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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ENRIQUE UROZA, Plaintiff, v. SALT LAKE COUNTY; SHERIFF JAMES WINDER; THE UNITED STATES OF AMERICA, JANET NAPOLITANO; JOHN MORTON; STEVEN M. BRANCH; MARSHALL MATHIS; JOHN DOES 1-100, Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF FEDERAL DEFENDANTS' MOTION TO DISMISS** Case No. 2:11-CV-00713 Judge Dale A. Kimball

On August 5, 2011, Plaintiff Enrique Uroza ("Uroza") filed a complaint alleging that Salt Lake County and Salt Lake County Sheriff James Winder, along with 50 unnamed defendants (collectively, "the County Defendants"), unlawfully detained Uroza in Salt Lake County Metro

Jail for 39 days. *See* Compl. ¶¶ 1-2, ECF No. 2. On March 26, 2012, Uroza amended his complaint and added defendants the United States of America, Janet Napolitano, John Morton, Steven M. Branch, Marshall Mathis, and John Does 51-100[1] (collectively, "the Federal Defendants"). *See* Am. Compl. ¶ 3, ECF No. 15. In his amended complaint, Uroza asserts that the Federal Defendants were liable for Uroza's detention in county jail because of their "policies and practices." *Id.* ¶ 3. He specifically challenges the individually-named Federal Defendants' actions, as well as the use of the Form I-247 detainer to request that an individual be held for up to 48 hours excluding weekends and holidays. Finally, he brings a false imprisonment claim against the United States. The Federal Defendants move to dismiss the complaint and all claims Uroza has filed against them, without leave to amend, pursuant to Federal Rule of Civil Procedure 12(b)(1), because the Federal Defendants have not waived sovereign immunity with respect to some of Uroza's claims. In addition, the Federal Defendants move to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) because Uroza fails to state a claim for relief against Federal Defendants which this Court may grant.

LEGAL STANDARDS

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a court must dismiss an action for lack of subject-matter jurisdiction if the court lacks statutory or constitutional authority to adjudicate. *See Kokkenen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (noting that federal courts are of limited jurisdiction). A court must dismiss the action whenever it

[1] At the time of filing, it appears that Uroza has not served John Does 51-100. Furthermore, John Does 51-100 have not sought representation by the Department of Justice. Because the John Does have not requested representation, and the Department has not agreed to represent them, John Does 51-100 are not represented by the Department of Justice at this time.

appears that the court lacks subject-matter jurisdiction. Fed. R. Civ. P. 12(h)(3). The plaintiff bears the burden of establishing the court's jurisdiction. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Under Federal Rule of Civil Procedure 12(b)(6), a Court must dismiss the complaint if it is not "plausible that the plaintiff is entitled to relief." *Bixler v. Foster*, 596 F.3d 751, 756 (10th Cir. 2010); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 (2007). When assessing a 12(b)(6) motion based on the facts, allegations of material fact are taken as true and construed in the light most favorable to the non-moving party. *American United Life Ins. Co.*, 480 F.3d at 1057 (citation omitted). A complaint must "give the court reason to believe that *this* plaintiff has a reasonable likelihood of mustering factual support for *these* claims." *Ridge at Red Hawk v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007). Furthermore, the Court need not accept as true pleadings that are no more than legal conclusions or the "formulaic recitation of the elements" of a cause of action. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

FACTUAL BACKGROUND

On June 13, 2011, Uroza was arrested and booked into Salt Lake County Metro Jail ("SLC Metro"). Am. Compl. ¶ 7. Uroza arranged for a bail bond on the same day. *Id.*; *see id.* ¶¶ 52-53; *see also* Salt Lake County Answer to Am. Compl. p. 12 (asserting that the bail bonds company either never submitted the bond to the jail or withdrew their bond upon learning that there was an immigration hold on Uroza). Pursuant to Salt Lake County's policy at that time, Uroza was held in detention to allow United States Immigration and Customs Enforcement

("ICE") to issue a detainer. Am. Compl. ¶¶ 35, 55. On June 14, 2011, an ICE agent interviewed Uroza and issued a Form I-247 detainer, requesting that Salt Lake County hold Uroza for up to 48 hours to allow ICE to assume custody of him.[2] *Id.* ¶¶ 56-57.

Assuming for purposes of this motion that Salt Lake County's independent authority to hold Uroza terminated on June 14, 2011, the detainer expired 48 hours later, on June 16, 2011.[3] *Id.* ¶ 60. On July 21, 2011, the state court ordered Uroza released from custody. *Id.* ¶ 63. On July 22, 2011, Salt Lake County released Uroza, whereupon ICE took Uroza into immigration custody. *Id.* ¶ 68-69. On July 25, 2011, ICE agents transported Uroza to Salt City for a bond hearing. *Id.* ¶ 85. Uroza was released on July 28, 2011, after posting bail. *Id.* ¶ 85-88.

ARGUMENT

I. The Court should dismiss Uroza's fourth claim for lack of jurisdiction and failure to state a claim for relief

(a) The Court lacks jurisdiction to hear Uroza's constitutional claims

The Court must dismiss Uroza's claim that the policy, practices, customs, and actions of the Federal Defendants deprived him of his liberty without due process. Am. Compl. ¶¶ 112-13. Absent a waiver, sovereign immunity shields the United States and its agencies from civil

[2] ICE may issue a Form I-247 immigration detainer and request that the federal, state, or local law enforcement agency temporarily detain "an alien not otherwise detained by a criminal justice agency" for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays. 8 C.F.R. § 287.7(d); *see* 8 U.S.C. § 1357. As specified by regulation, the detention request expires after 48 hours. This detention request is separate from Utah's former-SB 81 procedure for detaining individuals.

[3] The 48-hour detention period commences when an alien becomes otherwise eligible for release from criminal custody. Here, Uroza alleges that he was eligible for release from criminal custody on June 13, 2011, in which case the detainer would have expired on June 15, 2011. For purposes of this motion the Federal Defendants accept Uroza's assertion that the detainer expired on June 16, 2011.

actions. *See Loeffler v. Frank*, 486 U.S. 549, 554 (1988); *Federal Housing Administration v. Burr*, 309 U.S. 242, 244 (1940). Sovereign immunity is jurisdictional in nature. *See United States v. Mitchell*, 463 U.S. 206, 212 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite of jurisdiction"). Where the United States has not consented to suit, a court must dismiss the action for lack of subject matter jurisdiction. *United States v. Sherwood*, 312 U.S. 584, 586 (1941).

In his amended complaint, Uroza cites 28 U.S.C. §§ 1331, 1343, 1367, and 42 U.S.C. § 1983 in support of his constitutional claims. Am. Compl. pp. 12, 21. However, none of these sections provide an appropriate waiver of sovereign immunity. 28 U.S.C. § 1331 merely provides district courts with original jurisdiction over federal questions; it does not provide the waiver of sovereign immunity necessary for a suit against the federal government. *See Merida Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005). Similarly, § 1343 provides district courts with original jurisdiction over civil rights actions, but it does not include a waiver of sovereign immunity for suits against the United States. *Trackwell v. United States Government*, 472 F.3d 1242, 1244 (10th Cir. 2007). Uroza's reliance on 28 U.S.C. § 1367 and 42 U.S.C. § 1983 also fail. *San Juan County, Utah v. United States*, 503 F.3d 1163, 1182-83 (10th Cir. 2007) (§ 1367 does not provide a waiver for sovereign immunity); *Dry v. United States*, 235 F.3d 1249, 1255 (10th Cir 2000) (§ 1983 "appli[es] only to actions by state and local entities, not by the federal government."); *Belhomme v. Widnall*, 127 F.3d 1214, 1217 (10th Cir. 1997) (§ 1983 "does not apply to federal officers acting under color of federal law."). Accordingly, because the United States has neither waived its immunity nor consented to suit for damages based on constitutional claims, the Court must dismiss Uroza's fourth claim for damages under 42 U.S.C.

§ 1983. Likewise, the Court must dismiss all of Uroza's constitutional claims against the individually-named defendants in their official capacities. *See Weaver v. United States*, 98 F.3d 518, 529 (10th Cir. 1996) (an action against federal employees in their official capacities is an action against the United States); Fed. R. Civ. P. 12(b)(1).

(b) The Court must dismiss Uroza's § 1983 claim because § 1983 does not apply to actions by the federal government

Regardless of whether there is subject-matter jurisdiction over the constitutional claims, this Court should dismiss all claims against the Federal Defendants because Uroza fails to state a claim against them upon which relief could be granted. Uroza named Steven M. Branch, Marshall Mathis, and John Does 51-100 as individually-named defendants.[4] Am. Comp. ¶¶ 21-26. However, he failed to plead any facts or allegations that would support a claim for relief.

In his introduction section, Uroza states that his complaint contains "*Bivens*, conspiracy and declaratory judgment claims" against the Federal Defendants. Am. Compl. ¶ 4. Yet, he did not assert that any particular defendants are individually liable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971).[5] *See generally* Am.

[4] Although Department of Homeland Security Secretary Janet Napolitano and ICE Director John Morton are named defendants, it appears as though Uroza did not intend to name these defendants in their individual-capacities. *Compare* Am. Compl. ¶¶ 21-22 (naming Secretary Napolitano and Director Morton as parties) *with id.* ¶¶ 23-25 (naming Director Branch, Agent Mathis, and John Does 51 and 52 as defendants sued in their individual capacities) and *id.* ¶117 (naming Director Branch, Agent Mathis, and John Does 51 and 52 in the claim for relief under 42 U.S.C. § 1985(2)).

[5] Even if Uroza had sufficiently pled a *Bivens* claim, that claim would require dismissal because the Federal Defendants would be entitled to qualified immunity. Uroza's vague assertions concerning ICE's "policies, customs and actions" are insufficient to establish who acted in what capacity to deprive Uroza of any cognizable right. *See Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011). Moreover, all Federal Defendants were acting within

Compl. Instead, he brought a claim under 42 U.S.C. § 1983 against "ICE Defendants," and another claim under 42 U.S.C. § 1985(2) against Federal Defendants "Branch, Mathis, John Doe 51, and John Doe 52." Am. Compl. pp. 21-22.

Uroza's allegations under § 1983 against the individually-named Federal Defendants are insufficient to withstand a motion to dismiss. To properly plead a claim under 42 U.S.C. § 1983, a plaintiff must allege sufficient facts to establish that he was deprived of a federal right and the deprivation was caused by a person acting under color of state law. *Beedle v. Wilson*, 422 F.3d 1059, 1064 (10th Cir. 2005). By its own terms, section 1983 applies "only to actions by state and local entities, not by the federal government." *Dry*, 235 F.3d at 1255. Furthermore, § 1983 does not apply to federal officers acting under color of federal law. *Belhomme*, 127 F.3d at 1217. Uroza has not alleged that any of the individually named defendants were not acting under color of federal law. *See generally* Am. Compl. Instead, and fatal to his claims, he alleges that all individually-named Federal Defendants were acting within the scope of their employment and in accord with DHS policy. Am. Compl. ¶¶ 21-25, 72-75. Because § 1983 does not apply to the United States, Secretary Napolitano, and Director Morton, and the individually-named Federal Defendants were acting under the color of federal law, the Court must dismiss Uroza's claims under § 1983. Fed. R. Civ. P. 12(b)(6).

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their scope of employment and in accordance with 8 C.F.R. § 287.7. *Wilson v. Layne*, 526 U.S. 603, 617 (1999) (a law enforcement officer is entitled to qualified immunity if he reasonably relies on a statute, regulation, or policy, even if such policy is subsequently found to be unconstitutional). Finally, to the extent that Uroza pled a *Bivens* claim, there is no showing that the individual Federal Defendants have been properly served. *See* June 1, 2012 Cert. of Service, ECF No. 28.

II. The Court must dismiss Uroza's fifth claim for lack of jurisdiction and failure to state a claim

(a) The Court lacks jurisdiction to render a declaratory judgment regarding the constitutionality of ICE's "hold requests"

This Court must also dismiss Uroza's claim for declaratory judgment against Federal Defendants based on alleged violations of the Fourth and Fifth Amendments for lack of subject-matter jurisdiction. Am. Compl. ¶¶ 114-15; Fed. R. Civ. P. 12(b)(1). As discussed above, the United States has neither waived its immunity nor consented to suit based on constitutional claims. *Mitchell*, 463 U.S. at 212; *Sherwood*, 312 U.S. at 586. Uroza's additional citation to 28 U.S.C. §§ 2201 and 2202 in support of his request for a declaratory judgment also does not provide a valid waiver of sovereign immunity. *See* Am. Comp. ¶ 13; *Neighbors for Rational Development, Inc. v. Norton*, 379 F.3d 956, 961 (10th Cir. 2004); *Wyoming v. United States*, 279 F.3d 1214, 1225 (10th Cir. 2002) (holding that "the declaratory judgment statute, 28 U.S.C. § 2201, [does not] itself confer jurisdiction on a federal court where none otherwise exists"). The Court should therefore dismiss Uroza's fifth claim for a declaratory judgment based on the constitutionality of ICE's uses of the Form I-487 detainer. *See* Am. Comp. ¶ 114-15; *Aviles v. Lutz*, 887 F.2d 1046, 1048 (10th Cir. 1989); *Weaver* 98 F.3d at 529; Fed. R. Civ. P. 12(b)(1).

(b) The Court must dismiss claim six because Uroza failed to allege that Federal Defendants were responsible for any violation of his rights

Uroza's claim for declaratory judgment against the Federal Defendants should be dismissed because the Federal Defendants were not responsible for any alleged violation of Uroza's rights. Fed. R. Civ. P. 12(b)(6). Critically, Uroza admits that, between June 14, 2011 and July 22, 2011, he was detained by Salt Lake County, and not ICE. *See* Am. Compl. ¶¶ 1, 4,

46, 61, 65, 68, 82. While it is uncontested that ICE issued a detainer on June 14, 2011, that hold request expired on June 16, 2011. Am. Compl. ¶ 57-60; Salt Lake County Answer ¶ 59. Indeed, the terms of the detainer specify that the hold request was to expire after 48 hours. Am. Compl. ¶ 29. There is no reason to believe that the County Defendants would construe the detainer as requesting indefinite detention. *Cf.* Am. Compl. ¶¶ 78-79. In fact, Uroza acknowledges that the detainer was a *request*, and not an *order* for Salt Lake County to keep Uroza in detention.[6] *See* Am. Compl. ¶ 29 (stating that "ICE acknowledges that Form I-247 'hold requests' are, indeed, 'requests,' rather than 'orders.'"). Thus, the federal government could not have been liable for Uroza's detention prior to July 22, 2011 when ICE took Uroza into immigration custody. *Id.* ¶¶ 68-69. Accordingly, Uroza's fails to state a viable claim for declaratory judgment.[7]

Moreover, this Court must dismiss Uroza's claims based on his allegations that the Federal Defendants violated his rights due to the delay between his arrival in ICE custody on Friday, July 22, 2011 and his bond hearing on Monday, July 25, 2011. *See* Am. Compl. ¶ 84.

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[6] Moreover, most circuit courts considering the issue have determined that issuing an immigration detainer, without more, is insufficient to render someone in custody. *See Zolicoffer v. United States Dep't of Justice*, 315 F.3d 538, 541 (5th Cir. 2003); *Galaviz-Medina v. Wooten*, 27 F.3d 487, 493 (10th Cir. 1994); *Prieto v. Gluch*, 913 F.2d 1159, 1162-64 (6th Cir. 1990); *Orozco v. INS*, 911 F.2d 539, 541 (11th Cir. 1990); *Campillo v. Sullivan*, 853 F.2d 593, 595 (8th Cir. 1988); *but see Vargas v. Swan*, 854 F.2d 1028, 1032-33 (7th Cir. 1988) (holding that a detainer could, in particular circumstances, be sufficient to satisfy the custody requirement). Likewise, judges in the Northern District of California have held the same. *See Hung Vi v. Alcantar*, 2008 WL 928340 (N.D. Cal. Apr. 4, 2008); *Mitchell v. Gonzales*, 2007 WL 2688693 (N.D. Cal. Sept. 12, 2007) *aff'd sub nom. Mitchell v. Mukasey*, 278 F. App'x 714 (9th Cir. 2008); *Nguyen v. United States*, 2003 WL 1343000 (N.D. Cal. Mar. 13, 2003); *Ishmat v. INS*, 2001 WL 725362 (N.D. Cal. June 14, 2001).

[7] Uroza alleges that ICE "regularly took custody of individuals detained by County Defendants long after ICE's 'hold request' had expired." Am. Compl. ¶ 51. However, no facts are alleged to support this assertion and this is not a class action suit. Uroza lacks standing to assert a claim on behalf of anyone else.

Once arriving in immigration custody, Uroza was promptly scheduled for a bond hearing and granted a $2,500 bond. Am. Compl. ¶¶ 84-85, 87. Accordingly, Federal Defendants did not violate Uroza's constitutional rights. *See United States v. Encarnacion*, 239 F.3d 395, 397-98 (1st Cir. 2001) (an eight-day delay in detention before a bond hearing was not unconstitutional). Therefore, this Court must dismiss the claims against the Federal Defendants because Uroza failed to state a claim for relief that this Court could grant. Fed. R. Civ. P. 12(b)(6); *Iqbal*, 556 U.S. at 677; *Twombly*, 550 U.S. at 555, 557.

III. This Court should dismiss Uroza's sixth claim for conspiracy because his vague allegations do not allege that Federal Defendants acted with a discriminatory purpose

The Court must also dismiss Uroza's claims under 42 U.S.C. § 1985(2). Uroza asserts that the Federal Defendants conspired with County Defendants in order to violate his constitutional rights. Am. Compl. ¶¶ 89-93. In order to state a claim under § 1985(2), the plaintiff must allege a class-based, invidiously discriminatory animus. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 267-68 (1993); *Bretz v. Kelman*, 773 F.2d 1026, 1029 (9th Cir. 1985); *Brawer v. Horowitz*, 535 F.2d 830, 840 (3d Cir. 1976). Uroza's complaint does not contain any allegations of discriminatory animus, and thus he fails to state a viable claim for relief under § 1985(2). *See* Am. Compl. Instead, he simply alleges that Defendants Branch, Mathis, John Doe 51, and John Doe 52 conspired with the county defendants and knew or should have known that the county defendants would detain him beyond the expiration of the hold request. Am. Compl. ¶¶ 78-79, 89-94, 117. These vague and baseless allegations do not allege that any of the defendants acted with a discriminatory purpose. *Bretz*, 773 F.2d at 1028-29. The Court should therefore dismiss the sixth claim against the individually-named defendants.

IV. The Court should dismiss Uroza's seventh claim because Uroza failed to establish that his brief ICE detention was unlawful

Uroza's seventh claim, for false imprisonment under the Federal Tort Claims Act ("FTCA"), codified at 28 U.S.C. § 1346(b)(1); §§ 2674-2680, must also be dismissed. The FTCA provides a limited waiver of sovereign immunity for certain tort claims brought against the United States, and specifies the terms, conditions and extent of this limited waiver. *Dry*, 235 F.3d at 1257 (noting that the "intentional torts exception to the FTCA, the general waiver of sovereign immunity effected by the Act only extends to suits for intentional torts such as 'assault [and] battery, false imprisonment, false arrest, malicious prosecution, [and] abuse of process' if the conduct of 'investigative or law enforcement officers of the United States Government' is involved"). While the FTCA provides a limited waiver of sovereign immunity for claims of false imprisonment, it restricts the waiver to claims arising from the actions of investigative or law enforcement officers. *See* 28 U.S.C. § 2680(h). Section 2680(h) defines "investigative or law enforcement officer" as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law."

Uroza's complaint fails to establish that he was falsely imprisoned, and that Federal Defendants' acts or omissions caused the false imprisonment. *Id.* ¶¶ 25, 121. State law applies in analyzing claims under the FTCA. *Richardson v. United States*, 369 U.S. 1, 11-12 (1962). In Utah, "[f]alse imprisonment is an act 'intending to confine the other . . . within boundaries fixed by the actor,' which 'results in such a confinement' while 'the other is conscious of the confinement or is harmed by it.'" *Tiede v. State*, 915 P.2d 500, 503 n. 4 (Utah 1996) (quoting *Restatement (Second) of Torts* § 35 (1965)). False imprisonment occurs when there is "*unlawful*

detention or restraint of another against his will." *Mildon v. Bybee*, 13 Utah 2d 400, 375 P.2d 458, 459 (1962) (emphasis added). Under the FTCA, the United States is liable only to the extent that a private individual would be liable under like circumstances. 28 U.S.C. § 2674; *Dolan v. United States Postal Service*, 546 U.S. 481, 481, 126 S.Ct. 1252, 1253 (2006).

Here, Uroza entered ICE custody on July 22, 2011, after the County Defendants released him from state custody. Am. Comp. ¶ 80. On July 25, 2011, ICE issued a Notice to Appear, charging Uroza with removability from the United States, and provided him a bond hearing. Am. Comp. ¶ 85. ICE granted his release on bond, and released him after he posted the bond on July 28, 2011. Am. Comp. ¶ 87. The Immigration and Nationality Act allows for ICE to arrest and detain aliens in order to examine their right to enter or remain in the United States. *See* 8 U.S.C. § 1357; 8 C.F.R. § 287.7. Uroza fails to explain how ICE's custody after his release from state custody, which lasted for only three days before granting him bond on July 25, 2011, was unlawful. Am. Compl. ¶¶ 121-22; *cf. Encarnacion*, 239 F.3d 395 (holding that alien's eight-day detention without examination was not unlawful under 8 U.S.C. § 1357). Moreover, ICE's lodging of a detainer against Uroza on June 14, 2011, which Uroza concedes expired after 48 hours, did not cause him to be in ICE custody during the five-week period he waited for Salt Lake City Metro to release him. Am. Compl. ¶¶ 29, 45, 54, 57, 60-61. Accordingly, Uroza failed to establish that he was unlawfully detained, and therefore falsely imprisoned, due to the act or omission of an investigative or law enforcement officer, and therefore failed to state a meritorious claim under the FTCA. The Court must dismiss claim seven for failure to state a claim for relief.

V. Conclusion

The Court must dismiss Uroza's complaint against the Federal Defendants because the Court lacks jurisdiction to review Uroza's constitutional claims, and Uroza fails to state a claim against ICE upon which relief could be granted.

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