

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SERGEY MAYOROV)	
)	
Plaintiff,)	No. 13 C 5249
)	
v.)	
)	
UNITED STATES OF AMERICA)	Judge Pallmeyer
)	
Defendant.)	

ANSWER

First Defense

The United States asserts the discretionary function exception, 28 U.S.C. § 2680(a).

Second Defense

Answering the specific allegations of the complaint, and using the same paragraph numbering, the third-party defendant United States admits, denies, or otherwise avers as follows:

STATEMENT OF THE CASE

Complaint: 1. This complaint arises from tortious actions taken by the Immigration and Customs Enforcement (“ICE”) that caused Sergey Mayorov (“Plaintiff” or “Mr. Mayorov”) to be unlawfully detained in prison for 324 days, including approximately two weeks in 24-hour lockdown segregation.

Response: Deny.

Complaint: 2. Pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671, *et seq.*, Plaintiff seeks to hold the United States liable for the damages he suffered due to the erroneous immigration detainer issued by ICE, which resulted in Plaintiff’s unlawful

detention in prison for 324 days. Because of ICE's tortious conduct, Plaintiff suffered damages including loss of liberty, emotional pain and suffering, and lost wages.

Response: Admit plaintiff seeks to hold the United States liable and deny remainder.

JURISDICTION AND VENUE

Complaint: 3. This Court has subject matter jurisdiction of this action pursuant to 28U.S.C. §1331 because it arises under the laws of the United States.

Response: Admit the district court has jurisdiction pursuant to 28 U.S.C. § 1346(b) and deny remainder.

Complaint: 4. This Court has jurisdiction over Plaintiffs FTCA claims pursuant to 28 U.S.C. §§1346(b), 2675. Plaintiff submitted his Standard Form 95 claim to ICE on June 29, 2012, seeking \$5 million. ICE denied Plaintiffs Form 95 claim on January 23, 2012. In accordance with 28 U.S.C. §2401(b), Plaintiff files the present action within six months of ICE's denial of his Standard Form 95 claim.

Response: Admit.

Complaint: 5. Venue is also proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1)(B) because a substantial part of the events and omissions giving rise to Plaintiffs claims occurred in this district.

Response: Admit venue is proper.

Complaint: 6. Finally, venue is proper in this judicial district pursuant to 28 U.S.C. §1391(e)(1)(C) because Plaintiff resides in the district and the defendant is the United States.

Response: Admit venue is proper.

PARTIES

Complaint: 7. Plaintiff, Sergey Mayorov, derived U.S. citizenship upon his mother's naturalization on March 22, 2007. Despite his U.S. citizenship, ICE issued an immigration detainer against him, without probable cause, so that it could assume physical custody of him to initiate removal proceedings. The unlawful immigration detainer caused the Illinois Department of Corrections ("IDOC") to disqualify Mr. Mayorov from its "impact incarceration" program, a 120-day boot camp, from which, once completed, Plaintiff would have been released without having to serve a 4-year prison sentence. Because of the unlawful immigration detainer, Plaintiff wrongfully served 324 days in prison before ICE cancelled the detainer and Plaintiff was properly reassigned back into to boot camp and then released.

Response: Admit plaintiff derived U.S. citizenship from his mother, lack knowledge or information sufficient to form a belief as to the truth of the allegations that the detainer caused the Illinois Department of Corrections to disqualify plaintiff from its "impact incarceration" program, from which, once completed, he would have been released without having to serve a 4-year prison sentence, accordingly, they are denied, and deny remainder.

Complaint: 8. Defendant the United States of America is responsible for injuries caused by investigative or law enforcement officers resulting from false imprisonment and/or negligent acts or omissions by the Department of Homeland Security's ("DHS") ICE agents acting within the scope of their employment, in accordance with the law of the state where the act or omission occurred. In this case, ICE acted tortiously when they caused Plaintiff to be wrongfully detained in a prison facility for 324 days.

Response: Deny.

Complaint: 9. ICE agents, who issue immigration detainers, are investigative or law enforcement officers as defined by 28 U.S.C. §§ 2680(h).

Response: Admit.

FACTUAL ALLEGATIONS

Complaint: 10. Sergey Mayorov was born October 15, 1990 in Belarus. On June 4, 1999, Plaintiff lawfully entered the United States to live in the custody of his mother, Tatyana Mayorov. Plaintiff became a legal permanent resident on July 22, 2005. His mother filed an application to naturalize to U.S. citizenship on November 17, 2006. The N-400 naturalization application designated Plaintiff as a dependent minor, included his Alien Number, and reflected that he was living at the same address as his mother. On March 22, 2007, Tatyana Mayorov naturalized to become a U.S. citizen, when Plaintiff was 16 years old.¹ Accordingly, under the Child Citizenship Act of 2000 (“CCA”), codified at 8 U.S.C. § 1431, Mr. Mayorov automatically derived U.S. citizenship through his mother on March 22, 2007.

Response: Admit.

Complaint: 11. There is a longstanding precedent that federal government cannot exert its civil immigration enforcement authority against U.S. citizens. *See Woodby v. INS*, 385 U.S. 276 (1966). On November 19, 2009, ICE Director John Morton issued unequivocal instructions to ICE agents: “[a]s a matter of law, ICE cannot assert its civil immigration enforcement authority to arrest and/or detain a USC [U.S. citizen]. Consequently, investigations into an individual’s claim to U.S. citizenship should be prioritized . . .” Ex. A.

Response: Admit.

¹ Plaintiff’s mother concurrently changed her name to “Tanya May,” using the Department of Homeland Security’s “Petition for Name Change” form.

Complaint: 12. Despite the clear duty to ensure that it does not wrongfully exercise enforcement against U.S. citizens, DHS does not have policies and practices in place to update its records to reflect when a dependent minor automatically derives U.S. citizenship under the CCA.

Response: Deny.

Complaint: 13. DHS commonly has possession and ready access to all of the necessary documents to certify dependent minors' citizenship and to update its records. It does not do so.

Response: Deny.

Complaint: 14. Through programs like Secure Communities, ICE increasingly relies exclusively on the accuracy and completeness of DHS records for its decisions to issue immigration detainers.

Response: Deny.

Complaint: 15. DHS and ICE's systemic failure to maintain accurate, up-to-date records on individuals, who derive citizenship through CCA, endangers thousands of U.S. citizens, like Mr. Mayorov, to unlawful immigration enforcement through detainers.

Response: Deny.

Complaint: 16. In 2010, Plaintiff was arrested for residential burglary in Cook County, Illinois. On December 27, 2010, Plaintiff pleaded guilty with the understanding that he was eligible and would be placed in the Illinois "impact incarceration" program, also known as boot camp. Under the Illinois "impact incarceration" program, Plaintiff would participate in a 120-day boot camp, and once completed, he would be released from custody without having to serve the imposed prison sentence. The judge sentenced Mr. Mayorov to the minimum 4-year

prison sentence with a designation for boot camp. Accordingly, upon completion to the 120-day “impact incarceration” program, Plaintiff would be released instead of serving any portion of his prison sentence.

Response: Admit plaintiff was arrested for residential burglary in Cook County, and pleaded guilty to that charge, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 16; accordingly, they are denied.

Complaint: 17. In late December 2010, Plaintiff was processed into IDOC at the Stateville Correctional Center (“Stateville”) in Joliet, Illinois. As part of standard processing procedures, ICE stations agents at Stateville to interview incoming detainees. During processing, Plaintiff was interviewed by a female ICE officer (hereinafter ICE Officer Jane Doe). ICE Officer Jane Doe asked Mr. Mayorov if he was born in the United States. Plaintiff responded that he was born in Belarus. ICE Officer Jane Doe reviewed her computer and informed Plaintiff that he could not be admitted to boot camp because of his immigration status. Mr. Mayorov asked how she knew he was not a U.S. citizen and explained that his mother had become a citizen. ICE Officer Jane Doe asked for Mr. Mayorov’s mother’s name and was able to confirm that she was a citizen, who naturalized in 2007. ICE Officer Jane Doe then asked for Mr. Mayorov’s age. After making a telephone call, ICE Officer Jane Doe told Mr. Mayorov that he was a citizen and did not prevent his admission to boot camp.

Response: Admit plaintiff was processed by IDOC at Stateville, and deny remainder.

Complaint: 18. ICE Officer Jane Doe, nevertheless, did not update ICE records to reflect Mr. Mayorov’s U.S. citizenship.

Response: Admit ICE does not maintain citizenship records and deny remainder.

Complaint: 19. Plaintiff entered the IDOC “impact incarceration” program on or around January 25, 2011. He completed approximately 52 days of boot camp with a clean record. On or around March 18, 2011, Plaintiff was awoken in the early morning hours, handcuffed, and transferred to the Vienna Correctional Center (“Vienna”) where he spent two weeks in 24-hour lockdown segregation. At Vienna, Mr. Mayorov was informed by his counselor that he had been disqualified from boot camp due to an immigration detainer.

Response: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19; accordingly, they are denied.

Complaint: 20. On March 16, 2011, ICE agent Giuseppe DiMaggio issued an immigration detainer against Mr. Mayorov. Ex. B.

Response: Admit.

Complaint: 21. Agent DiMaggio never interviewed Plaintiff or permitted Plaintiff to submit evidence that he was a U.S. citizen before issuing the immigration detainer.

Response: Admit.

Complaint: 22. Neither ICE nor Agent DiMaggio provided Mr. Mayorov a copy of the immigration detainer, notified him that it had been lodged against him, or provided any mechanism to challenge the detainer.

Response: Admit.

Complaint: 23. Agent DiMaggio did not have probable cause to issue a detainer against Mr. Mayorov.

Response: Deny.

Complaint: 24. Agent DiMaggio did not have a reason to believe that Mr. Mayorov was a deportable noncitizen, or that Mr. Mayorov would somehow flee from the boot

camp before an investigation could occur and an arrest warrant issue. *See* 8 U.S.C. § 1357(a)(2) (governing warrantless arrest authority for immigration agents).

Response: Deny.

Complaint: 25. Agent DiMaggio justified the detainer based solely on an “investigation has been initiated” into whether Plaintiff was removable from the United States.

Response: Admit.

Complaint: 26. The detainer issued by Agent DiMaggio instructed IDOC to detain Plaintiff for an additional 48-hours (excluding weekends and holidays) once he had completed his sentence, so that ICE could assume physical custody of him. In short, ICE instructed IDOC to treat the detainer as the functional equivalent of an arrest warrant.

Response: Admit that the detainer contained language stating “DHS requests that you maintain custody of this individual for a period not to exceed 48 hours (excluding Saturdays, Sundays, and Federal Holidays) to provide adequate time for DHS to assume custody of the alien,” and deny remainder.

Complaint: 27. Neither Agent DiMaggio nor any other ICE agent reasonably investigated Mr. Mayorov’s case before issuing the unlawful immigration detainer.

Response: Deny.

Complaint: 28. Had ICE adequately investigated Plaintiff’s case, it would have reasonably discovered that he became a legal permanent resident at a young age; that he was identified as a dependent minor along with his alien number on his mother’s naturalization application; and that he was under 18 and in her custody at the time of her naturalization in March 2007. ICE, therefore, would have reasonably discovered that Mr. Mayorov was a U.S. citizen.

Response: Deny.

Complaint: 29. Likewise, had Agent DiMaggio interviewed Plaintiff, Mr. Mayorov would have confirmed his claim to U.S. citizenship as he did during the interview at Stateville.

Response: Deny.

Complaint: 30. After lodging the immigration detainer on March 16, 2011, neither Agent DiMaggio nor any other ICE agent conducted any further investigation into whether Mr. Mayorov was indeed removable from the United States. Despite the claimed basis for the detainer - that an "investigation had been initiated" - ICE did not actually investigate anything about Plaintiff's citizenship or deportability.

Response: Deny.

Complaint: 31. ICE, at all times relevant to this matter, had a pattern and practice of issuing detainers for the purpose of initiating an investigation, but not further investigating the propriety of an issued detainer until after the 48-hour detention period pursuant to the detainer was already triggered.

Response: Deny.

Complaint: 32. On or around March 21, 2011, Mr. Mayorov's counselor at Vienna provided Plaintiffs mother with an ICE telephone number listed on Plaintiff's detainer form. Over the next few days, Plaintiffs mother called the ICE phone number multiple times and left voicemails to explain that she believed the immigration detainer had been wrongfully issued. No ICE official ever answered or responded to her voicemails.

Response: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32; accordingly, they are denied.

Complaint: 33. Without any response from ICE or mechanism to challenge the immigration detainer, Plaintiff was transferred from Vienna to the Shawnee Correctional Center, a medium security prison, in order to serve a 4-year prison sentence. In fall 2011, Plaintiff contacted the National Immigrant Justice Center, which had announced a class action lawsuit related to detainees.

Response: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33; accordingly, they are denied.

Complaint: 34. On November 23, 2011, Mr. Mayorov sought to intervene in the putative class action *Jimenez Moreno, et al. v. Napolitano, et al.*, Case No. 11-CV-05452 (N.D. Ill. filed Aug. 11, 2011). In his motion to intervene, Mr. Mayorov placed ICE on further notice that its unlawful immigration detainer disqualified him from boot camp and thus was causing him to serve a 4-year sentence.

Response: Deny the detainer was unlawful and admit the remainder.

Complaint: 35. Within days of the intervention motion, ICE cancelled the detainer it lodged against Mr. Mayorov.

Response: Admit.

Complaint: 36. ICE took no further action with IDOC with regard to Plaintiff's eligibility to be returned to boot camp.

Response: Admit.

Complaint: 37. It took Plaintiff, with the assistance of his attorney, more than two months to undo the effects of the wrongful detainer so as to be allowed to reenter the "impact incarceration" program. Plaintiff reentered boot camp on or around February 6, 2012.

Response: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37; accordingly, they are denied.

Complaint: 38. Plaintiff successfully completed the remaining portion of the 120-day “impact incarceration” program without incident and was released from custody on April 14, 2012.

Response: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38; accordingly, they are denied.

Complaint: 39. Had the wrongful immigration detainer not been lodged against Plaintiff, he would have completed the 120-day boot camp and been released on parole on May 25, 2011.

Response: Deny the detainer was “wrongful” and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 39; accordingly, they are denied.

Complaint: 40. ICE’s immigration detainer was the direct and proximate cause for Plaintiff to be wrongfully incarcerated for 324-days, including approximately two weeks in 24-hour lockdown segregation.

Response: Deny.

Complaint: 41. While in prison, Mr. Mayorov suffered from significant emotional distress and depression and sought psychological counseling. Plaintiff was further subject to verbal harassment of a sexual nature from inmates.

Response: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41; accordingly, they are denied.

Complaint: 42. But for his wrongful imprisonment, Mr. Mayorov would have been gainfully employed from June 2011 to April 2012, as evidenced by his gainful employment since his release in April 2012.

Response: Deny plaintiff was wrongfully imprisoned and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 42; accordingly, they are denied.

Violations of the Federal Tort Claims Act

Complaint: 43. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671, *et seq.*, permits private parties to sue the United States for torts committed by employees of the federal government while acting within the scope of their employment. Under the FTCA, the United States is liable for tort claims in the same manner and to the same extent as a private individual would be under the circumstances. 28 U.S.C. § 2674. Because ICE’s tortious conduct against the Plaintiff occurred in Illinois, this state’s tort law will apply. *Fed Aviation Admin. v. Cooper*, 132 S.Ct. 1441, 1455 (2012).

Response: Deny employees of ICE engaged in tortious conduct, and admit remainder.

Complaint: 44. The federal government has a longstanding legal rule that it may not exercise its civil immigration enforcement authority against U.S. citizens.

Response: Admit.

Complaint: 45. ICE agents have an obligation to reasonably investigate and determine whether they have probable cause that a subject of enforcement is removable from the United States, prior to issuing a detainer. As part of these obligations, the government must reasonably investigate that an individual does not have a claim to U.S. citizenship before exercising its enforcement authority.

Response: Deny.

Complaint: 46. ICE falsely imprisoned Plaintiff by issuing an unlawful immigration detainer absent probable cause, which caused Plaintiff to be detained in a prison for 324-days.

Response: Deny.

Complaint: 47. ICE knew or should have known that, as a direct and proximate result of its issuance and maintenance of an immigration detainer, Plaintiff would be, or it was substantially certain that Plaintiff would be, automatically disqualified from boot camp and otherwise detained in a prison facility for the length of his four year prison sentence. An ICE officer interviewed Mr. Mayorov during processing at Stateville and initially told Plaintiff that he was disqualified from boot camp because of his immigration status. It was only after Plaintiff questioned that determination that the ICE officer ultimately concluded that Plaintiff was a U.S. citizen and did not disqualify his admission into boot camp. Nevertheless, that ICE officer at Stateville failed to update ICE's records to reflect Plaintiff's citizenship.

Response: Deny.

Complaint: 48. Less than three months later, ICE wrongfully issued a detainer against Plaintiff. Before issuing the detainer, ICE did not interview Plaintiff or reasonably investigate Plaintiff's citizenship before issuing the detainer. ICE lacked probable cause that Plaintiff, a U.S. citizen, had committed an immigration offense before issuing a detainer that served as the functional equivalent of an arrest warrant.

Response: Deny.

Complaint: 49. As a result of ICE's issuance of an immigration detainer absent probable cause, Plaintiff was wrongfully detained for 324 days in prison. During his time in prison, Plaintiff was subject to approximately two weeks in 24-hour lockdown segregation, was subject to verbal harassment of a sexual nature, and suffered significant emotional distress and depression. Plaintiff would have been held for longer than 324 days but for the efforts of Plaintiff and his attorneys to get the wrongful detainer canceled and then alert state officials that Plaintiff had been wrongfully disqualified from "impact incarceration" program and should be readmitted to complete boot camp.

Response: Deny.

Complaint: 50. Had ICE not engaged in such tortious conduct, Plaintiff would have been released on parole on or around May 25, 2011 and would not have been subject to 324-days in prison, suffered lost wages, as well as emotional pain and suffering.

Response: Deny employees of ICE engaged in tortious conduct, and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 50; accordingly, they are denied.

Complaint: 51. Prior to issuing the detainer on March 16, 2011, ICE negligently failed to interview Plaintiff or properly investigate his citizenship. ICE had all records necessary to determine that Plaintiff was a U.S. citizen and a brief interview with the Plaintiff would have revealed his claim to citizenship. ICE does not have legal authority to exercise its enforcement authority against U.S. citizen, and had a legal duty to reasonably investigate that Mr. Mayorov was not a U.S. citizen before issuing the detainer against him.

Response: Deny.

Complaint: 52. As a result of ICE's negligence, Plaintiff suffered a loss of liberty by being detained for 324 days in a prison, lost wages, and emotional pain and suffering.

Response: Deny.

FIRST CLAIM FOR RELIEF
Against the United States of America
(FTCA Claim of False Imprisonment or False Arrest)

Complaint: 53. Plaintiff realleges paragraphs 1-52 as if set forth fully herein.

Response: Defendant re-avers its responses to paragraphs 1-52.

Complaint: 54. This claim is brought pursuant to 28 U.S.C. §§ 2671 *et seq.*

Response: Admit plaintiff seek relief pursuant to the Federal Tort Claims Act.

Complaint: 55. The issuance of a detainer was a limitation on the freedom of the Plaintiff and constitutes a detention and an arrest.

Response: Deny.

Complaint: 56. ICE's agents, officers, servants, and employees caused or produced an unreasonable restraint on the liberty of Plaintiff through the issuance of an immigration detainer, thereby depriving him of his liberty for a period of 324 days in an Illinois prison facility.

Response: Deny.

Complaint: 57. ICE's agents, officers, servants, and employees caused or procured the restraint on the liberty of Plaintiff through the issuance of an immigration detainer, enlisting agents of the State of Illinois to further the restraint on liberty.

Response: Deny.

Complaint: 58. ICE's agents, officers, servants, and employees acted without reasonable grounds to believe that an offense was committed by the Plaintiff, in that they caused

Plaintiff's liberty to be restrained without having probable cause to believe that Plaintiff committed an immigration violation.

Response: Deny.

Complaint: 59. ICE's agents', officers', servants', and employees' actions in issuing a detainer and causing Plaintiff to be detained in a prison facility were unreasonable under the circumstances because one of the elements for probable cause to believe that Plaintiff committed an immigration violation was Plaintiff's alienage; and ICE's agents, officers, servants, and employees failed to reasonably investigate whether Plaintiff was a U.S. citizen before exercising their civil immigration enforcement authority against him.

Response: Deny.

Complaint: 60. As a proximate and reasonably foreseeable result of the actions by ICE's agents, officers, servants, and employees, Plaintiff suffered damages including 324 days of imprisonment, emotional pain and suffering, and lost wages.

Response: Deny.

SECOND CLAIM FOR RELIEF
Against the United States of America
(FTCA Claim of Negligence)

Complaint: 61. Plaintiff realleges paragraphs 1-60 as if set forth fully herein.

Response: Defendant re-avers its responses to paragraphs 1-60.

Complaint: 62. ICE's agents, officers, servants, and employees- including but not limited to Agent Giuseppe DiMaggio- had a duty to reasonably investigate whether Plaintiff was a U.S. citizen in order to establish whether it had probable cause that he was removable from the United States, before exercising its enforcement authority through issuance of an immigration detainer against Plaintiff.

Response: Deny.

Complaint: 63. ICE's agents, officers, servants, and employees- including but not limited to Agent Giuseppe DiMaggio - breached a duty to reasonably investigate whether Plaintiff was a U.S. citizenship before issuing a detainer against Plaintiff. ICE's agents, officers, servants, and employees breached its duty to establish probable cause that Plaintiff was removable from the United States before issuing a detainer against Plaintiff.

Response: Deny.

Complaint: 64. As a proximate and reasonably foreseeable result of the actions by ICE's agents, officers, servants, and employees - including but not limited to Agent Giuseppe DiMaggio- Plaintiff suffered damages including 324 days of imprisonment, emotional pain and suffering, and lost wages.

Response: Deny.

Complaint: 65. ICE's agents, officers, servants, and employees- including but not limited to ICE Officer Jane Doe- had a duty to reasonably document the Plaintiff's claim to U.S. citizenship.

Response: Deny.

Complaint: 66. ICE's agents, officers, servants, and employees- including but not limited to ICE Officer Jane Doe- breached a duty to reasonably document the fact of Plaintiff's U.S. citizenship, causing a detainer to thereafter be entered against Plaintiff by other agents, officers, servants, and employees.

Response: Deny.

Complaint: 67. As a proximate and reasonably foreseeable result of the actions by ICE's agents, officers, servants, and employees - including but not limited to ICE Officer Jane

Doe- Plaintiff suffered damages including 324 days of imprisonment; emotional pain and suffering, and lost wages.

Response: Deny.

WHEREFORE the United States denies liability, prays for judgment in its favor with costs, and asks that the court award such further relief as may be appropriate.

Respectfully submitted,

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United States Attorney

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