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Erasto Vallejo

2008 JUN 16 PM 12:27
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: [Signature]

FILED

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ERASTO VALLEJO

Plaintiff
v.

UNITED STATES OF AMERICA,
Does 1 through Does 10, Agents
Of the Department of Homeland
Security,
Defendants.

) No. **CV 08-03923**
)
) COMPLAINT FOR :
) (1) False Arrest-FTCA
) (2) False Imprisonment
) Federal Tort Claims Act
)
) (3) Negligence-FTCA
) (4) BIVENS Violation
) Of Constitutional
) Rights
) (5) Malicious Prosecution
)

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Plaintiff alleges as follows:

INTRODUCTION

1. This action seeks compensatory damages arising out of the false arrest , false imprisonment, malicious prosecution and wrongful deportation of plaintiff by defendant the United States of America (hereinafter “USA”) through agents of the Immigration and Customs Enforcement (herein after ICE) and or agents of the Department of Homeland Security. In addition Plaintiff seeks damages against ICE/DHS agents Does 1 through 10 under a Bivens cause of action. Defendants’ negligence caused the false arrest, and or false imprisonment, malicious prosecution, and wrongful deportation of the plaintiff on the basis he was a deportable alien. These charges were false. The plaintiff is a United States citizen. During the pendency of the removal proceeding the plaintiff was falsely imprisoned at the Metropolitan Correctional Center and or CCA in Otay Mesa, California. On or about October 19, 2005, the plaintiff was wrongfully deported from the United States to Mexico.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over plaintiff’s claims against defendants under the Fourth and Fifth Amendments to the

1 Constitution, 28 U.S.C. Sections 1331, 1343 and 1367 and the Federal
2 Tort Claims Act (“FTCA”) under 28 U.S.C. Sections 1346(b) and 2671-
3 2680(h)*proviso*. Plaintiff timely filed a claim under the FTCA with the
4 DHS on or about October 1, 2007. The claim was denied on March 14,
5 2008. This action is filed within the six month period set forth in 28
6 U.S.C. 2401(b).
7

8
9 3. Venue is proper in this district under 28 U.S.C. 1391 and 1402(b)
10 because the plaintiff resides in Los Angeles County, California.
11

12 PARTIES

13 4. Plaintiff Erasto Vallejo is a citizen of the USA and at all times
14 herein mentioned was a resident of Los Angeles, California.
15

16 5. Defendant, the United States of America (“United States”)
17 through its employees and agencies, is responsible for the actions alleged
18 herein under the FTCA. Defendants Does 1 through 10 are Special
19 Agents of the Department of Homeland Security, and are sued in their
20 individual capacities. The true names and capacities of the defendants
21 sued herein as Does 1 through 10, inclusive, are presently unknown to
22 Plaintiff, who therefore sues said defendants by fictitious names. Plaintiff
23 is informed and believes, and thereon alleges, that each of the Defendants
24 is in some way responsible for the acts complained of herein. Plaintiff
25
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1 will, if necessary, seek leave of the Court to amend the Complaint to show
2 the true names and capacities of these fictitiously names Does when they
3 have been ascertained.
4

5 FACTS COMMON TO ALL CLAIMS FOR RELIEF

6 6. Plaintiff was born in Mexico on April 14, 1982 to Erasto Vallejo
7 and Maria Eleazar Castillon.
8

9 7. On or about April 19, 1992 the plaintiff was lawfully admitted to
10 the USA as a permanent resident, based on his mother's I-130 petition.
11

12 8. On March 29, 2000, while the plaintiff was under the age of 18
13 his mother, before the U.S. District Court in Los Angeles, California,
14 became a naturalized United States citizen, conferring U.S. citizenship on
15 her minor son(plaintiff) pursuant to [former section] 8 U.S.C.
16 §1432(a)(3).
17

18 8. On or about April 27, 2004, while the plaintiff was incarcerated
19 at the California State Prison in Delano, California, agents of the
20 ICE/DHS interviewed the plaintiff to determine if he was an alien
21 subject to deportation or removal.
22

23 9. On or about April 27, 2004, plaintiff informed the ICE agents he
24 had been lawfully admitted for permanent residence, that his mother was
25 a United States citizen, he had no relationship with his father, his parents
26
27
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1 were not married, and provided them his mother's name and telephone
2 number.

3
4 10. Defendants negligently concluded plaintiff was not a United
5 States citizen, and on or about October 3, 2005, agents of the ICE/DHS
6 arrested the plaintiff, and held him without bail, to commence removal
7 proceedings.
8

9 11. Plaintiff was taken to the CCA detention facility in or near San
10 Diego, California, where he was held without bail.
11

12 12. The plaintiff was deported to Mexico on or about October 19,
13 2005.
14

15 13. In the plaintiff's immigration "A" file was his mother's "A"
16 number which ICE could have accessed through their computer system to
17 verify plaintiff's mother naturalized before plaintiff's 18th birthday.
18
19

20 FIRST CAUSE OF ACTION

21 (False Arrest 28 U.S.C. § 2680(h) *Proviso*)
22

23 14. Plaintiff incorporates paragraphs 1 to 13 as though set forth in
24 full.

25 15. Officers Does 1 through 10 are, and at all times herein
26 mentioned are and were, employed by defendant as a DHS Special Agent
27
28

1 and in doing the things herein alleged were acting within the course and
2 scope of their employment.

3
4 16. On or about October 3, 2005, the plaintiff was arrested and
5 incarcerated without bond as an alien by defendants, negligently, and
6 without any legal authority, on the basis he was a deportable or
7 removable, when in fact plaintiff is a citizen of the United States of
8 America.
9

10 17. Defendants negligently imprisoned the plaintiff from on or
11 about October 3, 2005 to on or about October 19, 2005, when he was
12 removed to Mexico.
13

14 18. By negligently failing to properly investigate his claim of
15 United States citizenship while acting under color of law defendants
16 violated plaintiff's rights 1) to be free of arrest, and incarceration without
17 probable cause under the Fourth Amendment, 2) to due process of law
18 under the Fifth Amendment, and 3) to be free of excessive bail and cruel
19 and unusual punishment under the Eighth Amendment of the United
20 States Constitution .
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24 19. Defendants' actions caused plaintiff serious emotional injury
25 and the loss of his freedom for which he is entitled to compensatory
26 damages in accordance with proof at trial.
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SECOND CAUSE OF ACTION

(False Imprisonment 28 U.S.C. § 2680(h) *Proviso*)

20. Plaintiff incorporates paragraphs 1 to 19 herein.

21. Defendants caused the plaintiff to be incarcerated without lawful justification, provocation or authority from on or about October 3, 2005 to on or about October 19, 2005, causing plaintiff damages as alleged above.

THIRD CAUSE OF ACTION

FEDERAL TORT CLAIMS ACT-NEGLIGENCE

22. Plaintiff re alleges and incorporates by reference paragraphs 1 through 21 as fully set forth herein.

23. This cause of action arises under the Federal Tort Claims Act, 28 U.S.C. Sec. 2671 et. Seq.

24. Defendants were negligent in failing to follow DOJ and DHS procedures regarding the investigation of plaintiff's status as a United States citizen.

25. Defendants also failed to act in a reasonable and prudent manner under the circumstances given their actions as set forth above including Defendants timely failure to investigate Plaintiff's case while he

1 was incarcerated.

2 26. As a result of Defendants negligence, Plaintiff was deprived of
3 his freedom and liberty, denied the right to live and work in the United
4 States for many days and suffered mental anguish, for which he is
5 entitled to compensatory damages in accordance with proof at trial.
6
7

8 FOURTH CAUSE OF ACTION

9 BIVENS Action Against the DHS Agents

10 27. Plaintiff re alleges and incorporates by reference paragraphs 1
11 through 26 as fully set forth herein.
12

13 28. The actions and conduct of defendants Does 1 through 10
14 violated the rights of plaintiff to be free from unreasonable arrest and or
15 detention under the Fourth Amendment and to due process of law under
16 the Fifth Amendment.
17

18 FIFTH CAUSE OF ACTION

19 (Malicious Prosecution-FTCA)

20 29. Plaintiff re alleges and incorporates by reference paragraphs 1
21 through 28 as though fully set forth herein.
22

23 30. On or about April 27, 2004, while the plaintiff was incarcerated
24 at the California State Prison in Delano, plaintiff was interviewed by an
25 immigration agent. The agent completed form I-213 Record of Deportable
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1 Alien.

2 31. The agent recorded on the form I-213 that the plaintiff was
3 born on April 14, 1982, that he was born in Mexico, that he was admitted
4 to the United States as a lawful permanent resident, that his “green card”
5 number is A43-364-393, that he was unaware of his father, that his
6 mother is a naturalized United States citizen, and plaintiff provided the
7 DHS agent his mother’s name and telephone number for verification of
8 the information.
9

10
11
12 32. On or about October 5, 2005, more than one year later,
13 defendants arrested plaintiff as an alien and instituted a removal
14 proceeding.
15

16 33. Defendants acted without probable cause in issuing a Notice to
17 Appear for his removal from the United States asserting plaintiff was not
18 a United States citizen, when the plaintiff’s “A” file in defendants’
19 possession contained all the information necessary for the defendants to
20 determine plaintiff derived United States citizenship when his mother
21 naturalized on March 29,2000.
22

23
24 34. Defendants acted maliciously in issuing a Notice to Appear and
25 commencing removal proceedings in that their actions were in total
26 indifference to the facts within their possession, in that the defendants,
27
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1 including the ICE/DHS agents who issued the Notice to Appear and filed
2 it with the Immigration Court made no attempt to confirm that plaintiff
3 was a United States citizen.
4

5 35. As a result of Defendants negligence, Plaintiff was deprived of
6 his freedom and liberty for the time he was in ICE/DHS custody, and
7 suffered lost wages, mental anguish, for the time he was in ICE custody
8 and in Mexico, for which he is entitled to general and compensatory
9 damages in accordance with proof at trial.
10
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12 PRAYER FOR RELIEF

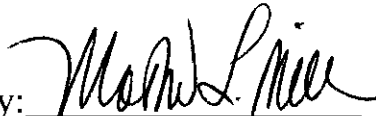
13 1. On all claims for relief for general or compensatory and punitive
14 damages in accordance with proof at trial.
15

16 2. For costs of suit herein.

17 3. For reasonable attorney fees. provided under 28 U.S.C. Sec.
18 2678; and
19

20 4. For such other and further relief as this Court may deem just and
21 proper.
22

23 Dated: June 10, 2008

By: 
Mathew L. Millen
Attorney for Plaintiff