

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' OPPOSITION TO
PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

On January 15, 2015, the United States moved for summary judgment on all of Plaintiff's claims: (1) false arrest; (2) false imprisonment; (3) abuse of process; and (4) negligent and intentional infliction of emotional distress. Dkt. No. 34. The same day, Plaintiff filed a motion for partial summary judgment on three claims: (1) false arrest; (2) false imprisonment; and (3) abuse of process. Dkt. No. 35. Many of the arguments overlap and do not require additional briefing. The United States files this opposition to Plaintiff's motion for partial summary judgment to address the arguments that do not overlap or arguments that require additional briefing.

I. USBP's Request that Plaintiff be Detained for Further Investigation Was Not An Arrest Requiring Probable Cause.

Plaintiff admits that Officer Leetz is the one who "physically seized" him, but seeks to hold the United States liable for Officer Leetz's actions by arguing that Agent Hafstad's request that Officer Leetz detain Plaintiff constituted an "arrest" because Agent Hafstad should have known that Officer Leetz would handcuff Plaintiff and place him in the back of his patrol car.

1 Dkt. No. 35, pg. 8-12. Plaintiff has already received a settlement from the Anacortes Police
2 Department (“APD”) based on Officer Leetz’s actions during this incident. Plaintiff is now
3 trying to get a double recovery from the United States by arguing that a request by a U.S.
4 Border Patrol agent (“USBP”) to a local law enforcement officer to detain an individual for
5 further investigation constitutes an “arrest” requiring probable cause. Plaintiff’s argument is
6 contrary to the statutes and regulations that authorize USBP agents to detain an individual for
7 investigation based only on “reasonable articulable suspicion.”

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

18 Here, it is clear that USBP **requested** that Plaintiff be **detained** for further investigation
19 and did not direct, instruct, or order Plaintiff’s arrest. Officer Leetz’s police report states,
20 “based on the information of [Plaintiff] not being documented as being legally in the US, the
21 fact that he did not have a[n] SSN, it was requested that I detain him for USBP.” Dkt. No. 1,
22 Ex. 1, pg. 2. The report also states that Officer Leetz informed Plaintiff that “he was not under
23 arrest for any crime [Officer Leetz] was investigating, but that he was being detained based on
24 US Border Patrol’s request.” *Id.* Officer Leetz testified that Agent Hafstad requested that
25 Plaintiff be detained and said something along the lines of, “hold onto him for us.” Dkt. No.
26 34, Ex. C, pg. 8, 34. Officer Leetz testified that Agent Hafstad stated that a USBP Agent would
27 come down to Anacortes from Bellingham and meet him at the APD. *Id.* at pg. 7-8, 34-35. But
28 Officer Leetz confirms that Agent Hafstad never told him to “arrest” Plaintiff. *Id.* at pg. 37.

Plaintiff argues that Agent Hafstad’s request that Plaintiff be detained for further
investigation constituted an “arrest” because he should have known that Officer Leetz would
handcuff Plaintiff and put him in the back of a patrol car. Dkt. No. 35, pg. 12. But Officer

1 Leetz testified that he decided to handcuff Plaintiff and transport him to the APD in the back of
2 his patrol car. *See* Dkt. No. 34, Ex. C, pg. 34-36. Agent Hafstad never gave Officer Leetz any
3 instructions on how to detain Plaintiff, whether to handcuff him, or whether to put him in the
4 back of his patrol car. *Id.* at pg. 36. Rather, Officer Leetz testified that all of these decisions
5 were his decisions, based on a variety of reasons. *Id.* Officer Leetz specifically testified that he
6 was not acting at USBP's direction when he made these decisions. *Id.* at pg. 36-37.

7 Therefore, Agent Hafstad's request that Plaintiff be detained for further investigation
8 was made pursuant to 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.8(b)(2). The request was
9 lawful if it was supported by reasonable articulable suspicion. Contrary to Plaintiff's
10 arguments, the law does not require USBP to have probable cause before it can request that an
11 individual be detained for further investigation.

12 **II. USBP Had Reasonable Suspicion to Request that Plaintiff be Detained for 13 Further Investigation.**

14 In Plaintiff's motion for partial summary judgment, he argues that USBP lacked
15 reasonable suspicion to request that Plaintiff be detained. Dkt. No. 35, pg. 12-20. The parties
16 previously briefed at length whether the factors known to USBP at the time Agent Hafstad
17 requested that Officer Leetz detain Plaintiff for further questioning constitute reasonable
18 suspicion. *See* Dkt. No. 15, pg. 8-14, No. 19, pg. 12-21, No. 21, pg. 3-5. The Court heard oral
19 argument on these factors. Dkt. No. 25. And the Court issued a ruling identifying specific
20 unknown facts that precluded the Court from making a determination on reasonable articulable
21 suspicion. Dkt. No. 26, pg. 15-18. The parties have since engaged in discovery and the United
22 States has filed a motion for summary judgment and provided the Court with the discovery that
23 addresses the unknown facts previously identified by the Court. *See* Dkt. No. 34, pg. 4-11.
24 The United States incorporates the arguments in the previous briefing and in its motion for
25 summary judgment herein and, at this point, has no further argument to add on the reasonable
26 suspicion analysis.

27 **III. No Legal Process Had Been Instituted When the I-213 Was Completed.**

28 Plaintiff bases his entire abuse of process claim on the factual inconsistencies in the I-
213. *See* Dkt. No. 35, pg. 21-24. Plaintiff admits that under Washington law, an abuse of
process claim can only be maintained when there is misuse or misapplication of the legal
process, **after the initiation of the legal proceeding**, but fails to address what "legal

1 proceeding” had been initiated before the I-213 was completed by Agent Reyes. *Id.* at pg. 23-
2 24.

3 It is undisputed that the I-213 was completed by Agent Reyes on June 23, 2011.
4 Completion of the I-213 is part of the process of presenting an illegal alien for removal
5 proceedings to U.S. Customs and Immigration Enforcement (“ICE”). The actual removal
6 proceedings, or legal process, do not formally begin until ICE files a Notice to Appear with the
7 immigration court through the Executive Office of Immigration Review. 8 C.F.R. § 1003.14;
8 *see also Lazaro v. Mukasey*, 527 F.3d 977, 980 (9th Cir. 2008) (“The Immigration Court’s
9 jurisdiction vests ‘when a charging document is filed with the Immigration Court by the
10 Service.’”). Here, the NTA was filed with the Immigration Court on July 1, 2011. *See* Exhibit
11 B. Thus, no legal process was initiated until July 1, 2011. Therefore, Plaintiff’s allegation that
12 USBP falsified the I-213 cannot form the basis of an abuse of process claim under Washington
13 law because it was completed well before any legal process was initiated.

13 **IV. The Inaccuracies in the I-213 Were Unintentional.**

14 Even if Plaintiff could state a claim for abuse of process based on inaccuracies in the I-
15 213, he is not entitled to summary judgment because the inaccuracies were unintentional.
16 Plaintiff alleges that the facts in the I-213 were “intentionally misrepresented” and that the only
17 reasonable inference was that the USBP Agent who completed the form “believed that
18 [Plaintiff’s] initial seizure would be subject to scrutiny and thus sought to conceal any potential
19 defect.” *See* Dkt. No. 35, pg. 24. This is in direct contrast to Agent Reyes’ testimony where he
20 unequivocally stated that he believed that the facts he put in the I-213 were true at the time he
21 wrote them and he never intentionally misrepresented the facts. *See* Exhibit A.

22 It is undisputed that certain facts in the narrative section of the I-213 are inaccurate.
23 But the United States does dispute that any USBP agent deliberately made false statements on
24 the I-213. Agent Reyes testified that he completed the I-213, and that the information he put in
25 the narrative was either passed down to him from a supervisor, another agent, Agent Orr, or he
26 obtained it from a copy of the traffic citation he had. *See* Exhibit A, pg. 3-8, 18-19. Agent
27 Reyes testified that he believed all of the information he put in the narrative section of the I-213
28 was true and accurate at the time he completed the form. *Id.* at pg. 8-9, 17, 20-21, 25.

One of the inaccurate facts in the I-213 is the location Agent Orr responded to. The I-
213 inaccurately states that Agent Orr responded to the scene of the traffic stop rather than to

1 the APD. But Agent Reyes testified that at the time he completed the I-213, he believed that
2 Agent Orr did respond to the scene of the traffic stop. *See* Exhibit A, pg. 9. Agent Reyes
3 explained that in normal practice, USBP agents respond to the scene of the traffic stop or to
4 where the local law enforcement officer is located, not to a police station. *Id.* at pg. 8, 18-19,
5 21. He testified that he asked where Agent Orr was meeting the officer and was told to check
6 the traffic citation. *Id.* at pg. 24. Because the normal practice is for USBP agents to go to the
7 scene of the traffic stop, Agent Reyes consulted the traffic citation and indicated in the
8 narrative that Agent Orr responded to the scene of the traffic stop. *Id.* Agent Reyes testified, “I
9 didn’t know [Agent Orr] was going to the police station. Had I known, that would have been
10 the address that I would have put down.” *Id.* at pg. 25. Thus, this particular inaccuracy in the
11 I-213 was based on the mistaken belief that Agent Orr had followed the normal practice and
12 met Officer Leetz at the scene of the traffic stop. It was not, as Plaintiff alleges, a deliberate
false statement to cover up some allegedly improper act.

13 Agent Reyes also testified about additional statements in the narrative that Plaintiff
14 claims are inaccurate. He testified that he believed, based on information provided to him by
15 his supervisors or another agent, that Agent Orr was assigned to be “other agency response”
16 that evening. *Id.* at pg. 10-12. Thus, Agent Reyes believed that Agent Orr was patrolling in the
17 city of Anacortes at the time of the stop. *Id.* Agent Reyes also believed that Agent Orr was
18 responding to a “translation assistance request” explaining that, at that time, USBP used the
19 term “translation assistance” very broadly and it could be a local law enforcement officer
20 specifically requesting actual translation assistance or it could be a request to USBP to help try
21 to determine who the person was, or it could be for general assistance. *Id.* at pg. 12-13. Agent
22 Reyes also testified that he believes he was told that Officer Leetz stated that he needed
23 assistance translating because Plaintiff spoke very limited English. *Id.* at pg. 13-14. He
believes this information was provided during the pass down of information between Agents
Hafstad and Orr and himself and Agent Wynn at the shift change. *Id.* at pg. 14-16.

24 Agent Reyes conceded that it was possible that words could have been confused in the
25 passing of information between the shift change or that he might have misunderstood some
26 information that was passed down. *Id.* at pg. 16-17. But Agent Reyes was clear that all of the
27 information he put in the I-213 was garnered from the information he had before him at the
28

1 time and that he believed the information to be true at the time he completed the I-213. *Id.* at
2 pg. 8-9, 17, 20-21, 25.

3 Therefore, Agent Reyes has testified that he believed that the facts he put in the I-213
4 were true at the time he wrote them and he never intentionally misrepresented the facts. As
5 such, even if Plaintiff could state a claim for abuse of process based on the completion of an I-
6 213, which was completed well before any legal process was initiated, Plaintiff cannot establish
7 on summary judgment that Agent Reyes misused or misapplied any legal process for an end
8 other than that which it was designed to accomplish. *See Hough v. Stockbridge*, 152
9 Wash.App. 328, 343 (Div. 1, 2009).

10 WHEREFORE Plaintiff's motion for partial summary judgment should be denied.

11 DATED this 2nd day of February, 2015.

12
13 Respectfully submitted,

14
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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 2nd day of February, 2015.

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