

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT**

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GABRIEL VILLANUEVA-OJANAMA and)	
MANUEL SEBASTIAN CASTRO LARGO,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. _____
)	
UNITED STATES,)	
)	
Defendant.)	
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Plaintiffs Gabriel Villanueva-Ojanama and Manuel Sebastian Castro Largo, through their counsel, allege upon information and belief:

COMPLAINT

U.S. Immigration and Customs Enforcement (“ICE”) officials caused local police and Connecticut Department of Corrections (“DOC”) officers to unlawfully imprison Mr. Gabriel Villanueva-Ojanama and Mr. Manuel Sebastian Castro Largo. Each Plaintiff was arrested by local police, charged with minor criminal offenses, and transferred to DOC custody. After each man had completed his brief criminal incarceration, DOC refused to release either Plaintiff because ICE officers had issued immigration “detainers.” An immigration detainer is not a warrant based on sworn evidence or independent review by a neutral magistrate, but merely an administrative notice. Nevertheless, these ICE detainers caused local law enforcement and DOC to continue to hold the two Plaintiffs for several days after all legal authority for their detention had expired. ICE officials issued the detainers with knowledge that they would cause Plaintiffs’ unlawful detention, and in contravention of statutory and regulatory constraints. As a result, both men suffered significant anxiety and humiliation, which they continue to feel to this day.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Plaintiffs' claims arising under the U.S. Constitution and federal statutes pursuant to 28 U.S.C. §§ 1331, 1346(b).

2. Venue is proper in this district under 28 U.S.C. § 1391(b) in that all events complained of and giving rise to Plaintiffs' claims arose in this district.

PARTIES

3. Plaintiff Gabriel Villanueva is a resident of Hartford, Connecticut.

4. Plaintiff Manuel Sebastian Castro Largo is a resident of Meriden, Connecticut.

5. Defendant United States is sued under the Federal Tort Claims Act for the tortious acts of its employees.

STATEMENT OF FACTS

Legal Background

6. ICE uses Form I-247, Immigration Detainer – Notice of Action, otherwise known as a “detainer,” to notify other law enforcement agencies of its interest in an individual and to control the release of non-citizens from state prisons and local jails as part of its immigration enforcement efforts.

7. Pursuant to 8 U.S.C. § 1357(d), Congress authorized the limited issuance of immigration detainers to detain non-citizens in local custody for offenses related to controlled substance violations and only when local law enforcement officials initiate the request.

8. ICE implementing regulations further restrict the use of detainers to situations “when gaining immediate physical custody is either impractical or impossible” prior to the individual’s release. 8 CFR § 287.7(a).

9. Unlike procurement of a criminal warrant, ICE issues detainers without sworn

evidence and without submitting evidence for review by a neutral and independent magistrate.

10. ICE frequently issues detainers merely for investigative purposes, before it has charged the subject in removal proceedings or obtained a final order of removal.

Gabriel Villanueva-Ojanama

11. Plaintiff Gabriel Villanueva-Ojanama is a thirty-seven year-old resident of Hartford, Connecticut. He lives with his long-term partner Mila Cruz, a legal permanent resident, and her two U.S.-citizen children, all of whom he cares for and supports financially.

12. The Wethersfield, Connecticut Police Department arrested Mr. Villanueva on or about May 15, 2011 and took him into custody on misdemeanor charges for driving under the influence, possessing marijuana and a marijuana pipe, and possessing a baseball bat.

13. That night, the Wethersfield police ran an immigration query on his name and fingerprints.

14. The Wethersfield police told Mr. Villaneuva that he would be able to pay a \$500 cash bond and leave that night. When his partner, Ms. Cruz, arrived at the station with the necessary funds to post the cash bond, she was unable to post bond because ICE had lodged a detainer against Mr. Villanueva dated May 15, 2011. ICE Agent Anthony Mackie signed this detainer.

15. The ICE detainer issued May 15 states, "Investigation has been initiated to determine whether this person is subject to removal from the United States." The detainer does not indicate that ICE had commenced removal proceedings or obtained a final order of removal against Mr. Villanueva.

16. The May 15 detainer states further, "Federal regulations (8 CFR 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” (emphasis added).

17. But for the May 15 ICE detainer, Mr. Villanueva would have been released from custody on May 15, 2011 when Ms. Cruz attempted to post his \$500 bond. Because the detainer prevented Mr. Villanueva from bonding out, however, he was held overnight at the Wethersfield police station and then transferred to the custody of the Connecticut Department of Correction (DOC) at the Hartford Correctional Center on May 16, 2011.

18. ICE issued a second detainer for Mr. Villanueva on May 20, 2011. ICE Agent Darren Gelormino signed this detainer.

19. The May 20, 2011 detainer stated, “Investigation has been initiated to determine whether this person is subject to removal from the United States.” The detainer did not indicate that ICE had commenced removal proceedings or obtained a final order of removal against Mr. Castro Largo.

20. The May 20, 2011 detainer further advised DOC, “Under Federal regulation 8 CFR § 287.7, 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” (emphasis added).

21. The second detainer supplemented the first, providing notice of its existence to a second law enforcement agency. The option on the May 20 Form I-247 to cancel previously issued detainers was not exercised in this case.

22. On June 6, 2011 Mr. Villanueva was transferred to the Osborn Correctional Center, another DOC facility.

23. On July 7, 2011 Mr. Villanueva pled guilty to the misdemeanor offense of

operating a motor vehicle under the influence of alcohol and received a sentence of six months, suspended after thirty days, with credit for time served. Because he had been incarcerated well in excess of thirty days by the date of his plea and sentencing, Mr. Villanueva was free of state criminal custody as of July 7, 2011.

24. There were no other outstanding warrants or detainers for Mr. Villanueva. Accordingly, but for the immigration detainer, Mr. Villanueva would have been released by state judicial authority on July 7, 2011 with credit for time served. The immigration detainer caused DOC employees to continue to detain Mr. Villanueva.

25. ICE did not undertake a probable cause hearing or present sworn evidence establishing probable cause to a neutral and detached magistrate before lodging detainers against Mr. Villanueva dated May 15, 2011 and May 20, 2011.

26. ICE did not determine in advance of lodging its detainers that it would be impracticable or impossible for ICE to pick up Mr. Villanueva upon release from state custody.

27. It was not impracticable or impossible for ICE to detain Mr. Villanueva upon his release from state custody.

28. Audiotapes of the conversations between Wethersfield police officers and ICE officials the night of Mr. Villanueva's arrest confirm that the Wethersfield Police Department did not request that ICE issue the May 15 detainer. ICE issued the May 15 detainer without a request from Wethersfield police or any other state or local law enforcement agency or officer.

29. No DOC employee, and no other state or local law enforcement officer, requested issuance of the May 20 ICE detainer.

30. Prior to the incident described above, Mr. Villanueva had no prior criminal or immigration history.

31. Mr. Villanueva remained in DOC custody for four days after the completion of his criminal sentence, from July 7 to July 11, 2011, based solely on the ICE detainer.

32. On July 11, 2011, ICE agents took custody of Mr. Villanueva from DOC. That same day, ICE issued a Form I-862, Notice to Appear, served him with an administrative arrest warrant, and set bond at \$10,000. Mr. Villanueva's partner posted the immigration bond nine days later, and he was released.

33. Mr. Villanueva suffered emotional distress, humiliation, and trauma caused by, and directly resulting from, the actions of ICE agents. He continues to bear the stigma and feelings of helplessness that were caused by his false detention and remains fearful and uncertain about whether law enforcement officers will exercise their power and authority to target him and/or his friends and family in the future.

34. On November 3, 2011 Mr. Villanueva timely filed Form 95, Claim for Damage, Injury, or Death, under the Federal Torts Claims Act against the United States Department of Homeland Security.

35. ICE denied Mr. Villanueva's claim on May 11, 2012.

36. Mr. Villanueva timely requested reconsideration of the denial on November 8, 2012, which ICE also denied on May 6, 2013. In the denial letter, ICE states that any suit against the United States must be filed no later than six months after the date of mailing.

Manuel Sebastian Castro Largo

37. Plaintiff Manuel Sebastian Castro Largo is a thirty-four year old resident of Meriden, Connecticut, where he has lived for more than four years.

38. Mr. Castro Largo was initially stopped by the Meriden, Connecticut Police Department on the evening of October 6, 2011, for an alleged traffic infraction. He was arrested

on suspicion of traffic infractions and a misdemeanor violation.

39. Mr. Castro Largo was held overnight at the Meriden Police Department and then transferred to the DOC's New Haven Correctional Center on the morning of October 7, 2011.

40. On October 8, 2011, the Superior Court, Geographical Area 7 at Meriden ordered Mr. Castro Largo released on his own recognizance subject to a promise to appear. The Superior Court imposed no bond requirement on Mr. Castro Largo's release. Lawful authorization for the State of Connecticut to detain Mr. Castro Largo thus ended on October 8, 2011.

41. However, because ICE issued an immigration detainer against Mr. Castro Largo on October 7, 2011, DOC employees continued to detain Mr. Castro Largo. The detainer was signed by ICE Agent John Hanlon.

42. The detainer issued October 7, 2011 stated, "Investigation has been initiated to determine whether this person is subject to removal from the United States." The detainer did not indicate that ICE had commenced removal proceedings or obtained a final order of removal against Mr. Castro Largo.

43. The ICE detainer further advised DOC, "Under Federal regulation 8 CFR § 287.7, 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" (emphasis added).

44. Mr. Castro Largo remained in DOC custody after Superior Court had ordered him released on recognizance, based solely on the ICE detainer.

45. On October 11, 2011, after three days in DOC custody based solely on the ICE detainer, Mr. Castro Largo filed a federal habeas petition. *Gaspar v. Feliciano*, 3:11-cv-01548-PCD (D. Conn. Oct. 11, 2011).

46. On October 12, 2011, four days after the Connecticut Superior Court ordered Mr. Castro Largo released on his own recognizance, ICE arrived to take him into custody. That same day, ICE interviewed Mr. Castro Largo and issued a Form I-862, Notice to Appear, served Mr. Castro Largo with an arrest warrant, then released Mr. Castro Largo on his own recognizance, with no requirement of bond.

47. ICE did not undertake a probable cause hearing or present sworn evidence establishing probable cause to a neutral and detached magistrate before lodging a detainer against Mr. Castro Largo.

48. ICE did not determine in advance of issuing a detainer that it would be impracticable or impossible for ICE to pick up Mr. Castro Largo upon release from state custody.

49. It was not impracticable or impossible for ICE to detain Mr. Castro Largo upon his release from state custody.

50. Prior to the incident described above, Mr. Castro Largo had no prior criminal or immigration history.

51. There were no controlled substance charges against Mr. Castro Largo.

52. Neither state nor local law enforcement requested that ICE issue the detainer against Mr. Castro Largo.

53. On October 21, 2011, the Connecticut state prosecutor declined to pursue the misdemeanor charge and one of the traffic charges against Mr. Castro Largo. Mr. Castro Largo pled guilty to the two remaining minor traffic infractions, and agreed to pay a total fine of \$125, fully resolving all charges against him.

54. Mr. Castro Largo subsequently dismissed his federal habeas petition as moot,

given that ICE had taken custody of him on October 12, 2011, and before the Court could adjudicate his petition.

55. Mr. Castro Largo suffered severe emotional distress and trauma caused by, and directly resulting from, the actions of ICE agents. While in detention, Mr. Castro Largo began to experience heart pain.

56. During the detention, Mr. Castro Largo felt anxious and scared. His mind went blank at times and he began to forget where he was, who he was, and what was happening. Mr. Castro Largo feared that he might be going crazy. He also felt depressed from the confusion and anxiety. During the detention, Mr. Castro Largo began to shake because he was very nervous.

57. He continues to bear the stigma and feelings of helplessness that were caused by his false detention and remains fearful and uncertain about whether law enforcement officers will exercise their power and authority to target him and/or his friends and family in the future.

58. On November 3, 2011 Mr. Castro Largo timely filed Form 95, Claim for Damage, Injury, or Death under the Federal Torts Claims Act against the United States Department of Homeland Security. ICE denied Mr. Castro Largo's claim on May 11, 2012.

59. Mr. Castro Largo timely requested reconsideration of the denial on November 8, 2012, which ICE also denied on May 6, 2013. In the denial letter ICE states that any suit against the United States must be filed no later than six months after the date of mailing.

60. Plaintiffs seek damages for the time that they were held solely on the basis of an ICE detainer after all legal authorization for their detention ended.

CLAIM FOR RELIEF
Federal Tort Claims Act
28 U.S.C. § 1346(b)

61. The Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

62. ICE agents are law enforcement officers.

63. Immigration detainers issued by ICE cause state and local law enforcement officials to hold individuals in custody, solely as a means of enforcing federal civil immigration statutes. ICE lodged the detainers at issue in this case solely for investigative purposes, before removal proceedings had been commenced or removal orders obtained against either Plaintiff.

64. ICE officials caused Plaintiffs to be detained for over 48 hours without undertaking a probable cause hearing or presenting sworn evidence establishing probable cause to a neutral and detached magistrate in violation of the Fourth Amendment. *See County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

65. Local law enforcement is not authorized to carry out civil immigration enforcement in the circumstances at issue in this case and therefore may not hold individuals solely on the basis of a detainer issued for investigative purposes only. ICE officials knew or should have known that the issuance of detainers would cause the DOC to hold the Plaintiffs without legal authority.

66. ICE officials improperly commandeered state resources in violation of the Tenth Amendment by requiring state personnel to implement federal regulatory programs. *See Printz v. United States*, 521 U.S. 898 (1997). ICE officials intentionally led Connecticut authorities to believe that the detainers they issued required Plaintiffs' detention beyond the conclusion of criminal proceedings.

67. Federal statutes preempt civil immigration enforcement except as expressly permitted by statute. No federal statute authorized DOC to detain Plaintiffs solely on the basis of an ICE detainer.

68. Detainers are *ultra vires* of the statute when they are issued for offenses other than controlled substance violations or when there is no initiating request from local law enforcement officials.

69. Plaintiffs' detention violated substantive and procedural due process. There was no way for Plaintiffs to challenge the legality of their detention.

70. There are no standards governing the issuance of an ICE detainer.

71. ICE had no discretion to violate the United States Constitution.

72. The United States is liable pursuant to the Federal Tort Claims Act ("FTCA") for the tortious acts of its employees in "circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b).

73. At all times relevant to this Complaint, the ICE officials acted within the scope of their employment and/or their official duties as employees of ICE and the Department of Homeland Security ("DHS"), an agency of the U.S. Government.

74. In these circumstances, if the United States were a private person, liability would be imposed in accordance with the law of Connecticut.

75. Both Plaintiffs have also administratively exhausted their claims under the FTCA. Pursuant to 28 U.S.C. §2675(a), the Plaintiffs filed FTCA administrative claims with DHS. DHS denied the claims of both Plaintiffs.

False Imprisonment

76. The Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

77. ICE officials' actions constituted intentional and/or negligent false imprisonment.

78. ICE officials' actions resulted in the unlawful restraint of the Plaintiffs' physical liberty. Plaintiffs were restrained against their will and did not consent to the restraint or acquiesce in it willingly.

79. ICE officials knowingly and intentionally issued unlawful detainers and forwarded them to local law enforcement officers, knowing and intending that the detainers would cause those local officers to detain Plaintiffs. As a result of the unlawful detainers, Plaintiffs were falsely imprisoned.

80. Upon conclusion of the criminal charges, the DOC lacked legal authority to hold the Plaintiffs.

81. Both Plaintiffs were eligible for release from custody. Superior Court ordered Mr. Castro Largo released on his own recognizance with no bond requirement, but DOC continued to detain him for an additional four days based solely on an ICE detainer. Mr. Villanueva's partner attempted to post bond the night he was arrested, but was refused on the basis of the May 15 ICE detainer. Moreover, DOC continued to detain Mr. Villanueva for four days after the completion of his sentence solely based on an ICE detainer. ICE thus deprived Mr. Castro Largo and Mr. Villanueva of their liberty without due process of law, in violation of the Fifth Amendment.

82. Mr. Villanueva seeks damages for false imprisonment from the date he was free of state custody but continued to be detained, July 7, 2011, to the date that ICE took him into

custody, July 11, 2011. Mr. Castro Largo seeks damages from the date he was free of state custody but continued to be detained, October 8, 2011, to the date that ICE took him into custody, October 12, 2011.

83. ICE knew that the DOC lacked the legal authority to continue to detain the Plaintiffs, and nevertheless intentionally issued detainers, communicated them to the DOC, and caused DOC to hold the Plaintiffs. As a result, ICE caused DOC to unlawfully seize the Plaintiffs in violation of the Fourth Amendment and the Supremacy Clause of the Constitution.

84. The duty of a jailer to release a detainee after the expiration of a sentence or other state authority to detain is mandatory. The lodging of the immigration detainers, which are administrative notices, not warrants, did not extend the lawful authority of DOC to detain Plaintiffs.

85. The ICE officials' actions were done for the purpose of imprisoning the Plaintiffs and with the knowledge that the detention would, to a substantial certainty, result from ICE's unlawful detainers.

86. The ICE officials' intentional and/or negligent conduct resulted in a confinement of sufficient consequence to constitute the actual damage required to maintain a negligence action.

Emotional Distress

87. The Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

88. The ICE officials' actions constituted intentional infliction of emotional distress. The ICE officials intentionally caused Plaintiffs emotional distress.

89. The ICE officials intended to inflict emotional distress and they knew or should have known that emotional distress was a likely result of their conduct.

90. By issuing unlawful detainers, the ICE officials engaged in conduct that was extreme and outrageous and that conduct was the cause of the Plaintiffs' distress. The emotional distress sustained by the Plaintiffs' as a result of the ICE officials' unlawful conduct was severe.

91. The ICE officials' actions also constituted negligent infliction of emotional distress. The ICE officials negligently caused Plaintiffs emotional distress.

92. The ICE officials created an unreasonable risk of causing the Plaintiffs emotional distress.

93. The Plaintiffs' distress as a result of the unlawful detainer was foreseeable to the ICE officials, and Plaintiffs' emotional distress was severe enough that it might result in illness or bodily harm.

Abuse of Process

94. The Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

95. The ICE officials' action constituted abuse of process.

96. The ICE agents who lodged the detainers against Mr. Villanueva and Mr. Castro Largo are law enforcement officers who could have taken each Plaintiff into custody at the time of their judicially authorized release, but they declined to do so.

97. The ICE agents also knew or should have known that issuing a detainer without an initial request from local law enforcement, without an underlying controlled substance charge in Mr. Castro Largo's case, without evidence of the impossibility or impracticability of detaining Plaintiffs themselves, without a probable cause determination, and where state and local law

enforcement lacked legal authority to detain each Plaintiff, would nevertheless cause the DOC to unlawfully detain the Plaintiffs.

98. The agents knew or should have known that DOC had no authority to detain Mr. Villanueva or Mr. Castro Largo after the point of judicially authorized release.

99. ICE nevertheless issued a detainer for the unlawful purpose of detaining Mr. Villanueva and Mr. Castro Largo until it was convenient to arrest them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Award Plaintiffs compensatory damages in an amount to be proven at trial.
- (2) Hold Defendant liable for compensatory damages.
- (3) Grant such other relief as the Court deems just and equitable.

Dated: November 5, 2013
New Haven, Connecticut

Respectfully submitted,

_____/s/_____

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