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## **INTRODUCTION**

Plaintiff, [REDACTED] Rodriguez, is a citizen of the United States who was detained by the Sonoma County Jail for two days in [REDACTED] 2012, as a result of the decision of the Sheriff of Sonoma County, California, to honor and enforce all detainer requests made by agents of the U.S. Department of Homeland Security (DHS), and as a result of the detainer request made in Mr. Rodriguez's case by Immigration Enforcement Agent K. Legaspi on [REDACTED] 2012. Mr. Rodriguez was detained for over 50 hours, from [REDACTED] [REDACTED], on the ostensible reason that DHS had "initiated an investigation to determine whether [Mr. Rodriguez was] subject to removal from the United States", despite the fact that Mr. Rodriguez had been a citizen of the United States for approximately ten years, had a U.S. passport since [REDACTED], had informed the staff of the Sonoma County Jail of these facts and his [REDACTED] had presented conclusive proof of his U.S. citizenship status (his U.S. passport). Moreover, even though Mr. Rodriguez and his [REDACTED] informed Defendant employees of the Sonoma County Jail of Mr. Rodriguez's citizenship status and repeatedly attempted to inform Defendant employees of DHS of this fact, Defendants continued to deprive him of his liberty pursuant to the detainer, without notice and an opportunity to respond and provide evidence of his citizenship.

## **JURISDICTION**

1. This action arises under the Constitution and law of the United States, including 42 U.S.C. § 1983, and the laws of the State of California. This Court has jurisdiction over the claims alleged in this Complaint pursuant to 28 U.S.C. §§ 1331 (federal question), 1346(b) (United States as a defendant), and 1343 (civil rights). Supplemental jurisdiction over the pendant state law claims is proper pursuant to 28 U.S.C. § 1367.

**EXHAUSTION**

2. On [REDACTED] 2013, Mr. Rodriguez filed an administrative tort claim with the federal government, attached here to as Exhibit F. The federal government denied the claim on [REDACTED] 2013, attached hereto as Exhibit G. Accordingly, Mr. Rodriguez exhausted administrative remedies for purposes of his claims against the United States under the Federal Tort Claims Act. 28 U.S. C. § 2675.

**VENUE AND INTRA-DISTRICT ASSIGNMENT**

3. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§ 1391(b) and (e). The events described in this Complaint occurred in Sonoma County, which is within the jurisdiction of the Northern District of California. Assignment of the Court to either the Oakland Division or San Francisco division is appropriate pursuant to Local Rule 3-2.

**PARTIES**

4. Plaintiff [REDACTED] Rodriguez is a U.S. citizen, born in [REDACTED]. He has lived in the U.S. since the age eight, when he first came as a child with his mother, and he became a U.S. citizen by operation of law on February 21, 2001, when the Child Citizenship Act of 2000 took effect. He is a resident of [REDACTED] California.

5. At all times relevant, Defendant K. Legaspi was employed as an agent of U.S. Immigration and Customs Enforcement (ICE), a component agency within the U.S. Department of Homeland Security (DHS). At all relevant times, Agent Legaspi was acting under color of federal law and is sued in his or her individual capacity.

6. At all times relevant, Defendant Timothy Aitken was employed as the Field Office Director for the San Francisco Field Office of ICE. In this capacity, he supervised Defendant K. Legaspi. In addition, on information and belief, Timothy Aitken was responsible

for supervision of K. Legaspi, an ICE agent whose conduct caused the injuries alleged herein. Pursuant to ICE policy, ICE officers and agents are required to interview detainees about the merits of their citizenship claims “in the presence of and/or in conjunction with a supervisor.” Memorandum from John Morton (Assistant DHS Secretary), dated Nov. 19, 2009, entitled *Superseding Guidance on Reporting and Investigating Claims to United States Citizenship*, attached hereto as Exhibit A. Thus, Mr. Aitken was responsible for evaluating Mr. Rodriguez’s citizenship claim. At all relevant times, Mr. Aitken was acting under color of federal law and is sued in his individual capacity.

7. At all times relevant, Defendant Sheriff Steve Freitas is Sheriff-Coroner of the Sonoma County Sheriff’s Department, is the custodian of persons confined in the Sonoma County Jail, and is responsible for the policies, practices and customs of the Sonoma County Sheriff’s Department and Jail. Defendant Freitas also is responsible for the hiring, screening, training, retention, supervision, discipline, counseling and control of the deputy sheriffs and jail staff under his supervision and command. At all relevant times, Defendant Freitas was acting under color of state law. He is sued in his individual and official capacities.

8. At all relevant times, Defendants DOES 1 through 10 (also referred to hereinafter as the “Doe defendants”) were agents, employees, or otherwise representatives of the Sheriff, each of whom Mr. Rodriguez sues in his or her individual capacity. At all relevant times, Does 1 through 10 were acting under color of state law. Upon information and belief, Mr. Rodriguez alleges that many, if not all, of Does 1 through 10 are residents of the Northern District of California. Upon information and belief Mr. Rodriguez alleges that DOES 1 through 10, inclusive, are legally responsible for the wrongs committed against Mr. Rodriguez, as alleged herein. When Mr. Rodriguez becomes aware of the true identities of one or more DOE

defendants, Mr. Rodriguez will amend this complaint to add or substitute them as named Defendants.

9. At all relevant times, Defendants Roes 1 through 10 (also referred to hereinafter as the “Roe defendants”), each of whom Mr. Rodriguez sues in his or her individual capacity, were agents, employees, or otherwise representatives of ICE. At all relevant times, Roes 1 through 10 were acting under color of federal law. Upon information and belief, Mr. Rodriguez alleges that many, if not all, of Roes 1 through 10 are residents of the Northern District of California. Upon information and belief Mr. Rodriguez alleges that Roes 1 through 10, inclusive, are legally responsible for the wrongs committed against Mr. Rodriguez, as alleged herein. When Mr. Rodriguez becomes aware of the true identities of one or more ROE defendants, Mr. Rodriguez will amend this complaint to add or substitute them as named Defendants.

10. Defendant United States of America is the appropriate defendant under the Federal Tort Claims Act. 28 U.S.C. § 1346(b).

11. Mr. Rodriguez is informed and believes and thereon alleges that each of the Defendants caused, and is liable for, the unconstitutional and unlawful conduct and resulting injuries, by, among other things, personally participating in said conduct or acting jointly with others who did so; by authorizing, acquiescing or setting in motion policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the unlawful conduct; by failing or refusing with deliberate indifference to maintain adequate training and supervision; and/or by ratifying the unlawful conduct taken by employees under his or her direction and control. Mr. Rodriguez is informed and believes and thereon alleges that Defendants’ actions were pursuant to a policy, custom, or usage of the Sheriff’s Department and/or ICE or other related agencies.

FACTS

12. [REDACTED] Rodriguez was born on [REDACTED] in [REDACTED] to [REDACTED] and [REDACTED]. In or around [REDACTED], Mr. Rodriguez's father became a lawful permanent resident (LPR). He then petitioned for lawful permanent residency for his wife [REDACTED] [REDACTED]), son [REDACTED]), and daughter ([REDACTED]), all of whom became LPRs on [REDACTED]. Mr. Rodriguez's father, became a U.S. citizen by naturalization on [REDACTED]. Mr. Rodriguez's mother, [REDACTED], became a citizen by naturalization on [REDACTED].

13. Mr. Rodriguez has been residing in the United States since 1992, and became a lawful permanent resident on [REDACTED], at the age of eight years old.

14. In 2000, Congress enacted the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) to allow foreign-born children to acquire citizenship automatically if they: (a) have at least one American citizen parent by birth or naturalization; (b) are under eighteen years of age; (c) live in the legal and physical custody of the American citizen parent; and (d) have been admitted as an immigrant for lawful permanent residence. 8 U.S.C. § 1431. The statute took effect on February 27, 2001. Children who met these requirements on that date automatically became American citizens.

15. On February 27, 2001, Mr. Rodriguez was still under eighteen years of age, was residing in the U.S. in the legal and physical custody of both parents, and at least one parent, his father, had naturalized to become a U.S. citizen. Thus, he automatically acquired a U.S. citizenship on this date.

16. In [REDACTED], Mr. Rodriguez applied for a U.S. passport at [REDACTED] [REDACTED] in [REDACTED], California. On [REDACTED], the U.S. State Department issued Mr.

Rodriguez his U.S. passport. Exhibit B. A U.S. passport is conclusive proof of U.S. citizenship. 22 U.S.C. § 2705.

17. On [REDACTED], Mr. Rodriguez sustained a misdemeanor conviction for [REDACTED] [REDACTED] in Superior Court of California, [REDACTED] County for which he received a 90-day sentence. Taking into consideration Mr. Rodriguez's employment as [REDACTED] which he needed to help support his [REDACTED] ([REDACTED]), the Superior Court specifically allowed Mr. Rodriguez to serve his 90-day sentence on weekends.

18. On [REDACTED], at approximately 7:00 p.m., Mr. Rodriguez checked himself into the Sonoma County Jail, North County Detention Facility in compliance with the Superior Court order. Mr. Rodriguez fully expected that he would be released on [REDACTED] [REDACTED], at approximately 7:00 p.m. [REDACTED]

19. Unbeknownst to Mr. Rodriguez, on Saturday, [REDACTED], ICE Agent K. Legaspi lodged an immigration detainer against Mr. Rodriguez on Form I-247. Exhibit C. The Form was addressed to the Sonoma Main Adult Detention Facility and indicated that ICE had "initiated an investigation to determine whether [Mr. Rodriguez] is subject to removal from the United States." The form further requested that the Sonoma Main Adult Detention Facility detain Mr. Rodriguez beyond the time it otherwise would release him and provided three separate contact telephone numbers to reach ICE during business hours, after hours or in an emergency, or if an ICE official could not be reached at the other two numbers. In addition, the box indicating that the jail was requested to "[p]rovide a copy to the subject of this detainer" was

ticked. However, during the entire detention, the jail never provided a copy of the detainer form to Plaintiff.

20. On Sunday evening, as he was getting ready to be released, jail staff informed Mr. Rodriguez that they would not release him because ICE had placed an immigration “hold” or detainer on him. Jail staff further stated that he would have to serve his whole 90-day sentence on the misdemeanor matter without release, contrary to the judge’s terms, and then ICE would take custody of him for removal/deportation.

21. Mr. Rodriguez immediately informed a jail guard that he was a U.S. citizen and could not be deported. Mr. Rodriguez asked the guard him to find out about the hold. Luis heard the guard call another officer, believe to be his sergeant. However, he guard then told him that ICE was responsible for the hold, not the jail, so Mr. Rodriguez was going to have to take it up with ICE. Feeling extremely anxious, Mr. Rodriguez called [REDACTED], to ask for help with the ICE hold.

22. On Sunday evening, after receiving Mr. Rodriguez’s call, [REDACTED] immediately called the Main Adult Detention Facility, but was told it did not matter that she had proof of her brother’s citizenship, because the jail did not know who from ICE placed the hold, or who could lift the hold. Nonetheless, she then immediately went to the North County Detention Facility, with Mr. Rodriguez’s U.S. passport to prove that he was a citizen. A U.S. passport is conclusive proof of U.S. citizenship. 22 U.S.C. § 2705.

23. However, a clerk at the jail told her that there was nothing they could do, and no jail staff asked to examine or make a copy of the passport. The clerk gave [REDACTED] a telephone number for ICE in San Francisco, but to her knowledge, the jail staff did not communicate with

ICE themselves about Luis' claim to citizenship, ██████'s affirmation of that claim, or the passport.

24. ██████ repeatedly called the ICE telephone number she had been given Sunday evening and Monday. She never reached a human nor did she have the opportunity to leave a voice mail message with the facts she wanted to share. Instead, each time she called she reached a recording giving her information about DHS' services, hours, etc. In addition, she repeatedly called the jail several to see if the detainer hold had been lifted.

25. On Tuesday morning, ██████, ██████ called a different ICE phone number that she had found on the internet. She finally reached a human being who, she believes, had the last name "Robinson", who took from her Mr. Rodriguez's name, date of birth, and passport number, and who said he would check into the case.

26. Later, on Tuesday at approximately 4:00 p.m., ██████ brought the passport to the office of an undersigned counsel, who faxed the biographic page of Mr. Rodriguez's passport to ICE Officer Eddie Robinson of the San Francisco Enforcement and Removals Office. Exhibit D.

27. ██████ repeatedly called the jail during the day to determine the hold had been lifted.

28. At approximately 11:00 p.m. on Tuesday, the Sonoma County Jail finally released Mr. Rodriguez from detention. .

29. Upon information and belief, ICE checked its own records to verify his U.S. citizenship status before dropping the detainer on which he had been held.

30. On information and belief, Defendant Legaspi, Defendant Aiken, Defendant Freitas, Defendants Does 1-10 and Defendants Roes 1-10 did not act to confirm that there existed probable cause to detain Mr. Rodriguez for removal proceedings prior to lodging the detainer.

31. Ultimately, Mr. Rodriguez, a U.S. citizen, was unlawfully detained without cause for over 50 hours, from [REDACTED] at approximately 7:00 until [REDACTED] at approximately 11:00 p.m. During this time, he was deprived of his freedom, separated from his family and prevented from working. In addition, he suffered substantial emotional damage, not only as a result of being indefinitely locked up, but also from the prospect of losing his contact with his [REDACTED], losing his job and being threatened with deportation to a country that he left as a child, where he no longer had any family ties or supporting network. Mr. Rodriguez reasonably fears that he will again be subjected to a false immigration detainer in the future.

32. On or about [REDACTED] 2012, Mr. Rodriguez filed an administrative complaint with the Sonoma County Board of Supervisors regarding his unlawful detention. In his complaint, Mr. Rodriguez request compensation in the amount of \$ 15,000 for deprivation of liberty, lost earnings and emotional distress.

33. On [REDACTED] 2012, the Sonoma County Human Resources Department rejected Mr. Rodriguez's claim, stating that "The Sonoma County Jail is obligated to maintain custody of individuals listed on Immigration Detainers based on Federal Regulation. As such we find no wrong doing on the part of the jail." Exhibit E.

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**FIRST CLAIM FOR RELIEF**

**42 U.S.C. § 1983**

**(Fourth and Fourteenth Amendments)**  
Against Defendants Freitas and DOES 1-10

34. Mr. Rodriguez incorporates by reference the allegations in the paragraphs above as though fully set forth here.

35. The Fourth Amendment prohibits “unreasonable searches and seizures.” The Fourth Amendment’s guarantees are applied to the States through the Fourteenth Amendment.

36. Defendants Freitas and DOES 1-10 caused Mr. Rodriguez to be detained for over 50 hours after he was entitled to release and after their authority to detain him for serving his criminal sentence ceased.

37. Defendant Freitas and Does 1-10 did not have probable cause to believe that Mr. Rodriguez was a non-citizen subject to removal and detention. They detained him despite his ability and efforts to demonstrate his U.S. citizenship and despite actual proof of U.S. citizenship.

38. Defendants Freitas and Does 1-10 detained Mr. Rodriguez pursuant to a custom or policy, as memorialized in the letter from Sonoma County, dated [REDACTED] rejecting his administrative claim, that Sonoma County is “obligated” to maintain custody of anyone who has an immigration detainer, despite the fact that the detainer is a request made by ICE without any legal obligation.

39. Through their acts, conduct, policy and custom, Defendants Freitas and Does 1-10 effectuated an unreasonable seizure and deprivation of liberty in violation of Mr. Rodriguez’s rights under the Fourth and Fourteenth Amendments.

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**SECOND CLAIM FOR RELIEF**

*Bivens*

**(Fourth and Fifth Amendment)**

Against Defendants Legaspi, Aitken and Roes 1-10

40. Mr. Rodriguez incorporates by reference the allegations in the paragraphs above- as though fully set forth here.

41. The Fourth Amendment prohibits “unreasonable searches and seizures.” The Fifth Amendment protects against the deprivation of liberty without due process of law.

42. The acts and conduct of Defendants Legaspi, Aitken and Roes 1-10 caused Mr. Rodriguez to be detained for over 50 hours after he was entitled to release and after the Sonoma County Jail’s authority to detain him for serving his criminal sentence ceased.

43. Defendants Legaspi, Aitken and Roes 1-10 did not have probable cause to issue an ICE detainer against him and did not seek to first determine if there was probable cause prior to lodging the detainer against him.

44. Defendants Legaspi, Aitken and Roes 1-10 caused him to be detained him without affording him notice and an opportunity to respond and provide evidence of his citizenship.

45. Defendants Legaspi, Aitken and Roes 1-10 were the direct and proximate cause of injury and damage to Mr. Rodriguez

**THIRD CLAIM FOR RELIEF**

**California Constitution, Art. I, § 13**

**(Unreasonable Search and Seizure)**

Against Defendants Freitas and Does 1-10

46. Plaintiff incorporates by reference the allegations in the paragraphs above as though fully set forth here.

47. Defendant Freitas' and Defendant employees Does 1-10's above-described policies and practices, and their conduct from [REDACTED] 2012, constitutes a false arrest/imprisonment of Plaintiff, and have violated Plaintiff's right to be free from unreasonable searches and seizures under Article 1, § 13 of the California Constitution.

**FOURTH CLAIM FOR RELIEF**

**California Constitution Art. I, §§ 7(a) and 15  
(Due Process)  
Against Defendants Freitas and Does 1-10**

48. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth here.

49. Defendant Freitas' and Defendants employees Does 1-10's above-described policies and practices, and their conduct from [REDACTED] 2012, constitutes a false arrest/imprisonment of Plaintiff without notice and hearing regarding probable cause, and have violated Plaintiff's right to due process of law under Article I, §§ 7(a) and 15 of the California Constitution.

**FIFTH CLAIM FOR RELIEF**

**Violation of Bane Act, California Civil Code § 52.1  
Against Defendants Freitas and Does 1-10**

50. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth here.

51. Defendant Freitas' and Defendant employee Does 1-10's above-described policies and practices, and their conduct against Plaintiff from [REDACTED] 2012 constituted a false arrest/imprisonment and constituted interference, by threats, intimidation, and coercion, with Plaintiff's exercise and enjoyment of rights secured by the Constitutions and laws of the United States and California, in violation of California Civil Code § 52.1.

52. As a direct and proximate cause of defendants' actions, Plaintiff suffered injury, including actual damages and emotional distress, in an amount according to proof, and said damages may be trebled.

**SIXTH CLAIM FOR RELIEF**

**False Arrest/Imprisonment**  
Against Defendants Freitas and Does 1-10

53. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

54. Through above-described policies, practices and conduct, Defendants Freitas and employees Does 1-10 falsely arrested and/or imprisoned Plaintiff. Said Defendants intentionally confined, restrained, and/or seized Plaintiff with threat of force and without Plaintiff's consent, without arrest warrants, without lawful authority and without probable cause.

**SEVENTH CLAIM FOR RELIEF**

**Negligence**  
Against Defendants Freitas and Does 1-10

55. Plaintiff incorporates by reference the allegations in the paragraphs above as though fully set forth here.

56. Defendants Freitas and employee Does 1-10 owed Plaintiff a duty of care not to cause him the harms alleged herein. By engaging in the above-described conduct, and by enforcing the ICE detainer request without confirming that there was probable cause to deprive Plaintiff of his liberty, and moreover, without seeking to verify Plaintiff's claim that he was a U.S. citizen and thus ICE had no jurisdiction to issue a detainer, Defendants Freitas and employee Does 1-10 breached their duty of care and proximately caused harm to Plaintiff.

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**EIGHTH CLAIM FOR RELIEF**

**False Imprisonment/False Arrest under the Federal Tort Claims Act,  
28 U.S.C. §§ 1346(b), 2671 *et seq.***  
Against Defendant United States of America

57. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth here.

58. Defendants Aiken, Legaspi and Roes 1-10 intentionally imprisoned Plaintiff on the basis of an immigration detainer without lawful privilege for over 50 hours. Said Defendants carried out this imprisonment without Plaintiff's consent and without legal justification or probable cause.

**NINTH CLAIM FOR RELIEF**

**Negligent Infliction of Emotional Distress under the Federal Tort Claims Act,  
28 U.S.C. §§ 1346(b), 2671 *et seq.***  
Against Defendant United States of America

59. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth here.

60. Defendants Aiken, Legaspi and Roes 1-10 have a duty to act with reasonable care, including treating individuals without regard to race, ethnicity and/or national origin, verifying the existence of probable before authorizing or executing a search or seizure and providing due process when depriving an individual of his liberty. Defendant Aiken also has a duty to train and supervise his subordinates and to establish and enforce policies and practices to prevent the occurrence of unconstitutional and tortious actions by his subordinates.

61. Said Defendants breached these duties and such breach was the proximate cause of Plaintiff's unlawful detention. As a result of the unlawful detention resulting from Defendants' negligence, Plaintiff suffered serious emotional distress, including but not limited

to, fright, nervousness, anxiety, worry, and shock. Defendants' negligence was a substantial factor in causing Plaintiff's serious emotional distress.

**TENTH CLAIM FOR RELIEF**

**Abuse of Process under the Federal Tort Claims Act,  
28 U.S.C. §§ 1346(b), 2671 *et seq.*  
Against Defendant United States of America**

62. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth here.

63. Defendants Aitken, Legaspi and Roes 1-10 regularly engage in the process of issuing detainers. Said Defendants intentionally used this legal procedure to harm Mr. Rodriguez without economic or social excuse or justification, and Defendants were seeking a collateral advantage or corresponding detriment to Plaintiff which was outside the legitimate ends of the process.

64. The acts and conduct of Defendants Legaspi, Aitken and Roes 1-10 directly and proximately harmed Plaintiff in that they caused his detention for over 50 hours after he was entitled to release and after the Sonoma County Jail's authority to detain him for serving his criminal sentence ceased. Said Defendants' actions and omissions were a substantial factor in causing Plaintiff's harm.

**ELEVENTH CLAIM FOR RELIEF**

**Violations of Liberty and Due Process under Art. I, §§ 1 and 7 of the California  
Constitution, under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.*  
Against Defendant United States of America**

65. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth here.

66. Defendants Legaspi, Aitken and Roes 1-10 above-described policies and practices, and their conduct from [REDACTED], 2012, constitutes a violation of liberty without notice and hearing regarding probable cause, and have violated Plaintiff's right to due process of law under Article I, §§ 1 and 7 of the California Constitution.

**REQUEST FOR RELIEF**

WHEREFORE, Mr. Rodriguez requests relief as follows:

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

Respectfully submitted,

By: s/Trina Realmuto

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Dated: March 20, 2013

**CERTIFICATE OF SERVICE**

I, Trina Realmuto, hereby certify that on March 20, 2013, the foregoing First Amended Complaint for Damages was served electronically on counsel of record for Defendant Steve Freitas via the Court's CM/ECF system.

s/Trina Realmuto

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