

**IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF ILLINOIS
 SPRINGFIELD DIVISION**

JHON ERIK OCAMPO,

Plaintiff,

v.

GLEN HARRINGTON, MICHAEL
 MITCHELL, and the UNITED STATES

Defendants.

Case No. 3:14-cv-03134-RM-TSH

Jury Trial Demanded

FIRST AMENDED COMPLAINT

Plaintiff Jhon Erik Ocampo (“Plaintiff” or “Mr. Ocampo”), by and through his undersigned counsel, hereby alleges as follows for his complaint against Defendants Glen Harrington, Michael Mitchell, and the United States.

STATEMENT OF THE CASE

1. Plaintiff Jhon Erik Ocampo is a U.S. citizen and has been a U.S. citizen since 2002.
2. Mr. Ocampo was born in Colombia. He lawfully derived U.S. citizenship in 2002 when his mother became a naturalized citizen. Before becoming a citizen, he resided for years in the U.S. as a lawful permanent resident.
3. In 2012, despite Mr. Ocampo’s status as a U.S. citizen, two federal officers with the Immigration and Customs Enforcement (ICE), a division of the United States Department of Homeland Security (DHS), unlawfully arrested him in front of his family, and detained him for seven days, for alleged immigration violations without probable cause, due process, or other procedural protections afforded to him by the Fourth and Fifth Amendments to the U.S. Constitution.

4. Mr. Ocampo, who suffers from significant back pain, was forced to sleep on thin mattresses on the floor in crowded, dirty jail cells for much of his detention. He was twice shackled and transported over long distances: approximately 200 miles on the first instance (from Springfield to Ullin), and then approximately 350 miles (from Ullin to Chicago). And despite his requests, Mr. Ocampo did not receive any medication for his back pain until shortly before he was released.

5. On multiple occasions, both before his arrest and during his detention, Mr. Ocampo informed the arresting ICE officers that he was a U.S. citizen. The arresting ICE officers had numerous sources of information readily available to them conclusively establishing that Mr. Ocampo was, in fact, a U.S. citizen. The arresting ICE officers either failed to investigate Mr. Ocampo's citizenship, or they maliciously or wantonly arrested and detained him despite his U.S. citizenship, contrary to the law and ICE's own governing policies.

6. To ensure that he is no longer subject to illegal seizure and detention and to remedy his past injuries, Mr. Ocampo brings this action for damages and injunctive relief under the Fourth and Fifth Amendments to the U.S. Constitution pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and the Federal Tort Claims Act (FTCA).

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over Mr. Ocampo's *Bivens* constitutional claims and FTCA claims pursuant to 28 U.S.C. §§ 1331 (federal question) and 1346 (FTCA). The Court further has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202 (declaratory relief).

8. On May 5, 2014, Mr. Ocampo filed an administrative complaint with the United States government, specifically ICE/DHS, raising claims under the FTCA. A true and correct

copy of the administrative complaint, with personal information redacted, is attached herein as Exhibit 1. By letter dated June 28, 2014, however, the government refused to accept responsibility for the misconduct of its officers and finally denied Mr. Ocampo's claims for administrative relief. A true and correct copy of the government's letter denying administrative relief is attached herein as Exhibit 2. Mr. Ocampo, therefore, has exhausted his administrative remedies for purposes of his claims against the United States under the FTCA as required by 28 U.S.C. §§ 2401(b) and 2675(a).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(e)(1), and 1402(b), because Mr. Ocampo resides in this judicial district, a substantial part of the events giving rise to Mr. Ocampo's claims occurred in this judicial district, and this is a civil action against the United States, officers of the United States, or an agency thereof acting in their official capacities or under color of legal authority. On information and belief, each Defendant also resides in this district. Additionally, venue is proper in this division pursuant to L.R. 40.1 because a substantial part of the events giving rise to Mr. Ocampo's claims occurred in Sangamon County, Illinois.

THE PARTIES

10. Plaintiff Jhon Erik Ocampo resides in Springfield, Illinois (Sangamon County). Mr. Ocampo is, and was at all times relevant to this action, a U.S. citizen.

11. Defendant Glen Harrington is being sued in both his individual and official capacities. On information and belief, Defendant Glen Harrington is, and was at all times relevant to this action, a Special Agent at ICE. On information and belief, Defendant Harrington serves, and was at all times relevant to this action serving, as a law enforcement officer at ICE responsible for formulating, approving, implementing, and/or enforcing ICE customs and policies, including the preparation and issuance of arrest warrants, the investigation and arrest of

persons in violation of the immigration laws, and the subsequent detention and treatment of such persons. On information and belief, Defendant Harrington is, and was at all times relevant to this action, responsible for ensuring that ICE's customs, policies, practices, and activities accord with the U.S. Constitution and applicable federal law and regulations. As described in further detail below, Defendant Harrington unlawfully arrested and detained Mr. Ocampo, or caused him to be unlawfully arrested and detained, in Springfield, Illinois (Sangamon County) and therefore has sufficient minimum contacts with this judicial district.

12. Defendant Michael Mitchell is being sued in both his individual and official capacities. On information and belief, Defendant Mitchell is, and was at all times relevant to this action, a Resident Agent in Charge at ICE. On information and belief, Defendant Mitchell serves, and was at all times relevant to this action serving, as a law enforcement officer at ICE responsible for formulating, approving, implementing, and/or enforcing ICE customs and policies, including the preparation and issuance of arrest warrants, the investigation and arrest of persons in violation of the immigration laws, and the subsequent detention and treatment of such persons. On information and belief, Defendant Mitchell is, and was at all times relevant to this action, responsible for ensuring that ICE's customs, policies, practices, and activities accord with the U.S. Constitution and applicable federal law and regulations. As described in further detail below, Defendant Mitchell unlawfully arrested and detained Mr. Ocampo, or caused him to be unlawfully arrested and detained, in Springfield, Illinois (Sangamon County) and therefore has sufficient minimum contacts with this district.

13. Defendant United States is liable under the FTCA for the conduct of Defendants Harrington and Mitchell who were employees of the United States and acting within the scope and course of their employment at all times relevant to this action.

FACTUAL ALLEGATIONS

Mr. Ocampo's United States Citizenship

14. Mr. Ocampo was born in Colombia on August 28, 1985 and entered the United States as a lawful permanent resident of the United States on May 21, 1995. On November 1, 2002, Mr. Ocampo's biological mother, Ms. Cielo Orley Lopez, became a naturalized U.S. citizen. Because he was in the legal and physical custody of his mother, Mr. Ocampo automatically derived U.S. citizenship through his mother on November 1, 2002 pursuant to the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000) (CCA), which amended 8 U.S.C. § 1431(a) (also known as Immigration and Nationality Act ("INA") § 320(a)).

15. Mr. Ocampo further took steps to make immigration officials aware of his U.S. citizenship. On or about December 2, 2002, Mr. Ocampo submitted an N-600 application for a Certificate of U.S. Citizenship, which the U.S. Citizenship and Immigration Service (USCIS) received on or about November 18, 2003. USCIS approved Mr. Ocampo's N-600 application and issued a Certificate of U.S. Citizenship on or about December 2, 2002—acknowledging that Mr. Ocampo derived U.S. citizenship on November 1, 2002 through his mother.

16. Although USCIS issued Mr. Ocampo a Certificate of U.S. Citizenship, he did not receive the certificate. Mr. Ocampo inquired several times about his N-600 application and certificate in November 2007, May 2011, and December 2011 but still did not receive a copy of his Certificate of U.S. Citizenship. Mr. Ocampo's N-600 application, Certificate of U.S. Citizenship, and correspondence regarding his efforts to obtain his certificate were, at all times relevant to this action, contained within his Alien file at USCIS.

Defendants Unlawful Arrest and Detention of Mr. Ocampo

17. On or about May 4, 2012, Defendants Harrington and Mitchell issued, or caused to be issued, a one-page arrest warrant for the arrest of Mr. Ocampo. A true and correct copy of the arrest warrant, with personal information redacted, is attached herein as Exhibit 3.

18. Defendant Mitchell's name is printed on the arrest warrant, and upon information and belief, Defendant Mitchell was the "Designated Immigration Officer" who issued the arrest warrant. Defendant Mitchell, however, did not sign the arrest warrant.

19. The arrest warrant includes a certificate of service, which is dated May 4, 2012 and signed by Defendant Harrington.

20. The arrest warrant falsely represented that Mr. Ocampo was within the United States in violation of the immigration laws and that he was therefore liable to being taken into custody under 8 U.S.C. § 1226 (INA § 236).

21. The arrest warrant does not include, and is not accompanied by, any sworn declaration or recitation of facts providing probable cause to believe that Mr. Ocampo was a noncitizen or that he was otherwise within the United States in violation of the immigration laws and subject to arrest or detention on such grounds.

22. The arrest warrant does not indicate that it was approved by a neutral magistrate, such as an immigration judge.

23. On or about May 4, 2012, while away from his home, Defendants Harrington and Mitchell went to Mr. Ocampo's home seeking to arrest him, but Mr. Ocampo was not there. They instead spoke with Mr. Ocampo's step-daughter who called Mr. Ocampo and informed him that there were "a couple of police officers looking for him." His step-daughter then put one of Defendants Harrington and Mitchell on the phone. After identifying himself as an ICE officer,

one of the Defendants Harrington and Mitchell told Mr. Ocampo that he wanted to ask him a few questions about his legal status in the country. Mr. Ocampo explained that he was a citizen through his mother's naturalization in 2002 and that he had filed an application for a Certificate of U.S. Citizenship that same year. He further explained that he attended a USCIS Infopass appointment in December 2011, during which a USCIS agent confirmed that he was a U.S. citizen. The ICE officer, nevertheless, insisted that they meet in person.

24. When Mr. Ocampo returned home, two ICE officers, Defendants Harrington and Mitchell, immediately approached him as he exited his car. Mr. Ocampo tried to explain again that he was a U.S. citizen through his mother's naturalization and offered to show them her certificate of naturalization.

25. Mr. Ocampo's ex-wife further called Mr. Ocampo's mother and handed the phone to Defendants Harrington and Mitchell. Mr. Ocampo's mother likewise explained that she was a naturalized U.S. citizen and that Mr. Ocampo derived U.S. citizenship through her. Defendants Harrington and Mitchell, however, refused to listen and hung up the phone.

26. Defendants Harrington and Mitchell then handcuffed and arrested Mr. Ocampo in front of his family and took him to an unmarked ICE office at 2861 Stanton Street, Springfield, Illinois 62703 for booking into ICE custody.

27. While in custody, Mr. Ocampo again informed Defendants Harrington and Mitchell that he was a U.S. citizen, but they again dismissed his claim of U.S. citizenship and told him that he could make his case of citizenship to an immigration judge in Chicago.

28. On or about May 4, 2012, the ICE officers served Mr. Ocampo with a three-page Notice to Appear (Form I-862) ("NTA" or "Notice") purporting to initiate removal (deportation)

proceedings against him under 8 U.S.C. § 1229a (INA § 240). A true and correct copy of the NTA, with personal information redacted, is attached herein as Exhibit 4.

29. The first page of the NTA ordered Mr. Ocampo to appear before an immigration judge of the Department of Justice at 425 W. Van Buren in Chicago, Illinois. The NTA, however, failed to set any date or time for a hearing. The second and third pages of the NTA purported to allege facts supporting the issuance of the NTA, but falsely represented that Mr. Ocampo was not a U.S. Citizen.

30. Defendant Mitchell's name is printed on the first page and third pages of the Notice to Appear, and he is indicated on that page to be the issuing officer. On information and belief, Defendant Mitchell issued the Notice to Appear. But Defendant Mitchell did not sign any page of the NTA.

31. Defendant Harrington's name is printed on the second page of the NTA, and upon information and belief, he signed the second page of the Notice.

32. For the next seven days, between about May 4 and May 11, 2012, Mr. Ocampo was detained by ICE. ICE first detained Mr. Ocampo at the Sangamon County Jail in Springfield, Illinois, and then transferred him to the Tri-County Detention Center in Ullin, Illinois, approximately 200 miles from the Sangamon County Jail. Mr. Ocampo was then transferred to Chicago, Illinois, approximately 350 miles from Ullin, Illinois. The transfer to Chicago took place overnight and included no bathroom break.

33. Once in Chicago, and approximately seven days after his initial arrest in Springfield, Mr. Ocampo met with another ICE officer, who finally reviewed with Mr. Ocampo the facts of his claim to derived citizenship. The officer confirmed that he had been a citizen

since 2002. ICE released him on the evening of May 11, 2012, leaving him on the streets of Chicago to find his own way back to Springfield, Illinois.

34. The Defendants Harrington and Mitchell could have discovered upon minimal investigation that Mr. Ocampo was a U.S. citizen and had numerous sources of information available to them indicating that he was in fact a U.S. citizen.

35. Upon information and belief, Defendants Harrington and Mitchell could have requested and received Mr. Ocampo's Alien file from USCIS before arresting Mr. Ocampo, or could have called USCIS to inquire about the contents of his Alien file after Mr. Ocampo informed them that he was a citizen. Had Defendants Harrington and Mitchell reviewed Mr. Ocampo's Alien file, they would have discovered his approved N-600 application, Certificate of U.S. Citizenship, and his numerous efforts to obtain a copy of his certificate.

36. Mr. Ocampo's Alien file also contains Federal Bureau of Investigation (FBI) records dated May 4, 2012 that plainly state that Mr. Ocampo was a U.S. citizen. A true and correct excerpted copy of these FBI records, with personal information redacted and relevant information highlighted, is attached herein as Exhibit 5. Upon information and belief, Defendants Harrington and Mitchell requested these records from the FBI and had information available to them indicating that Mr. Ocampo was a U.S. citizen before they arrested him.

37. Even the electronic database records available to Defendants Harrington and Mitchell indicated he was a U.S. citizen. For example, DHS uses a database called the Reengineered Naturalization Application Casework System (RNACS) to track the progress of N-600 applications. Mr. Ocampo's Alien file contains a printout from RNACS showing that USCIS had approved his N-600 application by January 27, 2004. A true and correct excerpted copy of this RNACS printout, with personal information redacted and relevant information

highlighted, is attached herein as Exhibit 6. Upon information and belief, Defendants Harrington and Mitchell could have directly accessed and searched RNACS, or could have contacted someone at USCIS with access to RNACS, to confirm that Mr. Ocampo was a U.S. citizen.

38. Likewise, upon information and belief, Defendants Harrington and Mitchell could have directly accessed DHS's Central Index System (CIS) to investigate Mr. Ocampo's claim that he derived citizenship through his mother. For example, Defendants Harrington and Mitchell could have searched the CIS to confirm that Mr. Ocampo's biological mother became a naturalized U.S. citizen on November 1, 2002 and that Mr. Ocampo derived U.S. citizenship through her.

39. Upon information and belief, Defendants Harrington and Mitchell either failed to investigate Mr. Ocampo's citizenship before arresting Mr. Ocampo, or at any time during his seven days in custody, or they maliciously or wantonly arrested and detained him despite his U.S. citizenship.

40. Mr. Ocampo suffers from significant back pain due to an accident and takes pain medication. Before his arrest, he was receiving medical care and physical therapy for his back pain. During his unlawful detention Mr. Ocampo's back pain was significantly aggravated because (among other things): (1) he was forced to sleep on thin mattresses on the floor in dirty, crowded cells for much of his detention; (2) during each of his two transfers (from Springfield to Ullin and then to Chicago); he was shackled and forced to sit in an automobile for extended periods of time; and (3) he requested but did not receive any medication for his back pain throughout much of his detention.

41. For many months after he was released, Mr. Ocampo suffered from considerable emotional distress as a result of his unlawful arrest and detention. During this time he sought and received therapy and medication for stress, anxiety, and depression.

ICE's Policies Regarding the Arrest and Detention of U.S. Citizens

42. On or about November 19, 2009, John Morton, the Assistant Secretary of DHS, issued a memorandum to ICE, entitled "Superseding Guidance on Reporting and Investigating Claims to United States Citizenship" (the "Morton Memo"). A true and correct copy of the Morton Memo is attached herein as Exhibit 7.

43. Consistent with clearly established law, the Morton Memo explained that "[a]s a matter of law, ICE cannot assert its civil immigration enforcement authority to arrest and/or detain a [U.S. citizen (USC)]."

44. The Morton Memo clearly established the following policies that ICE officers must follow before arresting an individual who makes a claim of U.S. citizenship (emphasis added):

When officers and agents encounter an individual who they suspect is without lawful status but claims to be a USC, the situation will fall into one of three categories: 1) evidence indicates the person is a USC; 2) some evidence indicates that the individual may be a USC but is inconclusive; and 3) no probative evidence indicates the individual is a USC. **If evidence indicates the individual is a USC, ICE should neither arrest nor place the individual in removal proceedings.** Where there is *some* probative evidence that the individual is a USC, officers and agents should consult with their local OCC as soon as practicable. **After evaluating the claim, if the evidence of U.S. citizenship outweighs evidence to the contrary, the individual should not be taken into custody. . . . In all cases, any uncertainty about whether the evidence is probative of U.S. citizenship should weigh against detention.**

45. The Morton Memo clearly established the following policies that ICE officers must follow when an individual already in custody makes a claim of U.S. citizenship (emphasis added):

If an individual already in custody claims to be a USC, an officer must immediately examine the merits of the claim and notify and consult with his

or her local [Office of the Chief Counsel (OCC)]. If the individual is unrepresented, an officer must immediately provide the individual with the local Executive Office for Immigration Review (EOIR) list of pro bono legal service providers, even if one was previously provided.

[Detention and Removal Operations (DRO) personnel and the Office of the Principal Legal Advisor (OPLA)] must also jointly prepare and submit a memorandum explaining the claim and recommending a course of action to the HQDRO Assistant Director for Operations at the “USC Claims ORO” e-mail box and to the HQOPLA Director of Field Operations at the OPLA Field Legal CPS” e-mail box. **Absent extraordinary circumstances, this memorandum should be submitted no more than 24 hours from the time the individual made the claim.** HQDRO and HQOPLA will respond to the field with a decision on the recommendation within 24 hours. A notation should be made in BARM and a copy of the memorandum and resulting decision should be placed in the alien’s A-file. The memorandum and resulting decision should also be saved in OEMS and notated using the designated GEMS barcode.

If the individual’s claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a USC, the individual should be released from detention.

46. At all times relevant to this action, the Morton Memo set forth the governing policies that Defendants Harrington and Mitchell, the ICE officers who arrested and detained Mr. Ocampo, were required to follow.

COUNT I

Plaintiff v. Defendants Harrington and Mitchell
**(Violation of the Fourth Amendment and Substantive Due Process
under the Fifth Amendment Pursuant to *Bivens*)**

47. The foregoing allegations are repeated and incorporated as if fully set forth herein.

48. The Fourth Amendment to the U.S. Constitution prohibits “unreasonable searches and seizures” and provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

49. The Fifth Amendment to the U.S. Constitution provides: “No person shall be . . . deprived of life, liberty, or property, without due process of law”

50. Defendants Harrington and Mitchell could have discovered upon minimal investigation that Mr. Ocampo was a U.S. citizen.

51. Defendants Harrington and Mitchell lacked probable cause to believe that Mr. Ocampo was a noncitizen, or that he was otherwise in violation of the immigration laws and subject to arrest, detention, or removal.

52. Defendants Harrington and Mitchell caused to be issued a facially invalid warrant for the arrest of Mr. Ocampo with the intent of depriving him of his liberty. The warrant for Mr. Ocampo's arrest was invalid for at least the following reasons:

- a. It did not include, and was not accompanied by, any sworn declaration or recitation of facts providing probable cause to believe that Mr. Ocampo was a noncitizen, or that he was otherwise in violation of the immigration laws and subject to arrest, detention, or removal; and
- b. It was not approved and signed by a neutral magistrate, such as an immigration judge, and was not even signed by the "Designated Immigration Officer," Defendant Mitchell, who purportedly issued the warrant.

53. Defendants Harrington and Mitchell arrested Mr. Ocampo, or caused him to be arrested, depriving him of his liberty, even after he informed them that he believed he was a U.S. Citizen, contrary to the Morton Memo, 8 U.S.C. §§ 1226(a) and 1357(a)(2), and other applicable laws and policies.

54. Defendants Harrington and Mitchell continued to detain, or cause to be detained, Mr. Ocampo for nearly a week, even after he informed them that he was a U.S. citizen, contrary to the Morton Memo, 8 U.S.C. §§ 1226(a) and 1357(a)(2), and other clearly established law and policies.

55. Mr. Ocampo's arrest and detention violated his rights under the Fourth Amendment and his substantive due process rights under the Fifth Amendment.

56. At all relevant times during Mr. Ocampo's arrest and detention, Defendants Harrington and Mitchell were aware, or reasonably should have been aware, that they lacked the authority to arrest and detain a U.S. citizen under the governing laws and policies and that their conduct violated Mr. Ocampo's constitutional rights.

57. As a proximate and reasonably foreseeable result of the actions of Defendants Harrington and Mitchell, Mr. Ocampo suffered injuries, including his unlawful arrest and week-long detention, pain and suffering, as well as severe mental, emotional and psychological anguish.

58. Mr. Ocampo has a reasonable apprehension of being unlawfully arrested and detained again and has no adequate remedy at law to prevent future violations of his rights.

COUNT II

Plaintiff v. Defendants Harrington and Mitchell **(Violation of Procedural Due Process Under the Fifth Amendment Pursuant to *Bivens*)**

59. The foregoing allegations are repeated and incorporated as if fully set forth herein.

60. Defendants Harrington and Mitchell failed to follow the applicable, governing laws, statutes, and regulations, as well as ICE's own controlling policies, and deprived Mr. Ocampo of his liberty without affording him the procedural due process guarantees of the Fifth Amendment as follows:

- a. Defendants detained Mr. Ocampo, or caused him be detained, for seven days without affording him adequate notice or an opportunity to respond and provide evidence of his U.S. citizenship;

- b. Defendants detained Mr. Ocampo, or caused him be detained, without probable cause to believe that he was a noncitizen, or that he was otherwise in violation of the immigration laws and subject to detention;
- c. Defendants detained Mr. Ocampo, or caused him be detained, even though he was a United States Citizen, contrary to the Morton Memo, 8 U.S.C. §§ 1226(a) and 1357(a)(2), and other applicable laws and policies;
- d. Defendants failed to reasonably investigate Mr. Ocampo's claim of U.S. citizenship, contrary to the Morton Memo, 8 U.S.C. §§ 1226(a) and 1357(a)(2), and other applicable laws and policies;
- e. Defendants issued, or caused to be issued, a Notice to Appear alleging to initiate removal proceedings against Mr. Ocampo that was facially defective, for example because (i) it was not signed by the issuing ICE officer; (ii) it falsely represented that Mr. Ocampo was not a U.S. citizen without any probable cause or basis; and (iii) it failed to specify any date or time for a hearing; and
- f. Defendants detained Mr. Ocampo, or caused him be detained, even though a Notice to Appear had not yet been filed with an immigration court and no decision was pending regarding whether Mr. Ocampo was an alien subject to removal, contrary to 8 U.S.C. § 1226(a) and other applicable laws and policies.

61. At all relevant times during Mr. Ocampo's arrest and detention, Defendants Harrington and Mitchell were aware, or reasonably should have been aware, that they lacked the authority to arrest and detain a U.S. citizen under the governing laws and policies and that their conduct violated Mr. Ocampo's constitutional rights.

62. As a proximate and reasonably foreseeable result of the actions of Defendants Harrington and Mitchell, Mr. Ocampo suffered injuries, including his unlawful arrest and week-long detention, pain and suffering, as well as severe mental, emotional and psychological anguish.

COUNT III

Plaintiff v. Defendants Harrington and Mitchell
(Violation of Equal Protection Under the Fifth Amendment Pursuant to *Bivens*)

63. The foregoing allegations are repeated and incorporated as if fully set forth herein.

64. Defendants Harrington and Mitchell arrested and detained Mr. Ocampo, or caused him to be arrested and detained, solely on the basis of his race, ethnicity, and/or national origin—including his place of birth and Hispanic name—in violation of Mr. Ocampo’s equal protection rights under the Fifth Amendment to the U.S. constitution.

65. At all relevant times during Mr. Ocampo’s arrest and detention, Defendants Harrington and Mitchell were aware, or reasonably should have been aware, that they lacked the authority to target, arrest, and detain an individual based solely on his race, ethnicity, and/or national origin and that their conduct violated Mr. Ocampo’s constitutional rights.

66. As a proximate and reasonably foreseeable result of the actions of Defendants Harrington and Mitchell, Mr. Ocampo suffered injuries, including his unlawful arrest and week-long detention, pain and suffering, as well as severe mental, emotional and psychological anguish.

COUNT IV

Plaintiff v. Defendant United States
(False Arrest / False Imprisonment Under Illinois Law
Pursuant to Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346)

67. The foregoing allegations are repeated and incorporated as if fully set forth herein.

68. Defendants Harrington and Mitchell intentionally caused Mr. Ocampo to be arrested and detained without having probable cause or legal justification to believe he was a noncitizen, or that he was otherwise in violation of the immigration laws and subject to arrest, detention, or removal.

69. Mr. Ocampo was aware of his arrest and detention and did not consent to it.

70. In carrying out Mr. Ocampo's arrest and detention, Defendants Harrington and Mitchell were acting as investigative or law enforcement officers at ICE.

71. At all times during Mr. Ocampo's arrest and detention, Defendants Harrington and Mitchell were aware, or reasonably should have been aware, that they lacked the authority to arrest and detain a U.S. citizen under the governing laws and policies and that their conduct was unlawful.

72. As a proximate and reasonably foreseeable result of the actions of Defendants Harrington and Mitchell, Mr. Ocampo suffered injuries, including his unlawful arrest and week-long detention, pain and suffering, as well as severe mental, emotional and psychological anguish.

73. At all times during Mr. Ocampo's arrest and detention, Defendants Harrington and Mitchell were employees of the United States acting within the scope and course of their employment. Defendant United States, therefore, is liable for the actions of Defendants Harrington and Mitchell under the FTCA.

COUNT V

Plaintiff v. Defendant United States
(Negligence / Negligent Infliction of Emotional Distress Under Illinois Law
Pursuant to Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346)

74. The foregoing allegations are repeated and incorporated as if fully set forth herein.

75. ICE officials have a duty to act with reasonable care and not subject individuals to personal injury during the course of their duties.

76. ICE officials have a duty to not subject individuals to unreasonable searches and seizures or deprive them of liberty without due process.

77. ICE officials have a duty to not subject individuals to discriminatory treatment on the basis of race, ethnicity, or national origin.

78. ICE officials have a duty to adequately train and supervise their subordinates and to establish and enforce policies and practices to prevent the occurrence of unconstitutional and tortious actions by their subordinates.

79. ICE officials have a duty to ensure that they have probable cause that an individual is an alien before arresting that individual.

80. ICE officers have a duty to reasonably investigate whether an individual is a U.S. citizen before arresting that individual as a removable alien.

81. ICE officials have a duty, under the Morton Memo and/or other governing laws and policies, to (i) promptly and meaningfully evaluate claims of U.S. citizenship by an individual they seek to arrest; and (ii) not arrest the individual when there is evidence indicating the individual is a U.S. citizen.

82. ICE officials have a duty, under the Morton Memo and/or other governing laws and policies, to: (i) immediately examine the merits of a claim of U.S. citizenship by an individual whom they have already have in custody and consult with the local Office of the Chief Counsel

(OCC); (ii) if the individual is unrepresented, immediately provide the individual with the local Executive Office for Immigration Review (EOIR) list of pro bono legal service providers, even if one was previously provided; (iii) work with the Office of the Principal Legal Advisor (OPLA) to jointly prepare and submit a memorandum, no more than twenty-four (24) hours from the time the individual made the claim of U.S. citizenship, recommending a course of action to the Assistant Director for Operations at the Headquarters Office of Detention and Removal Operations (HQDRO) and the Director of Field Operations at the Headquarters Office of the Principal Legal Advisor (HQOPLA) such that HQDRO and HQOPLA can respond to the field with a decision on the recommendation within twenty-four (24) hours; and (iv) if the individual's claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a U.S. citizen, immediately release the individual from detention.

83. As ICE officials, Defendants Harrington and Mitchell, breached these duties, set forth in Paragraphs 75-82, in the scope and course of their employment with the United States.

84. In the alternative, Mr. Ocampo's unlawful arrest and detention constitutes conduct that ordinarily does not occur in the absence of negligence, and the instrumentality or agents that caused Mr. Ocampo's unlawful arrest and detention were under the exclusive control of Defendants. Therefore, Defendants' negligence may be presumed under the doctrine of *res ipsa loquitur*.

85. As a proximate and reasonably foreseeable result of Defendants' negligence, Mr. Ocampo suffered injuries, including his unlawful arrest and week-long detention, pain and suffering, as well as severe mental, emotional and psychological anguish.

86. Defendant United States is liable for the injuries to Mr. Ocampo under the FTCA.

COUNT VI

Plaintiff v. Defendant United States
(Intentional Infliction of Emotional Distress Under Illinois Law Pursuant to Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346)

87. The foregoing allegations are repeated and incorporated as if fully set forth herein.

88. The willful acts of Defendants Harrington and Mitchell constitute outrageous conduct insofar as they were intended to cause Mr. Ocampo to be singled out and discriminated against because of his race and/or ethnicity and to be unlawfully arrested and detained.

89. Defendants Harrington and Mitchell intended to cause Mr. Ocampo emotional distress, and/or acted in reckless disregard of the probability of causing Mr. Ocampo emotional distress in committing these acts.

90. As a proximate and reasonably foreseeable result of the actions of Defendants Harrington and Mitchell, Mr. Ocampo suffered injuries, including his unlawful arrest and week-long detention, pain and suffering, as well as mental, emotional and psychological anguish.

91. Defendant United States is liable for the injuries to Mr. Ocampo under the FTCA.

COUNT VII

Plaintiff v. Defendants Harrington, Mitchell, and the United States
(Declaratory Relief under 28 U.S.C. § 2201)

92. The foregoing allegations are repeated and incorporated as if fully set forth herein.

93. A ripe and justiciable controversy exists with regard to the circumstances and legality of Mr. Ocampo's arrest and detention.

94. Mr. Ocampo is entitled to a declaration in his favor pursuant to 28 U.S.C. § 2201.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Mr. Ocampo demands a trial by jury as to all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mr. Ocampo respectfully requests that the Court enter judgment:

A. Declaring that Defendants Harrington and Mitchell violated Mr. Ocampo's rights under the U.S. Constitution and federal law;

B. Permanently enjoining Defendants Harrington and Mitchell in their official capacities from unlawfully arresting or detaining Mr. Ocampo, or causing him to be unlawfully arrested or detained, for alleged violations of the immigration laws in the future;

C. Awarding compensatory and punitive damages to Mr. Ocampo against Defendants Harrington and Mitchell in their individual capacities for the above violations;

D. Awarding compensatory damages to Mr. Ocampo against Defendant United States under the Federal Tort Claims Act (28 U.S.C. §§ 2671, 1346);

E. Awarding prejudgment interest to Mr. Ocampo on any award of damages to the extent permitted by law;

F. Awarding reasonable attorneys' fees to Mr. Ocampo pursuant to 42 U.S.C. § 1988, 28 U.S.C. §§ 2412(b) and 2412(d)(1)(A), and/or any applicable common-law provisions; and

G. Granting such other relief as the Court may deem just and proper under the circumstances.

Dated: July 30, 2014

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