

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**ERNESTO GALARZA,**

**Plaintiff,**

**v.**

**UNITED STATES OF AMERICA**

**Defendant.**

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**CIVIL ACTION**

**No. 11-\_\_\_\_\_**

**(Related to 10-cv-6815 (JKG))**

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. Plaintiff Ernesto Galarza is a United States citizen who was born in New Jersey. Local and federal officials with United States Immigration and Customs Enforcement (“ICE”) nonetheless collaborated to imprison him at the Lehigh County Prison for three days as a suspected undocumented and deportable “alien.”

2. Plaintiff brings this action against Defendant United States of America under the Federal Tort Claims Act.

3. This matter is brought as a related case to the previously filed action brought against local and federal officials under docket number 10-cv-6815.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. §§ 1331 & 1346(b).

5. On November 19, 2010, Plaintiff submitted an Administrative Tort Claim to ICE and the United States Department of Homeland Security (“DHS”). Plaintiff’s claim was denied on March 28, 2011. Plaintiff has therefore exhausted all available administrative remedies.

6. Venue is proper with this District under 28 U.S.C. § 1402(b) as the acts that are the subject of this Complaint occurred within the District, in Lehigh County, Pennsylvania.

### **PARTIES**

7. Thirty-six-year-old Plaintiff Ernesto Galarza is and was at all times relevant to this Complaint a resident of Allentown, Pennsylvania.

8. Mark Szalczyk, Greg Marino, both of whom are named defendants in the related matter, No. 10-cv-6815, and any and all other federal officers involved in the decision to issue an immigration detainer concerning plaintiff (collectively “ICE officers”) were at all times relevant to this Complaint officers employed by ICE, an executive agency of the United States of America.

9. At all times relevant to this Complaint, the ICE officers were acting within the scope and course of their employment with ICE and, as such, Defendant United States of America is the appropriate defendant under the Federal Tort Claims Act.

10. At all times relevant to this Complaint, the ICE officers were acting as investigative or law enforcement officers.

### **FACTUAL ALLEGATIONS**

11. Plaintiff Ernesto Galarza was born in Perth Amboy, New Jersey on September 20, 1974.

12. Plaintiff is and always has been a United States Citizen.

13. Plaintiff is a Hispanic man of Puerto Rican heritage.

14. Plaintiff speaks both English and Spanish.

15. On Thursday, November 20, 2008, Plaintiff was performing construction work on a house near 6<sup>th</sup> and Monroe Streets in Allentown.

16. Unbeknownst to Plaintiff, the contractor directing the construction, Juan Santilme, was selling cocaine.

17. At approximately 2:30 p.m., after Santilme sold cocaine to Allentown Police Inspector Christie Correa (a named defendant in the related matter, No. 10-cv-6815) who was acting undercover, Allentown police arrived at 6<sup>th</sup> and Monroe Streets and arrested Plaintiff.

18. Plaintiff was charged with conspiring with Santilme and two other arrestees, Joel Cruz and Luis Aponte-Maldonado, to deliver cocaine in violation of Pennsylvania law.

19. Juan Santilme, Luis Aponte-Maldonado and Joel Cruz are Hispanic.

20. Juan Santilme is a citizen of the Dominican Republic.

21. On information and belief, Luis Aponte-Maldonado is a citizen of the Dominican Republic. However, following his arrest, he told Correa that he is a United States citizen from Puerto Rico.

22. On information and belief, Joel Cruz is a citizen of Honduras.

23. Upon his arrest, Plaintiff was taken to the Allentown Police Department and held in a cell separate from the other three arrestees.

24. The Criminal Complaint, dated November 20, 2008 and verified on penalty of perjury by Inspector Correa, correctly listed Plaintiff's place of birth as Perth Amboy and his date of birth as September 20, 1974; the Complaint also listed Plaintiff's Social Security Number and ethnicity (Hispanic).

25. At the time of arrest, Plaintiff carried his wallet, which contained the following:

- a) Plaintiff's Pennsylvania Driver's License
- b) Plaintiff's Social Security Card
- c) Plaintiff's Debit Card

d) Plaintiff's Health Insurance Card.

26. At approximately 8:00 p.m., Plaintiff was transported to Lehigh County Prison in Allentown.

27. At approximately 10:15 p.m., Magisterial District Judge Karen C. Devine set Plaintiff's bail at \$15,000.

28. In the early morning hours of Friday, November 21, 2008, Plaintiff underwent the prison admissions process.

29. During the prison admissions process, all new inmates are asked to report their place of birth. If a birthplace outside the United States is reported, Lehigh County Prison staff complete and fax a special form to ICE.

30. During his admissions processing, Plaintiff told prison officials that he was born in New Jersey.

31. Understanding that Mr. Galarza is an American citizen, Lehigh County Prison staff never faxed to ICE a special form regarding Plaintiff.

32. During the prison admissions process, Plaintiff was fingerprinted.

33. Lehigh County Prison officials stored Plaintiff's wallet.

34. At some point during the evening of November 20, 2008, Inspector Correa phoned ICE and spoke to an officer she believed to be ICE Officer Greg Marino. She stated that she had arrested four men that afternoon on drug charges, some of whom she believed to have given false information about their identities. She provided the ICE officer with information from each arrestee's booking sheet, including, his name, date of birth, place of birth, ethnicity, and Social Security number, if given.

35. Inspector Correa provided the following information regarding Plaintiff:

- a) Name (Ernesto Galarza)
- b) Date of Birth (09/20/74)
- c) Place of Birth (Perth Amboy, New Jersey)
- d) Ethnicity (Hispanic)
- e) Social Security Number.

36. ICE Officer Marino gave to Mark Szalczyk, also an ICE officer, the information from Inspector Correa.

37. Before ICE Officer Marino gave ICE Officer Szalczyk this information, he conducted no investigation of other reasonably available information that would have confirmed Plaintiff's identity and the fact that Plaintiff is a U.S. citizen.

38. If Inspector Correa spoke to ICE Officer Szalczyk as opposed to ICE Officer Marino, then Inspector Correa communicated the information described above directly to ICE Officer Szalczyk.

39. Despite being provided Plaintiff's Social Security number and other accurate personal information proving that Plaintiff is a U.S. citizen, ICE Officer Szalczyk decided to issue an immigration detainer for Plaintiff.

40. ICE Officer Szalczyk did not make any effort to determine whether the Social Security Number provided by Plaintiff was valid.

41. ICE Officer Szalczyk had no sufficient factual or legal basis to believe that Plaintiff was a foreign national.

42. ICE Officer Szalczyk thus did not have sufficient legal cause to issue a detainer for Plaintiff.

43. The ICE officers knew or should have known that improper detainers have frequently been issued at Lehigh County Prison, where many Allentown Police Department arrestees are jailed, as ICE officials have issued and then cancelled many immigration detainers previously lodged against Lehigh County Prison inmates and inmates detained in other nearby county prisons and jails.

44. Since at least November 6, 2008, ICE officers were put on official notice of the agency's "ongoing concerns" about the imperative to ensure that U.S. Citizens are not falsely detained on immigration detainers. On that date, then-Director of ICE's Detention and Removal Operations, James T. Hayes, issued a memorandum to ICE Field Office Directors cautioning that, prior to making an arrest, ICE officers must have probable cause that the individual to be arrested is an "alien" subject to removal from the United States. James T. Hayes, *Superseding Guidance on Reporting and Investigating Claims to United States Citizenship*, at 1 (Nov. 6, 2008).

45. On or about Friday, November 21, 2008, notwithstanding the above, ICE Officer Szalczyk prepared an Immigration Detainer – Notice of Action (Form I-247) directing Lehigh County prison staff not to release Plaintiff. Exhibit A.

46. The detainer was faxed to Lehigh County Prison on Friday, November 21, 2008.

47. The immigration detainer falsely described Plaintiff as an "alien" and falsely listed his nationality as "Dominican Republic."

48. The immigration detainer correctly listed Plaintiff's birth date.

49. The immigration detainer failed to list an Alien Registration Number or File Number for Plaintiff. Instead it read: "TBD."

50. The immigration detainer also read, in part:

Investigation has been initiated to determine whether this person is subject to removal/deportation from the United States . . . . Federal regulations (8 C.F.R. 287.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays) to provide adequate time for ICE to assume custody of the alien.

51. In issuing the detainer, the ICE officers intended and expected to prevent Plaintiff's release.

52. On Friday, November 21, 2008, a surety company posted bail for plaintiff.

53. Plaintiff learned that bail had been posted when, on Friday, November 21, 2008, a Lehigh County Prison correctional officer told him that his bail had been posted and that he should prepare to leave the facility.

54. Shortly after Plaintiff was told of his imminent release, the same correctional officer told him that a detainer was preventing his release.

55. When Plaintiff protested to the correctional officer that there should be no detainer preventing his release, the officer told him that he would have to wait through the entire weekend until he could speak with a counselor on Monday, November 24, 2008.

56. Solely because of the immigration detainer, Lehigh County Prison officials did not release Plaintiff on Friday, November 21, 2008, after his bail was posted.

57. Prior to issuance of the detainer, Plaintiff had neither been interviewed by any ICE official nor provided with a copy of the detainer. Nor did ICE bother to verify the validity of the ample documentation of Plaintiff's identity and U.S. citizenship, including his Social Security number and Pennsylvania driver's license.

58. Consequently, Plaintiff did not, until Monday, November 24, 2008, learn that the detainer had been issued for immigration purposes.

59. Plaintiff remained jailed at Lehigh County Prison until Monday night, November 24, 2008.

60. After breakfast on Monday, November 24, 2008, a Lehigh County Prison counselor told Plaintiff for the first time that the detainer holding him was an immigration detainer that had been placed by ICE.

61. Plaintiff immediately protested that he is a United States citizen and that there was no basis to hold him on an immigration detainer.

62. Plaintiff urged the counselor to collect his wallet from the property room and look at his Social Security Card and Pennsylvania Driver's License. The counselor refused.

63. Shortly thereafter, two ICE officers met with Plaintiff at the Lehigh County Prison.

64. These ICE officers questioned Plaintiff extensively about his statement that he had been born in New Jersey.

65. Plaintiff gave them his Social Security Number and date of birth.

66. The ICE officers left and returned shortly thereafter. Upon their return, they informed Plaintiff that the detainer was being lifted.

67. The detainer was in fact lifted at 2:05 p.m. on Monday, November 24, 2008.

68. Plaintiff was released from Lehigh County Prison at 8:28 p.m. on Monday, November 24, 2008.

69. The detainer caused Plaintiff to be detained unlawfully for approximately three days.

70. On April 12, 2010, a jury acquitted Plaintiff of the crime for which he had been arrested on November 20, 2008.



71. As a direct and proximate result of the conduct of the ICE officers, Plaintiff suffered substantial damages, including physical pain and suffering, emotional distress and harm, embarrassment, lost wages and employment, other financial losses, and lost liberty.

72. As a result of his imprisonment, Plaintiff lost a part-time job, lost wages from both his full and part time jobs, and suffered emotional distress and physical problems.

73. Defendants' actions deprived Plaintiff of his liberty and thus amounted to a seizure of his person.

74. The ICE officers' actions deprived Plaintiff of his liberty with reckless indifference to the absence of a basis on which to continue his detention.

## **CAUSES OF ACTION**

### **Count I**

#### **Plaintiff v. Defendant United States of America Federal Tort Claims Act – False Arrest and False Imprisonment**

75. The actions of investigative or law enforcement personnel working on behalf of the United States as described above, including the ICE officers' issuance of an immigration detainer against Plaintiff, intentionally caused plaintiff to be detained and confined, without probable cause or any other legal justification, and as a result, Plaintiff was detained and confined unlawfully.

76. The actions of the ICE officers constitute the torts of false arrest and false imprisonment under the laws of the Commonwealth of Pennsylvania.

77. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

### **Count II**

#### **Plaintiff v. Defendant United States of America Federal Tort Claims Act – Negligence**

78. The ICE officers owed a duty to Plaintiff and, as described above, breached their duty to Plaintiff, and, as such, were a direct and proximate cause and a substantial factor in bringing about Plaintiff's damages outlined above.

79. The actions of the ICE officers constitute the tort of negligence under the laws of the Commonwealth of Pennsylvania.

80. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

WHEREFORE, Plaintiff respectfully requests:

- A. Compensatory damages;
- B. Reasonable attorneys' fees and costs;
- C. Such other and further relief as may appear just and appropriate.



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