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20 UNITED STATES DISTRICT COURT FOR THE
21 SOUTHERN DISTRICT OF CALIFORNIA

22 [REDACTED] [REDACTED] YOST,

23 Plaintiff,

24 v.

25 UNITED STATES OF AMERICA,

26 Defendant.

27 Case No. '13CV2509 W DHB

28 **COMPLAINT
FOR DAMAGES**

INTRODUCTION

1
2 1. Plaintiff [REDACTED] Yost is [REDACTED] year old a citizen of
3
4 the United States. Notwithstanding this objectively verifiable fact, officers
5 of U.S. Immigration and Customs Enforcement (ICE), a component agency
6 within the U.S. Department of Homeland Security (DHS), arrested and
7
8 detained Ms. Yost in immigration custody based on their purported, but
9 baseless, belief that Plaintiff was a noncitizen subject to deportation from the
10 United States.

11
12 2. During both her arrest and detention, Ms. Yost repeatedly
13 informed ICE that she was a U.S. citizen. In addition, she provided
14 documentary evidence that confirmed she had acquired citizenship through
15 her mother, a naturalized citizen, under former § 321(a) of the Immigration
16 and Nationality Act (INA), 8 U.S.C. § 1432(a) (1993). Despite this, and
17
18 contrary to law, ICE imprisoned her for almost seven months.

19
20 3. In addition to unlawfully arresting and detaining Ms. Yost, ICE
21 failed to expeditiously investigate her claim to citizenship, a violation of the
22 agency’s internal guidelines. A 2009 memorandum from John Morton,
23 Assistant Secretary of Homeland Security for ICE, to all Field Office
24 Directors, Special Agents in Charge, and Chief Counsels of ICE provides
25 that claims to U.S. citizenship must “receive *immediate* and careful
26
27
28

1 investigation and analysis” (emphasis added).¹ Exhibit A.

2 4. ICE’s acts and omissions caused Ms. Yost to be unlawfully
3 imprisoned from [REDACTED] 2011 until [REDACTED] 2011. While imprisoned,
4 Ms. Yost was deprived of her liberty without due process and suffered
5 serious emotional distress.
6

7 5. On [REDACTED] 2011, nine days after Ms. Yost’s release, U.S.
8 Citizenship and Immigration Services (USCIS), a component agency within
9 DHS, issued a Certificate of Citizenship confirming that Ms. Yost had
10 acquired U.S. citizenship on [REDACTED]—more than 18 years *before* she
11 was arrested and detained by ICE.
12

13 6. With the assistance of counsel, Ms. Yost exercised her right to
14 file an administrative complaint under the Federal Tort Claims Act (FTCA),
15 28 U.S.C. §§ 1346(b) and 2671-2680, seeking compensation for the 208
16 days she spent in ICE custody.
17

18 7. Following the filing of that administrative complaint, DHS
19 officers re-reviewed Ms. Yost’s citizenship status and issued a Notice of
20 Intent for Administrative Cancellation of Citizenship under 8 U.S.C. § 1453.
21 Presumably, as there is no other reasoned explanation and no valid legal
22

23
24
25 _____
26 ¹ Memorandum from John Morton, Assistant Sec’y of Homeland Sec. for ICE,
27 “Superseding Guidance on Reporting and Investigating Claims to United States
28 Citizenship,” at 1 (Nov. 19, 2009), *available at*
http://www.ice.gov/doclib/detention-reform/pdf/usc_guidance_nov_2009.pdf (Morton Memo).

1 basis for the notice, DHS issued this notice in response to, and in retaliation
2 for, Ms. Yost's filing of a complaint under the FTCA. That process is
3 ongoing and is not at issue in this action. However, even if DHS were to
4 cancel Ms. Yost's citizenship certificate, such cancellation "affect[s] only
5 the document *and not the citizenship status of the person in whose name the*
6 *document was issued.*" *Id.* (emphasis added).
7
8

9 8. Ms. Yost now brings this action under the FTCA, seeking
10 compensation for the harms that Defendants caused.
11

12 JURISDICTION

13 9. This action arises under the Constitution and laws of the United
14 States, including the FTCA. This Court has jurisdiction over the subject
15 matter of this Complaint pursuant to 28 U.S.C. §§ 1331 (federal question
16 statute) and 1346(b) (United States as a defendant).
17

18 EXHAUSTION

19
20 10. On [REDACTED] 2012, Plaintiff submitted an administrative tort
21 claim to ICE. ICE issued a final denial on [REDACTED] 2013. Plaintiff has
22 therefore exhausted all available administrative remedies.
23

24 11. Plaintiff is filing this Complaint within six months of the denial
25 of her administrative claim, in accordance with the FTCA, 8 U.S.C. §
26 2675(a).
27
28

VENUE

1
2 12. Venue is properly with the U.S. District Court for the Southern
3 District of California (the “Court”) under 28 U.S.C. § 1402(b). At all times
4 relevant to this Complaint, Plaintiff resided in [REDACTED], California,
5 which is within the jurisdiction of the Court. In addition, the acts and
6 omissions core to this Complaint occurred in San Diego County.
7
8

9 **PARTIES**

10 13. Plaintiff [REDACTED] Yost is a U.S. citizen and resident of
11 [REDACTED] County, California. She acquired citizenship through her mother,
12 a naturalized citizen, under former INA § 321(a), 8 U.S.C. § 1432(a) (1993).
13

14 14. Defendant United States of America is the appropriate
15 defendant for claims brought pursuant to the FTCA. 28 U.S.C. § 1346(b).
16

17 **FACTS**

18 **Ms. Yost’s Citizenship Status**

19
20 15. Ms. Yost was born on [REDACTED] in the [REDACTED].
21 Her [REDACTED], [REDACTED] (previously known as
22 [REDACTED]), is a naturalized U.S. citizen, and [REDACTED]
23 [REDACTED], [REDACTED], is a native-born U.S. citizen.
24

25 16. Former INA § 321(a), 8 U.S.C. § 1432(a) (1993), provides for
26 the automatic acquisition of citizenship where: (a) the individual was born
27 out of wedlock to a noncitizen mother, (2) the mother naturalized, and (c)
28

1 the individual was admitted as a lawful permanent resident before turning 18
2 years old.²
3

4 17. Ms. Yost was born out of wedlock to [REDACTED], then a
5 citizen of the [REDACTED]. See Exhibit B (Birth Certificate) (noting “Illeg.”
6 (illegitimate) in place of location and date of marriage of parents and
7 containing no entry for “father”).
8

9 18. In 19[REDACTED], [REDACTED] married [REDACTED], a
10 native-born U.S. citizen then stationed in the [REDACTED] with the U.S. Navy.
11

12 19. On [REDACTED], [REDACTED] naturalized as a

13 ² In relevant part, the text of the statute provides:

14 Child born outside of United States of alien parents; conditions under
15 which citizenship automatically acquired

16 (a) A child born outside of the United States of alien parents, or of an
17 alien parent and a citizen parent who has subsequently lost citizenship
18 of the United States, becomes a citizen of the United States upon
19 fulfillment of the following conditions:

20 . . .

21 (3) The naturalization of the parent having legal custody of the child
22 when there has been a legal separation of the parents or the
23 naturalization of the mother if the child was born out of wedlock and
24 the paternity of the child has not been established by legitimation; and
25 if

26 (4) Such naturalization takes place while such child is under the age of
27 eighteen years; and

28 (5) Such child is residing in the United States pursuant to a lawful
admission for permanent residence at the time of the naturalization of
the parent last naturalized under clause (1) of this subsection, or the
parent naturalized under clause (2) or (3) of this subsection, or
thereafter begins to reside permanently in the United States while
under the age of eighteen years.

1 U.S. citizen. Exhibit C.

2 20. Ms. Yost moved to the U.S. with her family in [REDACTED]. On [REDACTED]
3 [REDACTED], at age 13, she was admitted to the U.S. as a lawful permanent
4 resident. Exhibit D (Notice to Appear).

5
6 21. Under former INA § 321(a), 8 U.S.C. § 1432(a), Ms. Yost
7 automatically acquired U.S. citizenship on [REDACTED] 1993, the day she
8 satisfied the third and final requirement of the statute. Such acquisition of
9 citizenship is automatic by operation of law and does not depend on
10 submission of an Application for Certificate of Citizenship (Form N-600) or
11 formal recognition by DHS.
12

13
14 22. Nevertheless, DHS has recognized that Ms. Yost is a U.S.
15 citizen. On [REDACTED], DHS issued a Certificate of Citizenship
16 confirming that Ms. Yost became a U.S. citizen on [REDACTED]. Exhibit
17 E.
18

19
20 24. DHS had also previously recognized the U.S. citizenship of at
21 least two of Ms. Yost's [REDACTED] siblings.
22

23 **ICE's Unlawful Arrest and Imprisonment of Ms. Yost**

24 25. As a matter of law, "No citizen shall be imprisoned or otherwise
25 detained by the United States except pursuant to an Act of Congress." 18
26 U.S.C. § 4001(a). Neither the INA nor DHS policy authorizes the detention
27 of a U.S. citizen by immigration officers. *See* 8 U.S.C. § 1101 et seq.;
28

1 Morton Memo, at 1 (“ . . . ICE cannot assert its civil immigration
2 enforcement authority to arrest and/or detain a [U.S. citizen]”).
3

4 26. Yet, on [REDACTED] 2011, officers with ICE’s San Diego Field
5 Office (ICE officers) issued a warrant for Ms. Yost’s arrest and, at around
6 6:55 a.m., went to her home to serve it. The ICE officers placed her under
7 arrest and then imprisoned her without bond. Exhibit F (Warrant for Arrest
8 of Alien), Exhibit G (Form I-213), and Exhibit H (Notice of Custody
9 Determination).
10

11
12 27. Prior to issuing a warrant and making the decision to send
13 officers to arrest Ms. Yost in her home in the early hours of the morning,
14 ICE officers failed to review the agency’s files to determine whether she was
15 a U.S. citizen, and thus, whether they had the authority to arrest her at all.
16 Moreover, ICE compounded this error by failing to adequately and
17 expeditiously investigate her citizenship claim after Ms. Yost repeatedly told
18 them she was a U.S. citizen.
19
20

21 28. While in the [REDACTED] Field Office on the day of the arrest, Ms. Yost
22 informed deportation officers that she was a U.S. citizen.
23

24 29. Ms. Yost also hand-wrote “I would like to claim citizenship . . .” on
25 the Notice to Appear ICE issued on that date. Exhibit D (Notice to Appear).
26
27
28

1 30. Notwithstanding this information, ICE imprisoned Ms. Yost at Otay
2 Mesa Detention Facility in San Diego, California from [REDACTED] until
3 [REDACTED] a period of nearly seven months.
4

5 31. While she was imprisoned, Ms. Yost's only means of initiating
6 communication with ICE was to complete a Detainee Request Form and
7 wait for either a written response or in-person meeting with an ICE officer.
8 Between [REDACTED] and [REDACTED] 2011, Ms. Yost asserted her claim of U.S.
9 citizenship to ICE—either orally or in writing—at least 20 different times.
10

11 32. ICE policy requires that, “[w]hen officers and agents encounter
12 an individual who they suspect is without lawful status but claims to be a
13 USC [U.S. citizen],” they should not take the individual into custody unless
14 there is *no* probative evidence that the individual is a U.S. citizen. Morton
15 Memo, at 1-2. If there is *some* probative evidence, officers and agents must
16 consult with their local Office of the Chief Counsel *before* arresting the
17 individual. *Id.* “In all cases, any uncertainty about whether the evidence is
18 probative of U.S. citizenship should weigh against detention.” *Id.* at 2.
19
20
21

22 33. In violation of this policy, ICE ignored Ms. Yost's claim of
23 citizenship at the time of her arrest and took her into custody.
24

25 34. A week later, on [REDACTED] 2011, Ms. Yost completed her first
26 Detainee Request Form, which stated in part:
27
28

1 I WOULD LIKE TO SPEAK TO AN ICE OFFICER IN REGARD OF
2 MY CASE. YESTERDAY WHEN AT LAW LIBRARY I
3 ESTABLISHED THAT I FALL UNDER U.S. CITIZENSHIP
4 UNDER MY PARENTS. I AM GOING TO FILE FOR MY N-600
5 AND WOULD LIKE TO KNOW HOW MUCH IS THE FEE. IN
6 ADDITION, I WOULD ALSO LIKE TO APPLY FOR MY US
7 PASSPORT.

8 Exhibit I.

9 35. According to ICE's policy, "[i]f an individual already in
10 custody claims to be a USC, an officer must *immediately* examine the merits
11 of the claim and consult with his or her local OCC [Office of Chief
12 Counsel]." Morton Memo, at 2. The government then has 48 hours from
13 the time of the individual's claim to evaluate it; specifically, 24 hours to
14 prepare and submit a memorandum "examining the claim and
15 recommending a course of action," and 24 hours to make a decision on the
16 recommendation. *Id.* Ms. Yost's citizenship claim did not receive such
17 treatment.
18

19 36. The policy also requires that ICE provide unrepresented
20 detainees with citizenship claims "a list of pro bono legal service providers."
21 Morton Memo, at 2. On information and belief, no such list was provided to
22 Ms. Yost.
23

24 37. On [REDACTED] 2011, five days after Ms. Yost's request, ICE replied: "I
25 will try to meet with you on Friday [REDACTED]/11." Exhibit I.
26
27
28

1 38. On [REDACTED], 2011, Ms. Yost appeared pro se at her first Master
2 Calendar hearing at the San Diego Immigration Court. At this proceeding, in the
3 presence of DHS trial counsel Chris Reeber, Immigration Judge Philip S. Law
4 stated that Ms. Yost “[c]laims to be US citizenship [sic] on advice of someone.”
5 Exhibit J (EOIR Form 55, Record of Master Calendar Pre-Trial Appearance and
6 Order).
7

8
9 39. On [REDACTED], 2011, Ms. Yost completed a Detainee Request Form as
10 follows: “I would like to speak or meet with you in concern about my case. I have
11 my legal documents to prove my claim of citizenship of the United States.” Exhibit
12 K.
13

14 40. On [REDACTED], 2011, she completed a second Detainee Request Form,
15 stating in part: “I would like to speak (meet) with my deportation officer. Thank
16 you.” Exhibit L.
17

18 41. The next day, ICE responded: “I will see you on Thursday [REDACTED] 11.”
19 Exhibit L.
20

21 42. After 19 days of imprisonment, on [REDACTED] 2011, Ms. Yost completed
22 yet another form, writing:
23

24 It has been 19 days since I’ve been detained here at CCA. My claim
25 for US citizenship through both my parents feels as if its [sic] being
26 ignored. Through all the days spent here, not once I spoke with any of
27 you guys. An attempt to meet with me was never met. I have in hand
28 forms of information which states [sic], once proven citizenship of the
United States of America that I cannot be detained nor deported.
Furthermore, my documents for proof of U.S. citizenship are within

1 my possession which I've stated from my previous request. I need to
2 meet with you asap please. Thank you.

3 Exhibit M.

4 43. ICE replied on [REDACTED] 2011, noting: "I spoke with you today." Exhibit
5 M.
6

7 44. On [REDACTED], 2011, Ms. Yost again completed a Detainee Request
8 Form, asking: "Please update me with my case. I would like to know what I need
9 more. Please let me know something, anything about my case." Exhibit N.
10

11 45. To this the ICE officer responded: "I need to speak with our attorney
12 because he had your file. I will get back to you." Exhibit N.
13

14 46. Shortly thereafter, Ms. Yost again pleaded for information about her
15 citizenship claim, completing a Detainee Request Form as follows: "Please update
16 me with my case. If there is any other form or documents I need for my claim of
17 U.S. citizenship. Thank you. Please do reply back." Exhibit O.
18

19 47. On [REDACTED] 2011, ICE responded: "We will be reviewing your case,
20 your next court date is on [REDACTED]-11." Exhibit O.
21

22 48. On [REDACTED] 2011, Ms. Yost completed another Detainee Request
23 Form, stating:

24 Here are copies of my documents.

25
26 (1) Proof that I was present in court for my bench warrant. My
27 proof that I was present in front of a judge [REDACTED] 2011 and
28 that I got my next court date [REDACTED] 2011 which I did not get
to go because I'm here in custody of OCA

- 1 (2) copy of my N600
- 2 (3) copy of my marriage license
- 3 (4) copy of my divorce papers.

4 You already have in your hand copy of my mom [sic] U.S. passport,
5 my parents [sic] marriage decree, my birth certificate, and my adoption
6 decree, which are my proof for my claim of U.S. citizen. All my
7 documents for proof of U.S. citizenship are all now in your hands. Do
8 I need to send copies to the judge as well?

9 Exhibit P.

10 49. Four days later, on [REDACTED] 2011, ICE responded: "I will pass this to
11 your officer." Exhibit P.

12 50. On [REDACTED] 2011, after being imprisoned for almost two months, Ms.
13 Yost wrote via Detainee Request Form: "I would like to request for custody re-
14 determination form 1003.19. Thank you." Exhibit Q.

15 51. Four days later, on [REDACTED] 2011, she received this response from ICE:
16 "Your next court is on [REDACTED]/11, ask judge for bond. You are mandatory custody."
17 Exhibit Q (underlined in the original).

18 52. The next day, [REDACTED] 2011, Ms. Yost, via a Detainee Request Form,
19 inquired as follows: "Please elaborate on mandatory custody. How long am I
20 looking at? Also, what is going on with my claim of citizenship. Please be more
21 detailed. Thank you." Exhibit R.

22 53. ICE responded: "I plan to meet with you on Friday [REDACTED]/11 I am waiting
23 on your file which was sent to me yesterday." Exhibit R.

1 54. On [REDACTED] 2011, Ms. Yost again completed a Detainee Request Form,
2 again asking: “Please update me with my claim of citizenship. Is [sic] there any
3 more documents I need to turn in to you? Or to Judge Law?” Exhibit S.
4

5 55. On [REDACTED], 2011, ICE provided this (non-responsive) answer to Ms.
6 Yost’s inquiry about her citizenship status: “In regards to a bond hearing you will
7 need to call 619 [REDACTED] Mon-Fri 8-5.” Exhibit S.
8

9 56. Also on [REDACTED], 2011, Ms. Yost completed another Detainee Request
10 Form as follows:
11

12 My sisters filed N-600 form and received their certificate of
13 citizenship. I have my original form with me. How could I file it from
14 here and how do I waive the fee for it? Along with the N600 my
15 sisters filed those same documents I have gave [sic] you. Could I
16 please have copies of all my documents I gave you because I will need
17 to also show to my immigration judge copies and my court is this
18 friday [sic] [REDACTED], 2011 @ 0800. If there is any other thing please
19 call [REDACTED]. Please help me file
20 my N600. How do I file it from here?

21 Exhibit T.

22 57. On that same day, the immigration court rescheduled Ms. Yost’s
23 planned hearing to [REDACTED], 2011. Exhibit U (Notice of Hearing in Removal
24 Proceedings, dated [REDACTED], 2011).
25

26 58. On [REDACTED], 2011, having received no response, Ms. Yost completed
27 yet another Detainee Request Form, explaining:
28

29 I need copies of my documents back to me because I need to send
30 those along with my N600. ASAP. Thank you. Also, please talk to
31 me about waiver fee for my N600 which is \$600.00. How could I get
32 this waived? P/S Have you spoke [sic] with my mother?

1
2 Forms I need copies of: -my adoption decree. -my birth certificate, -my
3 mom [sic] passport, -my parents [sic] marriage decree, -my marriage
4 certificate, -my divorce certificate

5 Exhibit V.

6 59. On [REDACTED], 2011, ICE informed Ms. Yost: “I will forward your
7 documents.” Exhibit T.

8 60. That same day, [REDACTED], 2011, Ms. Yost wrote to ICE via another
9 Detainee Request Form:

10 I will need 2 photos (passport) for my N600. I was told since I’m in
11 here, you guys could take my picture from here. Also, pls [sic] let me
12 know how to waive the \$600 fee for my N600 application. In addition,
13 how could I get my US passport from here?

14 Exhibit W.

15 61. Three days later, on [REDACTED], 2012, in response to Ms. Yost’s earlier
16 ([REDACTED] 2011) request for copies of her documents establishing citizenship, ICE
17 sent her this response: “I do have your file. Did you ask for copies during your
18 hearing on [REDACTED]/11?” Exhibit V. This response is confusing for at least two
19 reasons: since the Immigration Judge had rescheduled Ms. Yost’s [REDACTED] hearing
20 to [REDACTED], 2011, Ms. Yost could not have asked for copies “during [her] hearing on
21 [REDACTED]/11”; in addition, if the ICE officer had her file (and therefore the copies of
22 documents she had provided), it is unclear why ICE redirected her to the
23 immigration court, rather than providing her with copies of the documents directly.
24
25
26
27
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1 62. That same day, [REDACTED], 2011, Ms. Yost responded to ICE via a
2 Detainee Request Form, seeking clarification of ICE's [REDACTED] 2011 response:
3
4 "What documents are you going to forward and to who?" Exhibit X.

5 63. Also on [REDACTED] 2011, in a state of increased distress, Ms. Yost
6 completed a second Detainee Request Form, pleading with ICE as follows:
7

8 Please help me get release from here by filing my N600. I have my
9 original form with me. I have to go back to school this fall semester at
10 Southwestern Community College. Thank you.

11 Exhibit Y.

12 64. On or around [REDACTED] 2011, Ms. Yost wrote a formal letter to the San
13 Diego ICE Director explaining her multiple attempts to claim U.S. citizenship to
14 ICE and notifying him of her diabetic condition. Exhibit Z.

15 65. On [REDACTED] 2011, Ms. Yost received two responses from ICE to her
16 prior requests. One response stated: "I will have someone take your photos."
17 Exhibit W. The other stated: "Did you ask for copies while you were in court last
18 Friday. The court has your file I do not have it." Exhibit X. As mentioned in ¶ 61,
19 Ms. Yost could not have asked for copies "last Friday," since her hearing had been
20 rescheduled to the subsequent Friday, [REDACTED], 2011. Furthermore, ICE's claim to
21 "not have" Ms. Yost's file on [REDACTED], 2011 occurred only one day after the same
22 officer signed a form stating "I do have your file." If ICE transferred Ms. Yost's
23 file to the immigration court between [REDACTED], 2011 and [REDACTED], 2011, it did so
24
25
26
27
28

1 with full knowledge that she would not be able to obtain the copies she had
2 requested without contacting the immigration court.
3

4 66. Unable to obtain any information about her case, Ms. Yost began to
5 appeal to the emotions of her captors. On [REDACTED], 2011, she wrote: “Take this as
6 my apology for giving you stress over your stress. You are a good person. And
7 you will be blessed. Thank you for all the help you’ve given.” Exhibit AA.
8

9 67. On [REDACTED], 2011, ICE responded: “Thank you. I understand that the
10 camera did not work, we will try again this week. I found out that our camera is
11 having problems. We will keep trying.” Exhibit AA.
12

13 68. On [REDACTED], 2011, Ms. Yost attended a Master Calendar Hearing in
14 which the Immigration Judge acknowledged that she had an “N-600 and docs” but
15 that the requisite “officer failed to show up for [her] photo for the N-600.” Exhibit
16 BB (EOIR Form 55, Record of Master Calendar Pre-Trial Appearance and Order).
17 The Immigration Judge also noted that Ms. Yost’s mother “naturalized in 19[REDACTED]”
18 and her father was a native-born U.S. citizen. *Id.*
19
20

21 69. By this time, ICE had received confirmation of the factual predicates
22 to Ms. Yost’s U.S. citizenship from at least two sources: Ms. Yost’s documents and
23 the Immigration Judge’s order. Moreover, from the beginning ICE had access to
24 the administrative files with copies of all the relevant documents. Notwithstanding
25 this probative evidence of U.S. citizenship, and in violation of its obligations under
26
27
28

1 U.S. law and the Morton Memo, the agency continued both to charge Ms. Yost as
2 removable *and* to keep her imprisoned in immigration detention.

3
4 70. Notably, neither at the [REDACTED], 2011 hearing nor at any prior hearing
5 did DHS trial counsel move the Immigration Judge to determine whether there was
6 jurisdiction to continue the proceedings.

7
8 71. On [REDACTED], 2011, Ms. Yost again attempted to obtain an update on her
9 citizenship claim through another Detainee Request Form, stating: “I am kindly
10 asking, what is going on with my photos? I cannot mail my N600 without my 2
11 photos. Pls [sic] update me. Thank you.” Exhibit CC.

12
13 72. The next day, ICE responded, informing Ms. Yost of continued
14 technological problems: “We are having problems with our camera. I will try today
15 7/27/11.” Exhibit CC.

16
17 73. Eventually, ICE managed to fix its camera and take Ms. Yost’s
18 photograph, and she submitted her N-600 application. However, on [REDACTED]
19 2011, USCIS issued a notice returning her application without recognizing her
20 citizenship status based on the fact that she had submitted an outdated N-600 Form.
21 Exhibit DD (Letter from USCIS, dated [REDACTED] 2011).

22
23
24 74. On [REDACTED], 2011, Ms. Yost again appeared in immigration court.
25 The Immigration Judge’s notes reflect that Ms. Yost’s photo had been taken, she
26 had filed an N-600 application, and USCIS had instructed her to file a new form.
27 Exhibit EE (EOIR Form 55, Record of Master Calendar Pre-Trial Appearance and
28

1 Order). At this point, DHS trial counsel stated that he would contact the USCIS
2 liaison to arrange for an interview. *Id.*

3
4 75. On [REDACTED] 2011, Ms. Yost again inquired (via a Detainee
5 Request Form) about when her interview before USCIS would take place. She
6 stated, in part:

7
8 My first interview didn't have my adoption information which was
9 probably why I didn't qualify on the citizenship that's what I was told.
Please let me know when I will have this interview.

10 Exhibit FF.

11
12 76. Contrary to her misinformed belief, Ms. Yost's citizenship claim was
13 not dependent on adoption information, as she acquired citizenship under former
14 INA § 321(a), 8 U.S.C. § 1432(a) (1993).

15
16 77. The next day, [REDACTED] 2011, ICE responded to Ms. Yost: "I sent
17 an email to Mr. Wities [DHS attorney] to get you any information he might have."

18 Exhibit FF.

19
20 78. On [REDACTED] 2011, USCIS erroneously denied Ms. Yost's N-600
21 application, concluding that Ms. Yost had not naturalized under INA § 322 because
22 she allegedly had not been admitted as a lawful permanent resident when her
23 adoptive mother naturalized and no application for citizenship was submitted
24 before she turned eighteen years old. Among other reasons, this analysis was
25 incorrect because USCIS evaluated Ms. Yost's citizenship claim under the wrong
26 provision of the INA; it focused its analysis on INA § 322, not former INA § 321,
27
28

1 the provision under which Ms. Yost had acquired U.S. citizenship. Former INA §
2 321 automatically confers citizenship, i.e., it does not require an application for
3 citizenship to be filed at all. Exhibit GG.

4
5 79. On [REDACTED], 2011, Ms. Yost again completed a Detainee Request
6 Form, asking ICE for help in securing her release. She explained that she did not
7 have money for bond and only had thirty days to appeal her citizenship denial,
8 gather documents, find a lawyer, and also apply for cancellation of removal.
9 Exhibit HH.
10

11
12 80. Two days later, ICE responded: “You can call (619) [REDACTED] to
13 request to see the judge to reduce your bond.” Exhibit HH.

14
15 81. The next day, [REDACTED], 2011, Ms. Yost wrote back, explaining that
16 she had called to schedule a bond hearing but was told that her deportation officer
17 had to ask the judge. Ms. Yost begged the officer to call the judge to set up a bond
18 hearing: “Pls [sic], I don’t have much time left? Pls [sic] help me out. Thank you.”
19 Exhibit II.
20

21 82. On [REDACTED], 2011, ICE wrote in response: “I spoke to you in person
22 on [REDACTED]/11 about your case. I will give you an answer as soon as I know.”
23 Exhibit II.
24

25 83. Three days later, on [REDACTED], 2011, Ms. Yost completed yet another
26 Detainee Request Form, following up on whether the deportation officer had called
27 the judge about a custody status or release. Exhibit JJ.
28

1 84. The next day, [REDACTED] 2011, she received this response: “Your
2 deportation officer is not here today. I will forward your request to them, when
3 they return.” Exhibit KK.
4

5 85. Two more days passed with no response. On [REDACTED] 2011, Ms.
6 Yost completed another Detainee Request Form, requesting a biometric fingerprint
7 appointment. Exhibit KK. ICE did not respond to this request.
8

9 86. The next day, [REDACTED] 2011, Ms. Yost, who by then was in a state
10 of desperation, wrote on a new Detainee Request Form:
11

12 Please let me know what is happening with my bond/own recognance
13 [sic]. Please I am waisting [sic] a lot of time in here. I need to be
14 outside to finish my case. Please help me. Thank you.

14 Exhibit LL.

15 87. On [REDACTED] 2011, ICE wrote back: “We are working on
16 reviewing your case. Please be patient.” Exhibit LL. At this point, Ms. Yost had
17 been unlawfully imprisoned for nearly six months without an investigation into her
18 citizenship claim.
19

20 88. On [REDACTED] 2011, via a Detainee Request Form, Ms. Yost made a
21 request for a biometric appointment to apply for cancellation of removal and, *for*
22 *the fourth time*, asked about her custody status. Exhibit MM.
23

24 89. Two days later, on [REDACTED] 2011, she again was informed that her
25 deportation officer was out of the office. ICE wrote: “Your case officer is currently
26 out, I will forward this request to your case officer.” Exhibit MM.
27
28

1 Notice of Intent for Administrative Cancellation of Citizenship under 8 U.S.C. §
2 1453. USCIS reissued a corrected Notice on [REDACTED] 2013. On [REDACTED] 2013,
3
4 Plaintiff responded, explaining the lack of any legal basis for cancelling her
5 citizenship certificate.

6
7 **FIRST CLAIM FOR RELIEF**

8 **Federal Tort Claims Act – Negligence**

9
10 94. Ms. Yost incorporates by reference the allegations in the
11 paragraphs above as though fully set forth here.

12 95. ICE has a duty to act with reasonable care in exercising its civil
13 arrest and detention authority, including investigating citizenship status prior
14 to deciding to arrest someone and expeditiously and adequately investigating
15 claims of U.S. citizenship made by individuals in its custody.
16

17
18 96. ICE breached this duty when it failed to review its files and
19 investigate Ms. Yost's citizenship status in advance of deciding to go to her
20 home and arrest her early in the morning on [REDACTED] 2011.
21

22 97. ICE also breached this duty when it imprisoned Ms. Yost from
23 [REDACTED] 2011 to [REDACTED] 2011 without an adequate and expeditious
24 investigation of her U.S. citizenship claim.
25

26 98. ICE's breach actually and proximately caused Ms. Yost's arrest
27 and prolonged detention and the damage that resulted to her from such arrest
28

1 and detention, including, but not limited to, emotional distress.

2 99. ICE should have foreseen that its acts and omissions would
3 result in the unlawful arrest and detention of Ms. Yost. ICE officers knew
4 that they were not authorized to arrest and imprison U.S. citizens, as ICE’s
5 civil detention authority does not extend beyond noncitizens. Furthermore,
6 ICE’s internal guidelines instruct officers to “immediately” evaluate
7 detainees’ claims to U.S. citizenship. Morton Memo, at 1. ICE officers also
8 knew that Ms. Yost had a claim to U.S. citizenship, since she communicated
9 her claim to ICE more than 20 different times beginning on the day of her
10 arrest and throughout her detention—both orally and by submitting Detainee
11 Request Forms. In addition, she provided ICE with documentary evidence
12 that demonstrated that she had satisfied the requirements of acquired
13 citizenship under former INA § 321(a), 8 U.S.C. § 1432(a).
14
15
16
17

18 100. Under the FTCA, Defendant United States of America is liable
19 for these acts and omissions.
20

21 **SECOND CLAIM FOR RELIEF**

22 **Federal Tort Claims Act – False Imprisonment**

23
24 101. Ms. Yost incorporates by reference the allegations in the
25 paragraphs above as though fully set forth here.

26
27 102. ICE intentionally confined Ms. Yost at Otay Mesa Detention
28 Center for almost seven months. This detention was non-consensual and

1 without lawful privilege, as ICE's civil detention authority does not extend
2 beyond noncitizens. ICE imprisoned Ms. Yost despite her ability and efforts
3 to demonstrate her U.S. citizenship, as well as actual proof of her U.S.
4 citizenship.
5

6 103. Under the FTCA, Defendant United States of America is liable
7 for these acts and omissions.
8

9 **THIRD CLAIM FOR RELIEF**

10 **Federal Tort Claims Act – Negligent Infliction of Emotional Distress**

11
12 104. Ms. Yost incorporates by reference the allegations in the
13 paragraphs above as though fully set forth here.

14
15 105. ICE has a duty to act with reasonable care in exercising its civil
16 arrest and detention authority, including expeditiously investigating claims
17 of U.S. citizenship made by individuals in its custody.

18
19 106. ICE breached this duty when it arrested and imprisoned Ms.
20 Yost from [REDACTED] 2011 to [REDACTED] 2011 without conducting an
21 adequate and expeditious investigation of her U.S. citizenship claim prior to
22 her arrest or after she made ICE officers aware of her citizenship claim
23 orally and in writing more than 20 different times, beginning on the day of
24 her arrest and throughout her detention, and after she provided ICE with
25 documentary evidence demonstrating that she had satisfied the requirements
26 of acquired citizenship under former INA § 321(a), 8 U.S.C. § 1432(a).
27
28

1 107. ICE’s breach actually and proximately caused Ms. Yost’s arrest
2 and prolonged detention and the damage that resulted to her from such arrest
3 and detention, including, but not limited to, serious emotional distress.
4

5 108. Ms. Yost suffered serious emotional distress related to the
6 following circumstances, among others: inability to work, attend school, or
7 associate with family and friends for almost seven months; preparation and
8 filing of an unnecessary N-600 application from prison, which required
9 coordinating with uncooperative ICE officers to obtain photographs and
10 copies of documents; medical problems, including complications from
11 diabetes; and the threat of removal to the [REDACTED], a country in which she
12 had not lived for 20 years.
13
14
15

16 109. ICE should have foreseen that its acts and omissions would
17 result in the unlawful detention of Ms. Yost and would cause her serious
18 emotional distress. ICE officers knew that they were not authorized to arrest
19 or imprison U.S. citizens, as ICE’s civil detention authority does not extend
20 beyond noncitizens. Furthermore, ICE’s internal guidelines instruct officers
21 to “immediately” evaluate detainees’ claims to U.S. citizenship. Morton
22 Memo, at 1. ICE was also aware of many exacerbating circumstances
23 specific to Ms. Yost, including, but not limited to: her plans to [REDACTED]
24 [REDACTED]; her (misinformed)
25 belief that she needed to submit an N-600 application in order to be released
26
27
28

1 from detention; her dependence on ICE for copies of her documents and
2 photographs; and her medical problems, including diabetes.

3
4 110. Under the FTCA, Defendant United States of America is liable
5 for these acts and omissions.

6 **FOURTH CLAIM FOR RELIEF**

7
8 **Federal Tort Claims Act – Intentional Infliction of Emotional Distress**

9 111. Ms. Yost incorporates by reference the allegations in the
10 paragraphs above as though fully set forth here.

11
12 112. ICE’s conduct was both extreme and outrageous. Far from
13 “immediately” examining Ms. Yost’s citizenship claim, as required by law
14 and internal policy, ICE arrested and imprisoned Ms. Yost for almost seven
15 months *after* she asserted U.S. citizenship, despite the fact that she was able
16 to, and did in fact, provide documentary evidence of her claim, and despite
17 the fact that ICE had access to administrative files containing all relevant
18 records.
19

20
21 113. Ms. Yost suffered severe emotional distress while imprisoned
22 by ICE relating to the following circumstances, among others: inability to
23 work, attend school, or associate with family and friends for almost seven
24 months; preparation and filing of an unnecessary N-600 application from
25 prison, which required coordinating with uncooperative ICE officers to
26 obtain photographs and copies of documents; medical problems, including
27
28

1 complications from diabetes; and heightened anxiety based on these factors
2 and the threat of removal to the [REDACTED], a country in which she had not
3 lived for 20 years. ICE's wrongful conduct actually and proximately caused
4 this emotional distress.
5

6 114. The acts and omissions of ICE officers in arresting,
7 imprisoning, and failing to release Ms. Yost despite her claims and evidence
8 of U.S. citizenship were committed with, at minimum, reckless disregard of
9 the probability of causing severe emotional distress.
10

11 115. Under the FTCA, Defendant United States of America is liable
12 for these acts and omissions.
13

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PRAYER FOR RELIEF

WHEREFORE, Ms. Yost requests relief as follows:

- a. Trial by judge on all claims so triable;
- b. Compensatory damages in an amount to be proven at trial;
- c. Costs and reasonable attorney fees;
- d. The right to conform the pleadings to the proof and evidence presented at trial; and
- e. Such other relief as the Court deems just and equitable.

Respectfully submitted,

By: s/Trina Realmuto

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Dated: October 18, 2013