained in the BCADC with ICE detainer requests, which demonstrates the high number of individuals affected by ICE detainer

practice in Bexar County. *Video testimony available at http://tlcsenate.granicus.com/MediaPlayer.php?view_id=40&clip_id=10949.* Indeed, Sheriff Pamerleau represented to Texas State Senator Brian Birdwell that Bexar County complies with all immigration detainer requests. *See* Exh. B. Bexar County detains such individuals regardless if there is a properly authorized warrant allowing them to do so.

23. Based on information and belief, the Defendant at all times relevant to this action was colluding with Bexar County and was aware of the aforementioned policy, practice, and custom of detaining individuals pursuant to ICE detainer requests.

B. The Plaintiff unlawful detention in the BCADC
from March 24, 2016 until June 8, 2016.

24. On or around January 20, 2016, Plaintiff was arrested for misdemeanor assault and detained at the BCADC.

25. On January 20, 2016, in a custodial setting at the BCADC, and without access to counsel, Leonard Davis, an ICE agent and employee and law enforcement officer of the Defendant, interrogated the Plaintiff about his immigration status. Davis failed to Mirandize the Plaintiff before his custodial interrogation. Subsequent to the custodial investigation, Davis filed an immigration detainer with Bexar County requesting that the Plaintiff remain in the BCADC beyond the time when he would otherwise be released to allow ICE an opportunity to assume his custody. *See* Exh. A, Immigration Detainer.

26. In the detainer request, Davis inaccurately represented that probable cause existed that the Plaintiff was a removable alien based on a final order of removal. On January, 20, 2016, the day when the detainer was issued, ICE had no final order of removal which they could legally execute against the Plaintiff. They did not procure an order of removal until June 8, 2016. *See* Exh. D Removal Order. Thus, Davis' basis for "probable cause" was incorrect as a matter of law and the

Plaintiff was provided no legal channel by which to challenge it.

27. At no time while Plaintiff was in custody at the BCADC did ICE seek a warrant of arrest for federal immigration violations.

28. On or around March 24, 2016, Plaintiff's misdemeanor assault charge was dismissed. *See* Exh. E, Order of dismissal.

29. The Plaintiff remained in unlawful detention at the BCADC after his charges were dismissed pursuant to the ICE detainer request. The Plaintiff remained in BCADC without a warrant for arrest, order from a Court, order of removal, or other legal basis until June 8, 2016. He was in custody at BCADC for approximately 76 days after his criminal charges were dismissed pursuant to the ICE detainer. He was at no time presented before a magistrate or other authority for a hearing. Nor was he provided bail or the opportunity to seek a bond. At no time prior to June 8, 2016 did ICE take any action to release the Plaintiff from his unlawful detention.

30. ICE's immigration detainer request was the direct and proximate cause for Plaintiff to be unlawfully detained for approximately 76 days in the BCADC.

31. During his unlawful detention, the Plaintiff submitted multiple inquiries with Bexar County seeking to understand why he was detained after the Bexar County Court dismissed the misdemeanor criminal case against him. Bexar County informed the Plaintiff that he was being detained pursuant to a detainer request from immigration officials. Exh. F, Affidavit of Julio Trujillo Santoyo.

32. On April 29, 2016—over one month after his criminal charges were dismissed—the Plaintiff wrote to the Bexar County Sergeant's Office:

“What's my release date? And do I have bond or what? My case has already been dismissed. Let me know something.”

To which the response was:

“Hold for ICE.”

See Exh. G, Correspondence with Bexar County; Exh. F at ¶ 6.

33. Plaintiff’s girlfriend also inquired on multiple occasions about why Plaintiff remained in custody after his misdemeanor assault charge was dismissed. Exh. F at ¶ 10. Bexar County repeatedly informed her that the Plaintiff was detained pursuant to a request from federal immigration officials. *Id.* at ¶¶ 4-8.

34. Plaintiff’s girlfriend then called ICE who informed her that the Plaintiff was not on their list to be picked up.

35. During Plaintiff’s custody at the BCADC he was never served with a warrant for his arrest for federal immigration violations, a notice to appear before an immigration judge, or a final order of removal. *Id.* at ¶ 8. He also was not served with the ICE detainer request in violation of ICE policy. *Id.* He was not provided a bond, judicial review, or provided any due process of law.

36. On June 6, 2016, Plaintiff, still being unlawfully detained without a warrant or pending charges, was forced to hire counsel and pay attorney fees for an attorney to seek his release from unlawful detention in the BCADC. *Id.* at ¶ 11.

37. On June 8, 2016, the Plaintiff was released from BCADC and taken into ICE custody. *See* Exh. H, Letter from the Bexar County Sheriff’s Office confirming the dates of Plaintiff’s detention in the Bexar County Jail.

38. Issuance and maintenance of the immigration detainer by the Defendant’s ICE officers was the direct and proximate cause of the Plaintiff’s detention in the BCADC against his will, without his consent, and with absolutely no legal authority, from March 24, 2016 (the date when his State criminal charges were dismissed) to June 8, 2016 (the date when ICE assumed his custody).

39. On June 8, 2016, ICE agents assumed custody of the Plaintiff and read him his Miranda rights.

40. From March 24, 2016 until June 8, 2016, while under arrest and detained at the BCADC, the Plaintiff was not charged with any offense under federal immigration laws. He was held without a warrant for his arrest. He did not receive prompt independent review of whether there was probable cause to detain him. He was not provided notice about any pending charges. He had no opportunity to appear before a judge to seek his release, to learn why he was deprived of his liberty, or post a bond.

C. The Plaintiff administrative complaint with ICE.

41. On August 29, 2016, the Plaintiff submitted an administrative complaint to ICE requesting the agency to pay damages caused by the Plaintiff's unlawful detention. *See* Exh. I. The complaint alleged that ICE is liable under the FTCA for falsely imprisoning the Plaintiff pursuant to the detainer request issued by the ICE San Antonio Field Office. *See id.* The Plaintiff requested damages in the amount of one million dollars. *See id.*

42. On January 11, 2017, ICE mailed a letter to the Plaintiff's counsel denying the Plaintiff's administrative complaint and denying any liability under the FTCA. *See* Exh. J.

43. The Plaintiff has exhausted all administrative remedies as required by law. *See* 28 U.S.C. § 2675(a).

CLAIM FOR RELIEF

44. The foregoing allegations, numbered 1-43, are incorporated by reference.

45. As a result of the wrongful acts or omission of law enforcement officers and employees of the Defendant who were acting within the scope of their employment, the Plaintiff was deprived of his liberty and willfully detained for approximately 76 days.

46. The Plaintiff did not consent to this detention.

47. The Plaintiff's detention was without lawful authority.

48. Accordingly, if the Defendant were a private actor, it would be liable under Texas law for the tort of false imprisonment under the law of Texas, the State where the aforementioned acts or omission occurred. *See Wal-Mart Stores, Inc.*, 92 S.W.3d at 506 (Tex. 2002); *Sears, Roebuck Co.*, 693 S.W.2d at 375.

49. The Defendant's false imprisonment of the Plaintiff is a direct and proximate cause of the Plaintiff's injuries sustained as a result of his unlawful detention.

50. The Defendant is therefore liable for damages caused to the Plaintiff pursuant to the Federal Tort Claims Act. *See* 28 U.S.C. §§ 1346(b)(1); 2674; 2680(h).

51. The Plaintiff is entitled to compensatory damages of one million dollars, court costs, and any other relief this Court deems just and proper.

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests the Court enter the following orders:

- a) Enter judgment in favor of the Plaintiff against the Defendant for compensatory damages in the amount of one million dollars;
- b) Order the Defendant to pay all court costs incurred in bringing this action; and
- c) Grant the Plaintiff any and all additional relief to which he may appear to be entitled.

Respectfully submitted,

/s/ Juan Carlos Rodríguez

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