

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GUSTAVO VARGAS RAMIREZ,
Plaintiff,
v.
UNITED STATES OF AMERICA,
Defendant.

No. C13-2325-JLR

**UNITED STATES' MOTION TO
DISMISS UNDER RULE 12(b)(6)
AND/OR RULE 56**

Noted for Consideration:
June 20, 2014

I. INTRODUCTION

Plaintiff's Complaint challenges the lawfulness of his detention by U.S. Customs and Border Protection ("CBP") and U.S. Immigration and Customs Enforcement ("ICE"). He brings claims under the Federal Tort Claims Act ("FTCA") for: (1) false arrest; (2) false imprisonment; (3) abuse of process; and (4) negligent and intentional infliction of emotional distress. Even assuming the facts in Plaintiff's complaint are true, for purposes of this motion only, Plaintiff's detention was lawful. The investigative detention was carried out pursuant to the authority in 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.8(b)(2), and was supported by reasonable articulable suspicion that Plaintiff was an illegal alien. The administrative detention was carried out pursuant to the authority in 8 U.S.C. § 1357(a)(2), and was supported by probable cause to believe that Plaintiff was an illegal alien. Because Plaintiff's detention was lawful, his false arrest, false imprisonment, and malicious prosecution claims must be dismissed for failure to state a claim and/or summary judgment.

II. FACTS

1
2 On June 23, 2011, Plaintiff was stopped by Anacortes Police Officer R.W. Leetz in
3 Anacortes, Washington, for failing to signal a left turn.¹ Dkt. No. 1, Ex. A, pg. 1-2. Officer
4 Leetz contacted Plaintiff and advised him of the reason for the stop. *Id.* at pg. 2. Plaintiff
5 spoke to Officer Leetz in “broken English and was hard to understand.” *Id.* Plaintiff provided
6 Officer Leetz with a Washington driver’s license and an insurance card. *Id.* Officer Leetz
7 returned to his patrol car and ran a driver’s check of Plaintiff. *Id.* The driver’s check revealed
8 that Plaintiff did not have a valid Social Security number as it showed 000-00-000. *Id.* Officer
9 Leetz noted that “this is not standard.” *Id.* Thus, Officer Leetz contacted Border Patrol,
10 advised them of the information he discovered, and provided them with Plaintiff’s name. *Id.*
11 Border Patrol told Officer Leetz they would call him back after running Plaintiff’s name
12 through their system. *Id.*

13 Border Patrol called Officer Leetz back while he was still completing Plaintiff’s
14 infraction and advised him that Plaintiff “had no documentation of legally being in the United
15 States.” *Id.* Border Patrol reportedly requested to speak with Plaintiff by phone and Officer
16 Leetz handed his phone to Plaintiff. *Id.* Plaintiff alleges that the individual on the phone
17 identified himself as being a Border Patrol Agent and asked him questions about where he was
18 born and what his immigration status was. *Id.* at pg. 5, ¶21-22. Plaintiff reportedly told the
19 Agent he would not answer any questions without a lawyer. *Id.* at ¶23 & Ex. 1, pg. 2.

20 Officer Leetz reports “that based on the information of [Plaintiff] not being documented
21 as being legally in the US, the fact that he did not have a[n] SSN, it was requested that I detain
22 him for USBP.” *Id.* at Ex. 1, pg. 2. Border Patrol advised Officer Leetz that an Agent was in
23 route from Bellingham to Anacortes and would meet him at the Anacortes Police Department.
24 *Id.* Officer Leetz then returned to Plaintiff’s car and informed him that “he was not under arrest
25 for any crime [Officer Leetz] was investigating, but that he was being detained based on US
26 Border Patrol’s request.” *Id.* & pg. 6, ¶28. Officer Leetz then placed Plaintiff in handcuffs,
27 patted him down for weapons, secured his vehicle, and transported Plaintiff to the Anacortes
28 Police Department. *Id.* & pg. 6, ¶29.

¹ The well-pleaded factual allegations in Plaintiff’s Complaint are taken as true for purposes of this motion only. *See Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal conclusions couched as factual allegations are not entitled to the assumption of truth. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

1 Plaintiff alleges that he was locked in a holding cell at the Anacortes Police Department
2 until a Border Patrol Agent arrived. *Id.* at pg. 6, ¶31. Officer Leetz reports that Border Patrol
3 Agent J. Orr arrived at the Anacortes Police Department shortly after he arrived with Plaintiff.
4 *Id.* at Ex. A, pg. 3 & Ex. F, pg. 2. Plaintiff states that it was approximately 40 minutes before
5 Agent Orr arrived at the Anacortes Police Department. *Id.* at pg. 6, ¶31. Agent Orr spoke with
6 Plaintiff in the detention area, both Agent Orr and Plaintiff were standing during the
7 conversation, and they spoke in Spanish although “[p]arts of the conversation were in broken
8 English.” *Id.* at Ex. A, pg. 2 & Ex. F, pg. 2.

9 Plaintiff states that Agent Orr asked him where he was born, how long he had been in
10 the United States, and what his immigration status was. *Id.* at pg. 7, ¶38. Plaintiff initially
11 refused to answer any questions and requested to speak with an attorney. *Id.* at ¶39 & Ex. A,
12 pg. 2. But Plaintiff states, “[a]s [Agent Orr] questioned me, I thought that they would keep me
13 locked up until I told them what [they] wanted to hear. I believed I had no choice.” *See*
14 Declaration of Gustavo Vargas Ramirez (“Ramirez Decl.”), pg. 2, ¶9, attached hereto as
15 Exhibit A. Plaintiff also states, “he began to fear that he would remain arrested unless he gave
16 Agent Orr the answers he seemed to want. [Plaintiff] did not believe he had the choice to stay
17 silent.” Dkt. No. 1, pg. 8, ¶41.

18 Agent Orr confirms that he interviewed Plaintiff while he was in the holding cell at the
19 Anacortes Police Department. *See* Declaration of John M. Orr (“Orr Decl.”), pg. 1, ¶4. Agent
20 Orr remained in the doorway and identified himself as a U.S. Border Patrol Agent. *Id.* He
21 advised Plaintiff of his name and was also dressed in his Border Patrol uniform, which has
22 several patches identifying him as a U.S. Border Patrol Agent as well as name tape that
23 identifies him as “J. Orr.” *Id.* Agent Orr asked Plaintiff how he was doing, and then asked him
24 what his address was. *Id.* at pg. 2, ¶5. Plaintiff provided Agent Orr with an address that
25 matched the address on the Washington driver’s license Officer Leetz had given Agent Orr. *Id.*
26 Agent Orr then asked Plaintiff where he was born and how long he had been in the United
27 States. *Id.* Plaintiff responded that he was born in Mexico and had been in the United States
28 approximately 10 years. *Id.* Agent Orr asked Plaintiff if he was in possession of any valid
immigration documents to show that he was legally in the United States. *Id.* Plaintiff said he
did not have any immigration documents with him and he no longer wanted to answer any
questions without an attorney. *Id.* At that point, Agent Orr stopped questioning Plaintiff and

1 called his supervisor. *Id.*; *see also* Dkt. No. 1, Ex., pg. 3.

2 Agent Orr spoke with Supervisory Border Patrol Agent Wayne Hafstad and advised him
3 of the information he had at the time. *See* Orr Decl., pg. 2, ¶7. Agents Hafstad and Orr agreed
4 that they needed to run Plaintiff's fingerprints through the Department of Homeland Security's
5 Automated Biometric Identification System ("IDENT") to confirm Plaintiff's identity and
6 whether or not he had valid immigration status.² *Id.* The closest IDENT machine to the
7 Anacortes Police Department at that time was at the old Bellingham Border Patrol Station. *Id.*
8 Thus, Plaintiff was handcuffed and transported to the Bellingham Station. *Id.* at ¶8; Dkt. No. 1,
9 pg. 8, ¶42.

10 Plaintiff alleges that Agents "ran his fingerprints for background checks but found no
11 criminal or immigration record." Dkt. No. 1, pg. 8, ¶43. Agents requested that Plaintiff sign
12 "forms," but Plaintiff declined to sign all paperwork except for one form where he requested to
13 see an immigration judge. *Id.* at ¶44. Agents then placed Plaintiff under administrative
14 detention by serving him with the I-213 Record of Deportable/Inadmissible Alien and Form I-
15 862 Notice to Appear. *Id.* at ¶45. The following day, Plaintiff was transported to the
16 Northwest Detention Center in Tacoma, Washington, was transferred to the custody of ICE,
17 and removal proceedings were initiated. *Id.* at ¶47. Plaintiff states he was detained for
18 approximately ten weeks and his removal proceedings were eventually administratively
19 terminated. *Id.* at ¶48-49.

18 III. STANDARD OF REVIEW

19 A. Failure to State a Claim

20 Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and
21 plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court
22 has explained the pleading requirements of Rule 8(a)(2) and the requirements for surviving a
23 Rule 12(b)(6) motion to dismiss in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-80 (2009), *Erickson v.*
24 *Pardus*, 551 U.S. 89, 93-94 (2007), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127
25 (2007). *See also Moss v. U.S. Secret Service*, 572 F.3d 962, 968-69 (9th Cir. 2009).

26 _____
27 ² IDENT is a DHS-wide system for the collection and processing of biometric, and limited biographic information,
28 for DHS national security, law enforcement, immigration, intelligence, and other DHS mission-related functions.
See Declaration of Russell Wynn, Supervisory Border Patrol Agent ("Wynn Decl.") ¶14. IDENT stores biometric
data for legitimate travelers to the United States, immigration benefit seekers, and immigration violators. *Id.* If an
individual was not born in the United States, and had lawfully entered the United States, his or her biographic
information would normally be in IDENT. *Id.*

1 The pleading standard of Rule 8 does not require “detailed factual allegations.” *Iqbal*,
2 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555); see also *Erickson*, 551 U.S. at 93; *Moss*,
3 572 F.3d at 968. However, a complaint does not meet the pleading standard if it contains
4 merely “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.”
5 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Instead, to comply with Rule
6 8(a)(2) and survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain
7 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
8 face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the
9 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
10 defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). This
11 plausibility standard is not a probability requirement, but does ask for more than mere
12 possibility; if a complaint pleads facts “merely consistent with” a theory of liability, it falls
13 short of “the line between possibility and plausibility.” *Id.* (quoting *Twombly*, 550 U.S. at 557).

13 B. Summary Judgment

14 Summary judgment is appropriate if there is no genuine issue as to any material fact,
15 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The
16 moving party has the initial burden of demonstrating that summary judgment is proper.
17 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The moving party must identify the
18 pleadings, depositions, affidavits, or other evidence that it “believes demonstrates the absence
19 of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “A
20 material issue of fact is one that affects the outcome of the litigation and requires a trial to
21 resolve the parties’ differing versions of the truth.” *S.E.C. v. Seaboard Corp.*, 677 F.2d 1301,
22 1306 (9th Cir. 1982).

23 The burden then shifts to the opposing party to show that summary judgment is not
24 appropriate. *Celotex*, 477 U.S. at 324. The opposing party’s evidence is to be believed, and all
25 justifiable inferences are to be drawn in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
26 242, 255 (1986). However, to avoid summary judgment, the opposing party cannot rest solely
27 on conclusory allegations. *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). Instead, it
28 must designate specific facts showing there is a genuine issue for trial. *Id.*; see also *Butler v.*
San Diego District Attorney’s Office, 370 F.3d 956, 958 (9th Cir. 2004) (stating if defendant

1 produces enough evidence to require plaintiff to go beyond pleadings, plaintiff must counter by
2 producing evidence of his own).

3 IV. ARGUMENT

4 **A. The Investigative Detention was Lawful Because Border Patrol Had Reasonable** 5 **Articulable Suspicion that Plaintiff was an Illegal Alien and the Intrusiveness of** 6 **the Detention was Reasonably Related to the Situation.**

7 Immigration agents are statutorily authorized to interrogate suspected aliens for possible
8 violations of immigration laws. 8 U.S.C. § 1357(a)(1). “If the immigration officer has a
9 reasonable suspicion, based on specific articulable facts, that the person being questioned is ...
10 an alien illegally in the United States, the immigration officer may briefly detain the person for
11 questioning.” 8 C.F.R. § 287.8(b)(2). Further, immigration officers “may make forcible
12 detentions of a temporary nature for the purposes of interrogation under circumstances creating
13 a reasonable suspicion, not arising to the level of probable cause to arrest, that the individual so
14 detained is illegally in this country.” *Au Yi Lau v. Immigration & Naturalization Serv.*, 445
15 F.2d 217, 223 (D.C. Cir. 1971) (applying *Terry* standards); *see also United States v. Brignoni-*
16 *Ponce*, 422 U.S. 873, 884 (1975). “Utilizing the standards developed in *Terry*, such detentions
17 are to be judged from case to case by reference to the particular facts of each.” *Au Yi Lau*, 445
18 F.2d at 223. Investigative detention is permitted for as long as it takes to determine if the alien
19 is in the United States illegally. *See Brignoni-Ponce*, 422 U.S. at 881.

20 **i. Plaintiff’s Initial Detention was an Investigative Detention.**

21 Plaintiff’s initial detention, from the time he was detained by Officer Leetz at the scene
22 of the stop until the time he was served with the I-862 Notice to Appear, was an investigative
23 detention pursuant to 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.8(b)(2) to determine Plaintiff’s
24 immigration status. Border Patrol began their investigation into Plaintiff’s immigration status
25 by first attempting to determine his immigration status remotely. First, they conducted a
26 records check through Border Patrol’s system based on the information Officer Leetz provided
27 to them. Next, they attempted to interview Plaintiff remotely while he was still at the scene of
28 the traffic stop. The records check, however, revealed that Plaintiff had never been lawfully
admitted to the United States, and Plaintiff refused to tell Border Patrol what his immigration
status was.

1 Because Border Patrol was unable to determine Plaintiff's immigration status remotely,
2 it was necessary to continue their investigation into Plaintiff's immigration status by
3 conducting an in-person interview. During the interview, Agent Orr questioned Plaintiff about
4 where he was born, how long he had been in the United States, and what his immigration status
5 was. But Plaintiff only provided limited information to Border Patrol and refused to confirm
6 his immigration status. Because Border Patrol could not conclusively determine Plaintiff's
7 identity and immigration status during the in-person interview, it was necessary for Border
8 Patrol to fully complete their investigation into Plaintiff's immigration status by transporting
9 him to the Bellingham Station and running his fingerprints through the IDENT.

10 Therefore, Plaintiff's detention, from the time he was detained by Officer Leetz at the
11 scene of the stop, until the time he was served with the I-862 Notice to Appear, was an
12 investigative detention pursuant to 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.8(b)(2) for the
13 purpose of determining Plaintiff's immigration status. Plaintiff's detention up until this point
14 constituted a forcible detention of a temporary nature for the purposes of interrogation. The
15 question before the Court is whether this detention was lawful under the Fourth Amendment.
16 Plaintiff has asserted claims under the FTCA for false arrest, false imprisonment, and abuse of
17 process/malicious prosecution. Dkt. No. 1, pg. 14-17, 21-22. And under Washington law, it is
18 a complete defense to all three of these claims if Plaintiff's detention was lawful. *See Hanson*
19 *v. City of Snohomish*, 121 Wash.2d 552, 563-64 (1993); *Bender v. Seattle*, 99 Wash.2d 582,
20 592 (1983).

21 Assessing whether an investigatory stop comported with the Fourth Amendment is a
22 two-step process. First, the Court must determine whether the officer had a reasonable basis
23 for the stop by looking to whether the officer had reasonable suspicion supported by specific
24 and articulable facts. *See United States v. Caruthers*, 458 F.3d 459, 464 (6th Cir. 2006).
25 Second, if the stop was proper at its inception, the Court must examine whether the
26 intrusiveness of the stop was reasonably related to the situation by reviewing the
27 reasonableness of the officer's actions in the context of the presenting circumstances. *Id.*

28 **ii. Border Patrol Had Reasonable Articulable Suspicion that Plaintiff was an
Illegal Alien.**

To determine whether an investigatory stop is supported by reasonable suspicion, courts
must look at the totality of the circumstances of each case to see whether there is a

1 particularized and objective basis for suspecting wrongdoing. *United States v. Arvizu*, 534 U.S.
2 266, 273 (2002). The focus on the totality of the circumstances, rather than each individual
3 circumstance, underscores that “a court may not engage in a ‘sort of divide-and-conquer
4 analysis’ by evaluating and rejecting each factor in isolation.” *United States v. Cheromiah*, 455
5 F.3d 1216, 1221 (9th Cir. 2006). “This process allows officers to draw on their own experience
6 and specialized training to make inferences from and deductions about the cumulative
7 information available to them that might well elude an untrained person.” *Arvizu*, 534 U.S. at
8 273. “Individual factors that may appear innocent in isolation may constitute suspicious
9 behavior when aggregated together.” *See United States v. Diaz-Juarez*, 299 F.3d 1138, 1141
10 (9th Cir. 2002); *United States v. Fernández-Castillo*, 324 F.3d 1114, 1117 (9th Cir. 2003) (“All
11 relevant factors must be considered in the reasonable suspicion calculus—even those factors that,
12 in a different context, might be entirely innocuous.”).

12 Here, when Border Patrol requested that Plaintiff be detained for further investigation
13 into his immigration status, they had reasonable articulable suspicion that Plaintiff was an
14 illegal alien because: (1) he was encountered in Anacortes, Washington - an area near an
15 international border, with a non-functioning Border Patrol checkpoint, and a large illegal
16 immigration population; (2) Officer Leetz suspected that Plaintiff was an illegal alien because
17 he spoke in broken English, was hard to understand, and had no valid Social Security number;
18 (3) Plaintiff failed to produce any alien registration documents or advise Border Patrol that he
19 possessed any valid U.S. immigration documents; and (4) Border Patrol’s record checks
20 revealed that Plaintiff had never been lawfully admitted into the United States. These facts,
21 when taken together, and viewed in the light of experienced Border Patrol Agents, constitute
22 reasonable suspicion to believe that Plaintiff was an illegal alien.

23 First, Plaintiff was encountered in Anacortes, Washington, an area with a maritime
24 border, a functioning port of entry, a non-functioning Border Patrol checkpoint, and a large
25 illegal immigration population. *See Wynn Decl.* ¶3. Border Patrol is aware of a number of
26 incidents in which persons have arrived in the San Juan Islands from Canada contrary to law,
27 and then were subsequently intermingled with legitimate ferry traffic to further the illegal entry
28 to the mainland. *Id.* at ¶4. The porous border in the San Juan Islands adjacent to Anacortes
allows for people to be dropped off illegally in boats or by plane and then enter the rest of the
United States by ferry. *Id.* The area’s geography and resource limitations make it unreasonable

1 to believe that all illegal entry attempts are stopped at the actual land or marine border. *Id.* In
2 fact, the area's international maritime border has the highest risk-based threat of vulnerability.
3 *Id.*

4 Thus, in 2008, Border Patrol established a checkpoint at the Washington State
5 Department of Transportation ferry terminal at Anacortes. *Id.* at ¶5. Due to limited resources,
6 however, this checkpoint stopped functioning in 2009. *Id.* It was not functioning at the time of
7 Plaintiff's arrest on June 23, 2011. *Id.* By its nature, a non-functioning checkpoint is a nexus
8 for illegal activity because it is no longer addressing a previously identified vulnerability. *Id.*
9 In this specific instance, Border Patrol is aware that illegal aliens are able to arrive in Anacortes
10 from the San Juan Islands due to the vulnerability of the ferry system and the area's geography.
11 *Id.* At ¶4-5.

12 Here, the fact that Plaintiff was stopped in a porous border area, with an international
13 maritime border and an unmanned border checkpoint, and where Border Patrol was acutely
14 aware that illegal aliens have been crossing into the United States at Anacortes via the San Juan
15 Island ferry system, all contributed to Border Patrol's reasonable suspicion that Plaintiff was an
16 illegal alien. *Id.* "[P]roximity to the border may be considered as a factor in the reasonable
17 suspicion calculus." *U.S. v. Manzo-Jurado*, 457 F.3d 928, 936 (9th Cir. 2006) (*quoting Diaz-*
18 *Juarez*, 299 F.3d at 1142). This includes proximity to the Canadian border as was the case
19 here. *Id.* (*citing United States v. Tiong*, 224 F.3d 1136, 1139 (9th Cir. 2000)).

20 Second, Officer Leetz suspected that Plaintiff may be an illegal alien because, among
21 other things, he spoke in broken English, was hard to understand, and did not have a valid
22 Social Security number. Dkt. No. 1, Ex. A, pg. 2. Officer Leetz had the opportunity to speak
23 with and interact with Plaintiff in person. *Id.* He specifically noted that Plaintiff "spoke broken
24 English and was hard to understand." *Id.* He also noted that when he ran a driver's check of
25 Plaintiff, "there was no valid Social Security number listed, as it showed 000-00-000, which is
26 not standard." *Id.* Thus, he immediately called Border Patrol and advised them of this
27 information. *Id.* Officer Leetz' suspicions, as well as all of the factors that contributed to
28 Officer's Leetz' belief that Plaintiff may be an illegal alien, also contributed to Border Patrol's
reasonable suspicion that Plaintiff was an illegal alien.

Local law enforcement officers in the jurisdictions within the Blaine Sector are not
empowered or able to perform immigration inspections or determine immigration status. *See*

1 Wynn Decl. ¶7. Thus, Border Patrol Agents in the Blaine Sector frequently receive calls from
2 local law enforcement officers with concerns that an individual they have encountered may be
3 an illegal alien. *Id.* Another law enforcement officer's suspicions, based on his in-person
4 interactions with the suspected illegal alien, is a factor that Border Patrol Agents may take into
5 consideration in determining whether an individual is an illegal alien. *Id.* In fact, another law
6 enforcement officer's suspicions weigh heavily in a Border Patrol Agent's investigation into
7 immigration status. *Id.*

8 Furthermore, the fact that an individual speaks broken English and is difficult to
9 understand is another factor that Border Patrol Agents may take into consideration in
10 determining whether an individual is an illegal alien. *Id.* at ¶8. Border Patrol Agents may take
11 into consideration a person's manner of dress or speech indicating foreign citizenship as one
12 factor to be considered in determining immigration status. *Id.*; *see also Brignoni-Ponce*, 422
13 U.S. at 884-85. An individual's inability to speak English may support an officer's reasonable
14 suspicion that the individual is in this country illegally. *See Manzo-Jurado*, 457 F.3d at 936-37
15 (*citing United States v. Contreras-Diaz*, 575 F.2d 740, 745 (9th Cir. 1978)). By itself,
16 however, an individual's inability to understand English will not justify an investigatory stop
17 because the same characteristic applies to a sizable portion of individuals lawfully present in
18 this country. *Id.* (*citing United States v. Sigmond-Ballesteros*, 285 F.3d 1117, 1126-27 (9th Cir.
19 2002)). Thus, the inability to speak English is probative of immigration status, but it does not
20 supply reasonable suspicion unless "other factors suggest that the individuals are present in this
21 country illegally." *Id.* at 937. Here, the fact that Plaintiff spoke broken English and was hard
22 to understand was one of several factors that contributed to Border Patrol's reasonable
23 suspicion that Plaintiff was an illegal alien.

24 In addition, the fact that Plaintiff did not have a valid Social Security number is another
25 factor that contributed to Border Patrol's reasonable suspicion because it shows that Plaintiff
26 was likely an alien who was not born in the United States. *See Wynn Decl.* ¶9. Washington
27 State is one of few states that allow individuals to obtain a driver's license without providing a
28 valid Social Security number or proof of legal immigration status. *Id.* In the Blaine Sector,
Border Patrol is acutely aware that illegal aliens come to Washington to procure driver's
licenses because of the relative ease in obtaining them. *Id.* In Border Patrol's experience, an
individual without a valid Social Security number likely was not born in the United States or

1 lawfully admitted to the United States. *Id.* On the contrary, an alien who was lawfully
2 admitted to the United States likely does have a valid Social Security number so that they can
3 take advantage of the benefits associated with it. *Id.* Thus, the fact that Plaintiff did not have a
4 valid Social Security number is another factor that contributed to Border Patrol's reasonable
5 suspicion that Plaintiff was an illegal alien.

6 Third, Plaintiff did not produce any alien registration documents or advise Border Patrol
7 that he had been issued any valid U.S. immigration documents. *See* Dkt. No. 1, Ex. A, pg. 2.
8 The only documents Plaintiff produced were a driver's license and an insurance card. *Id.* And
9 Plaintiff concedes that he refused to provide Border Patrol with any information. *Id.* at pg. 5,
10 ¶23. But every alien in the United States who has been lawfully registered and fingerprinted is
11 issued a certificate of alien registration or an alien registration receipt card. *See* 8 U.S.C.
12 § 1304(d). And every alien eighteen years of age and over, is required to carry with him and
13 have in his personal possession any certificate of alien registration or alien registration card
14 issued to him at all times. *See* 8 U.S.C. § 1304(e).

15 It is undisputed that Plaintiff did not present a Permanent Resident Card, an Arrival-
16 Departure record, an Employment Authorization Document, or a Border Crossing Card. The
17 fact that an individual is unable or unwilling to produce any valid alien registration documents
18 is a factor that Border Patrol Agents may take into consideration in determining whether an
19 individual is an illegal alien. *See* Wynn Decl. ¶10. In Border Patrol's experience, *lawful*
20 immigrants abide by the requirement to carry valid immigration documents with them, and
21 readily present their documents when encountered by a Border Patrol Agent, for the most part.
22 *Id.* Thus, the fact that Plaintiff did not present any valid U.S. immigration documents is
23 another factor that contributed to Border Patrol's reasonable suspicion that Plaintiff was an
24 illegal alien.

25 Here, Plaintiff's failure to produce any alien registration documents is just one of many
26 factors that contributed to Border Patrol's reasonable suspicion that Plaintiff was an illegal
27 alien. At this point, Border Patrol had already developed a reasonable belief that Plaintiff was
28 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 lacked a
valid social security number. Plaintiff's failure to present any valid immigration documents

1 contributed to Border Patrol's reasonable suspicion that he was not only an alien, but was an
2 illegal alien.

3 Finally, Border Patrol's record checks revealed that Plaintiff had never been legally
4 admitted into the United States. *See* Dkt. No. 1, Ex. A, pg. 2. When a local law enforcement
5 officer provides Border Patrol with personal identifiers such as name, driver's license number,
6 or date of birth, Agents perform a records check through CBP's dispatch. *See* Wynn Decl. ¶11.
7 This records check will search several systems, including but not limited to:

- 8 a. The Central Index System ("CIS"), which contains information on the status of 57
9 million applicants/petitioners seeking immigration benefits to include: lawful permanent
10 residents, naturalized citizens, U.S. Border crossers, aliens who illegally entered the
11 U.S., aliens who have been issued employment authorization documents, individuals
12 who petitioned for benefits on behalf of family members, and other individuals subject
13 to the provisions of the Immigration and Nationality Act (INA);
- 14 b. The Enforce Alien Removal Module ("EARM"), ICE's information system for
15 recording data and generating reports on removable aliens;
- 16 c. The Computer Linked Application Information Management System ("CLAIMS"),
17 the primary case management system used for the adjudication of immigrant and non-
18 immigrant benefits and services;
- 19 d. The National Crime Information Center ("NCIC"), the FBI's computerized index of
20 criminal justice information; and
- 21 e. State criminal records.

22 *Id.*

23 The fact that a records check through CBP's dispatch returns no records at all is a factor
24 that Border Patrol Agents may take into consideration in determining whether the individual is
25 an illegal alien. *Id.* at ¶12. The CIS system will identify whether the individual has prior
26 deportations and will also identify individuals with lawful immigration status. *Id.* The EARM
27 system will verify whether the individual has prior deportations. *Id.* The CLAIMS system
28 will identify whether the individual has submitted any petitions for lawful status or anyone on
their behalf has submitted any claims. *Id.* 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.*

Therefore, in the case at hand, Border Patrol was confronted with an individual who did
not appear to have been born in the United States. He was encountered in an area near an
international border, with a non-functioning Border Patrol checkpoint, and a large illegal
immigration population; he spoke in broken English and was difficult to understand; and
although he had a Washington driver's license, he had no valid Social Security number, which

1 Border Patrol knew was a loophole in Washington state that illegal aliens often exploited.
2 Thus, Border Patrol reasonably believed that Plaintiff was an alien who was not born in the
3 United States. When Plaintiff failed to provide any valid immigration documents and record
4 checks revealed that Plaintiff had never been lawfully admitted to the United States, Border
5 Patrol reasonably believed that Plaintiff was not only an alien, but was an illegal alien. These
6 facts, when taken together and viewed in the light of experienced Border Patrol Agents, are
7 sufficient to establish reasonable suspicion.

8 In *United States v. Soto-Cervantes*, 138 F.3d 1319 (10th Cir. 1998), the Tenth Circuit
9 found that officers had reasonable suspicion that the defendant might be in the country illegally
10 based on only three factors: (1) the defendant's presence in an area known to be frequented by
11 illegal aliens from Mexico; (2) his nervousness upon being asked for identification; and
12 (3) although he produced an alien registration card, the officer knew that there was a high rate
13 of fake documentation. *Id.* at 1324.

14 Similarly, in *Tejeda-Mata v. I.N.S.*, 626 F.2d 721 (9th Cir. 1980), the Ninth Circuit
15 found that an officer had reasonable suspicion under 8 U.S.C. § 1357(a)(1) based on the
16 following: (1) the petitioner was with a known illegal alien; (2) spoke with a distinct Spanish
17 accent and had trouble understanding English; (3) he approached and sought to interrupt the
18 officer as he was trying to open the car door to speak with the known illegal alien; and (4) he
19 looked shocked when he heard the officer was an INS officer. *Id.* at 724.

20 Therefore, at the time Border Patrol requested that Officer Leetz detain Plaintiff for
21 further investigation into his immigration status, they had reasonable articulable suspicion to
22 believe that Plaintiff was an illegal alien. The four factors discussed above, when considered as
23 a whole together, and viewed in the light of experienced Border Patrol Agents in the Blaine
24 Sector constitute reasonable articulable suspicion. Thus, Border Patrol lawfully requested that
25 Plaintiff be detained for investigative detention pursuant to 8 U.S.C. § 1357(a)(1) and 8 C.F.R.
26 § 287.8(b)(2) until such time as a Border Patrol Agent could arrive and interview Plaintiff in
27 person.

28 Border Patrol Agents had reasonable articulable suspicion to continue Plaintiff's
investigative detention at the point they decided to transport Plaintiff to the Bellingham Station.
In addition to the four factors already known to Border Patrol, Agent Orr's interview produced
additional information that not only added to Border Patrol's reasonable suspicion, but ripened

1 that reasonable suspicion into probable cause. First, Agent Orr was able to confirm two factors
2 already known to Border Patrol, that Plaintiff spoke in broken English and was difficult to
3 understand, and that Plaintiff did not have any valid immigration documents in his possession.
4 *See* Orr Decl. ¶5-6. Second, Agent Orr also discovered that Plaintiff was from Mexico and had
5 been in the United States approximately ten years. *Id.* at ¶5. This information not only
6 confirmed Border Patrol's reasonable suspicion that Plaintiff was an alien, but when coupled
7 with the fact that records checks revealed that Plaintiff had never been lawfully admitted to the
8 United States, ripened Border Patrol's reasonable suspicion into probable cause to believe that
9 he was an illegal alien. Even though Border Patrol had probable cause at that time, they
10 continued their investigative detention and transported Plaintiff to the Bellingham Border
11 Patrol Station to run his fingerprints through IDENT. This final step in the investigation was
12 necessary because Border Patrol often confronts individuals who present them with false names
13 and fraudulent documents. *See* Wynn Decl. ¶13. And Border Patrol was unable to
14 conclusively determine Plaintiff's identity and immigration status during the in-person
15 interview.

16 Therefore, taking all of the factors known to Border Patrol into consideration, and
17 viewed through the eyes of experienced Border Patrol Agents, Border Patrol had reasonable
18 suspicion to believe that Plaintiff was an illegal alien justifying the initial investigative
19 detention. Border Patrol lawfully detained Plaintiff for investigative detention pursuant to
20 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.8(b)(2) and transported him to the Bellingham Station
21 to run his fingerprints though IDENT.

22 **iii. The Intrusiveness of the Investigative Detention was Reasonably Related to**
23 **the Situation.**

24 Several courts have evaluated the intrusiveness of investigative detentions that involve
25 local law enforcement officers calling on immigration officials to determine immigration status.
26 These courts have found that an investigative detention can last several hours, and even up to
27 24 hours, until immigration officers can complete their investigation of the individual's
28 immigration status. This is because immigration officers frequently need to conduct in-person
interviews and/or transport the individual to a Border Patrol Station for fingerprinting and
further records checks. Courts have found these types of investigative detentions, similar to the
detention in the case at hand, to be lawful.

1 In a case with facts remarkably similar to the facts of this case, the District Court of
2 North Dakota found that a 24-hour detention, which included transporting the individual to a
3 local law enforcement center and then to a Border Patrol Station to conduct fingerprint checks
4 to determine his immigration status, was lawful. *See U.S. v. Diaz-Quintana*, 596 F. Supp. 2d
5 1273, 1280 (D.N.D., Feb. 6, 2009). In *Diaz-Quintana*, a local law enforcement officer stopped
6 the defendant for speeding near Dickinson, North Dakota. *Id.* at 1275. The defendant
7 produced a Mexican driver's license and stated that his passport and visa were in another state,
8 but failed to produce any documentation of his legal status in the United States. *Id.* The officer
9 contacted Border Patrol to determine the defendant's immigration status and was informed that
10 a Border Patrol Agent would contact the officer. *Id.* at 1276.

11 A Border Patrol Agent called the officer back and talked with the defendant who stated
12 that he was a Mexican national and he entered the United States legally with a Mexican
13 passport. *Id.* The Agent ran two record checks, but neither check returned any immigration
14 history or port-of-entry crossing or visa information. *Id.* Thus, the Agent instructed the officer
15 to transport the defendant to the local law enforcement center so that a Border Patrol official
16 could travel to Dickinson and take custody of him. *Id.* The officer transported the defendant to
17 the center where he was booked and fingerprinted at 3:48 p.m. *Id.* A Border Patrol Agent
18 arrived in Dickinson at 11:00 a.m. the next morning and subsequently transported the defendant
19 to the Border Patrol Station in Portal, North Dakota for administrative processing. *Id.* There,
20 the defendant was finger-printed and questioned for basic biographical information. *Id.* When
21 the defendant's fingerprints were entered into the system, they matched to an individual by
22 another name and also revealed prior criminal involving controlled substances and immigration
23 history revealing prior deportations. *Id.* The defendant was then placed under arrest. *Id.*

24 The defendant in *Diaz-Quintana* contended that he was "de facto" arrested when he was
25 taken to the law enforcement center and then to the Border Patrol Station. *Id.* at 1279. The
26 court, however, found that obvious exigencies allow law enforcement officers to continue an
27 investigative stop to stabilize a situation until they can determine whether full custodial arrest is
28 warranted. *Id.* (citing *U.S. v. Maltais*, 295 F. Supp. 2d 1077, 1089 (D.N.D. Dec. 16, 2003)
(citing *U.S. v. Lego*, 855 F.2d 542, 545 (8th Cir. 1988))). "Actions by law enforcement officers
that 'maintain the status quo' and 'stabilize the situation,' pending the quickest means of
investigation reasonably available to confirm the officers' suspicion, do not transform an

1 investigatory detention into an arrest as long as the actions of the officers are not dilatory.” *Id.*
2 (*citing Maltais*, 295 F. Supp. 2d at 1089 (*quoting United States v. Dickson*, 58 F.3d 1258, 1264
3 (8th Cir. 1995))).

4 The *Diaz-Quintana* court found that, although the defendant was detained for
5 approximately 24 hours while his immigration status was being investigated, obvious
6 exigencies existed as the law enforcement officers attempted to determine his immigration
7 status. *Id.* These exigencies included: (1) the Border Patrol Agent had to travel more than 200
8 miles from the Border Patrol Station in Portal to pick up the defendant; and (2) then had to
9 transport him back to the Border Patrol Station where the IDENT system was located. *Id.* at
10 1280. The court found that “[t]hese unique circumstances required a longer period of detention
to determine Diaz-Quintana’s immigration status.” *Id.* The court stated:

11 [The Border Patrol Agent], by transporting Diaz-Quintana to the Border Patrol Station,
12 was merely stabilizing the situation while attempting to resolve the investigation of
13 Diaz-Quintana’s immigration status in the quickest manner possible. Transporting
14 Diaz-Quintana to the Border Patrol station was necessary for a complete investigation
into his immigration status and to determine whether full custodial arrest was
warranted.

15 *Id.* Indeed, the court noted that it would have been extremely poor police work and
16 incompetence to have done nothing and to have failed to take any steps to detain the defendant
17 to further investigate the matter. *Id.* (*quoting Maltais*, 295 F. Supp. 2d at 1089).

18 Similarly, the District Court for Nebraska found that a 90-minute-detention, which
19 included transporting the individual from the place of initial questioning to an immigration
20 office to run his fingerprints through IDENT, was reasonable in duration and scope. *See U.S. v.*
21 *Garcia-Aguilar*, 2010 WL 3636274 (D.Neb., Aug. 12, 2010) (Report & Recommendation
22 adopted at 2010 WL 3636266 (D.Neb., Sept. 9, 2010)). In *Garcia-Aguilar*, ICE Agents
23 contacted the defendant at his place of employment and questioned him to determine whether
24 he was an illegal alien. *Id.* at *2. The defendant did not provide sufficient information leading
25 the Agents to believe he had a legal right to be in the United States, and the Agents decided to
26 transport the defendant to ICE’s Detention and Removal Office (“DRO”) in order to query his
27 fingerprints through IDENT. *Id.* The defendant was handcuffed during his transport and the
28 DRO where the investigation continued was similar to a jail facility. *Id.* The defendant’s
fingerprints were taken and he was ultimately arrested. *Id.* at *3.

1 The *Garcia-Aguilar* Court found that the defendant's detention was reasonable in
2 duration and scope holding:

3 Transporting the defendant to the DRO lengthened the duration of the detention, but
4 was a necessary step in alleviating Special Agent Archer's suspicion and determining
5 the defendant's alienage. Questioning the defendant at Skylark, transporting the
6 defendant to ICE DRO, and entering the defendant's information into the immigration
7 database took approximately an hour and a half. The amount of time spent was not
8 unreasonable considering the time it took to transport the defendant to ICE DRO, the
9 time to prepare the immigration database, and the defendant's uncooperative behavior.

10 *Id.* at *6.

11 Similarly, the District Court of the Eastern District of North Carolina found that a three-
12 hour detention, while immigration officers arrived on scene to conduct an in-person interview,
13 was lawful where exigencies required a longer period of detention. *See U.S. v. Nunez-*
14 *Betancourt*, 766 F. Supp.2d 651 (E.D.N.C., Feb. 4, 2011). In *Nunez-Betancourt*, the defendant
15 was detained by local law enforcement following a traffic stop for approximately three hours
16 until an immigration officer arrived to interview the defendant in person. The immigration
17 officer was approximately ninety miles away and with no direct route. The court found that the
18 "defendant's detention, although somewhat lengthy, was not too long in duration to be justified
19 as an investigative stop when considering the surrounding circumstances." *Id.* at 659.

20 Specifically, the court found that obvious exigencies, including the immigration officer's need
21 to personally interview the defendant in order to correctly identify him, as well as the distance
22 he had to travel to conduct the interview, necessitated a longer period of detention to determine
23 the defendant's immigration status. *Id.*

24 Here, just as in the cases discussed above, there were obvious exigencies that justified
25 the length and type of detention at issue and Border Patrol acted diligently to pursue a means of
26 investigation to confirm or dispel their suspicions quickly. First, Border Patrol was informed of
27 Officer Leetz' suspicion that Plaintiff was an illegal alien because he spoke broken English,
28 was difficult to understand, and had no valid Social Security number. Border Patrol attempted
to verify Plaintiff's immigration status remotely by performing records checks based on the
information Officer Leetz provided. When record checks revealed that there was no record of
Plaintiff ever lawfully entering the United States, Border Patrol made a second attempt to
verify Plaintiff's immigration status remotely by asking him questions over the telephone.
Plaintiff, however, would not provide them with any information to assist in their investigation

1 or to dispel their belief that he was an illegal alien. As such, they needed to personally
2 interview Plaintiff.

3 Second, Agent Orr had to be dispatched from Bellingham to conduct the in-person
4 interview. He was not dilatory in responding to the call. In fact, Agent Orr was patrolling the
5 border in the Blaine Sector area when he received the phone call requesting that he report to the
6 Anacortes Police Department. *See* Orr Decl. at ¶2. He immediately changed course and drove
7 to the Anacortes Police Department. *Id.* at ¶3. Agent Orr drove straight there and arrived in
8 approximately 30 to 40 minutes. *Id.* The route from the old Bellingham Border Patrol Station
9 to the Anacortes Police Department is approximately 42.7 miles or 45 minutes. Thus, Border
Patrol diligently responded to the scene.

10 Third, it was reasonable to transport Plaintiff to the nearby police department to await
11 the arrival of Agent Orr. According to Officer Leetz' report, he initiated the traffic stop in the
12 900 block of 7th Street in Anacortes. *See* Dkt. No. 1, Ex. A, pg. 2. The Anacortes Police
13 Department is only 1.2 miles or 4 minutes away from the stop. Agent Orr, on the other hand,
14 was dispatched from the Bellingham Border Patrol Station, which is 42.7 miles or 45 minutes
15 away. Given that it was 11:00 at night and would be a 40-45 minute wait, it was not
16 unreasonable to transport Plaintiff to the Anacortes Police Department to await Agent Orr's
arrival rather than wait on the side of the road.

17 Fourth, Agents needed to transport Plaintiff to the Bellingham Station to run his
18 fingerprints in IDENT. *See* Wynn Decl. ¶13. It is extremely common for Border Patrol Agents
19 to be given false names, multiple names, and/or aliases by individuals they encounter. *Id.*
20 Border Patrol Agents are also frequently given fraudulent identification and immigration
21 documents. *Id.* Unless a Border Patrol Agent can conclusively verify the accuracy and
22 authenticity of the information an individual has provided, Border Patrol Agents must run the
23 individual's fingerprints through IDENT to confirm their identity and immigration status. *Id.*
24 Often times, when a Border Patrol Agent runs the individual's fingerprints through IDENT,
25 they match to an individual with a different name than the individual provided, often with
26 immigration and/or criminal history. *Id.* Therefore, when conducting an investigation into an
27 individual's immigration status, Border Patrol Agents are trained to run an individual's
28 fingerprints through the IDENT system to confirm the individual's identity and whether or not
they have valid immigration status. *Id.* at ¶14.

1 Fifth, it was necessary to handcuff Plaintiff and transport him to the Bellingham Border
2 Patrol Station. Plaintiff was handcuffed for officer safety, which is standard operating
3 procedure, and the Bellingham Station housed the closest IDENT machine. See Orr Decl. ¶8;
4 Wynn Decl. ¶15-16. “Handcuffing a suspect does not automatically convert an investigatory
5 detention into an arrest requiring probable cause.” See *United States v. Jordan*, 232 F.3d 447,
6 450 (5th Cir. 2000); see also *Lundstrom v. Romero*, 616 F.3d 1108, 1122 (10th Cir. 2010). A
7 law enforcement officer’s decision to confine a suspect in a patrol vehicle does not
8 automatically transform an investigatory detention into an arrest. See *Maltais*, 295 F. Supp. 2d
9 at 1088-89 (suspect detained in patrol car for 1½ - 2 hours until another Border Patrol Agent
10 could arrive at scene reasonable) (citing *Dickson*, 58 F.3d 1258 at 1263-64 (suspect detained in
11 patrol car until witness could arrive to positively identify the suspect was reasonable and
12 appropriate)); *U.S. v. Tehrani*, 49 F.3d 54, 62-63 (2nd Cir. 1995) (defendant’s detention
13 remained an investigative detention even though he was taken to a small, private office, he was
14 advised that he would miss his flight, his luggage was seized, and he was asked to empty his
15 wallet).

16 Therefore, the investigative detention in this case was minimally intrusive and lasted
17 only as long as it took Border Patrol to confirm Plaintiff’s identity and immigration status.
18 Based on the facts that they were presented with at the time, the investigation into Plaintiff’s
19 immigration status required a Border Patrol Agent to travel from Bellingham to Anacortes to
20 interview Plaintiff in person and then transport Plaintiff back to the Bellingham Border Patrol
21 Station to run his fingerprints through IDENT. It was necessary for officer safety to restrain
22 Plaintiff during the transport. As such, the intrusiveness of the investigative detention in this
23 case was reasonably related to the situation and Plaintiff’s detention, from the time he was
24 detained by Officer Leetz at the scene of the stop until the time he was served with the I-862
25 Notice to Appear, was a lawful investigative detention pursuant to 8 U.S.C. § 1357(a)(1) and 8
26 C.F.R. § 287.8(b)(2) to determine Plaintiff’s immigration status.

27 **B. The Administrative Detention was Lawful Because Border Patrol Had Probable
28 Cause to Believe Plaintiff was an Illegal Alien and Reasonably Believed He was
Likely to Escape Before a Warrant Could be Obtained for His Arrest.**

Immigration agents are authorized without a warrant “to arrest any alien in the United
States, if [they have] reason to believe that the alien so arrested is in the United States in

1 violation of any [law or regulation made in pursuance of law regulating the admission,
2 exclusion, expulsion or removal of aliens] and is likely to escape before a warrant can be
3 obtained for his arrest.” 8 U.S.C. § 1357(a)(2). In the context of an arrest under 8 U.S.C.
4 § 1357(a), “reason to believe” is the equivalent of probable cause. *See United States v.*
5 *Sanchez*, 635 F.2d 47, 63 (2d Cir. 1980); *Au Yi Lau*, 445 F.2d at 222.

6 Here, Border Patrol placed Plaintiff in administrative detention when they served
7 Plaintiff with the I-213 Record of Deportable/Inadmissible Alien and Form I-862 Notice to
8 Appear. At that time, they had probable cause to believe Plaintiff was an illegal alien. As
9 discussed above, Border Patrol’s reasonable suspicion ripened into probable cause to believe
10 Plaintiff was an illegal alien at the time he stated he was from Mexico and had been in the
11 United States for approximately 10 years. That information was sufficient to ripen the
12 reasonable suspicion into probable cause because (1) Plaintiff was not in any system of records;
13 and (2) Plaintiff did not have valid immigration documents. As discussed above, once it was
14 confirmed that Plaintiff was not born in the United States, the fact that Plaintiff was not in any
15 system of records established that he did not come to the United States lawfully. And the fact
16 that Plaintiff was not in possession of valid immigration documents, further established that
17 Plaintiff was an illegal alien.

18 Furthermore, Border Patrol reasonably believed Plaintiff was likely to escape before a
19 warrant could be obtained for his arrest. To make an arrest under 8 U.S.C. § 1357(a)(2), an
20 officer must not only have reason to believe that a violation of the law has occurred, but he
21 must also reasonably believe that the individual “is likely to escape.” 8 U.S.C. § 1357(a)(2).

22 This additional qualification of an officer’s right to effect an arrest obliges INS officers
23 to make an on the spot determination, with no opportunity to verify information
24 provided or to conduct a full-scale interview, whether a person whom they reasonably
25 believe is illegally in the country will voluntarily cooperate with the government’s
26 investigation and possible deportation proceedings. **It is no doubt for this reason that
27 courts have held, essentially, that an officer’s determination will not be upset if
28 there is any reasonable basis for it.**

Marquez v. Kiley, 436 F. Supp. 100, 108 (S.D.N.Y. 1977) (emphasis added) (*citing United*
States v. Cantu, 519 F.2d 494 (7th Cir.) *cert. denied*, 423 U.S. 1035 (1975); *United States v.*
Meza-Campos, 500 F.2d 33, 34 (9th Cir. 1974); *LaFranca v. INS*, 413 F.2d 686, 689 (2d Cir.
1969); *Hon Keung Kung v. INS*, 356 F. Supp. 571, 576 (E.D.Mo., Feb. 28, 1973); *Taylor v.*
Fine, 115 F. Supp. 68, 70 (S.D.Cal., July 21, 1953)).

1 Here, Border Patrol Agents reasonably believed that Plaintiff was likely to escape based
2 on the following three factors: (1) Plaintiff's refusal to cooperate with Border Patrol's
3 investigation into his immigration status; (2) Plaintiff's refusal to provide Border Patrol with
4 any information documenting his ties to the community such as family, home, or employment;
5 and (3) the fact that Plaintiff was highly mobile and his location was entirely unknown and
6 unpredictable.

7 First, Plaintiff steadfastly and repeatedly refused to cooperate with Border Patrol's
8 investigation into his immigration status. Plaintiff was acutely aware that Border Patrol Agents
9 were trying to ascertain his immigration status at the scene of the traffic stop. But he refused to
10 provide Agents with any identifying or biographical information and refused to tell them what
11 his immigration status was. Dkt. No. 1, pg. 5, ¶19-24. Plaintiff remained evasive and
12 uncooperative during Agent Orr's in-person interview, at which point Plaintiff knew that
13 Border Patrol was continuing to try to determine his immigration status. *Id.* at pg. 6, ¶28; pg.
14 7-8, ¶37-41, Ex. A, pg. 2. When Plaintiff was transported to the Border Patrol Station, he
15 continued to be uncooperative, resisting giving Agents any information, verifying his
16 immigration status, or even signing any of the routine processing forms, except for one form in
17 which he requested to see a judge in Tacoma. *Id.* at pg. 8, ¶43-44. Thus, even though Plaintiff
18 was acutely aware that Border Patrol was trying to confirm his immigration status and they
19 believed he was an illegal alien, Plaintiff adamantly refused to provide them any information to
20 either confirm or dispel their suspicions. Plaintiff's refusal to cooperate with Border Patrol's
21 investigation into his immigration status, at every stage of their investigation, demonstrated that
22 he would likely not voluntarily cooperate with any subsequent investigation and possible
23 removal proceedings. *See Wynn Decl.* ¶17.

24 Second, Plaintiff prohibited Border Patrol Agents from making the usual inquiry as to
25 his willingness to voluntarily cooperate with the government's investigation and possible
26 deportation proceedings. In deciding whether to arrest an individual or require him to
27 voluntarily report, Border Patrol Agents are trained to inquire into an individual's ties to the
28 community such as family, home, or employment. *Id.* at ¶18. The fact that an individual
refuses to provide Border Patrol with information as to whether he or she is employed, has
roots in the community, or has any family with proper immigration status would give a Border
Patrol Agent reason to believe the individual will not voluntarily follow reporting requirements

1 and will likely abscond. *Id.*; *see also Marquez*, 436 F. Supp. at 108 (the officer properly
2 determined to make an arrest when the individual stated that he was married but the paperwork
3 available to the officers did not substantiate this claim, and when the individual provided no
4 information to the officers regarding his property ties to the community). Thus, in the case at
5 hand, Border Patrol had no information whatsoever as to whether Plaintiff was employed, had
6 roots in the community, or had any family with proper immigration status.

7 Third, Plaintiff was highly mobile; he had a vehicle and what appeared to be a valid
8 Washington driver's license and proof of insurance. Plaintiff's location and destination once he
9 left the Border Patrol Station was unknown and entirely unpredictable. The fact that an
10 individual is highly mobile and that his or her location and destination are unknown and
11 entirely unpredictable is a factor Border Patrol Agents may take into consideration in
12 determining whether the individual is likely to escape before or a warrant can be obtained or
13 whether he or she is likely to voluntarily cooperate with subsequent investigation and possible
14 removal proceedings. *See Wynn Decl.* ¶19; *see also Cantu*, 519 F.2d at 497-98 (the likelihood
15 of escape was a serious threat because the arrested immigrants were at all times, highly mobile,
16 and traveling in a car along an interstate); *U.S. v. Kisgyorgy*, 2010 WL 3323675, *10 (D.Vt.,
17 Apr. 23, 2010) (finding reason to believe defendant was likely to escape when a taxi had
18 recently arrived to take the defendant to an unknown destination).

19 Therefore, Border Patrol had probable cause to believe Plaintiff was an illegal alien.
20 Plaintiff knew that Border Patrol believed he was an illegal alien and was trying to investigate
21 his immigration status, but he steadfastly refused to cooperate or provide Border Patrol with
22 any information to validate his immigration status. Plaintiff also refused to provide any
23 information to demonstrate that he had marital or property ties to the United States.
24 Furthermore, he was highly mobile and could easily flee. Border Patrol was forced to make an
25 on-the-spot determination whether, under these circumstances, Plaintiff was likely to escape
26 before a warrant could be obtained or whether he would voluntarily cooperate with possible
27 removal efforts. Their determination that Plaintiff would likely escape was reasonable, given
28 their experience, the information known to them at the time, and Plaintiff's adamant refusal to
cooperate in their investigation. Being unable to look into Plaintiff's mind, Border Patrol could
do no more than to draw their own inferences from the objective circumstances. *Meza-*
Campos, 500 F.2d at 34. Because Border Patrol had a reasonable basis to believe Plaintiff

1 would escape and would not cooperate with future removal proceedings, their determination
2 should not be upset. *Marquez*, 436 F. Supp. at 108.

3 **V. CONCLUSION**

4 Border Patrol's primary mission is to detect and prevent the entry of terrorists, weapons
5 of mass destruction, and unauthorized aliens into the country, and to interdict drug smugglers
6 and other criminals along the border. Border Patrol Agents must draw on their experience and
7 make difficult decisions based on the information presented to them at the time. Here, all of
8 the information known to Border Patrol at the time of Plaintiff's detention indicated that he was
9 an illegal alien. Border Patrol's investigative detention was supported by reasonable suspicion
10 that Plaintiff was an illegal alien and their administrative detention was supported by probable
11 cause to believe Plaintiff was an illegal alien. Because Plaintiff's detention was lawful, his
12 false arrest, false imprisonment, and malicious prosecution claims must be dismissed.

DATED this 29th day of May, 2014.

13 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 29th day of May, 2014.

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