

THE HONORABLE JAMES L. ROBART

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

Gustavo VARGAS RAMIREZ,  
Plaintiff,

v.

UNITED STATES OF AMERICA,  
Defendant.

) Case No. 13-cv-02325-JLR  
)  
) **PLAINTIFF’S MOTION FOR**  
) **PARTIAL SUMMARY JUDGMENT**  
) **UNDER RULE 56**

) NOTE ON MOTION CALENDAR:  
) February 6, 2015  
)

Oral Argument Requested

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## I. INTRODUCTION

Plaintiff Gustavo Vargas Ramirez (“Mr. Vargas”) respectfully moves for partial summary judgment as to Defendant United States’ liability for false imprisonment, false arrest, and abuse of process. Because United States Border Patrol’s (“USBP”) arrest was conducted without even reasonable suspicion, let alone probable cause, its seizure of Mr. Vargas was unlawful. Its deliberate falsification of facts in Form I-213, Record of Deportable/Inadmissible Alien, moreover, was done to cover up Mr. Vargas’s unlawful arrest, constituting an abuse of process.

## II. STATEMENT OF UNDISPUTED FACTS

### A. Stop by Anacortes Police Department

On June 23, 2011, Officer Leetz of the Anacortes Police Department (“APD”) pulled Mr. Vargas over for failing to signal a turn. Ex. 1 at 7:20-22, USAO284.<sup>1</sup> Officer Leetz alleges he had difficulty conversing with Mr. Vargas because of Mr. Vargas’s English-language skills. *Id.* at 8:1-4. He was nonetheless able to process Mr. Vargas for the traffic infraction, as Mr. Vargas was responsive to the officer’s requests and gave him all the documentation he asked for. *Id.* at 21:4-15, 23:2-6, USAO284; Ex. 2 at 44:13-16, 46:2-5. Officer Leetz was also able to verify with Mr. Vargas that the address on his license was current. Ex. 1 at 23:1. Officer Leetz does not speak or understand Spanish; he spoke to Mr. Vargas in English. *Id.* at 28:17-25; Ex. 2 at 47:7-8.

### B. First Call with USBP

When Officer Leetz ran a records check on Mr. Vargas’s driver’s license, he noticed that Mr. Vargas’s Social Security number showed up as all zeros in the Washington Department of

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<sup>1</sup> All exhibits are attached to the Declaration of Glenda M. Aldana Madrid in Support of Plaintiffs’ Motion for Partial Summary Judgment. For the sake of brevity, preceding zeros have been deleted from pin cites. References to “USAO” refer to the Bates number of documents introduced as exhibits during depositions.

1 Licensing database. Ex. 1 at 36:1. Officer Leetz did not know that Washington drivers did not  
2 need to provide a Social Security number to get their license. *Id.* at 8:17-22. He subsequently  
3 called USBP and informed the agent who answered that he had stopped someone who did not  
4 have a Social Security number listed with his driver's license and who did not speak English  
5 well, and whom he suspected might be in the country unlawfully. Ex. 1 at 8:5-9:7, 38:24-39:7.  
6 Officer Leetz also provided the agent with Mr. Vargas's name and date of birth. *Id.* at 39:8-12;  
7 Ex. 3 at 12:9. He did not mention anything about Mr. Vargas's demeanor, appearance, or  
8 ethnicity, or provide the agent with any additional information. Ex. 1 at 9:21, 10:3, 84:9; Ex. 3 at  
9 12:15. Indeed, Officer Leetz did not notice anything "strange" or noteworthy about Mr. Vargas's  
10 demeanor. Ex. 1 at 54:3. The agent—Wayne Hafstad<sup>2</sup>—informed Officer Leetz that he would  
11 call him back "after running Gustavo in their system." *Id.* at USAO284. Officer Leetz replied  
12 that he "could only wait as long as it took [him] to complete [the] infraction, unless they  
13 specifically requested [him] to detain [Mr. Vargas]." *Id.* & 9:9-15. At no point during his  
14 interaction with Mr. Vargas did Officer Leetz ask Mr. Vargas whether he was an immigrant,  
15 where he had been born, or what his immigration status was. *Id.* at 20:3-9.

### 19 C. Second Call with USBP

20 When Agent Hafstad called Officer Leetz back, he advised Officer Leetz that he had  
21 found no documentation indicating that Mr. Vargas was in the country lawfully. *Id.* at  
22 USAO284. Officer Leetz asked Agent Hafstad whether he wanted him to detain or release Mr.  
23 Vargas, and the agent asked to speak to Mr. Vargas over the phone. *Id.* at 12:5-6. Officer Leetz  
24 placed the phone on speaker and held it while Mr. Vargas and the USBP agent conversed. *Id.* at  
25 12:10-19; Ex. 2 at 47:12-18. As he did not hand the phone to Mr. Vargas, Officer Leetz was able

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27 <sup>2</sup> Officer Leetz did not remember the name of the agent he spoke to, but Defendant's discovery materials revealed it  
28 was Agent Hafstad. *See, e.g.*, Ex. 3 at 10:23-25, 11:2-3.

1 to hear part of the conversation. Ex. 1 at 12:24-25. Agent Hafstad asked Mr. Vargas for his  
2 name, how long he had been in the United States, and whether he had any documentation  
3 authorizing his presence in the country. Ex. 2 at 49:13-15, 50:6-9. Mr. Vargas did not answer any  
4 of Agent Hafstad's questions. *Id.* at 44:22- 45:2, 49:21-50:11; Ex. 1 at 13:5-12, USAO284.  
5 Instead, he told the agent, in English, that he would not answer any questions without a lawyer.  
6 *Id.* at 13:4-12, 49:6-18, USAO284; Ex. 2 at 49:21-50:15. Officer Leetz took the phone back upon  
7 hearing Mr. Vargas inform the USBP agent that he would not answer any questions without an  
8 attorney. Ex. 1 at 49:22-50:10; Ex. 2 at 50:19-51:3.

#### 11 **D. USBP's Seizure of Mr. Vargas**

12 Agent Hafstad then asked Officer Leetz to seize Mr. Vargas. Ex. 1 at 13:16-20,  
13 USAO284, USAO288. Officer Leetz and Mr. Vargas were still at the scene of the traffic stop. *Id.*  
14 Agent Hafstad instructed Officer Leetz that a USBP agent would meet him and Mr. Vargas at the  
15 APD station. *Id.* at 13:19-14:10, 17:10-18, USAO284; Ex. 4 at 13:17-19. It was Agent Hafstad  
16 who instructed Officer Leetz to meet at the police station, not Officer Leetz. Ex. 1 at 56:20-22.  
17 Officer Leetz believed USBP had the authority to detain Mr. Vargas. *Id.* at 15:1-4. Absent  
18 USBP's request, Officer Leetz's plan had been to release Mr. Vargas. *Id.* at 9:9-10:14.

19 Prior to returning the officer's call, Agent Hafstad had run a series of background checks  
20 on Mr. Vargas. Ex. 5, Interrog. 1; Ex. 4 at 27:6-10. The only record that was returned was one  
21 indicating that Mr. Vargas had a driver's license. Ex. 3 at 18:25-19:3, Ex. 7 at USAO428. The  
22 checks did not yield any records in the other databases searched. *Id.* These other databases  
23 checked whether someone (1) had any warrants against them, *id.* at 15:19-24; (2) had a state or  
24 federal criminal history, *id.* at 16:8-17; (3) was registered as inspected or admitted if traveling to  
25 the United States, or was assigned an immigrant number, *id.* at 16:18-17:1; (4) had been  
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1 deported, *id.* at 17:3-5; (5) had an employment authorization card, *id.* at 17:6-8; (6) had had a  
2 case before the immigration courts, *id.* at 17:9-10; (7) had filed an immigration application or  
3 petition, *id.* at 17:12-15; (8) were registered as having entered the country at a port of entry, *id.* at  
4 17:20-22; (9) and had been arrested by the immigration authorities. *Id.* at 18:18-21.

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6 These databases did not include information on all foreign-born individuals in the United  
7 States, on all individuals who are U.S. citizens by virtue of deriving or acquiring their citizenship  
8 through a parent or grandparent who was born in the country, or on all individuals born in the  
9 United States. Ex. 5, Interrog. 2(c)-(e). Indeed, Agent Hafstad recognized the following types of  
10 individuals would not have been expected to turn up in any of these records checks: (1) U.S.-  
11 born U.S. citizens without a criminal record, Ex. 3 at 25:15-18; (3) and “derivative citizen[s]  
12 who didn’t make any application for—indication of citizenship.” *Id.* at 26:5-9. Agent Russell  
13 Wynn for his part acknowledged that not every non-citizen with lawful status is found in the CIS  
14 database, Ex. 7 at 47:16-24, or the CLAIMS database, *id.* at 49:15; and that they would only  
15 appear in EARM if they have had some interaction with immigration enforcement, *id.* at 48:13,  
16 but that appearing “doesn’t necessarily mean that they are here illegally.” *Id.* at 49:1-2.

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19 At the time of ordering Mr. Vargas’s seizure, then, Agent Hafstad had the following  
20 information: (1) Officer Leetz suspected that Mr. Vargas might be in the country unlawfully, Ex.  
21 3 at 26:15-17; (2) Mr. Vargas’s name and date of birth, *id.* at 12:7-9; (3) Mr. Vargas’s Social  
22 Security number was not listed with his driver’s license, *id.* at 12:9-12; (4) Mr. Vargas did not  
23 turn up any records in the databases he had searched other than the database indicating he had a  
24 driver’s license, *id.* at 18:25-19:3; (5) Mr. Vargas purportedly had difficulty speaking English;  
25 and (6) Mr. Vargas had been “stopped on the side of the road in Anacortes,” a city along the  
26 maritime border that has an international ferry, a closed USBP checkpoint, and “a population of  
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1 illegal aliens in the area.” *Id.* at 11:21-23, 27:1-11. These were the factors he allegedly  
2 considered in assessing whether to arrest Mr. Vargas. *Id.* at 26:12-27:11.<sup>3</sup> Agent Hafstad later  
3 clarified that he did not suspect that Mr. Vargas had just come from the ferry terminal. *Id.* at  
4 27:12-14. He further clarified that “the location factors” “can apply...to anybody in the area  
5 that’s in that location.” *Id.* at 29:7-8.

#### 7 **E. Transfer to APD**

8 Officer Leetz handcuffed, patted down, and placed Mr. Vargas in his police car to  
9 transport him to the Anacortes Police station. Ex. 1 at 14:10-13. It is “standard practice” to  
10 handcuff an individual who is being moved from one location to another while in custody. *Id.* at  
11 16:11-17; Ex. 4 at 32:14-25; Wynn Decl. ¶16, Dkt. # 16. It is also standard to place them in a  
12 police vehicle when doing so. Ex. 1 at 15:7-16. Prior to leaving, Mr. Vargas asked Officer Leetz  
13 to grab his cell phone from his car, and Officer Leetz obliged. *Id.* at 60:2-5, USAO284.

15 He also said that he would not speak to anyone without an attorney. *Id.* at 60:1-2,  
16 USAO284. When they arrived at APD, Officer Leetz placed Mr. Vargas in a holding cell, which  
17 was also standard practice when detaining an individual. *Id.* at 16:18-17:18. While in the cell,  
18 Mr. Vargas asked Officer Leetz whether he could make a call, and Officer Leetz permitted him  
19 to do so. *Id.* at 64:17-22.

#### 21 **F. Interaction at APD**

22 USBP Agent John Orr subsequently arrived at the APD station. Orr Decl. ¶3, Dkt #17.  
23 He had been ordered there by Agent Hafstad, who told him there was an individual of interest  
24 there whose immigration status he should investigate. *Id.* at ¶2; Ex. 4 at 12:13-13:19. It took  
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26 <sup>3</sup> Plaintiff disputes that Agent Hafstad actually considered language skills and location, but includes them here since  
27 the Court is required to make reasonable inferences in Defendant’s favor. *See* n.4, *infra*. It is important to note,  
28 however, that at his deposition, Agent Hafstad did not recall the content of the second phone call with Officer Leetz.  
*See, e.g.*, Ex. 3 at 31:13-15. As such, at least these two factors are quite likely after-the-fact rationalizations,  
especially because the I-213 narrative is starkly different and fails to identify many of the factors listed.

1 about 30 to 40 minutes for Agent Orr to arrive at the station. *Id.* at 17:13-14; Ex. 1 at 67:10-14.  
2 Once there, he spoke to Mr. Vargas. Agent Orr's "Spanish is not so great." Ex. 4 at 21:1-23:5. In  
3 fact, he has never provided Spanish-English interpretation assistance to local law enforcement  
4 during his time at USBP for this reason. *Id.* at 60:19-61:5 ("My Spanish isn't good enough.").  
5

6 Mr. Vargas told Agent Orr that he did not want to answer questions without an attorney.  
7 Ex. 2 at 62:17-18. However, Mr. Vargas recalls Agent Orr continuing to ask him about his  
8 immigration status, his name, where he had been born, the length of time he had been present in  
9 the United States, and if he had any documentation authorizing his presence in the country. *Id.* at  
10 58:4-59:24. During the exchange, [REDACTED]  
11 [REDACTED]. *Id.* at 60:12-15; Ex. 4 at 20:1-4. Agent Orr  
12 maintains that [REDACTED] without an attorney  
13 present. *Id.* at 20:1-19, 24:3-4. Officer Leetz heard Mr. Vargas state his refusal to speak to Agent  
14 Orr without an attorney. Ex. 1 at 71:3-7, USAO288.  
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### 16 **G. Interaction at the Bellingham Border Patrol Station**

17 Agent Orr then called Agent Hafstad in order to determine whether to bring Mr. Vargas  
18 into the Bellingham USBP station for further investigation. Ex. 4 at 26:23-10. After deciding to  
19 do so in order to run Mr. Vargas's fingerprints through certain additional USBP databases, he  
20 transported Mr. Vargas to the station. *Id.* at 27:10-12, 32:14-15. When he arrived, Agent Orr  
21 handed Mr. Vargas off to agents Juan Reyes and Wynn and left for the night. *Id.* at 34:8-20.  
22 Agent Reyes rolled Mr. Vargas's fingerprints to run the background checks on him. Ex. 6 at  
23 12:4-8. The checks, which were on the IDENT and IAFIS databases, yielded no results. Ex. 7 at  
24 USAO33-34; Ex. 6 at 13:10-12.  
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### 26 **H. Manufactured I-213 Narrative**

1 Agent Reyes filled out the Form I-213 for Mr. Vargas. Ex. 6 at 11:10-20. The I-213  
2 requires that an officer “include the facts which demonstrate the legal basis for arresting an  
3 individual.” Ex. 7 at 14; Ex. 3 at 38; Ex. 4 at 49:8-13. In Mr. Vargas’s case, the I-213 was the  
4 only immigration record where information as to how he was encountered and arrested was  
5 documented. Ex. 7 at 21:2-3. This I-213 contains numerous false statements. It alleges that Agent  
6 Orr arrived at the scene of the traffic stop to assist with translation and “detained and  
7 transported” Mr. Vargas to the Bellingham station based on Mr. Vargas’s alleged admission—  
8 made at the stop—that he was born in Mexico. Ex. 7 at USAO33. It is now undisputed that this  
9 information is false. Officer Leetz’s report of the incident contradicts these statements. Ex. 1 at  
10 USAO284. His follow-up report confirms the validity of his original report, clarifying that the I-  
11 213 is incorrect as to those facts. *Id.* at USAO288. Agent Orr’s declaration, Dkt. #17, and his  
12 deposition also confirm that the I-213’s account of his initial encounter with Mr. Vargas is  
13 untrue: he had no interaction with Mr. Vargas at the scene of the stop, and he was not sent to the  
14 APD station to provide interpretation assistance. Ex. 4 at 38:17-40:12.

### 18 III. STANDARD OF REVIEW

19 Summary judgment is appropriate where the moving party establishes “there is no  
20 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of  
21 law.” Fed. R. Civ. P. 56(a). “A material issue of fact ... affects the outcome of the litigation and  
22 requires a trial to resolve the parties’ differing versions of the truth.” *SEC v. Seaboard Corp.*, 677  
23 F.2d 1301, 1306 (9th Cir. 1982) (citation omitted). The initial burden of establishing the  
24 propriety of summary judgment is on the moving party, which must identify the evidence it  
25 “believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*,

1 477 U.S. 317, 323 (1986). The burden then shifts to the opposing party to show that summary  
 2 judgment is not appropriate because a genuine dispute of material fact exists. *Id.* at 324.<sup>4</sup>

#### 3 IV. ARGUMENT

##### 4 A. USBP falsely arrested and imprisoned Mr. Vargas when it arrested him without 5 legal justification.

6 USBP's actions constituted both false arrest and false imprisonment. "A false arrest  
 7 occurs when a person with actual or pretended legal authority to arrest unlawfully restrains or  
 8 imprisons another person." *Youker v. Douglas Cnty.*, 162 Wash. App. 448, 465 *review denied*,  
 9 173 Wash. 2d 1002 (2011) (citation omitted). False imprisonment occurs when "the defendant  
 10 intentionally confined [the plaintiff] without justification." *Dunn v. Hyra*, 676 F. Supp. 2d 1172,  
 11 1195 (W.D. Wash. 2009) (citation omitted). To be liable, a party need not have actually  
 12 physically restrained or imprisoned the plaintiff; "procur[ing] or instigat[ing] the making of [the  
 13 seizure] without proper authority" is sufficient. *Bender v. City of Seattle*, 99 Wash. 2d 582, 592  
 14 n.3 (1983) (citation omitted). "[A]n officer can be liable for false arrest for merely procuring the  
 15 arrest of another falsely." *Id.* As Defendant's liability under the Federal Tort Claims Act turns on  
 16 Washington law, 28 U.S.C. §1346(b)(1), Mr. Vargas must thus demonstrate that USBP took  
 17 "some active part in bringing about the unlawful arrest itself, by some affirmative direction,  
 18 persuasion, request or voluntary participation." *Bender*, 99 Wash. 2d at 592 n.3 (internal  
 19 quotation marks and citation omitted).  
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23 It is well established that USBP agents have legal authority to seize an individual. *See* 8  
 24 C.F.R. § 287.5(c)(1) (arrest authority pursuant to 8 U.S.C. § 1357(a)(2)); 8 C.F.R. § 287.8 (b)(2)

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 27 <sup>4</sup> The nonmoving party's evidence is to be believed, with all reasonable inferences drawn in its favor. *Anderson v.*  
 28 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). "A factual dispute is genuine only if a reasonable trier of fact could  
 find in favor of the nonmoving party," and so, conclusory, "[b]ald assertions that genuine issues of material fact  
 exist are insufficient." *Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007) (citations omitted).

1 (detention authority). As this Court recognized in its Order dismissing Defendant’s Motion to  
2 Dismiss or for Summary Judgment, USBP agents’ detention and arrest authority “depends on  
3 familiar Fourth Amendment concepts”: an arrest must be justified by probable cause and a  
4 detention by reasonable suspicion that an individual is in the United States unlawfully. Dkt. # 26  
5 at 12-13. Here, USBP did not even have reasonable suspicion to seize Mr. Vargas, much less the  
6 probable cause it needed to justify arresting him.  
7

8 **i. USBP restrained and confined Mr. Vargas when it requested his arrest at the**  
9 **scene of the traffic stop.**

10 Whether an individual’s seizure constitutes an arrest or a detention depends on the  
11 totality of the circumstances. *United States v. Bravo*, 295 F.3d 1002, 1010 (9th Cir. 2002). The  
12 determination turns on two inquiries: first, whether the methods used to effectuate the seizure  
13 “would cause a reasonable person to feel that he or she will not be free to leave after brief  
14 questioning—i.e., that indefinite custodial detention is inevitable”; and, second, “whether the  
15 measures used were reasonable in light of the circumstances that prompted the stop or that  
16 developed during its course.” *United States v. Guzman-Padilla*, 573 F.3d 865, 884-85 (9th Cir.  
17 2009) (citations omitted).  
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19 USBP’s seizure of Mr. Vargas was an arrest. First, it is important to note that at the  
20 moment Agent Hafstad asked Officer Leetz to “hold” Mr. Vargas for USBP, Ex. 1 at 55:16, and  
21 take him to the APD station, Mr. Vargas had *already* been subjected to “brief questioning” by  
22 Agent Hafstad over the phone. *Id.* at 12:5-13:12. Agent Hafstad had questioned Mr. Vargas  
23 about his name, the length of time he had been in the United States, and whether he was legally  
24 authorized to be in the country. Ex. 2 at 49:13-50:9.  
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1 But this was just the beginning, for Mr. Vargas was not in fact “free to leave” after Agent  
 2 Hafstad’s questioning. Instead, he was handcuffed, placed in Officer Leetz’s police car, and  
 3 transported to the APD station, where he was locked up in a holding cell for about 40 minutes  
 4 until Agent Orr showed up and proceeded to question him. *See* II.D-E, *supra*. There is no  
 5 question that Mr. Vargas, who was in physical custody, was not free to go. The following factors  
 6 independently indicate this was an arrest: (1) Mr. Vargas’s removal from his own vehicle, which  
 7 exemplified the degree to which his “liberty was restricted,” *Washington v. Lambert*, 98 F.3d  
 8 1181, 1185, 88-89 (9th Cir. 1996) (citation omitted); (2) the use of handcuffs, *id.* at 1188; (3)  
 9 being placed in the police car; and then (4) being transferred to the police station. That Mr.  
 10 Vargas was moved to APD in handcuffs—even for purported investigative purposes—ends any  
 11 real debate regarding whether he was under arrest. *See, e.g., United States v. Parr*, 843 F.2d  
 12 1228, 1231 (9th Cir. 1988) (“[A] distinction between investigatory stops and arrests may be  
 13 drawn at the point of transporting the defendant to the police station.”) (citations omitted).

14 Despite Agent Orr’s assertions to the contrary, a seizure’s investigatory aim does not  
 15 turn it into a detention where all other factors indicate it was an arrest.<sup>5</sup> *See, e.g., Gonzales v.*  
 16 *City of Peoria*, 722 F.2d 468, 477 (9th Cir. 1983) (“[W]here the defendant is transported to the  
 17 police station and placed in a cell or interrogation room he has been arrested, *even if the purpose*  
 18 *of the seizure is investigatory.*”) (citations omitted) (emphasis added), *overruled by Hodggers-*  
 19 *Durgin v. de la Vina on other grounds*, 199 F.3d 1037 (9th Cir. 1999); *United States v. Zavala*,  
 20 541 F.3d 562, 579-80 (5th Cir. 2008) (arrest occurred where the defendant “was handcuffed,  
 21 placed in a police car, transported to different locations, and was not free to leave ... for one hour

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 27 <sup>5</sup> Agent Orr repeatedly asserted during his deposition that “technically we [USBP] don’t arrest anybody. We detain  
 28 ... for investigation, and then we just set them up for a court hearing.” Ex. 4 at 6:17-20. He added that distinguishing  
 an arrest from a detention is “above [his] pay grade. Our detentions are for investigative purposes.” *Id.* at 7:8.

1 and thirty minutes until a full-blown drug investigation [was] completed”) (citations omitted).

2 The purpose of a seizure does not determine whether it is an arrest or a detention.

3 That Mr. Vargas was held for about 40 minutes and then interrogated by Agent Orr while  
4 still in custody reinforces the conclusion that this seizure was an arrest. Although determinations  
5 are fact-specific, the duration of a seizure may itself demonstrate an arrest. *Lambert*, 98 F.3d at  
6 1189, n.11 (noting case in which 20-minute questioning in police car constituted arrest); *see also*  
7 *Guzman-Padilla*, 573 F.3d at 886. Agent Orr’s interrogation of Mr. Vargas in the holding cell  
8 was more restrictive of his liberty than the “holding [of a] suspect in police car and questioning  
9 him for twenty minutes,” which the Ninth Circuit has found to be an arrest. *Lambert*, 98 F.3d at  
10 1189 (citation omitted); *see also, United States v. Place*, 462 U.S. 696, 709-10 (1983) (noting  
11 that the Court had never approved a stop lasting ninety minutes).

14 While it was Officer Leetz who physically seized Mr. Vargas, it is undisputed that  
15 Officer Leetz was acting pursuant to Agent Hafstad’s instructions when he took custody of Mr.  
16 Vargas and transported him to the APD station. Ex. 1 at 13:19-14:1, 17:4-18, 56:16-22,  
17 USAO284. In fact, Officer Leetz distinguished this case from others where he has been told to  
18 meet other local law enforcement agents elsewhere, clarifying that “in this case, we were asked  
19 to meet at Anacortes P.D.” *Id.* at 17:17-18. All of Officer Leetz’s actions in taking and holding  
20 Mr. Vargas at APD, moreover, were standard procedures when transferring an individual in  
21 custody. Transporting a detainee from one location to another is “ordinarily, regardless of the  
22 circumstances,” done by placing the individual in the police car. *Id.* at 15:7-8. “[S]omeone [who]  
23 is being transported and [is] a detainee ... more likely than not, that person will go into  
24 handcuffs, mostly, regardless of circumstances.” *Id.* at 16:11-15. Similarly, placing someone in a  
25 holding cell is also routine, as Officer Leetz explained during his deposition:  
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1 I was asked to detain him, which essentially means to hold on to him until the  
2 other agent can arrive. And there's no—to be placed in a public waiting area, that  
3 gives him free access to and from as he pleases, and based on the fact that they  
4 said, Detain him for us. We're going to come to the Anacortes P.D., he was  
5 detained in a holding cell.

6 *Id.* at 16:24-17:6. A reasonable officer in Agent Hafstad's position would have known that when  
7 he asked Officer Leetz to detain Mr. Vargas for USBP and transport him to APD, that Officer  
8 Leetz would handcuff Mr. Vargas, transport him in his police car, and place him in a holding cell  
9 while he waited for USBP's arrival—factors typical of an arrest.

10 Mr. Vargas was thus clearly seized. He was constrained pursuant to USBP's  
11 instructions—in his car, then Officer Leetz's car, and afterwards in the APD holding cell—and  
12 denied “free access to and from as he please[d],” *id.*, “restrain[ing] his freedom to walk away.”  
13 *Terry v. Ohio*, 392 U.S. 1, 16 (1968) (defining a seizure). Moreover, as explained *supra*, the  
14 methods used to effectuate this seizure turned Mr. Vargas's seizure into an arrest. Because USBP  
15 affirmatively asked Officer Leetz to hold Mr. Vargas knowing that the officer did not intend to  
16 seize Mr. Vargas for his own purposes, and Officer Leetz only seized Mr. Vargas at USBP's  
17 request, *see* II.D, *supra*, USBP “procure[d] or instigate[d]” Mr. Vargas's seizure and is liable for  
18 his false arrest and imprisonment under Washington law. *Bender*, 99 Wash. 2d at 592 n.3.

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20 **ii. USBP's seizure of Mr. Vargas was unlawful and unjustified, as it was not**  
21 **supported by reasonable suspicion, much less probable cause.**

22 USBP needed probable cause to arrest Mr. Vargas. 8 U.S.C. § 1357(a)(2). Yet the facts  
23 known to and considered by Agent Hafstad in arresting Mr. Vargas, *see* II.D, *supra*, were not  
24 even enough to furnish USBP with reasonable suspicion to detain him, for they lacked the  
25 requisite particularity and specificity and were, at best, marginally relevant to the reasonable  
26 suspicion analysis. Even accepting, *arguendo*, Defendant's assertion that Agent Hafstad also  
27

1 knew or believed that Mr. Vargas did not speak English well<sup>6</sup> or spoke it with an accent, the  
2 addition of that factor is not enough to tip the balance in favor of finding reasonable suspicion.

3 Whether reasonable suspicion exists depends on the totality of the circumstances.  
4 *Guzman-Padilla*, 573 F.3d at 876. It requires that “the detaining officer [have] a particularized  
5 and objective basis for suspecting legal wrongdoing” before approaching a specific individual.  
6 *United States v. Arvizu*, 534 U.S. 266, 266 (2002) (internal quotation marks and citation  
7 omitted). This permits officers “to draw on their own experience and specialized training to  
8 make inferences from and deductions about the cumulative information available to them that  
9 might well elude an untrained person” but forbids stops premised on “a mere hunch.” *Id.* at 273-  
10 74 (internal quotation marks and citations omitted). Reliance on an officer’s experience does not  
11 give that officer “unbridled discretion in making a stop.” *United States v. Sigmond-Ballesteros*,  
12 285 F.3d 1117, 1126-27 (9th Cir. 2002) (internal quotation marks and citation omitted). Officers  
13 may not “rely solely on generalizations that, if accepted, would cast suspicion on large segments  
14 of the lawabiding [sic] population.” *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir.  
15 2006) (citations omitted). Probable cause, in turn, is an even more exacting standard. *Id.* at 934.

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19 1. Reliance on Mr. Vargas’s lack of a listed Social Security number in the Washington  
20 State Driver’s License database was based on ignorance of the law and at most was  
21 only marginally relevant to the reasonable suspicion analysis.

22 USBP’s assumption that Mr. Vargas’s unlisted Social Security number signified that he  
23 was undocumented was doubly flawed. Washington State does not require that a driver provide a  
24 Social Security number to obtain his license so long as adequate proof of state residency is  
25 provided. *See, e.g.*, Wash. Rev. Code Ann. 46.20.091; Wash. Admin. Code 308-104-014(4). That  
26 a driver does not have a Social Security number affiliated with his driver’s license may simply

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28 <sup>6</sup> Plaintiff disputes this factor. During his deposition, Agent Hafstad did not identify Mr. Vargas’s language skills as a factor he considered. Ex. 3 at 55:7-11. He did not recall the phone call or speaking to Mr. Vargas at all. *Id.* at 34:8.

1 mean that he chose not to provide it. But Officer Leetz did not know that Washington State did  
2 not require its drivers to provide their Social Security number. Ex. 1 at 8:17-22. Agent Hafstad,  
3 for his part, noted that he had “never studied the issue,” suggesting he was also unaware of  
4 Washington law on the topic. Ex. 3 at 56:7-18. Both officers’ assessments that Mr. Vargas  
5 lacked a Social Security number were based on ignorance of the law.  
6

7 Moreover, the assumption that an individual who lacks a Social Security number is  
8 present in the United States contrary to the law is also flawed. Defendant has admitted, for  
9 instance, that “not all United States citizens born in the United States have a Social Security  
10 Number.” Ex. 8 at #11. Additionally, not all foreign-born individuals lawfully in this country  
11 have a Social Security number either. *See* 20 C.F.R. § 422.104(a)(2)-(3) (clarifying that a  
12 lawfully present non-citizen who lacks authorization to work cannot obtain a Social Security  
13 number absent one of two specified “valid nonwork reason[s]”); *see generally* Dkt. #19 at III.c.v.  
14 Lack of a Social Security number is thus at most a marginal indication of unlawful status.  
15

16 Accordingly, USBP’s consideration of Mr. Vargas’s lack of a listed Social Security  
17 number in the Washington driver’s license database does not support the reasonable suspicion  
18 analysis, based as it was on compounded fallacies and ignorance of the law.  
19

20 2. Mr. Vargas’s accented English did not provide reasonable suspicion.

21 It is apparent from the record that, at the time of the arrest, Mr. Vargas spoke and  
22 understood English well enough to communicate effectively, even if with a heavy accent. Officer  
23 Leetz does not speak Spanish, yet he was able to process Mr. Vargas for the traffic infraction  
24 despite the existence of the alleged language barrier: Mr. Vargas responded to Officer Leetz’s  
25 English-language commands by providing him with the documentation requested and verified  
26 his address when the officer inquired about it. *See* II.A, *supra*. He also spoke English well  
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1 enough that Officer Leetz was able to understand his repeated requests for an attorney—both at  
2 the scene of the traffic stop and the APD holding cell—as well as his requests that the officer get  
3 his cell phone from his car prior to transferring him to APD and that he allow him to make a  
4 phone call once at the station. *See* II.B, D-E, *supra*. Moreover, it is clear that he believed Mr.  
5 Vargas could speak English because he ordered him to speak it when making a call from APD.  
6 Ex. 1 at 65:10-13. The objective facts show that Mr. Vargas was able to communicate effectively  
7 in English.  
8

9           What is more, immigration case law has made clear that while an inability to speak  
10 English “may support an officer’s reasonable suspicion that the individual is in this country  
11 illegally,” it is by no means dispositive, requiring the existence of “other factors.” *Manzo-*  
12 *Jurado*, 457 F.3d at 937 (citations omitted). The Ninth Circuit has found the following “other  
13 factors” to be insufficient: the “individuals’ appearance as a Hispanic work crew, inability to  
14 speak English, proximity to the border, and unsuspecting behavior.” *Id.* at 932 (finding  
15 reasonable suspicion lacking to stop a group of men in Montana). The “other factors” in Mr.  
16 Vargas’s case are even less probative than the ones enumerated in *Manzo-Jurado*. Mr. Vargas  
17 was able to communicate in English, as opposed to the petitioner in that case. *Id.* at 937. He did  
18 not exhibit any suspicious behavior, Ex. 1 at 54:19-21, and, as noted, his lack of a listed Social  
19 Security number at most provided only marginal support for any reasonable suspicion analysis.  
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22           Finally, even assuming, *arguendo* that Mr. Vargas had been unable to communicate very  
23 well in English, this fact does not demonstrate foreign birth or unlawful status. Defendant has  
24 admitted that “not all United States citizens born in the United States speak English without an  
25 accent.” Ex. 8 at #13. Moreover, Census statistics show that, in 2011, 10.6% of all native-born  
26 U.S. citizens age five and over grew up speaking a language other than English at home. Of  
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1 those who grew up speaking Spanish at home, nearly 20% “[s]poke English less than ‘very  
2 well’”; the figure was 15.2% for those who grew up speaking another language.<sup>7</sup> This data  
3 clearly demonstrates that conflating inability to speak English well with being foreign-born is an  
4 inaccurate assumption to make, and extrapolating immigration status from this fact is an  
5 impermissible generalization that “would cast suspicion on large segments of the lawabiding  
6 [sic] population.” *Manzo-Jurado*, 457 F.3d at 935 (citations omitted). Nor would his English-  
7 speaking skills be instructive at all in analyzing whether he was an immigrant with lawful status.  
8 Thus, Mr. Vargas’s English-language abilities would at most only be of a negligible probative  
9 value in Agent Hafstad’s reasonable suspicion analysis.  
10

11  
12 3. Officer Leetz’s suspicions about Mr. Vargas’s status provide no support to the  
13 reasonable suspicion or probable cause analysis.

14 USBP agents’ ability to seize individuals and perform related enforcement functions is  
15 conditioned on their receipt of specialized training. *See, e.g.*, 8 C.F.R. § 287.5(c). Training is  
16 crucial because “[t]here are significant complexities involved in enforcing federal immigration  
17 law”—complexities that have, relatedly, necessitated that any agreement providing for local law  
18 enforcement to assist the federal government in performing immigration functions “contain  
19 written certification that officers have received adequate training to carry out the duties of an  
20 immigration officer.” *Arizona v. United States*, 132 S. Ct. 2492, 2506 (2012) (citations omitted).  
21 Implicit in this statement and the statutory framework is the recognition that local law  
22 enforcement is not otherwise equipped to do such work. *See also generally* Dkt. # 19 at III.a.  
23

24 Despite these limitations, Agent Hafstad took Officer Leetz’s suspicions as to Mr.  
25 Vargas’s immigration status into account in his reasonable suspicion calculus. Ex. 3 at 27:1.  
26

27  
28 <sup>7</sup> U.S. CENSUS BUREAU: AM. CMTY. SURVEY REPORTS, “Language Use in the United States: 2011,” Aug.  
2013, Tbl 3, *available at* <http://www.census.gov/prod/2013pubs/acs-22.pdf> (last accessed Jan. 14, 2015).

1 Agent Wynn further explained that local law enforcement officers’ “suspicions *weigh heavily* in  
2 a Border Patrol Agent’s investigation into immigration status.” Wynn Decl. ¶7, Dkt. #16  
3 (emphasis added).<sup>8</sup> But Officer Leetz has never received any training on immigration law or on  
4 how to assess an individual’s immigration status. Ex. 1 at 20:13-15. He also does not purport to  
5 have any expertise in this field, noting that he contacted USBP precisely because assessing  
6 someone’s immigration status is something “I can’t handle... I don’t know how to handle it,”  
7 whereas USBP agents “are trained and know how to handle something like that.” *Id.* at 88:21-24.  
8 Officer Leetz did not even ask Mr. Vargas any questions about his alleged immigration status to  
9 be able to gauge whether his response seemed credible. *Id.* at 20:2-9. That USBP would take into  
10 consideration an untrained and uninformed assessment as to complex immigration law further  
11 undermines any purported reasonable suspicion analysis.  
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14 The two factors informing Officer Leetz’s assessment were the Social Security number  
15 issue and the alleged difficulty Officer Leetz had conversing with Mr. Vargas. Ex. 1 at 8:5-12.  
16 As established *supra*, neither factor was probative. His suspicion was *entirely* based on  
17 ignorance of the law and Mr. Vargas’s inability to speak perfect English—a factor that a USBP  
18 agent should have known was of limited value in determining reasonable suspicion. It was a  
19 “mere hunch” “based on broad profiles which cast suspicion on entire categories of people  
20 without any individualized suspicion of the particular person to be stopped.” *Sigmond-*  
21 *Ballesteros*, 285 F.3d at 1121 (internal quotation marks and citations omitted). USBP agents may  
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25 <sup>8</sup> Tellingly, when asked about the specific qualifications Officer Leetz or local law enforcement officers possess to  
26 make immigration-related determinations, Agent Hafstad responded that he did not know whether APD trained its  
27 officers in immigration matters, Ex. 3 at 46:21-23, but offered the opinion that an officer “knows his area... knows  
28 the people” and “can tell if something is wrong with an individual.” *Id.* at 29:12-19. More importantly, there is no  
case law or regulation that supports USBP’s assertions that they may rely on the suspicions of local law enforcement  
in determining whether there is reasonable suspicion.

1 not rely on hunches to support their reasonable suspicion analysis, *Arvizu*, 534 U.S. at 274-75, let  
2 alone rely on the hunch of a police officer who has received no training in immigration law.

- 3 4. The “location factors” allegedly considered by USBP are devoid of any probative  
4 value, as they are based on generalizations and speculation that apply to all Anacortes  
5 residents.

6 Agent Hafstad alleged that the fact that Mr. Vargas was stopped in Anacortes—a city  
7 with a maritime border and an international port of entry, a USBP checkpoint that had been  
8 closed for some two years, and “a population” of undocumented immigrants in the area—was  
9 another factor he would have considered in his reasonable suspicion analysis. *See* II.D, *supra*.  
10 But Agent Hafstad later clarified that he did not suspect that Mr. Vargas had just come from the  
11 ferry terminal. Ex. 3 at 27:12-14. Indeed, Mr. Vargas had a valid Washington driver’s license,  
12 indicating that he was a resident of the state. Ex. 1 at USAO284. There was thus no suspicion  
13 that Mr. Vargas was a recent border crosser. Proximity to border did not serve any probative  
14 value in the reasonable suspicion analysis if it was divorced from a suspicion that he had recently  
15 crossed that border. As the Fifth Circuit has explained, “‘reason to believe that the vehicle had  
16 come from the border’ is a vital element.” *United States v. Pallares–Pallares*, 784 F.2d 1231,  
17 1233 (5th Cir. 1986). If there is no reason to believe that the vehicle has come from the border,  
18 the remaining factors must be examined “charily.” *Id.* at 1234. What is more, any connection to  
19 the *Canadian* border is especially attenuated given that USBP suspected Mr. Vargas of coming  
20 from Latin America. *Cf. United States v. Martinez-Fuerte*, 428 U.S. 543, 564 n. 17 (1976)  
21 (“Different considerations would arise if, for example, reliance were put on apparent Mexican  
22 ancestry at a checkpoint operated near the Canadian border.”).

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26 Additionally, the alleged importance of these location factors is overstated and  
27 unsubstantiated. While proximity to the border is relevant where the record shows that “a  
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1 particular location or route is used predominantly for illegal purposes—including illegal  
 2 immigration,” the record here does not support such an allegation. *Manzo-Jurado*, 457 F.3d at  
 3 936 (citations omitted). Neither Agent Hafstad nor Agent Wynn was able to provide any  
 4 concrete data to substantiate the assertion that Anacortes is a hotbed of illicit border crossing  
 5 activity. Rather, they spoke in generalizations and conclusory statements. *See, e.g.*, Ex. 3 at  
 6 53:13 (noting that “illegal aliens *have* used the ferry”) (emphasis added); Ex. 7 at 38:1-40:8.  
 7 Indeed, Agent Hafstad noted that most of the individuals his agents have arrested in Anacortes  
 8 have entered the country through the southern border. Ex. 3 at 60:21-23. Defendant conceded  
 9 that USBP does not maintain records as to what percentage of the total number of undocumented  
 10 individuals apprehended by USBP in Anacortes in the last five years has been comprised of  
 11 border crossers unlawfully coming in from Canada, for example. Ex. 5 at #5. Allegations as to  
 12 the large undocumented population in Anacortes are similarly unsubstantiated. *See, e.g., id.* at #7  
 13 (Defendant does not maintain any records on this). Despite writing a declaration holding out this  
 14 allegation as a fact, Dkt. #16 ¶3, Agent Wynn could provide no concrete information or even  
 15 estimates as to this purportedly large undocumented population, eventually admitting that it was  
 16 his “opinion” that this was the case due to the presence of “seasonal farmers” in the area and  
 17 national “historical averages.” Ex. 7 at 56:17-59:7. Agent Leetz for his part testified that he was  
 18 not aware that there was a large undocumented population in Anacortes. Ex. 1 at 51:14.<sup>9</sup>

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 23 What is more, Agent Hafstad admitted that these factors “can apply...to anybody in the  
 24 area that’s in that location.” Ex. 3 at 29:7-8. Considering them, then, creates a “broad profile”

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 28 <sup>9</sup> Furthermore, the importance of the other location factors is also exaggerated. The international ferries arriving at Anacortes actually have to go through a checkpoint managed by Customs and Border Protection—it is the domestic ferries that no longer have a USBP checkpoint. Ex. 3 at 54:5-55:5. Moreover, while the allegation is that the USBP checkpoint was closed due to limited resources, the Bellingham USBP station has actually grown “substantially” since 2007. *Id.* at 53:20-54:2. The checkpoint closed in 2009—if there was a need for its continued operation, it would presumably not have closed given the increase in USBP resources. *Id.* at 49:22-24.

1 that could apply to lawful as well as unlawful immigrants and residents of Anacortes. *Manzo-*  
2 *Jurado*, 457 F.3d at 940. USBP agents may not “rely solely on generalizations that, if accepted,  
3 would cast suspicion on large segments of the lawabiding [sic] population.” *Id.* at 935 (citations  
4 omitted). These location factors are thus not probative in Mr. Vargas’s case.

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6 5. The records checks run by USBP prior to ordering Mr. Vargas’s arrest are also of  
7 minimal probative value in the reasonable suspicion and probable cause analysis.

8 The records checks run by USBP were only relevant to the reasonable suspicion analysis  
9 had Mr. Vargas admitted that he was born outside of the United States. Agent Hafstad and  
10 Defendant have recognized that the records check conducted by USBP while Mr. Vargas was at  
11 the scene of the traffic stop would not have returned information on all U.S.-born U.S. citizens or  
12 all foreign-born individuals lawfully in this country. *See* II.D, *supra*. Of all the immigration-  
13 related records checks conducted, the information that USBP gleaned merely indicated that Mr.  
14 Vargas had not been previously subject to criminal or immigration enforcement and was not  
15 registered in their databases, which record many but not all persons who have applied for or are  
16 included in applications for immigration benefits. *Id.* That Mr. Vargas did not did not have a  
17 record, then, was not necessarily indicative of citizenship or unlawful status.

18  
19 Indeed, his absence from those records would only have been relevant to the extent there  
20 had been a permissible basis for believing Mr. Vargas was born abroad. *See* Ex. 8 at #18  
21 (admitting “Mr. Vargas’s lack of an immigration record or history was indicative of an unlawful  
22 presence in the United States *if* he was not born in the United States”) (emphasis added). For this  
23 reason it is significant that Officer Leetz never asked Mr. Vargas questions regarding his  
24 citizenship or immigration status and that Mr. Vargas refused to answer Agent Hafstad’s  
25 questions at the scene of the traffic stop on this very topic. In fact, even Defendant recognizes  
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27

1 that [REDACTED], [REDACTED]

2 [REDACTED] *Id.*

3 The factors upon which Agent Hafstad ostensibly relied in ordering Mr. Vargas's arrest  
4 are comprised of uninformed and generalized assumptions based on, at best, hunches, and at  
5 worst, stereotypes. These factors cast a wide net that lacks the "particularized and objective  
6 basis" required to arrest an individual. *Arvizu*, 534 U.S. at 273.<sup>10</sup>

8 **B. USBP abused the process available to it when it falsified the information in Mr.  
9 Vargas's Form I-213.**

10 Prevailing on an abuse of process claim requires proving "an act in the use of legal  
11 process not proper in the regular prosecution of the proceedings" and "the existence of an  
12 ulterior purpose to accomplish an object not within the proper scope of the process." *Saldivar v.*  
13 *Momah*, 145 Wash. App. 365, 388 (2008) (internal quotation marks and citation omitted). The  
14 undisputed facts establish that USBP provided false information on Form I-213, Record of  
15 Deportable/Inadmissible Alien. *See* II.H, *supra*. One primary purpose of Form I-213 is to  
16 provide the legal basis for the arrest of the "Deportable Alien." Given the purpose of Form I-213,  
17 the circumstances surrounding Mr. Vargas's arrest, and the specificity of the false information  
18 provided, the only reasonable inference to draw is that USBP sought to misrepresent the manner  
19 in which Mr. Vargas was arrested. As such, Defendant is liable for abuse of process and this  
20 Court should grant Plaintiff's motion for summary judgment as to this claim.

23 **i. USBP's provision of manufactured evidence in Form I-213 was improper.**

24 The I-213 contains blatant misstatements about the manner in which Mr. Vargas was  
25 apprehended and the manner in which USBP obtained information to initiate removal  
26

27 <sup>10</sup> That USBP lacked a lawful basis to arrest Mr. Vargas is further exemplified by the fact that its agent(s) crafted a  
28 false narrative in the Form I-213 in order to furnish the needed justification. *See* IV.B, *infra*.

1 proceedings. This is especially grave given the crucial role the I-213 plays in immigration court  
2 proceedings. The form and its continuation pages (Form I-831) require that an officer “include  
3 the facts which demonstrate the legal basis for arresting an individual.” Ex. 7 at 14:20-23. It also  
4 serves as a basis for establishing alienage and removability in immigration court proceedings.  
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6 *See, e.g., Espinoza v. I.N.S.*, 45 F.3d 308, 311 (9th Cir. 1995), *as amended on denial of reh’g*  
7 (Jan. 12, 1995) (finding that I-213 was sufficient to demonstrate inadmissibility absent showing  
8 by respondent to counter statements); *Matter of Barcenas*, 19 I. & N. Dec. 609, 611 (BIA 1988)  
9 (“Absent any indication that a Form I–213 contains information that is incorrect or was obtained  
10 by coercion or duress, that document is inherently trustworthy and admissible as evidence to  
11 prove alienage and deportability.”). USBP agents thus fill out Form I-213 to “provide an accurate  
12 record” both of USBP’s “encounter with an individual” and “of the facts that *inform...USBP’s*  
13 *legal justification for seizure of an individual.*” Ex. 8 at ## 19, 20.

15           The facts on the I-213 documenting USBP’s initial encounter with Mr. Vargas (and  
16 accordingly, the legal justification for the seizure) are undisputedly false. While the form states  
17 that Agent Orr was dispatched to Anacortes to provide “translation assistance,” Ex. 7 at  
18 USAO33, both Agent Orr and Hafstad recognized that Agent Orr was sent to investigate Mr.  
19 Vargas’s immigration status—not provide interpretation assistance. *See* Ex. 3 at 39:23-40:8; Ex.  
20 4 at 12:15-24, 39:8-16. In fact, Agent Orr’s Spanish-language skills are so poor that he has never  
21 been asked to provide interpretation assistance to a local law enforcement agency. *Id.* at 60:19-  
22 61:5. The narrative in the I-213 specifically includes manufactured details that were clearly  
23 intended to buttress the allegation that there was a need for interpretation assistance: “Officer  
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1 Leetz stated [to Agent Orr at the scene of the traffic stop] that he had needed assistance  
2 translating because VARGAS-Ramirez spoke very limited English.” Ex. 7 at USAO33.<sup>11</sup>

3  
4 Among the other facts the I-213 misrepresents is the assertion that Agent Orr first met  
5 Mr. Vargas at the scene of the traffic stop. All individuals involved confirmed that Agent Orr  
6 first met him at APD. Ex. 4 at 40:2-3; Ex. 1 at USAO 284, 288; Ex. 2 at 58:2-7. This was *after*  
7 Officer Leetz had already been instructed by Agent Hafstad, to detain Mr. Vargas and transfer  
8 him to the APD. *See* Ex. 1 at USAO284. Most importantly, the I-213 attempts to justify Mr.  
9 Vargas’s arrest by asserting that, at the scene of the stop, Mr. Vargas said that he was from  
10 Mexico. Ex. 7 at USAO33. However, such an admission never happened because Mr. Vargas did  
11 not speak to Agent Orr at the scene of the traffic stop, ex. 4 at 40:15-18, and refused to answer  
12 Agent Hafstad’s questions on the phone. Ex. 2 at 49:19-50:23. Instead, he refused to answer  
13 questions without an attorney. *Id.*; Ex. 1 at 13:5-12, USAO284. The I-213 thus paints a very  
14 different story where Mr. Vargas admitted he was from Mexico and, only thereafter, insisted that  
15 he would not answer any more questions unless he had a lawyer. Ex. 7 at USAO33. It asserts that  
16 based on his admission of alienage Mr. Vargas was taken into custody. *Id.* But as is now  
17 undisputed, USBP ordered Mr. Vargas detained without any such concession.

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20 The I-213 constitutes abuse of process on its face: it provides untrue information as to  
21 USBP’s initial encounter with Mr. Vargas as well as the facts that informed USBP’s initial  
22 seizure of him. At the heart of an abuse of process claim is such “misuse or misapplication of the  
23 process, after the initiation of the legal proceeding, for an end other than that which the process  
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27 <sup>11</sup> Although agents Wynn and Reyes claimed that in practice the term “translation assistance” was widely used to  
28 encompass various types of assistance (not just translation assistance), neither Agent Hafstad nor Agent Orr  
understood the term to mean anything other than its literal meaning. *Compare* Ex. 7 at 15:17-17:13 and Ex. 6 at  
30:15-31:21 with Ex. 3 at 38:22-40:8 and Ex. 4 at 39:8-40:16.

1 was designed to accomplish.” *Saldivar*, 145 Wash. App. at 388 (citation omitted). The I-213  
2 narrative was misused to provide a falsified legal justification for Mr. Vargas’s arrest.

3 **ii. The I-213 narrative was very likely falsified for the inappropriate intention of**  
4 **covering up USBP’s unlawful seizure of Mr. Vargas.**

5 Courts examine whether legal procedures were “used in a manner consistent with the  
6 purpose for which the procedure is designed” in order to ascertain whether an improper purpose  
7 guided the use of the relevant legal process. *Hough v. Stockbridge*, 152 Wash. App. 328, 346  
8 (2009) (citation omitted). Here, the legal process was used in a manner wholly inconsistent with  
9 one of its purposes: to provide information that supported the legal basis for Mr. Vargas’s arrest  
10 and the removal charges against him. The facts are intentionally misrepresented, demonstrating  
11 that an improper purpose guided the drafting of the I-213. Given the facts of this case, the only  
12 reasonable inference is that the USBP agents responsible for filling out the form believed that  
13 Mr. Vargas’s initial seizure would be subject to scrutiny and thus sought to conceal any potential  
14 defect. As such, the drafting of the form constitutes an abuse of process.

17 **V. CONCLUSION**

18 For the foregoing reasons, Plaintiff requests that the Court grant partial summary judgment  
19 on his claims of false arrest, false imprisonment, and abuse of process by finding Defendant  
20 liable for these torts.

21 DATED this 15th of January, 2015.

23 Respectfully submitted,

24 s/ Matt Adams  
25 Matt Adams, WSBA No. 28287

26 s/ Glenda Aldana Madrid  
27 Glenda Aldana Madrid, WSBA No. 46987

28 NORTHWEST IMMIGRANT

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RIGHTS PROJECT  
615 Second Ave., Ste. 400  
Seattle, WA 98104  
Telephone: (206) 957-8611  
Fax: (206) 587-4025  
E-mail: matt@nwirp.org  
E-mail: glenda@nwirp.org

M. Elizabeth Hawkins, WSBA No. 43187  
Hawkins Law Group PLLC  
2200 Sixth Avenue, Suite 835  
Seattle, WA 98121  
Tel: (206) 728-4220  
Fax: (206)973-5326  
E-mail: ehawkins@hawkinsimmigration.com

*Attorneys for Plaintiff*  
*Gustavo Vargas Ramirez*

**CERTIFICATE OF SERVICE**

I, Matt Adams, hereby certify that on January 15, 2015, I electronically filed Plaintiff's Motion for Partial Summary Judgment under Rule 56, for Case 13-cv-02325-JLR, with the Clerk of the Court using the CM/ECF system, which automatically sends notification of such filing to the following CM/ECF participant:

Kristin B. Johnson  
United States Attorney's Office  
Western District of Washington  
700 Stewart Street, Suite 5220  
Seattle, WA 98101-1271  
Telephone: 206-553-7970  
Facsimile: 206-553-4073  
E-mail: kristin.b.johnson@usdoj.gov

DATED: January 15, 2015

By: s/ Matt Adams  
Matt Adams  
Northwest Immigrant Rights Project  
615 Second Ave., Ste. 400  
Seattle, WA 98104  
Telephone: (206) 957-8611  
Facsimile: (206) 587-4025  
E-mail: matt@nwirp.org  
WSBA No. 28287  
*One of the attorneys for Plaintiff*  
*Gustavo VARGAS RAMIREZ*