

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RAMON MENDOZA and)
LAURA MENDOZA,)
)
Plaintiffs,)
)
v.)
)
U.S. IMMIGRATION AND)
CUSTOMS ENFORCEMENT;)
JOHN DOES #1-5,)
SARPY COUNTY, NEBRASKA)
SHERIFF JEFF DAVIS, and)
JOHN DOES #6 - 10,)
)
Defendants.)

CASE NO.

**COMPLAINT AND REQUEST
FOR JURY TRIAL**

Plaintiffs allege:

1. Plaintiffs Ramon Mendoza and Laura Mendoza are husband and wife. At the date of the events described in this complaint, they resided in Papillion, Sarpy County, Nebraska.
2. Plaintiffs are citizens of the United States.
3. Defendant U.S. Immigration and Customs Enforcement (ICE) is an agency of the United States government.
4. Defendants "John Doe" 1-5 were employed by ICE on March 5-8, 2010. Every act attributed to them alleged in this complaint was committed during the course of their employment, under color of law.
5. Defendant Sarpy County is a political subdivision created by the laws of the state of Nebraska.
6. Defendant Sarpy County Sheriff Jeff Davis is a duly elected official empowered by law to operate and control the county jail for Sarpy County, Nebraska.

Every act or omission attributed to him alleged in this complaint occurred in the course of his employment, under color of state law.

7. Defendants “John Doe” 6-10 (“Sarpy County John Does 6-10”) were employed by the Sarpy County jail on March 5-8, 2010. Every act attributed to them alleged in this complaint was committed during the course of employment, under color of state law.

8. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983; U.S. Const. Amends. IV, V, VIII, X and XIV; 28 U.S.C.A. § 2680 *et seq.*; Neb. Const. Art. I, §§ 3, 7 and 9; Neb. Rev. Stat. § 13-901 *et seq.*, and other applicable provisions of Nebraska and federal law.

9. Prior to filing this action Plaintiffs administratively presented their claims to the appropriate governing bodies according to the Nebraska Political Subdivisions Tort Claims Act., Neb. Rev. Stat. § 13-901 *et seq.* and the Federal Tort Claims Act, 28 U.S.C.A. § 2680 *et seq.* None of these bodies responded to the merits of Plaintiffs’ claims.

10. At about 4 p.m. on Friday, March 5, 2010, Plaintiff Ramon Mendoza (“Mendoza”) was driving his automobile near 719 North Washington St. in Papillion, Sarpy County, Nebraska.

11. Law enforcement officers directed Mendoza to stop in a parking lot near that location. Mendoza did so.

12. The officers told Mendoza they stopped him to investigate an obstruction to driver visibility in Mendoza’s vehicle. A small medal on a ribbon was hanging from the interior rear view mirror attached to the windshield of Mendoza’s vehicle. A cloth

Mexican flag, folded flat, was on the interior shelf adjacent to the rear window of Mendoza's vehicle.

13. The officers determined that Mendoza did not have a current driver's license or proof of automobile insurance, and they arrested him. Mendoza was transported without incident to the Sarpy County jail and booked on charges of driving under revocation of license and no proof of insurance, both Class II misdemeanors, and an infraction charge for objects in the vehicle that obstructed visibility.

14. No other criminal charges or outstanding arrest warrants for Mendoza existed on March 5, 2010.

15. At the Sarpy County jail Mendoza truthfully stated his name, address, telephone number, Social Security number and all other information requested of him. Mendoza reasonably believed that this biographical information was also already in the jail's records, as he served a short sentence there in 2008 for a misdemeanor conviction.

16. Sarpy County John Does 6-10 held Mendoza in a locked jail cell as they completed booking paperwork and a shift change.

17. During the booking process, without alerting Mendoza Sarpy County John Does 6-10 telephoned ICE and John Does 1-5 to inquire whether ICE had a "detainer" on Mendoza.

18. Upon information and belief, ICE issues "detainers" to advise other law enforcement agencies that ICE seeks custody of an alien not legally in the United States, for the purpose of arresting and deporting that alien from the United States.

19. ICE and John Does 1 - 5 did not conclusively affirm that ICE had a detainer on Mendoza – and in fact, none existed. However, Sarpy County John Does 6-10 told Mendoza that he could not be released from the Sarpy County jail because ICE had issued a detainer on Mendoza.

20. Mendoza reiterated his name, address, Social Security number, U.S. citizenship and U.S. passport status to Sarpy County John Does 6-10, and urged them to confirm this information by reviewing the jail's file information from Mendoza's 2008 misdemeanor sentence. Mendoza was not afforded the opportunity to post a bail bond for his release from the Sarpy County jail.

21. Mendoza was not afforded the opportunity to post a bail bond for his release from the Sarpy County jail.

22. At no time during Mendoza's confinement at the Sarpy County jail did Sarpy County John Does 6-10 provide Mendoza with information or means to challenge or inquire further about the alleged ICE detainer.

23. At no time during Mendoza's confinement at the Sarpy County jail did ICE or John Does 1-5 interview Mendoza, or provide him an opportunity to supply proof of his American citizenship.

24. Sarpy County John Does 6-10 refused to release Mendoza from the Sarpy County jail, insisting that he was a Mexican alien illegally present in the U.S. Sarpy County John Does 6-10 stated to Mendoza that "you fooled us then but we've got you now", that Mendoza would have to serve a ten-year federal prison sentence, and that Mendoza would be deported to Mexico.

25. Sarpy County John Does 6-10 detained Mendoza against his will at the Sarpy County jail from Friday, March 5 – Monday, March 8, 2010.

26. At the Sarpy County jail Mendoza was confined in a locked cell with two men who were ICE detainees, neither of whom spoke English. Mendoza was not permitted to use a telephone to contact his wife or legal counsel. Mendoza was not allowed to leave the cell for exercise, or go to common areas in the jail.

27. During his confinement in the Sarpy County jail Mendoza was subjected to insults by Sarpy County John Does 6-10, including but not limited to:

- a. “Every spic eats our [jail staff] spit in our jail.”
- b. “Don’t talk to me, and don’t think we have anything in common, motherfucker.”
- c. “You’re a wetback here illegally.”

John Does 6-10 also showed Mendoza a picture of a swastika.

28. Mendoza’s wife Plaintiff Laura Mendoza, and Mendoza’s son went to the Sarpy County jail at least five (5) times during March 5 - 8, 2010, bringing Mendoza’s certificate of U.S. citizenship, his Social Security card, his birth certificate, his marriage license and his U.S. passport in order to prove Mendoza’s American citizenship and secure his release. Laura Mendoza also brought cash to post bond for Mendoza’s release.

29. Sarpy County John Does 6-10 refused to admit Laura Mendoza to the facility, refused to review the documents she brought to prove Mendoza’s American citizenship, and refused to allow her to post bond for Mendoza’s release.

30. Sarpy County John Does 6-10 refused to allow Laura Mendoza to see or speak with Mendoza, and they did not notify Mendoza of his wife's efforts to gain his release.

31. As a direct, proximate result of his detention Mendoza became increasingly distressed and despondent. On March 8, 2010, the fourth day of his detention, Mendoza cut one of his wrists with the thought of ending his life.

32. On March 8, 2010, ICE and John Does 1-5 transmitted a facsimile document to the Sarpy County jail stating that ICE had no detainer on Mendoza. The ICE document was dated March 5, 2010, but ICE and John Does 1-5 did not fax it to the Sarpy County jail until March 8, 2010.

33. Mendoza was finally released from the Sarpy County jail around 4 p.m. on March 8, 2010.

34. Immediately upon Mendoza's release Laura Mendoza took him to a hospital emergency room, where he was treated for dehydration and emotional distress.

35. As a direct, proximate result of his unlawful confinement in the Sarpy County jail from March 5 through March 8, 2010, Mendoza continues to experience anxiety, depression and emotional distress. He was diagnosed with post-traumatic stress disorder, from which he still suffers, and he has been unable to work. Plaintiff Laura Mendoza had to leave her responsibilities as fulltime caregiver of their six minor children and return to the workforce in order to support the family. As a further direct, proximate result of Mendoza's unlawful confinement, the family felt unsafe remaining in Nebraska and moved out of the state.

36. As a direct, proximate result of Mendoza's unlawful confinement in the Sarpy County jail from March 5 through March 8, 2010, Plaintiffs Ramon Mendoza and Laura Mendoza have incurred more than \$10,000.00 in costs for medical and counseling care, moving costs, and lost wages. They have also sustained general damages.

FIRST THEORY OF RECOVERY

37. The allegations in paragraphs 1 through 36 are incorporated by reference as though fully set forth.

38. Pursuant to U.S. Const. Amends. IV, V, VI, VIII and XIV and Neb. Const. Art. 1, §§ 1, 3, 7, 9 and 11 Mendoza has the following clearly established rights:

- a. to be free from unreasonable seizure of his person;
- b. to liberty, and to not be detained without a lawful basis;
- c. due process and equal protection under law;
- d. the right to counsel;
- e. to be free from being subjected to unlawful and excessive force;
- f. to be permitted to timely post reasonable bail for misdemeanor criminal charges.

39. There was no lawful basis to detain Mendoza at the Sarpy County jail on March 5 - March 8, 2010.

40. By seizing and detaining Mendoza against his will in the Sarpy County jail as alleged in this complaint, Defendants Sarpy County, Davis and John Does 6-10 violated Mendoza's clearly established constitutional rights set forth in paragraph 38, above.

41. In seizing and detaining Mendoza as alleged herein, all Defendants used excessive and unlawful force and their actions were not objectively reasonable.

42. As a direct, proximate result of Defendants' unlawful detention of Mendoza, he sustained injuries, pain and suffering, and damages.

43. Pursuant to 42 U.S.C. § 1983, all Defendants are liable to Plaintiffs for damages based on Defendants' violations of Mendoza's constitutional rights alleged herein.

SECOND THEORY OF RECOVERY

44. The allegations in paragraphs 1 through 36 are incorporated by reference as though fully set forth.

45. All Defendants knew or should have known that Mendoza had a right to post reasonable bond for his release from the Sarpy County jail.

46. All Defendants knew or should have known that there was no valid legal authority to detain Mendoza at the Sarpy County jail on March 5 – 8, 2010.

47. All Defendants failed or refused to timely and appropriately ascertain the fact of Mendoza's American citizenship, to afford Mendoza adequate opportunity and means to pursue his lawful release from the Sarpy County jail, and to effectuate his lawful processing and release from the Sarpy County jail.

48. By their actions alleged herein, all Defendants jointly and severally caused Mendoza's wrongful continued confinement at the Sarpy County jail, falsely imprisoning him.

49. As a direct, proximate result of Defendants' unlawful action Mendoza sustained injuries, pain and suffering, and damages.

50. Pursuant to 42 U.S.C. § 1983, the Federal Tort Claims Act, and the Nebraska Political Subdivisions Tort Claims Act all Defendants are jointly and severally liable to Plaintiffs for their damages.

THIRD THEORY OF RECOVERY

51. The allegations set forth in paragraphs 1 through 36 are incorporated by reference as though fully set forth.

52. Defendants ICE, Sarpy County and Davis had a duty to develop, implement and enforce appropriate policies, regulations, and procedures to prevent the illegal seizure and detainer of American citizens such as Mendoza, with the use of ICE detainers. These Defendants also had a duty to train and supervise their officers and agents in the application of such policies.

53. Defendants ICE, Sarpy County and Davis breached these duties on March 5-8, 2010 by failing to have and enforce such policies.

54. Defendants ICE, Sarpy County and Davis were deliberately indifferent to the effect that the breaches alleged herein would be likely to, and did produce as to Mendoza.

55. As a direct, proximate result of Defendants' breaches alleged herein, Mendoza was wrongly seized and detained causing him injuries, pain and suffering, and damages.

56. Pursuant to 42 U.S.C. § 1983, the Federal Tort Claims Act, and the Nebraska Political Subdivisions Tort Claims Act these Defendants are jointly and severally liable to Plaintiffs for their damages.

FOURTH THEORY OF RECOVERY

57. The allegations set forth in paragraphs 1 through 36 are incorporated by reference as though fully set forth.

58. Defendants ICE and John Does 1-5 had a duty to maintain accurate records on persons lawfully subject to detainer; to make accurate and timely reports of this

information upon request by fellow law enforcement agencies including the Sarpy County Jail; and not to effect, assist or allow the seizure and detainer of American citizens including Mendoza who were not lawfully subject to ICE's jurisdiction.

59. Defendants ICE and John Does 1-5 breached that duty by failing to expediently confirm with Sarpy County John Does 6-10 that ICE had no lawful basis to detain Mendoza.

60. As a direct, proximate result of these Defendants' breaches alleged herein, Mendoza was wrongly seized and detained causing him injuries, pain and suffering, and damages.

61. Pursuant to 42 U.S.C. § 1983, the Federal Tort Claims Act, and the Nebraska Political Subdivisions Tort Claims Act these Defendants are jointly and severally liable to Plaintiffs for their damages.

FIFTH THEORY OF RECOVERY

62. The allegations set forth in paragraphs 1 through 36 are incorporated by reference as though fully set forth.

63. Defendants Sarpy County, Davis, and Sarpy County John Does 6-10 had a duty to not seize or detain any American citizen, including Mendoza, without sufficient and proper lawful cause.

64. Defendants Sarpy County, Davis, and Sarpy County John Does 6-10 knew or should have known that they could not seize or detain any American citizen, including Mendoza, without affording him due process of law.

65. Defendants Sarpy County, Davis, and Sarpy County John Does 6-10 knew or should have known that ICE detainers do not, standing alone, create a legally and constitutionally sufficient basis to detain an American citizen such as Mendoza.

66. Defendants Sarpy County, Davis, and Sarpy County John Does 6-10 knew or should have known that an ICE detainer is simply a notice by ICE to another law enforcement agency, and that the detainer itself does not create an independent basis to seize or imprison any person.

67. Defendants Sarpy County, Davis, and Sarpy County John Does 6-10 breached their duty to Mendoza referenced in the preceding paragraphs by:

- a. Seizing and detaining him on the basis of an alleged ICE detainer
- b. Neglecting and failing to determine with sufficient certainty whether there was a valid legal basis to detain Mendoza;
- c. Refusing to accept and honor evidence of Mendoza's American citizenship offered to these Defendants by Plaintiffs Ramon Mendoza and Laura Mendoza; and
- d. Refusing to allow Mendoza to post bond for his release from the Sarpy County jail.

68. As a direct, proximate result of these Defendants' breaches alleged herein, Mendoza was wrongly seized and detained causing him injuries, pain and suffering, and damages.

69. Pursuant to 42 U.S.C. § 1983, the Federal Tort Claims Act, and the Nebraska Political Subdivisions Tort Claims Act these Defendants are jointly and severally liable to Plaintiffs for their damages.

SIXTH THEORY OF RECOVERY

70. The allegations set forth in paragraphs 1 through 36 are incorporated by reference as though fully set forth.

71. As a direct, proximate cause of Defendants' acts alleged above and the resulting injury to Mendoza, Plaintiff Laura Mendoza was wrongly deprived of Mendoza's society, love, affection, care, attention, companionship, comfort, and consortium, and Laura Mendoza has sustained general damages therefor.

REQUEST FOR RELIEF

On the basis of these forgoing claims, Plaintiffs request the following relief against Defendants jointly and severally:

- a. Special damages in the amount of \$10,000.00 or as proven by the trial evidence;
- b. General damages;
- c. Punitive damages;
- d. Attorneys fees and costs of this action; and
- e. All other appropriate relief.

PLAINTIFFS REQUEST TRIAL BY JURY IN OMAHA, NEBRASKA.

DATED this 28th day of February, 2013.

RAMON MENDOZA and
LAURA MENDOZA, Plaintiffs

BY: /s/ Denise E. Frost

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