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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

JOSE ABEL TOVAR HERNANDEZ JR.,

Plaintiff,

v.

UNITES STATES OF AMERICA;
NORTHERN OREGON CORRECTIONS
dba NORCOR, an intergovernmental
corrections entity; WASHINGTON
COUNTY; and DOES 1-10,

Defendants.

Case No.: 3:21-cv-1794

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Jose Abel Tovar Hernandez Jr., for his Complaint against the named defendants (“Defendants”), alleges as follows:

I. INTRODUCTION

1. Plaintiff Jose Abel Tovar Hernandez Jr. (“Plaintiff” or “Mr. Tovar”) is a naturalized U.S. citizen and resident of the State of Oregon, where he has lived practically his entire life.

2. On March 7, 2020, Washington County authorities transferred Mr. Tovar to the custody of Immigration and Customs Enforcement (“ICE”). Though Mr. Tovar repeatedly stated that he was a U.S. Citizen who had a social security number and previously had had a passport, ICE agents detained Mr. Tovar, transported him to the Northern Oregon Corrections (“NORCOR”) where he was imprisoned, threatened him with deportation, and mocked him for stating the truth about his identity.

3. Mr. Tovar was wrongfully detained for more than two days by ICE agents and employees of NORCOR before ICE acknowledged that he was a U.S. Citizen and that his detention had been wrongful and unwarranted.

4. As a result of his wrongful detention and threatened deportation, Mr. Tovar has experienced anxiety, fearfulness, worry, depression, and other emotional distress, which have made it difficult for him to find suitable employment or carry-on routine tasks. As a result of his detention, Mr. Tovar reasonably worries that he will be wrongfully detained again and that he will not be able to live freely as a U.S. citizen.

5. Mr. Tovar now brings this suit to remedy damages caused by this wrongful detention, incarceration, and threatened deportation.

II. PARTIES

6. Plaintiff is a resident of the State of Oregon. Mr. Hernandez is a U.S. Citizen. He has lived in the United States for practically his entire life, since the age of 10 months. He speaks fluent English and Spanish. Mr. Hernandez is Latino.

7. Defendant United States is a proper defendant in this action as to Mr. Tovar's claims made pursuant to the FTCA. At all material times, Immigrations and Customs Enforcement ("ICE") was a federal law enforcement agency housed within the United States Department of Homeland Security. On information and belief, ICE is the employer of individual ICE officers that unlawfully arrested, detained, and violated the rights of Mr. Tovar.

8. Defendant NORCOR is an intergovernmental agency established pursuant to ORS 190.003 *et seq.* and ORS 169.639 by Hood River, Wasco, Sherman, and Gillam Counties, which that owns and operates a regional jail located in The Dalles, Oregon. NORCOR is a "law enforcement agency" within the meaning of ORS 181A.820(a). NORCOR was, at all relevant, the employer of individual officers who unlawfully detained and violated Mr. Tovar's rights.

9. Defendant Washington County is a municipality and political subdivision of the State of Oregon. Washington County was, at all relevant times, the employer of individual officers who unlawfully detained and violated Mr. Tovar's rights.

10. Defendant DOES 1-10, in their individual capacities, are officers working on behalf of ICE, NORCOR, and Washington County who wrongfully arrested, detained, and threatened Mr. Tovar in March 2020.

III. JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, because claims in this action arise under the United States Constitution and 42 U.S.C. § 1983,

and under 28 U.S.C. § 1346, because Plaintiff seeks money damages from the United States. The Court has supplemental jurisdiction over Mr. Tovar's state law claims pursuant to 28 U.S.C. § 1367.

12. Venue is proper in the United States District Court, District of Oregon, Portland Division, because the events giving rise to the claims took place within this District.

13. On October 26, 2020, Mr. Tovar timely filed notice of his claims to the United States under 28 U.S.C. § 2675(a). Mr. Tovar is authorized to file claims under the Federal Torts Claim Act because his claims against the United States have not been resolved in six months following filing.

14. On September 1, 2020, Mr. Tovar timely sent notice of his claims to Washington County, Oregon pursuant to the Oregon Torts Claim Act, ORS 30.275. Washington County has not resolved his claims, and Mr. Tovar may file suit under the Oregon Tort Claims Act.

15. On September 1, 2020, Mr. Tovar timely sent notice of his claims to NORCOR, pursuant to the Oregon Torts Claim Act, ORS 30.275. NORCOR denied Mr. Tovar's claims on September 14, 2020. Accordingly, Mr. Tovar may file suit against NORCOR under the Oregon Tort Claims Act.

IV. FACTUAL BACKGROUND

A. Mr. Tovar Is a Naturalized U.S. Citizen.

16. Mr. Tovar is a naturalized U.S. Citizen.

17. Though born in Mexico, Mr. Tovar's father is a U.S. Citizen. Mr. Tovar was able to obtain law permanent residence status based on his father's citizenship and later became a naturalized U.S. Citizen.

18. Mr. Tovar was naturalized on April 15, 2000.

19. Mr. Tovar has had a passport and holds a social security card.

20. Mr. Tovar has lived in the United States since the age of 10 months and is a resident of Oregon.

B. Washington County Officials Placed Mr. Tovar Hernandez in ICE Custody

21. On March 7, 2020, Mr. Tovar completed a short jail sentence for a probation violation. Houseless and living on the street, Mr. Tovar had been apprehended after taking a pair of socks from a TJ Maxx store in Hillsboro, Oregon.

22. On the morning of his release, Washington County officials woke up Mr. Tovar and told him that he would be free to go. Instead of taking Mr. Tovar through the normal exit door, however, jail officials escorted him to the jail sally port.

23. A deputy told Mr. Tovar that there was someone to pick him up. When Mr. Tovar asked who this person was, the deputy said, “you’ll see.” Mr. Tovar thought it would be his mother. Jail officials took the handcuffs off Mr. Tovar and released him to the sally port.

24. In fact, Mr. Tovar’s mother did travel to the jail that day hoping to meet Mr. Tovar. Anxious to see her son released from custody, she arrived at the jail early that morning with her husband and brother-in-law, waited patiently at the primary entrance, and repeatedly asked when and where she could see her son. After delaying her for nearly 45 minutes, she was finally told that he had been detained by ICE and that she would need to go to a federal building in downtown Portland in order to see her son.

25. At the same time, when Mr. Tovar entered the sally port, instead of his mother or another family member, Mr. Tovar saw only three ICE officers. These officers asked for Mr. Tovar’s name, which he confirmed. The officers then arrested Mr. Tovar, without making any

effort to verify his immigration status even though Mr. Tovar repeatedly told them he was a U.S. citizen.

26. On information and belief, the ICE officers who arrested Mr. Tovar did so based on his Hispanic surname and on faulty information contained in a database, which has been repeatedly shown to be inaccurate.

27. On information and belief, Washington County notified ICE officials of Mr. Tovar's impending release and released him to ICE custody according to a policy and practice of collaborating with ICE and relying on his racial profile, Hispanic surname, and other information, which has been shown to be inaccurate.

C. ICE Officers Detain Mr. Tovar

28. Mr. Tovar told the ICE agents that he was a naturalized U.S. citizen, who had a social security number and had previously been issued a U.S. passport. Mr. Tovar also explained that he had come to the United States when he was 10 months old and that his father was a U.S. citizen.

29. In response, the ICE agents mocked Mr. Tovar, and refused to accept Mr. Tovar's explanation or to even attempt to verify it. One agent told Mr. Tovar that, as far as he was concerned, Mr. Tovar was "an illegal alien."

30. The ICE agents then handcuffed Mr. Tovar and forced him into a car.

31. Still stunned, Mr. Tovar asked, "why is this happening?" The ICE agents told him only that it was because he had come into the country illegally and because of his criminal charges.

32. The ICE agents then placed Mr. Tovar in a van. Mr. Tovar asked where he was being taken, and the ICE agents responded that he was being driven to where they take people to

see an immigration judge, implying that Mr. Tovar could ultimately be deported. The van then circled the jail and drove away. Mr. Tovar was able to see his mother's vehicle as he was driven away from her and his family.

D. Mr. Tovar Is Imprisoned at NORCOR for More than Two Days

33. Late that day, Mr. Tovar arrived at NORCOR in The Dalles, Oregon.

34. While being processed at NORCOR, Mr. Tovar told NORCOR officials that he had a social security number and explained that he was a U.S. citizen and should not be in ICE custody. In response, the NORCOR official continued processing Mr. Tovar and said something to the effect of "I'm not even going to look into this." Mr. Tovar was then imprisoned in NORCOR.

35. On information and belief, Mr. Tovar's imprisonment at NORCOR was done pursuant to an official NORCOR policy of holding ICE detainees, without investigating whether such detainees were properly in custody.

36. Mr. Tovar was held in NORCOR custody for more than two days, from the morning of Saturday, March 7, 2020 until the morning of Monday, March 9, 2020.

37. On Monday, March 9, 2020, Mr. Tovar was told that he was going to be taken to Portland to finish up some paperwork and then he would be transferred to the Northwest Detention Center in Tacoma, Washington. After hearing this, Mr. Tovar was anxious and fearful that he would no longer be able to live freely in the United States and would eventually be deported.

E. ICE Acknowledges that Mr. Tovar's Detention Was Wrongful and Releases Him.

38. The immigration attorney who had assisted Mr. Tovar's father contacted ICE on March 9, 2020, and informed ICE that Mr. Tovar was a naturalized legal citizen. Later that

afternoon, after Mr. Tovar had been in custody at NORCOR for two days, ICE agents acknowledged that Mr. Tovar was a U.S. citizen and that he would be released.

39. An ICE agent told Mr. Tovar that Mr. Tovar had two alien registration numbers and that one of these numbers confirmed Mr. Tovar's identity as a U.S. citizen. Mr. Tovar was released at or around 2 p.m. on March 9, 2020.

40. In the period following his arrest, Mr. Tovar has experienced anxiety, fearfulness, worry, depression, and other emotional distress which have made it difficult for him to find suitable employment and carry on routine tasks. As a result of his arrest and detention, Mr. Tovar naturally worries that he will be wrongfully arrested again and that he will not be able to live freely as a U.S. citizen.

FIRST CLAIM FOR RELIEF

(False Arrest/False Imprisonment – FTCA)

(Against Defendant ICE)

41. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

42. By the acts described above, agents of Defendant ICE intentionally detained and confined Mr. Tovar without Mr. Tovar's consent and without legal authority.

43. Mr. Tovar was not free to end the imprisonment, and he was totally deprived of his liberty.

44. As a direct and proximate cause of his arrest and imprisonment, Mr. Tovar has suffered anxiety, fearfulness, worry, depression, and other emotional distress and economic damages to be proven at trial.

SECOND CLAIM FOR RELIEF

(False Arrest/False Imprisonment – OTCA)

(Against Defendants Washington County and NORCOR)

45. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

46. By the acts described above, agents of Defendants Washington County and NORCOR intentionally detained and confined Mr. Tovar without Mr. Tovar's consent and without legal authority.

47. Mr. Tovar was not free to end the imprisonment, and he was totally deprived of his liberty.

48. As a direct and proximate cause of his arrest and imprisonment, Mr. Tovar has suffered anxiety, fearfulness, worry, depression, and other emotional distress and economic damages to be proven at trial.

THIRD CLAIM FOR RELIEF

(Negligence *Per Se* – FTCA)

(Against Defendant United States)

49. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

50. Agents of ICE have a duty to act with reasonable care and to not subject individuals to unreasonable searches or seizure or discriminatory treatment based on their perceived race, ethnicity, and/or national origin.

51. As set forth above, Defendant breached these duties when they made no effort to verify the immigration status of Mr. Tovar despite his clear statements that he was a U.S. citizen

and when they relied on databases known to be flawed to justify their arrest and prolonged detention of Mr. Tovar.

52. As a direct and proximate cause of ICE's negligent acts, Mr. Tovar has suffered anxiety, fearfulness, worry, depression, and other emotional distress and economic damages to be proven at trial.

FOURTH CLAIM FOR RELIEF

(Negligence *Per Se* – OTCA)

(Against Defendants ICE, Washington County, NORCOR)

53. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

54. Agents of Washington County and NORCOR have a duty to act with reasonable care and to not subject individuals to unreasonable searches or seizure or discriminatory treatment based on their perceived race, ethnicity, and/or national origin.

55. As a political subdivision and law enforcement agency in the State of Oregon, Washington County and NORCOR have an additional duty to comply with ORS 181A.820, which provides that they may not “use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.”

56. As set forth above, Washington County and NORCOR breached these duties when they made no effort to verify the immigration status of Mr. Tovar despite his clear statements that he was a U.S. citizen and when they facilitated and/or maintained the detention of Mr. Tovar.

57. Washington County and NORCOR breached their additional duties under ORS 181A.820 when they used money, equipment, and personnel for the purpose of detecting or apprehending persons whose only alleged violation of law was that he was a person of foreign citizen present in the United States in violation of federal immigration laws.

58. As a direct and proximate cause of Washington County and NORCOR's negligent acts, Mr. Tovar has suffered anxiety, fearfulness, worry, depression, and other emotional distress and economic damages to be proven at trial.

FIFTH CLAIM FOR RELIEF

(Intentional or Negligent Infliction of Emotional Distress – FTCA and OTCA)

(Against Defendants ICE, Washington County, NORCOR)

59. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

60. Despite Mr. Tovar Hernandez's constant assertions and offers of proof that he is a U.S. citizen, agents of ICE, Washington County, and NORCOR intentionally placed and held him in custody without probable cause. They also unnecessarily delayed the processing of his information and release. Officers also denigrated, threatened, and insulted Mr. Tovar Hernandez by stating that he was an "illegal alien" and that they would not investigate his assertions and by threatening him with deportation without cause.

61. Such actions, carried out by agents in a position of power with respect to Mr. Tovar Hernandez, were outrageous.

62. As a direct and proximate cause of Defendants' infliction of emotional distress, Mr. Tovar Hernandez has suffered anxiety, fearfulness, worry, depression, and other severe emotional distress.

SIXTH CLAIM FOR RELIEF

(Fourth Amendment (*Bivens*) – Unreasonable Seizure)

(Against Individual Defendant ICE Officers)

63. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

64. The Fourth Amendment to the U.S. Constitution prohibits “unreasonable searches and seizures.” Absent an emergency or other extraordinary circumstances, a detention of more than 48 hours prior to a judicial probable cause determination violates the Fourth Amendment as a matter of law. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

65. As set forth above, individual ICE officers seized and detained Mr. Tovar for more than 48 hours without probable cause to believe that Mr. Tovar was a noncitizen subject to removal and detention.

66. The detention constituted an unreasonable seizure in violation of Mr. Tovar’s Fourth Amendment rights.

67. It is clearly established, and was clearly established as of March 7, 2020, that an ICE officer must have probable cause to arrest an individual suspected of being a removeable noncitizen. It was also clearly established that ICE does not have probable cause to arrest and detain a U.S. citizen.

68. Even if ICE could claim probable cause to initially arrest Mr. Tovar, which it did not have, this probable cause ceased to exist the moment when Mr. Tovar informed ICE agents that he is a U.S. citizen.

69. As a direct and proximate cause of individual ICE agents' unconstitutional acts, Mr. Tovar has suffered anxiety, fearfulness, worry, depression, and other emotional distress and economic damages to be proven at trial.

70. In their conduct, individual ICE agents acted maliciously, intentionally, recklessly, and/or with callous indifference to Mr. Tovar's constitutional rights, such that an award of punitive damages is appropriate.

SEVENTH CLAIM FOR RELIEF

**(Fourth and Fourteenth Amendment (42 U.S.C. § 1983) – Unreasonable Seizure and
Deprivation of Due Process)**

(Against Defendants Washington County and NORCOR)

71. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

72. The Fourth Amendment to the U.S. Constitution prohibits "unreasonable searches and seizures." Absent an emergency or other extraordinary circumstances, a detention of more than 48 hours prior to a judicial probable cause determination violates the Fourth Amendment as a matter of law. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

73. The Fourteenth Amendment to the U.S. Constitution prohibits deprivation of liberty without "due process."

74. As stated above, Washington County and NORCOR agents acted pursuant to an official policy in transferring Mr. Tovar to ICE custody and detaining Mr. Tovar without probable cause and for more than 48 hours without a judicial probable cause determination.

75. As a direct and proximate cause of Washington County and NORCOR's unconstitutional acts, Mr. Tovar has suffered anxiety, fearfulness, worry, depression, and other emotional distress and economic damages to be proven at trial.

76. In their conduct, Washington County and NORCOR acted maliciously, intentionally, recklessly, and/or with callous indifference to Mr. Tovar's constitutional rights, such that an award of punitive damages is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

1. Award compensatory and punitive damages to Plaintiff according to proof at trial, including damages for emotional distress;
2. Issue a declaration that Defendants' acts, as alleged herein, violated the Fourth Amendment to the United States Constitution;
3. Issue a declaration that the acts of Defendants' Washington County and NORCOR violated the Fourteenth Amendment to the United States Constitution;
4. Award costs of suit and attorney fees; and
5. Provide such other and further relief as the Court deems just and proper.

JURY TRIAL REQUESTED

DATED: December 10, 2021.

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s/ Amy Edwards

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