

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-CV-879-REB-KLM

LUIS QUEZADA,

Plaintiff

v.

TED MINK, Sheriff of Jefferson County Colorado, in his official capacity,
JOHN LONGSHORE, Director of the ICE Denver Field Office, in his individual capacity,
JASON CLEMENS, Immigration Enforcement Agent in ICE's Denver Field Office, in his
individual capacity,
BRET R. TALBOT, Immigration Enforcement Agent in ICE's Denver Field Office, in his
individual capacity,
KELLI SAYERS, Immigration Enforcement Agent in ICE's Denver Field Office, in her
individual capacity,
WAYNE RICHARDSON, employee in ICE's Denver Field Office, in his individual
capacity,
JEFF JENKINS, employee in ICE's Denver Field Office, in his individual capacity,
EDDIE SANCHEZ, employee in ICE's Denver Field Office, in his individual capacity,
SHANNON SANTOS, employee in ICE's Denver Field Office, in his individual capacity,
and the UNITED STATES OF AMERICA.

Defendants.

**DEFENDANT JEFFERSON COUNTY SHERIFF TED MINK'S ANSWER TO
PLAINTIFF'S THIRD AMENDED COMPLAINT**

Defendant Jefferson County Sheriff Ted Mink (the "Sheriff"), by and through the
Jefferson County Attorney's Office and Assistant County Attorneys Writer Mott and
James Burgess, hereby answers the Third Amended Complaint and Jury Demand (the
"Complaint") [Docket #84] of Plaintiff Luis Quezada ("Plaintiff") as follows:

Introduction

1. The Sheriff admits that Plaintiff was transported to the Jefferson County Detention Facility (the “JCDF”) in May 2009 after being arrested as alleged in paragraph 1 of the Complaint. The Sheriff admits that when the Plaintiff went to court he was sentenced to time served on the traffic violation as alleged in paragraph 1 of the Complaint. The Sheriff is without knowledge or information surrounding the circumstances of the Plaintiff’s arrest and, therefore, denies any allegations related to the arrest contained in paragraph 1 of the Complaint. The Sheriff specifically denies all the remaining allegations of paragraph 1 of the Complaint. The Sheriff further affirmatively alleges that Plaintiff was a federal contract prisoner held for the Immigration and Customs Enforcement Agency (“ICE”) and was not in the custody of the Sheriff after the state charges were resolved.

2. The Sheriff denies the allegations contained in paragraph 2 of the Complaint.

3. The Sheriff admits that Plaintiff purports to bring *Bivens* claims against the individual ICE Defendants as alleged in paragraph 3 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations of paragraph 3 of the Complaint and therefore denies the same.

4. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 4 of the Complaint and therefore denies the same.

5. The Sheriff denies the allegations contained in paragraph 5 of the Complaint.

Jurisdiction and Venue

6. The Sheriff admits that Plaintiff purports to bring this lawsuit pursuant to 42 U.S.C. § 1983 ("Section 1983") and other statutes as alleged in paragraph 6 of the Complaint.

7. The Sheriff admits this court has jurisdiction over this matter as alleged in paragraph 7 of the Complaint.

8. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 8 of the Complaint and therefore denies the same.

9. The Sheriff admits that venue is proper in the District of Colorado and that the events described in the Complaint occurred in this District of Colorado as alleged in paragraph 9 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny whether all parties to this litigation reside within the District of Colorado as alleged in paragraph 9 of the Complaint and therefore denies the same.

Parties

10. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 10 of the Complaint and therefore denies the same.

11. The Sheriff admits that he is the elected Sheriff of Jefferson County, Colorado as alleged in paragraph 11 of the Complaint. The Sheriff admits that Plaintiff purports to sue the Sheriff in his official capacity only as alleged in paragraph 11 of the Complaint. The Sheriff admits that he operates the JCDF and is responsible for formulating policies applicable to the JCDF as alleged in paragraph 11 of the Complaint. The Sheriff denies the remaining allegations of paragraph 11 of the Complaint.

12. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 12 of the Complaint and therefore denies the same.

13. The Sheriff admits that Defendants Clemens, Talbot, and Sayers made requests to the Sheriff to detain Plaintiff on behalf of ICE, thereby causing Mr. Quezada's detention, as alleged in paragraph 13 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations of paragraph 13 of the Complaint and therefore denies the same.

14. The Sheriff admits that daily reports were sent by the JCDF to Defendants Richardson, Jenkins, Sanchez, and Santos alerting ICE that Plaintiff was being held at the JCDF as an ICE detainee as alleged in paragraph 14 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations of paragraph 14 of the Complaint and therefore denies the same.

15. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 15 of the Complaint and therefore denies the same.

Factual Allegations

A. ICE Immigration Detainers

16. The Sheriff admits the first sentence of paragraph 16 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations of paragraph 16 and therefore denies the same.

17. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in the first sentence of paragraph 17 of the Complaint and therefore denies the same. The second sentence of paragraph 17 merely quotes from

an Immigration Detainer Form I-247, which is a public document that speaks for itself and does not require any admission or denial.

18. The Sheriff admits receiving a November 7, 2008, letter from the American Civil Liberties Union related to ICE detainers as alleged in paragraph 18 of the Complaint. The Sheriff states that the letter is a document which speaks for itself and does not require any admission or denial. The Sheriff denies the allegations contained in paragraph 18 of the Complaint to the extent the representations of the content of the letter vary from the actual document.

19. The Sheriff states that the letter referenced in paragraph 19 of the Complaint is a document which speaks for itself and does not require any admission or denial.

20. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 20 of the Complaint and therefore denies the same.

21. The Sheriff admits producing copies of its policies and procedures relating to Immigration Detainers during the course of this litigation as alleged in paragraph 21 of the Complaint. The Sheriff affirmatively represents that its ICE Detainer policy produced in this litigation was not added to the Detention Post Orders until April 2009, after the February 2009 Open Records Request from the ACLU.

B. The IGSA Between Defendant Mink and the United States Marshals Service

22. The Sheriff admits the allegations contained in paragraph 22 of the Complaint.

23. In response to paragraph 23 of the Complaint, the Sheriff states the IGSA is a public document which speaks for itself and for which no admission or denial is necessary.

24. In response to paragraph 24 of the Complaint, the Sheriff states the IGSA is a public document which speaks for itself and for which no admission or denial is necessary.

25. In response to paragraph 25 of the Complaint, the Sheriff states the IGSA is a public document which speaks for itself and for which no admission or denial is necessary.

C. Luis Quezada's Arrest and Detention

26. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 26 of the Complaint and therefore denies the same.

27. The Sheriff admits the allegations contained in paragraph 27 of the Complaint.

28. The Sheriff admits that at around 11:54 a.m. on the morning of May 23, 2009, the JCDF faxed to ICE a notification that Mr. Quezada was "ready for pickup" by ICE as is alleged in paragraph 28 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 28 and therefore denies the same.

29. The Sheriff admits the allegations contained in paragraph 29 of the Complaint.

30. In response to paragraph 30 of the Complaint, the Sheriff states the Immigration Detainer referenced is a document which speaks for itself and for which no admission or denial is necessary.

31. The Sheriff admits the allegations contained in paragraph 31 of the Complaint.

32. The Sheriff admits receiving a I-203 Form from ICE at approximately 1:31 p.m. on May 23, 2009 as alleged in paragraph 32 of the Complaint. The Sheriff admits that ICE uses I-203 forms to request local law enforcement agencies with whom ICE has an IGSA to detain an individual as a federal detainee under the IGSA as alleged in paragraph 32 of the Complaint. The Sheriff further admits that the I-203 from ICE requested the Sheriff to detain Mr. Quezada for ICE and that the form did not specify any time limitation for his detention as alleged in paragraph 32 of the Complaint.

33. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 33 and therefore denies the same.

34. The Sheriff denies the allegations contained in paragraph 34 of the Complaint.

35. The Sheriff admits the allegations contained in paragraph 35 of the Complaint.

36. The Sheriff admits the allegations contained in the first sentence of paragraph 36 of the Complaint. The Sheriff denies the remaining allegations contained in paragraph 36 of the Complaint.

37. The Sheriff admits the allegations contained in paragraph 37 of the Complaint.

38. The Sheriff denies the allegations contained in paragraph 38 of the Complaint.

39. The Sheriff denies the allegations contained in paragraph 39 of the Complaint.

40. The Sheriff admits the allegations contained in the first sentence of paragraph 40 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 40 of the Complaint and therefore denies the same.

41. The Sheriff admits receiving a second Immigration Detainer, Form I-247, from ICE for Plaintiff Luis Quezada on June 23, 2009, as alleged in paragraph 41 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 41 of the Complaint and therefore denies the same.

42. The Sheriff denies the allegations contained in paragraph 42 of the Complaint.

43. The Sheriff admits receiving a second I-203 form from ICE related to the Plaintiff on July 11, 2009, as alleged in paragraph 43 of the Complaint. The I-203 form is a document which speaks for itself and for which no admission or denial is necessary.

44. The Sheriff admits that ICE agents picked up Mr. Quezada on July 14, 2009, as alleged in paragraph 44 of the Complaint. The Sheriff denies that ICE took

custody of Mr. Quezada on July 14, 2009, as alleged in paragraph 44 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations of paragraph 44 of the Complaint and therefore denies the same.

45. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 45 of the Complaint and therefore denies the same.

46. The Sheriff admits that Plaintiff filed a notice of claim to the Jefferson County Attorney on October 15, 2009, as alleged in paragraph 46 of the Complaint. The rest of the allegations in paragraph 46 of the Complaint constitute a legal conclusion for which no admission or denial is necessary.

D. Defendant Mink's Liability¹

47. The Sheriff denies the allegations contained in paragraph 47 of the Complaint.

48. The Sheriff denies the allegations contained in paragraph 48 of the Complaint.

49. The Sheriff denies the allegations contained in paragraph 49 of the Complaint.

50. The Sheriff denies the allegations contained in paragraph 50 of the Complaint.

¹ The Sheriff denies any liability in this matter and merely is incorporating the subject matter headings of the Complaint for ease of reference.

51. The Sheriff denies the allegations contained in paragraph 51 of the Complaint.

52. The Sheriff denies the allegations contained in paragraph 52 of the Complaint.

53. The Sheriff denies the allegations contained in paragraph 53 of the Complaint.

54. The Sheriff denies the allegations contained in paragraph 54 of the Complaint.

55. The Sheriff denies the allegations contained in paragraph 55 of the Complaint.

56. The Sheriff denies the allegations contained in paragraph 56 of the Complaint.

57. The Sheriff denies the allegations contained in paragraph 57 of the Complaint.

E. Liability of the ICE Defendants

58. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 58, including subparts a-c, of the Complaint and therefore denies the same. The Sheriff further notes that paragraph 58 of the Complaint refers to numerous federal statutes which speak for themselves and for which no admission or denial is necessary.

59. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 59 of the Complaint and therefore denies the same.

60. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 60 of the Complaint and therefore denies the same.

61. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 61 of the Complaint and therefore denies the same.

62. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 62 of the Complaint and therefore denies the same.

63. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 63 of the Complaint and therefore denies the same.

64. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 64 of the Complaint and therefore denies the same.

65. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 65 of the Complaint and therefore denies the same.

66. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 66 of the Complaint and therefore denies the same.

67. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 67 of the Complaint and therefore denies the same.

68. The Sheriff is without information or knowledge sufficient to admit or deny the allegations contained in paragraph 68 of the Complaint and therefore denies the same.

69. The Sheriff admits daily emails were sent from the JCDF to Defendants Richardson, Jenkins, Sanchez, and Santos notifying ICE that Plaintiff was being held at the JCDF as a Federal contract hold inmate on behalf of ICE as alleged in paragraph 69 of the Complaint. The Sheriff is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 69 of the Complaint and therefore denies the same.

FIRST CLAIM FOR RELIEF
(Against Defendant Mink—Fourth and Fourteenth Amendments; 42 U.S.C. § 1983)

70. The Sheriff hereby incorporates his responses to paragraphs 1 through 69 of the Complaint as if set forth fully herein as its response to paragraph 70 of the Complaint.

71. The Sheriff denies the allegations contained in paragraph 71 of the Complaint.

72. The Sheriff denies the allegations contained in paragraph 72 of the Complaint.

73. The Sheriff denies the allegations contained in paragraph 73 of the Complaint.

74. The Sheriff denies the allegations contained in paragraph 74 of the Complaint.

75. The Sheriff denies the allegations contained in paragraph 75 of the Complaint.

SECOND CLAIM FOR RELIEF
(Against Defendant Mink--False Imprisonment)

76. The Sheriff hereby incorporates his responses to paragraphs 1 through 75 of the Complaint as if set forth fully herein as its response to paragraph 76 of the Complaint.

77. The Sheriff denies the allegations contained in paragraph 77 of the Complaint.

78. The Sheriff denies the allegations contained in paragraph 78 of the Complaint.

79. The Sheriff is without information or knowledge sufficient to admit or deny the allegations of paragraph 79 of the Complaint and therefore denies the same.

80. The Sheriff denies the allegations contained in paragraph 80 of the Complaint including the allegations contained in subparts (a) and (b) of paragraph 80 of the Complaint.

THIRD CLAIM FOR RELIEF
(Against Defendant Mink--Negligence)

81. The Sheriff hereby incorporates his responses to paragraphs 1 through 80 of the Complaint as if set forth fully herein as its response to paragraph 81 of the Complaint.

82. The Sheriff denies the allegations contained in paragraph 82 of the Complaint.

83. The allegations contained in paragraph 83 of the Complaint constitute a legal conclusion for which no admission or denial is required.

84. The Sheriff denies the allegations contained in paragraph 84 of the Complaint.

85. The Sheriff denies the allegations contained in paragraph 85 of the Complaint including the allegations contained in subparts (a) and (b) of paragraph 85 of the Complaint.

FOURTH CLAIM FOR RELIEF
(*Bivens* Claims Against the ICE Defendants—Fourth and Fifth Amendments)

86-92. Paragraphs 86-92 of the Complaint are directed against the ICE Defendants and not against the Sheriff. Accordingly, no admission or denial is necessary. To the extent an affirmative response by the Sheriff is necessary, the Sheriff denies the allegations.

FIFTH CLAIM FOR RELIEF
(Against Defendant United States – False Imprisonment)

93-97. Paragraphs 93-97 of the Complaint are directed against Defendant United States and not against the Sheriff. Accordingly, no admission or denial is necessary.

To the extent an affirmative response by the Sheriff is necessary, the Sheriff denies the allegations.

SIXTH CLAIM FOR RELIEF
(Against Defendant United States – Negligence)

98-102. Paragraphs 98-102 of the Complaint are directed against Defendant United States and not against the Sheriff. Accordingly, no admission or denial is necessary. To the extent an affirmative response by the Sheriff is necessary, the Sheriff denies the allegations.

103. The Sheriff affirmatively denies that Plaintiff is entitled to any of the relief set forth in the “Prayer for Relief” section of the Complaint following paragraph 102 of the Complaint and, therefore, denies all allegations contained therein.

General Denial

The Sheriff denies each and every other allegation contained in the Complaint, except to the extent expressly and specifically admitted herein.

AFFIRMATIVE DEFENSES

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

All or part of Plaintiff’s claims fail to rise to the level of constitutional violations sufficient to state any claim for relief under 42 U.S.C. § 1983.

Third Defense

Plaintiff’s state law tort claims are barred by the Colorado Governmental Immunity Act.

Fourth Defense

Plaintiff's official capacity claims are barred on grounds that they are not based on any policy, practice, or custom.

Fifth Defense

All of Plaintiff's official capacity claims are barred on grounds that the facts underlying the Complaint describe an isolated incident.

Sixth Defense

Plaintiff's injuries, to the extent there are any, were caused by a third party or other Defendants over which the Sheriff had no responsibility.

Seventh Defense

The Sheriff cannot be held liable for any acts or omissions of others including the Plaintiff, non-parties, or the other Defendants.

Eighth Defense

There is no vicarious or respondent superior liability theory applicable to 42 U.S.C. §1983 claims.

Ninth Defense

Plaintiff has failed to mitigate his damages, if any, as required by law.

Tenth Defense

Some or all of the damages alleged, if any, by Plaintiff were caused by actions of third parties, including the Plaintiff or the other Defendants, or circumstances over which the Sheriff had no control or legal authority to act.

Eleventh Defense

Plaintiff was not in the custody of the Sheriff and, therefore, the Sheriff is not responsible for any alleged overdetention or false imprisonment.

Twelfth Defense

Plaintiff's damages were caused by a superseding or intervening cause.

Thirteenth Defense

To the extent Plaintiff is seeking to recover lost wages as a part of his request for compensatory damages, those damages are not compensable if Plaintiff was not legally entitled to earn those wages.

Fourteenth Defense

The Sheriff designates non-party, the Department of Homeland Security Immigration and Customs Enforcement Agency ("ICE"), in part or in whole, as at fault for any claims of overdetention, false imprisonment, or negligence pursuant to Colo.Rev.Stat. § 13-21-111.5.

Fifteenth Defense

The Sheriff is currently without knowledge of facts, which would form the basis for further affirmative defenses regarding Plaintiff's claims. The Sheriff reserves the right to assert any such defenses should factual bases become known during discovery or otherwise.

SHERIFF'S REQUEST FOR RELIEF

WHEREFORE, the Sheriff respectfully requests that this Court enter judgment in his favor and against Plaintiff, and for any such further relief as the Court deems just and proper.

Respectfully submitted this 5th day of January, 2011.

ELLEN G. WAKEMAN
JEFFERSON COUNTY ATTORNEY

s/ Writer Mott

By: _____

Writer Mott
James L. Burgess
Assistant County Attorney
100 Jefferson County Pkwy., Ste. 5500
Golden, Colorado 80419
Telephone: (303)271-8932
Email: wmott@jeffco.us
jburgess@jeffco.us

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT JEFFERSON COUNTY SHERIFF TED MINK'S ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT** was filed via the US District Court ECF Filing System this 5th day of January, 2010, which will send a true and correct copy to the following:

Daniel D. Williams
FAEGRE & BENSON, LLP
1900 Ninth St., Ste. 200
Boulder, CO 80302
Email: dwilliams@faegre.com

Mark Silverstein
Rebecca T. Wallace
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF COLORADO
400 Corona Street
Denver, Colorado 80218
Email: msilver2@att.net
Email: rtwallace@aclu-co.org

Kirk M. Neste
Jeffrey S. Roberts
FAEGRE & BENSON LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, Colorado 80203-4532
E-mail: kneste@faegre.com
E-mail: jroberts@faegre.com

Omar C. Jadwat
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Email: Ojadwat@aclu.org

J. Max Weintraub, Sr. Litigation Counsel
United States Dept. of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Email: jacob.weintraub@usdoj.gov

Timothy B. Jafek
Assistant United States Attorney
1225 Seventeenth Street, Ste. 700
Denver, Colorado 80202
Email: timothy.jafek@usdoj.gov

s/ Deborah Hokanson

Deborah Hokanson, Paralegal