The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GUSTAVO VARGAS RAMIREZ, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	No. C13-2325-JLR **UNITED STATES' REPLY**

I. The United States' Motion to Dismiss is Proper Under Rule 12(b)(1).

The United States' motion to dismiss challenges Plaintiff's ability to state a claim for false arrest, false imprisonment, and abuse of process. Dkt. No. 15. The United States cited Rule 12(b)(6), but should have brought its motion under Rule 12(b)(1). Plaintiff fails to state a claim under the Federal Tort Claims Act ("FTCA") for false arrest, false imprisonment, and abuse of process. As such, this Court lacks subject-matter jurisdiction.

"A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *A-Z Int'l v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003). A challenge to jurisdiction under Rule 12(b)(1) "can be either facial, confining the inquiry to allegations in the complaint, or factual, permitting the court to look beyond the complaint." *Savage v. Glendale Union High School*, 343 F.3d 1036, 1039-40 n. 2 (9th Cir. 2003). In a factual Rule 12(b)(1) challenge, "the district court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). Once the moving party has converted the motion to dismiss into a factual motion by presenting

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affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject-matter jurisdiction. *Savage*, 343 F.3d 1039-40 n. 2. When subject-matter jurisdiction is challenged under Rule 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion. *See Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989).

Here, Plaintiff predicates jurisdiction solely on the FTCA. Dkt. No. 1, pg. 3, ¶8. The FTCA provides liability only 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). Under Washington law, it is a complete defense to false arrest and false imprisonment if Plaintiff's detention was lawful. *See Hanson v. City of Snohomish*, 121 Wash.2d 552, 563-64 (1993); *Bender v. Seattle*, 99 Wash.2d 582, 592 (1983). Therefore, if Plaintiff cannot establish that his detention was unlawful, this Court lacks subject-matter jurisdiction under the FTCA. Furthermore, if Plaintiff cannot establish that the alleged false arrest and false imprisonment was performed by "an employee of the Federal government" as defined in the FTCA or by an "investigative or law enforcement officer" as defined in the FTCA this Court lacks subject-matter jurisdiction. Finally, if Plaintiff cannot establish the elements of a claim for abuse of process under Washington law, this court lacks subject-matter jurisdiction. Thus, the United States' motion to dismiss for failure to state a claim under the FTCA is properly brought under Rule 12(b)(1).

II. The United States' Motion for Summary Judgment is Proper.

The United States moved for summary judgment in the alternative and believes that its motion can be decided under Rule 12(b)(1) as a factual challenge without converting the motion to a Rule 56. *See* Dkt. No. 15. If the Court determines that the motion should be converted to Rule 56, there are no material issues of fact that preclude summary judgment at this point. Plaintiff argues that summary judgment is inappropriate because "a determination of disputed facts" is needed. Dkt. No. 19, pg. 22-23. But Plaintiff has not shown what disputed facts remain that would preclude summary judgment. Nor has he filed a motion for a continuance under Rule 56 supported by affidavits setting forth particular facts expected from the additional discovery he seeks. *Mackey v. Pioneer Nat'l Bank*, 867 F.2d 520, 523-24 (9th Cir. 1989) (*citing Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1443 (9th Cir.

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1986). A motion for a continuance under Rule 56 must show how additional discovery would preclude summary judgment and why a party cannot immediately provide "specific facts" demonstrating a genuine issue of material fact. *Id.* at 524. Plaintiff has failed to either file a proper motion to continue or provide affidavits setting forth what discovery is needed.

Furthermore, the United States is moving to dismiss under Rule 12(b)(1) and Rule 56 taking the facts in Plaintiff's complaint as true for purposes of this motion only. The only fact that was unclear in Plaintiff's complaint was what admissions Plaintiff made during Border Patrol Agent John Orr's interview at the Anacortes Police Station. Plaintiff skirted the issue in his complaint by stating, "[a]s [Agent Orr] questioned me, I thought that they would keep me locked up until I told them what [they] wanted to hear. I believed I had no choice." Dkt. No. 15, Ex. A, pg. 2, ¶9. Plaintiff also stated that he "began to fear that he would remain arrested unless he gave Agent Orr the answers he seemed to want. [Plaintiff] did not believe he had the choice to stay silent." Dkt. No. 1, pg. 8, ¶41.

The United States has submitted a declaration from Agent Orr wherein he testifies that Plaintiff told him he was born in Mexico and had been in the United States approximately ten (10) years. Dkt. No. 17, pg. 2, ¶5. Plaintiff had the opportunity to submit an affidavit in response and contest this fact. He did not. Thus, there are no material facts in dispute and if the Court chooses to consider the United States' motion to dismiss under Rule 56 it may do so.

III. Border Patrol Had Reasonable Suspicion to Believe Plaintiff is an Illegal Alien.

First, Plaintiff attacks Border Patrol's reasonable suspicion by isolating each factor that went into the officers' analysis and arguing that the individual factor itself is insufficient. Dkt. No. 19, pg. 12-19. But the Supreme Court has clearly cautioned that courts must look at the totality of the circumstances of each case to see whether there is a particularized and objective basis for suspecting wrongdoing. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). And the Ninth Circuit has held that the focus on the totality of the circumstances, rather than each individual circumstance, underscores that "a court may not engage in a 'sort of divide-and-conquer analysis' by evaluating and rejecting each factor in isolation." *United States v. Cheromiah*, 455 F.3d 1216, 1221 (9th Cir. 2006). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *Arvizu*, 534 U.S. at 273. "Individual factors that may appear innocent in isolation may constitute

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suspicious behavior when aggregated together." *See United States v. Diaz-Juarez*, 299 F.3d 1138, 1141 (9th Cir. 2002); *United States v. Fernández-Castillo*, 324 F.3d 1114, 1117 (9th Cir. 2003) ("All relevant factors must be considered in the reasonable suspicion calculus-even those factors that, in a different context, might be entirely innocuous.").

Second, Plaintiff discounts two of the most significant factors that Border Patrol considered by addressing them in a footnote**.** First, Border Patrol's record checks revealed that Plaintiff had never been lawfully admitted into the United States. Second, Plaintiff failed to produce any alien registration documents or advise Border Patrol that he possessed any valid U.S. immigration documents. In a footnote, Plaintiff argues that these factors are only relevant if Plaintiff is a foreign-born non-citizen. Dkt. No. 19, pg. 14, n.7. What Plaintiff fails to recognize is that Border Patrol had reasonable suspicion to believe that Plaintiff is an alien and that belief, coupled with these two additional significant factors, constituted reasonable suspicion that Plaintiff is also an illegal alien.

Border Patrol had already developed a reasonable belief that Plaintiff is an alien who was not born in the United States based on the area he was located in, Officer Leetz' suspicions, Plaintiff's inability to speak English very well, and the fact that he had a Washington driver's license but lacked a valid social security number. As discussed in the United States' motion to dismiss, each of these factors, when considered together by experienced Border Patrol officers in the Blaine Sector, caused them to believe that Plaintiff was an alien not born in the United States. When Border Patrol's record checks also revealed that Plaintiff had never been legally admitted into the United States, Border Patrol had reasonable suspicion to believe Plaintiff was not only an alien, but was an illegal alien.

Border Patrol's records systems identify any individuals with lawful immigration status, any individuals who have previously been deported, any individuals who have submitted any petitions for lawful status, and anyone who has had any claims submitted on their behalf. Dkt. No. 16, ¶12. Therefore, the fact that a suspected alien has no records in any of these systems is a strong indicator that the individual had not lawfully gained admission to the United States. *Id.* This was a major factor that went into Border Patrol's reasonable suspicion analysis and was absolutely relevant in this case because Border Patrol reasonably believed Plaintiff is an alien.

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Furthermore, because Plaintiff was not in Border Patrol's system as having been lawfully naturalized as a United States citizen, he was required to carry with him and have in his personal possession any certificate of alien registration or alien registration card issued to him at all times, if he had been lawfully admitted. *See* 8 U.S.C. § 1304(e). Plaintiff's failure to produce any alien registration documents or advise Border Patrol that he had been issued any valid U.S. immigration documents is another substantial factor Border Patrol properly relied on in determining that there was reasonable suspicion to believe that Plaintiff is an illegal alien.

IV. Plaintiff Fails to State a Claim Under the FTCA For Actions Taken by Officer Leetz.

Although Plaintiff has asserted false arrest and false imprisonment claims, he simply tells this Court to set aside the entire issue of who actually effectuated the arrest. Dkt. No. 19, pg. 2. This Court cannot do so. If the Court determines that Plaintiff was unlawfully arrested, it necessarily must determine who effectuated the arrest to determine where to impose liability. Plaintiff argues that he was unlawfully arrested and falsely imprisoned at the point where he was handcuffed, placed in the back of a patrol car, transported to the Anacortes Police Department, and detained in a holding cell until Border Patrol Agents arrived. Dkt. No. 19, pg. 7-11. All of these actions, however, were taken by Officer Leetz who is not an employee of the United States government. The Border Patrol did not direct Officer Leetz to take any of these actions and had no control over Officer Leetz' decisions to take these specific actions. Indeed, Officer Leetz himself reports that Border Patrol simply requested "that I detain him." Dkt. No. 1, Ex. 1, pg. 2. The United States cannot be held liable under the FTCA if Officer Leetz' actions, and the methods he used to detain Plaintiff, transformed the requested detention into an unlawful arrest.

Plaintiff has only filed suit against the United States and only predicated liability under the FTCA. The United States' liability under the FTCA only extends to "the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. § 1346(b)(1). An employee is defined as:

> "Employee of the government" includes (1) officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation, and (2) any officer or employee of a Federal public defender

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> organization, except when such officer or employee performs professional services in the course of providing representation under section 3006A of title 18.

28 U.S.C. § 2671. This definition provides specific limits to the scope of the § 1346(b) waiver. To construct a claim that would subject the United States to liability for the conduct of persons who are not federal employees, would contravene the limited waiver set forth in § 1346(b).

In order to state a claim within the FTCA's waiver of sovereign immunity, Plaintiff must allege negligence (1) by officers or employees of a federal agency, which includes executive departments such as the Department of Homeland Security but which does not include contractors, 28 U.S.C. § 2671; (2) by persons acting on behalf of a federal agency in an official capacity; or (3) by a government contractor over whose "day-to-day operations" the government maintains "substantial supervision." *See Valadez-Lopez v. Chertoff*, 656 F.3d 851, 858 (9th Cir. 2011); *Letnes v. United States*, 820 F.2d 1517, 1519 (9th Cir. 1987); *Ducey v. United States*, 713 F.2d 504, 516 (9th Cir. 1983).

Here, Officer Leetz is clearly not an officer or employee of a federal agency or a government contractor. The question is whether he was acting on behalf of a federal agency in an official capacity when he decided to take the actions that Plaintiff argues transformed his detention into a false arrest and false imprisonment - handcuffing Plaintiff, placing him in the back of a patrol car, transporting him to the Anacortes Police Department, and detaining him in a holding cell until Border Patrol Agents arrived. According to the complaint, Border Patrol requested that Plaintiff be "detained" until a Border Patrol Agent could arrive and interview him in person. Dkt. No. 1, pg. 6, ¶27. Border Patrol did not have any control over or direct the actions taken or the methods used by Officer Leetz to detain Plaintiff. As such, Officer Leetz was not acting on behalf of Border Patrol when he took the specific actions of handcuffing Plaintiff, placing him in the back of a patrol car, transporting him to the Anacortes Police Department, and detaining him in a holding cell until Border Patrol Agents arrived.

In *Means v. U.S.*, 176 F.3d 1376, 1379 (11th Cir. 1999), the Eleventh Circuit addressed a similar situation. There, the plaintiff brought claims based on the execution of a search warrant and argued that the county officials who executed the search warrant were acting on behalf of the Federal Bureau of Investigation ("FBI"). The court found that when determining whether an individual is an "employee of the government" under the FTCA, courts have

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adopted what is called the "control test."[1] *Id.* (*citing Carrillo v. United States*, 5 F.3d 1302, 1304-05 (9th Cir. 1993)). Under this test, a person is not an "employee of the government" for FTCA purposes unless the government controls and supervises the day-to-day activities of the individual. *Id.* (*citing Logue v. United States*, 412 U.S. 521, 526-32 (1973)). The court held:

> The undisputed record evidence shows that the Jefferson County Sheriff's deputies were the persons who entered the appellants' residence and secured the premises. The SWAT team and the county deputy sheriff commanding the team made all tactical decisions as to the best method of entering the house and the appropriate amount of force to use to secure the premises. While federal agents provided background information about Wendall Means and a previous search of his residence, they did not participate in the raid. We therefore conclude that the district court correctly held that the fact that FBI agents informed county officials as to the circumstances surrounding the previous search "fall[s] short of supporting a finding that the F.B.I. had control over or directed the actions taken or methods used by the county SWAT team in entering and then securing the Means' residence."

Id. at 1379.

Similar to the *Means* case, although Border Patrol requested that Officer Leetz detain Plaintiff so that they could interview him in person, they had no control over and did not direct the actions taken by Officer Leetz or the methods he used to detain Plaintiff. Nor did Border Patrol have the authority to control Officer Leetz' actions and methods used to detain Plaintiff. *See also George v. Rehiel*, 738 F.3d 562, 584 (3rd Cir. 2013) (finding that TSA officers had no legal or functional control over the decisions and actions of Philadelphia police officers who detained a plaintiff at an airport while awaiting Agents from the Joint Terrorism Task Force to arrive and question him).

The phrase "acting on behalf" was designed "to cover special situations such as the 'dollar-a-year' man who is in the service of the Government without pay, or an employee of another employer who is placed under direct supervision of a federal agency pursuant to contract or other arrangement." *Logue*, 412 U.S. at 531. It was not at all designed to cover a situation where Border Patrol merely requests that a local law enforcement officer detain an individual until they can arrive and conduct an in-person interview. Under these

[1] The appellants in *Means* contended that the *Logue* control test was inapplicable to determine if the officers were acting on behalf of a federal agency and was limited to cases concerning independent contractors. *Id.* at 1379. The Eleventh Circuit disagreed and applied the *Logue* control test to determine whether the county officers involved in the execution of the search warrant were acting on behalf of the government.

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circumstances, the local law enforcement officer is not acting on behalf of Border Patrol and the United States is not liable for any tortious or wrongful act the local law enforcement officer may commit when he decides what methods to employ to detain the individual.

Furthermore, under the intentional torts exception to the FTCA, the general waiver of sovereign immunity effected by the Act only extends to suits for intentional torts such as "assault [and] battery, false imprisonment, false arrest, malicious prosecution, [and] abuse of process" if the conduct of "investigative or law enforcement officers of the United States Government" is involved. 28 U.S.C. § 2680(h). "If an intentional tort is committed by someone who is not an investigative or law enforcement officer, then sovereign immunity is not waived." *Black v. U.S.*, 2013 WL 5214189, *2 (W.D.Wash., Sept. 17, 2013).

An "investigative or law enforcement officer" is defined as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." 28 U.S.C. § 2680(h). "It is common knowledge that local police officers and county sheriffs or deputies assist tribal officers and federal officers as well on occasion and vice versa. Such assistance does not cause these other law enforcement officials to be federal law enforcement officers" within the meaning of Section 2680(h) of the FTCA. *See Locke v. U.S.*, 215 F. Supp. 2d 1033, 1038-39.

Here, Plaintiff acknowledges and indeed emphasizes that Officer Leetz lacked the authority to enforce federal immigration laws. Dkt. No. 19, pg. 5-7. Thus, even if Plaintiff could prove that Officer Leetz somehow qualified as "an employee of the Federal government" under 28 U.S.C. § 2671, any action for false arrest or false imprisonment based on Officer Leetz' conduct is barred under the intentional tort exception because he is not an officer of the United States empowered to execute searches, seize evidence, or make arrests for violations of federal law under 28 U.S.C. § 2680(h).[2]

Therefore, the Court should not simply set aside the issue of who effectuated the arrest as Plaintiff requests. Plaintiff's claim is that his false arrest and false imprisonment began at the point when Officer Leetz handcuffed him, placed him in the back of a patrol car, transported him to the Anacortes Police Department, and detained him in a holding cell until Border Patrol Agents arrived. These actions were not taken by an employee of the federal

[2] Indeed, any claim *arising out of* the alleged false arrest and false imprisonment action by Officer Leetz is barred. *See Black*, 2013 WL 5214189, *3-4 (*citing* 28 U.S.C. § 2680(h)).

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government or an investigative or law enforcement officer of the United States. As such, the false arrest and imprisonment claims cannot be brought against the United States under the FTCA.

V. Plaintiff's Abuse of Process Claim Must be Dismissed Under Rule 12(b)(1).

The United States did analyze Plaintiff's abuse of process claim as a malicious prosecution claim, which requires lack of probable cause, in its motion to dismiss. The United States agrees with Plaintiff that under Washington law, an abuse of process claim is separate from a malicious prosecution claim and will lie even though there was probable cause for issuance of the process in the first place. *Fite v. Lee*, 11 Wash.App. 21, 27 (1974). But Plaintiff has failed to state a claim for abuse of process under Washington law.

The tort of abuse of process is disfavored in Washington. *Oreskovich v. Eymann*, 2005 WL 2271885, *3 (Div. 1, 2005) (unpublished) (citing *Batten v. Abrams*, 28 Wash.App. 737, 745 (1981)). To state a claim for abuse of process, Plaintiff must prove that after the process has been issued or the suit has been instituted the legal process was abused. Abuse of process is the misuse or misapplication of the process, after it has once been issued, for an end other than that which it was designed to accomplish. *Hough v. Stockbridge*, 152 Wash.App. 328, 343 (Div. 1, 2009); *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.)*, 119 Wash.App. 665, 699 (Div. 2, 2004); *Batten*, 28 Wash.App. 737 at 745. "[T]here must be an act after filing suit using legal process empowered by that suit to accomplish an end not within the purview of the suit." *Batten*, 28 Wash.App. at 748.

It is generally accepted that "the judicial process must in some manner be involved" before a claim for abuse of process will lie. *Oreskovich*, 2012 WL 2271885 at *3 n.2. (*citing* W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 121 at 898 (5th ed. 1984) and *Sea-Pac Co. v. United Food and Commercial Workers Union 44*, 103 Wn.2d 800 (1985) (holding that unfair labor practice charges could not form basis of action for abuse of process because no process was issued by Washington courts and that whether union misused process of National Labor Relations Board for an improper purpose was for the Board to decide). Similarly, the Washington Court of Appeals has held that Washington State Bar proceedings are not *judicial* proceedings where an abuse of process claim may be applied. *Id.* at *3.

Here, Plaintiff has failed to identify any act taken after a judicial proceeding or legal process was issued or a suit was filed. Rather, all of the acts Plaintiff challenges under his

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abuse of process claim took place before removal proceedings were instituted against him. Under his abuse of process claim, Plaintiff challenges: (1) his transfer to the Bellingham Border Patrol Station; (2) the taking of his fingerprints; (3) the alleged pressure to sign immigration forms; and (4) the alleged falsifications in the I-213. Dkt. No. 1, pg. 21-22, ¶117-120. He argues these actions were done for "the improper purpose of covering up USBP's unlawful arrest and imprisonment" of Plaintiff. *Id.* at ¶121. But even if Plaintiff could prove that these acts were done with malicious intent, all these acts occurred *before* any legal process was issued against Plaintiff.

The "mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process." *Loeffelholz*, 119 Wash.App. at 699. Instead, "[t]he gist of the action is the misuse or misapplication of the process, *after it has once been issued*, for an end other than that which it was designed to accomplish." *Id.* "[T]he gist of the tort is not commencing an action or causing process to issue without justification, but misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish." *Batten*, 28 Wn.App. at 745.

Investigating an individual's immigration status by running their fingerprints through the Department of Homeland Security's Automated Biometric Identification System, completing various immigration forms regarding removal proceedings, and preparing an I-213 are all actions that are taken in the process of presenting an illegal alien for removal proceedings to U.S. Customs and Immigration Enforcement ("ICE"). The actual removal proceedings, or legal process, do not formally begin until ICE files a Notice to Appear with the immigration court through the Executive Office of Immigration Review. 8 C.F.R. § 1003.14; *see also Lazaro v. Mukasey*, 527 F.3d 977, 980 (9th Cir. 2008) ("The Immigration Court's jurisdiction vests 'when a charging document is filed with the Immigration Court by the Service.'"). Thus, even if Plaintiff could prove that the Border Patrol's actions in processing him for removal and preparing the I-213 were done with a malicious motive, he must prove some additional improper act *after the legal process has been issued* to establish a valid abuse of process claim and he has not.

"[T]he initiation of vexatious civil proceeding, although baseless, is not an abuse of process." *Saldivar v. Momah*, 145 Wash.App. 365, 389 (Div. 2, 2008). There must be an act after filing suit using legal process empowered by that suit to accomplish an end not within the

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purview of the suit. *Id.* (*citing Batten*, 28 Wash.App. at 749). In *Ressy v. State, Dept. of Corrections*, 2013 WL 5430516 (Div. 1, 2013) (unpublished), a prisoner alleged that department of corrections personnel filed a false declaration and probation violation report in retaliation for grievances he filed against his community corrections officer. *Id.* at *1. The Washington Court of Appeals found that the plaintiff failed to state a claim for abuse of process because the act of filing a false declaration and probation violation report were acts that *initiated* the violation process. *Id.* at *5. "An abuse of process claim must be based on an act in the use of process that is not proper in the regular prosecution of the proceedings." *Id.*

Therefore, Plaintiff's abuse of process claim must fail because he has not shown that an act was taken after an actual *judicial* proceeding was instituted, using the legal process empowered by that suit, to accomplish an end not within the purview of the suit. Rather, Plaintiff's claims all go to actions taken by Border Patrol during the process of presenting Plaintiff, an illegal alien, for removal proceedings. These claims cannot support an abuse of process claim under Washington law and must be dismissed for lack of subject-matter jurisdiction.

VI. Inconsistencies in the I-213 Do Not Preclude a Determination that Plaintiff Has Failed to Prove the Elements of His Claims.

Plaintiff repeatedly claims that the I-213 was "fabricated," "doctored," and contains "false statements," and argues the United States did not address the I-213 report in its motion. Dkt. No. 19, pg. 1, 3, 20. Inconsistencies in the I-213, however, do not preclude the Court from determining whether or not Plaintiff has failed to establish claims under the FTCA for false arrest, false imprisonment, and abuse of process.

The question before the Court on the false arrest and false imprisonment claims is whether Plaintiff's detention was lawful. The Court's analysis of whether or not Border Patrol had reasonable suspicion and probable cause is not dictated by the contents of an I-213 completed when Plaintiff was placed into administrative detention and presented for removal proceedings. It is determined based on what information the officers had at the time of the detention. The reasonable suspicion and probable cause Border Patrol had at the time of the detention cannot be negated by inconsistencies in the subsequent preparation of the I-213.

The question before the Court on the abuse of process claim is not whether the I-213 contains inconsistencies or was maliciously created. It is only whether Plaintiff can show that

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an act was taken after an actual *judicial* proceeding was instituted, using the legal process empowered by that suit, to accomplish an end not within the purview of the suit. Thus, although Plaintiff attempts to focus this Court's sights on the inconsistencies in the I-213, they are not relevant to the analysis of the lawfulness of Plaintiff's detention or whether Plaintiff has stated a claim for abuse of process.

VII. Local Law Enforcement's Authority to Arrest for Immigration Violations is Not Relevant to the United States' Motion to Dismiss.

Plaintiff argues that Border Patrol lacked the authority to "order Officer Leetz to arrest" Plaintiff and that Officer Leetz lacked authority to "arrest" Plaintiff for an immigration violation. Dkt. No. 19, pg. 5-7. But Border Patrol never ordered or asked Officer Leetz to arrest Plaintiff for an immigration violation. Rather, Border Patrol requested that Plaintiff be detained so that they could interview him in person. Dkt. No. 1, Ex. A, pg. 2. Officer Leetz informed Plaintiff that "he was not under arrest for any crime [Officer Leetz] was investigating, but that he was being **detained** based on US Border Patrol's request." *Id*. (emphasis added). At no time did Border Patrol direct, authorize, or advise Officer Leetz to arrest Plaintiff for any particular immigration violation. Furthermore, if Plaintiff is seeking to challenge whether or not Officer Leetz had the legal authority to "arrest" him, this claim lies against Officer Leetz and/or the Anacortes Police Department, not the United States.

CONCLUSION

WHEREFORE the United States respectfully requests that Plaintiff's false arrest, false imprisonment, and abuse of process claims be dismissed under Rule 12(b)(1) and/or Rule 56.

DATED this 20th day of June, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

That on the below date she electronically filed the foregoing document(s) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the attorney(s) of record as follows:

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DATED this 20th day of June 2014.

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