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**ORIGINAL
FILED**

JAN - 5 2007

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Attorneys for Petitioner
Cesar Ramirez-Lopez

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SC

Cesar Ramirez-Lopez

Plaintiff,

v.

United States of America; Special Agent Alex CHAN,
Investigator, San Francisco United States Immigration
and Customs Enforcement, Department of Homeland
Security; Robert BIGGINS, Group Supervisor, San
Francisco United States Immigration and Customs
Enforcement, Department of Homeland Security; and
John DOES 1 through 3, San Francisco United States
Immigration and Customs Enforcement, Department
of Homeland Security;

Defendants.

C 07 0096

Case No.

COMPLAINT FOR DAMAGES

INTRODUCTION

1. This case is a challenge to the unlawful and unconstitutional arrest, detention and incarceration of a United States citizen by officers of the United States Department of Homeland Security and the United States of America.
2. Plaintiff Cesar Ramirez Lopez (“Mr. Ramirez Lopez”) was born in Mexico. His father became a United States citizen when Mr. Ramirez was a child. In 2000, Congress passed the Child Citizenship Act of 2000 (“CCA”), Pub. L. No. 106-395, 114 Stat. 1631 (2000) which provides that a child born outside of the United States to non-United States citizens automatically acquires United States citizenship if one of the parents naturalizes while the child is residing in the United States, in the custody of that parent, in lawful permanent resident status. These events must occur before the child reaches the age of eighteen. Because Mr. Ramirez Lopez was under 18 years of age at the enactment of the CCA on February 27, 2001, he automatically became a United States citizen on that date.
3. Despite the clear law on this issue, and despite being made aware that two prior Department of Homeland Security (“DHS”) United States Immigration and Customs Enforcement (“US ICE”) investigators had determined that Mr. Ramirez Lopez could not be detained by DHS because he was a United States citizen, Mr. Ramirez Lopez was unlawfully arrested and incarcerated for three days by US ICE.
4. Mr. Ramirez Lopez brings this action to vindicate his right to be free from arbitrary and punitive arrest and detention. He seeks a declaration that his arrest and detention was unlawful, and compensatory and punitive damages for the injury he suffered as a result of defendants’ unlawful actions. Defendants are the United States of America and the various federal officials responsible.

JURISDICTION AND PROCEDURAL PREREQUISITES TO SUIT

5. This case is brought pursuant to, inter alia, the Fourth, Fifth, and Eighth Amendments, to the United States Constitution, Bivens v. Six Unnamed Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), the Federal Tort Claims Act (“FTCA”), and 28 U.S.C. § 2671et. seq.
6. By letter dated October 12, 2006, Mr. Ramirez Lopez was informed that his administrative claim under the Federal Torts Claim Act had been denied. (See Exhibit A). Plaintiff has thus exhausted his administrative remedies for purposes of the FTCA.

VENUE

7. Venue is proper in the San Francisco District of the Northern District of California pursuant to 28 U.S.C. § 1391.

INTRADISTRICT ASSIGNMENT

8. Mr. Ramirez Lopez’s claims arose in the county of San Francisco, in the city of San Francisco. Therefore, assignment to the San Francisco Division of this Court is proper under N.D. Rule 3-2(d).

PARTIES

9. Plaintiff Cesar RAMIREZ LOPEZ is a Citizen of the United States. He is a resident of Contra Costa County, California.
10. Defendant UNITED STATES OF AMERICA exists under the Constitution of the United States of America and laws enacted by the United States Congress and is sued under the FTCA for the tortuous acts of its employees. The US ICE is, and at all times mentioned herein was, an agency of the United States Department of Homeland Security, organized and existing under the laws of the United States.¹

¹ The former Immigration and Naturalization Service was abolished by the Homeland Security Act of 2002, Pub.L. No. 107-296, 116 Stat. 2135 (2002), and the majority of its immigration enforcement functions were transferred to United States Immigration and Customs (continued on next page)

1 11. Defendant Special Agent Alex CHAN is an investigator with the San Francisco US ICE and
2 is sued in his individual capacity. Upon information and belief, investigations officers have
3 the authority to issue detainers and to take non-U.S. citizens into DHS custody for the
4 purposes of removal from the United States.

5
6 12. Defendant Group Supervisor Robert BIGGINS is a Supervisor with the San Francisco US
7 ICE and is sued in his individual capacity. Upon information and belief, he is a part of the
8 Investigations Unit of San Francisco US ICE. Investigations officers have the authority to
9 issue detainers and to take non-U.S. citizens into DHS custody for the purposes of removal
10 from the United States.

11 13. Mr. Ramirez Lopez is unaware of the true names and capacities, whether individual or
12 otherwise, of Defendant DOES 1 through 3, inclusive, and therefore sues those Defendants by
13 fictitious names. Mr. Ramirez Lopez is informed, and believes, and on that basis alleges, that
14 these DOE Defendants, and each of them, are in some manner responsible and liable for the
15 acts and/or damages alleged in this Complaint and that these Defendants were employees of
16 DHS, US ICE while they were so acting. Mr. Ramirez Lopez will amend the Complaint to
17 allege the DOE Defendants' true names and capacities when they have been ascertained.
18
19

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21 FACTUAL ALLEGATIONS

22 14. Mr. Ramirez Lopez was born on December 31, 1983 in Mexico.

23 15. On October 26, 1994, when he was two years old, Mr. Ramirez Lopez became a lawful
24 permanent resident of the United States.

25 16. From 1994 through the present time, Mr. Ramirez Lopez resided in the United States in the
26 legal custody of his mother, a lawful permanent resident, and his father, a United States
27

28 Enforcement, a part of the Department of Homeland Security. See Hernandez v. Ashcroft, 345
F.3d 824, 828 n. 2 (9th Cir.2003).

1 citizen.

2 17. On February 18, 1997, Felipe Ramirez Ramos, Mr. Ramirez Lopez's father, became a
3 naturalized United States citizen. Mr. Ramirez Lopez was 13 years old at the time.

4 18. On October 30, 2000, the Child Citizenship Act of 2000 ("CCA"), Pub. L. No. 106-395, 114
5 Stat. 1631 (2000) was enacted. Section 101 of the CCA replaced 8 U.S.C. § 1431,
6 Immigration and Nationality Act ("INA") § 320, and provided that United States citizenship
7 is automatically acquired by a child born outside of the United States when the following
8 conditions have been fulfilled:
9

10 i. At least one parent of the child is a citizen of the United States, whether by
11 birth or naturalization.

12 ii. The child is under the age of eighteen years; and

13 iii. The child is residing in the United States in the legal and physical custody of
14 the citizen parent pursuant to a lawful admission for permanent residence.
15

16 19. Section 101 of the CCA became effective 120 days after enactment, on February 27, 2001.

17 See CCA § 104 ("The amendments made by this title shall take effect 120 days after the date
18 of the enactment of this Act and shall apply to individuals who satisfy the requirements of
19 section 320 or 322 of the Immigration and Nationality Act, as in effect on such effective
20 date"). See also Matter of Rodriguez-Tejedor, 23 I. & N. Dec. 153, 158 (BIA 2001).
21

22 20. At the time of the CCA's effective date of February 27, 2001, Mr. Ramirez Lopez was 17
23 years old. Because he was under 18 at the time of the CCA's effective date, and because all
24 of the other requirements of CCA § 101 had been met, Mr. Ramirez Lopez automatically
25 became a United States citizen on February 27, 2001. 8 U.S.C. § 1431(a).

26 21. In early 2005 Mr. Ramirez Lopez was encountered by US ICE while serving a sentence at
27 West County Jail, in Richmond, California as a result of a criminal conviction. While Mr.
28 Ramirez Lopez was serving his sentence at West County Jail in 2005, ICE issued a detainer

- 1 pursuant to 8 C.F.R. § 287.7, on or about March 9, 2005
- 2 22. On June 9, 2005, Mr. Ramirez Lopez, through counsel Ilyce Shugall who determined that
- 3 Mr. Ramirez-Lopez was a United States Citizen, filed an application for a certificate of
- 4 citizenship on Form N-600 with the U.S. Citizenship and Immigration Services (“CIS”) to
- 5 obtain future evidence of his United States citizen status. See 8 C.F.R. § 322.3.
- 6
- 7 23. On June 15, 2005, Ms. Shugall sent a letter via facsimile and mail to the San Francisco Field
- 8 Office Director of ICE requesting that the previously placed detainer be lifted based on the
- 9 fact that Mr. Ramirez Lopez was a United States citizen. The Form N-600 and supporting
- 10 documents proving Mr. Ramirez Lopez’s United States citizenship were attached to the letter.
- 11 24. On July 22, 2005, Ms. Shugall sent a copy of the letter and all supporting documents
- 12 previously sent to the San Francisco Field Office Director of ICE to the San Francisco US
- 13 ICE investigations office, again requesting that the detainer be cancelled because Mr.
- 14 Ramirez Lopez was a United States citizen. Ms. Shugall spoke with US ICE Special Agent
- 15 Jeffrey Rea regarding the detainer and sent him a copy of the letter and the documents that
- 16 had been previously sent with the request to cancel the detainer. That same day, Agent Rea
- 17 sent via facsimile a cancellation of the detainer on Mr. Ramirez Lopez to West County Jail
- 18 because Mr. Ramirez Lopez had been determined to be a United States citizen.
- 19
- 20 25. On August 12, 2005, ICE Special Agent Denise Pinhey called Ms. Shugall and indicated that
- 21 she had previously determined that Mr. Ramirez Lopez was a United States citizen and that
- 22 she also had written to the State authorities and cancelled the detainer. The communication
- 23 stated “USC Not Deportable.”
- 24
- 25 26. However on information and belief, at some time prior to January 6, 2006, the date on which
- 26 Mr. Ramirez Lopez was scheduled to be released from criminal custody, a DHS ICE agent
- 27 reissued the detainer.
- 28
27. On January 6, 2006, US ICE detained Mr. Ramirez Lopez upon his release from criminal

1 custody and detained him in San Francisco, California. US ICE then transferred him to Yuba
2 County Jail in Marysville, California where he was detained pursuant to ICE's request.

3 28. While Mr. Ramirez Lopez was in US ICE custody, Ms. Shugall, called San Francisco DHS
4 and was directed to speak with Defendant Alex Chan, US ICE Special Agent whom she was
5 told was responsible for the case. Ms. Shugall reiterated that Mr. Ramirez Lopez had to be
6 released from custody because he was a United States citizen pursuant to the Child
7 Citizenship Act and that DHS had already twice determined that to be true. Agent Chan
8 stated that he did not believe Mr. Ramirez Lopez to be a United States citizen and that he
9 intended to keep him in custody. Ms. Shugall asked Agent Chan if he had spoken with a
10 DHS attorney and Chan stated that he did not need to because he had spoken with his
11 supervisor. US ICE then issued a Notice to Appear, charging Mr. Ramirez Lopez as being
12 removable, and, upon information and belief, Agent Chan's supervisor determined that Mr.
13 Ramirez Lopez should be continued in custody without bond.

14
15
16 29. A "Notice to Appear" was served upon Mr. Ramirez Lopez, charging with him being a non-
17 U.S. citizen subject to removal from the United States. The Notice to Appear had been
18 signed by Defendant Robert Biggins, Group Supervisor on December 27, 2005 and was
19 served upon Mr. Ramirez Lopez on January 6, 2006. Upon information and belief, the Notice
20 to Appear was served upon Mr. Ramirez Lopez by Defendant Agent Chan at the San
21 Francisco office of the Department of Homeland Security.

22
23 30. On January 6, 2006, Ms. Shugall sent a letter via facsimile to San Francisco DHS Deputy
24 Chief Counsel James Stolley requesting that Mr. Ramirez Lopez be released immediately.
25 The letter explained that Mr. Ramirez Lopez was a United States citizen, that there was no
26 lawful basis for US ICE detaining him, and that two US ICE agents had previously lifted the
27 detainer after determining that Mr. Ramirez Lopez was, in fact, a United States citizen.

28 31. Nonetheless, Mr. Ramirez-Lopez was not released that day and he continued to be held in

1 custody without bail for three more days. He was finally released from ICE custody on
2 January 9, 2006, after three days in detention. The Notice to Appear was never filed with the
3 Immigration Court and removal proceedings against Mr. Ramirez Lopez were, thus, never
4 commenced.

5
6 32. On February 13, 2006, Mr. Ramirez-Lopez received his Certificate of Citizenship from the
7 CIS which confirmed that he had automatically acquired United States citizenship on
8 February 27, 2001 pursuant to the Child Citizenship Act, as Defendants had been informed of
9 all along.

10
11 COUNT ONE

12 (Unlawful Detention: Fourth, Fifth, And Eighth Amendments)

13 33. The foregoing allegations are re-alleged and incorporated herein by reference.

14 34. This Count is against Defendants CHAN, BIGGINS, and DOES 1 through 3.

15 35. Defendants violated Mr. Ramirez Lopez's Fourth, Fifth, And Eighth Amendments rights by
16 unlawfully arresting and incarcerating him for three days despite the fact that Mr. Ramirez
17 Lopez is a United States citizen and DHS had already twice determined that to be the case.

18 36. Mr. Ramirez Lopez is informed and believes and herein alleges that the aforementioned acts
19 were done with evil motive or intent and involved reckless or callous indifference of his
20 rights, thereby justifying the award of punitive damages against Defendants.

21 37. As a direct and proximate result of Defendants' actions, Mr. Ramirez Lopez also suffered
22 emotional distress, pain and suffering, and sustained other damages. Mr. Ramirez Lopez is
23 thus entitled to compensatory and punitive damages in an amount to be determined at trial.
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COUNT TWO

(Federal Tort Claims Act, 28 U.S.C. § 2671 et. seq.: False Arrest and Imprisonment)

38. The foregoing allegations are re-alleged and incorporated herein by reference.

39. This Count is against Defendant United States of America.

40. Defendant United States of America falsely arrested and imprisoned Mr. Ramirez Lopez without legal justification or privilege, causing him the harms herein alleged.

41. Mr. Ramirez Lopez is informed and believes that Defendant United States at all times either knew, recklessly and callously disregarded, or reasonably should have known, the unlawful nature of the arrest and imprisonment.

42. As a direct and proximate result of Defendants' actions, Mr. Ramirez Lopez suffered emotional distress, pain and suffering, and sustained other damages. Mr. Ramirez Lopez is thus entitled to compensatory damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Mr. Ramirez Lopez respectfully requests relief as follows:

1. A declaration that Mr. Ramirez Lopez's arrest and detention violated the Fourth, Fifth, and Eighth Amendments of the United States Constitution and constituted false arrest and false imprisonment for purposes of the Federal Tort Claims Act;

2. Compensatory damages in an amount to be proven at trial;

3. Punitive damages in an amount to be proven at trial;

3. Costs and reasonable attorneys' fees; and

5. Such other relief as the Court may deem just and proper.

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1 Dated: January 5, 2007

By: 

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U.S. Immigration and Customs Enforcement
24000 Avila Road
Room 6000
Laguna Niguel, CA 92677-3400



U.S. Immigration
and Customs
Enforcement

October 12, 2006

Ilyce Shugall, Esquire
180 Sutter St, 5th Floor
San Francisco, CA 94104-4029

Re: Federal Tort Claim of Cesar Ramirez Lopez

Dear Ms. Shugall:

The claim you have submitted to the Department of Homeland Security has been referred to this office for determination.

Any recovery under the Federal Tort Claims Act must be predicated upon a showing of a negligent or wrongful act or omission of a federal government employee acting within the scope of his/her employment. 28 U.S.C. § 1346(b).

This office has reviewed the circumstances surrounding this alleged incident and has determined that you have failed to establish that any negligent or wrongful act or omission of a federal government employee caused this incident to occur.

Therefore, your claim must be and hereby is denied.

If you are dissatisfied with this determination, you may file suit in an appropriate United States District Court not later than six months after the date of mailing of this notification of denial. 28 U.S.C. § 2401(b).

Very truly yours,

Julie Hecht
Associate Legal Advisor

A