

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 03-21793-CIV-UNGARO-BENAGES

AMADO LÓPEZ,

Plaintiff,

v.

THE UNITED STATES OF AMERICA;
NOEMI MONTES DE OCA, CHRIS MASTON,
JOHN GARZON, ORLANDO TORRES, AND
MARY MEIER, in their individual capacities

Defendants

FIRST AMENDED COMPLAINT

INTRODUCTION

1. This case arises from an illegal detention and intrusive body search conducted on the Plaintiff, Mr. Amado Lopez, by United States Customs Officials at Miami International Airport. Mr. Lopez was illegally detained without probable cause or reasonable suspicion for a period of approximately ten (10) hours. During that period, Mr. Lopez was subjected to an intrusive and humiliating search of his person. He was also transported off site to a local hospital where he was subjected to an x-ray examination. No contraband was ever found in the possession of Mr. Lopez. The actions of U.S. Customs officers violated Mr. Lopez's rights under the Fourth and Fifth Amendments to the United States Constitution. Also, under the Federal Tort Claims Act, the United States of America is liable for actions undertaken by Customs officers all acting within the scope of their employment. Mr. Lopez seeks damages to compensate for injuries suffered as a consequence of this humiliating and devastating experience.

JURISDICTION AND VENUE

2. This action arises directly under the United States Constitution, as applied to federal employees through the case of Bivens v. Six Unnamed Agents of the Federal Bureau of Investigation, 403 U.S. 388 (1971).

3. This action, as against the United States of America, arises under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, *et seq.*

4. Plaintiff timely filed a Tort Claims Act administrative claim to the United States Customs Service. The United States Customs Service denied Plaintiff's administrative claim. All conditions precedent to a Federal Tort Claims Act have been met.

5. This court has jurisdiction under, and by virtue of, 28 U.S.C. §§ 1331, 1343 and 1346(b).

6. Venue is founded in this judicial district based on 28 U.S.C. §§ 1391 (e) (2) and 1402 (b), as the acts complained of occurred in this district.

PARTIES

7. Plaintiff, Amado Lopez, is a United States citizen and resident of Bronx, New York.

8. Defendant, the United States of America, has waived sovereign immunity as to Count IV, pursuant to the Federal Tort Claims Act.

9. Defendants, Chris Maston, Noemi Montes de Oca, John Garzon, Orlando Torres and Mary Meier during all times relevant to the events described in this complaint, were employed by Defendant United States as Customs Service officials working at Miami International Airport.

10. Said Defendants Customs Officials acted both as agents of the United States and are sued in their individual capacities under *Bivens*.

FACTS

11. On July 25, 2000, Mr. Lopez arrived at Miami International Airport on American Airlines flight #2134 at approximately 9:00 a.m. Mr. Lopez was traveling home from a vacation in Caracas, Venezuela and was scheduled to catch a connecting flight from Miami to his home in New York that same morning at approximately 11:00 a.m.

12. Mr. Lopez had purchased a round-trip ticket from New York to Venezuela through a travel agency for the purpose of visiting his children and family.

13. After arriving at the airport, Mr. Lopez claimed his luggage and proceeded to the Customs checkpoint. Defendants Customs Officials questioned Lopez and inspected his luggage.

14. While he was at the checkpoint, Defendant Monte de Oca and other defendants Customs officials approached him. Defendant Montes de Oca asked him for his credentials and traveling papers. Mr. Lopez complied with her request. Ms. Monte de Oca seized all his documents for inspection and advised him to follow her.

15. No contraband was found at the checkpoint. Nevertheless, Defendant Montes de Oca and other Defendants Customs Officials intensified their investigation by requiring Lopez to enter a small, enclosed room.

16. In this room, Defendants Customs Officials engaged in an interrogation, and complete search of his luggage. Plaintiff was also subjected to a pat-down search performed by Defendant Garzon and witnessed by Defendant Torres. Some Customs Officials repeatedly asked the same questions while other Customs Officials checked the entire content of his luggage. Plaintiff's luggage was thoroughly searched. Again, no contraband was found either upon his person or in his luggage.

17. Despite having evidence corroborating Mr. Lopez's statements, Defendants Customs Officials continued the detention and interrogation.

18. Defendants Customs Officials ordered Mr. Lopez to remove his clothes and proceeded to conduct a non-routine personal search, which was highly humiliating and invasive.

19. Defendant Custom Official gave Plaintiff a copy of the Miranda warnings and asked Plaintiff to sign it to waive all his rights. Mr. Lopez immediately asked a Customs official for a phone to call a lawyer or a friend, but they denied his request. Mr. Lopez refused to sign any papers because the Defendant Customs officers had refused to honor his request. Mr. Lopez did not waive any of his Miranda rights.

20. After being detained for several hours with no water and food, Mr. Lopez was escorted to the bathroom where he was observed while he relieved himself. No contraband was found.

21. Defendants Customs officers still refused to discharge Mr. Lopez. Customs officers ignored his request to call an attorney and persisted with the interrogation.

22. Even though the initial luggage and bodily inspection revealed no reasonable suspicion to continue the detention of Mr. Lopez, Defendants Customs officers asked him to sign another paper to consent to an x-ray of his stomach and abdominal area.

23. Defendant Mary Meier as Acting Port Director approved the x-ray search.

24. By this time, Mr. Lopez was hungry, thirsty, extremely tired and desperate to be released. Customs officer pressured him to sign the consent form if he wanted to be released soon.

25. After persistent threat of indefinite detention, Lopez signed the consent form under extreme duress and coercion. He reasonably believed that if he did not sign Customs officers would keep him detained indefinitely.

26. Defendants Customs officers proceeded to handcuff and chain Lopez for transportation to the hospital. Lopez remained handcuffed and chained while Customs officers prepared all the documentation. Customs officers kept coming in and out of the room continuing their interrogation.

27. Lopez was handcuffed when Customs officers took him out of this room and passed him by where other persons were waiting. Lopez was paraded through the crowd and taken to a waiting van and then driven to the Jackson Memorial Hospital.

28. After arriving at the hospital, Defendant Customs officer placed and handcuffed Lopez to a wheelchair. Lopez remained handcuffed and chained for a long period of time waiting for an x-ray room to be available.

29. Lopez was taken to a room where x-rays of the stomach and abdominal area were taken. The x-rays results came back negative. Again, no contraband was found.

30. At this point, Customs officers took Lopez back to the airport. Customs Supervisor Maston offered Plaintiff forty dollars (\$40) in cash as compensation, but Lopez did not accept the money.

31. Throughout the entire illegal detention and ordeal, Defendants Customs officers subjected Plaintiff to constant degrading ridicule and mockery.

32. Finally, after 7:30 p.m., Defendants Customs officers escorted Lopez to catch the next American Airlines flight to New York which was scheduled to depart at 8:15 p.m. from Miami and arrive at NY around 11:00 p.m. Mr. Lopez arrived at his home in Bronx around midnight.

33. As a result of the extremely outrageous wrongful acts alleged above, Plaintiff has suffered and continues to suffer extreme mental and physical pain, suffering, injury, fear, humiliation, emotional trauma, anguish, loss of earning capacity and loss of enjoyment of life.

Count I

Illegal Search and Seizure (Fourth Amendment)

34. This is a claim for violation of the Fourth Amendment to the United States Constitution.

35. The Defendants Maston, Montes de Oca, Garzon, Torres and Meier, individually and jointly violated the Fourth Amendment to the United States Constitution by illegally seizing, detaining, and searching Plaintiff, without reasonable or individualized suspicion and to an extent more invasive than justified.

36. Defendants Customs officials' conduct, in violation of the United States Constitution, is the direct and proximate cause of Plaintiff's severe physical, mental and emotional injuries, loss of earning capacity and loss of enjoyment of life.

37. All individual Defendants are, therefore, jointly and severally liable to Plaintiff in this action.

Count II

Invasion of Privacy (Fifth Amendment)

38. This is a claim for violation of the constitutional right to privacy under the Due Process Clause of the Fifth Amendment to the United States Constitution.

39. The Defendants Maston, Montes de Oca, Garzon, Torres and Mary Meier violated the Fifth Amendment to the United States Constitution by conducting an unduly invasive search, which infringed upon the Plaintiff's right to bodily integrity and autonomy, as described above, and to be free from government intrusion.

40. Defendants Customs officials' conduct, in violation of the United States Constitution,

is the direct and proximate cause of Plaintiff's severe physical, mental and emotional injuries, loss of earning capacity and loss of enjoyment of life.

41. All individual Defendants are, therefore, jointly and severally liable to Plaintiff in this action.

Count III

Violation of Due Process Protections (Fifth Amendment)

42. This is a claim for violation of the due process protections guaranteed by the Fifth Amendment to the United States Constitution.

43. The Defendants Maston, Montes de Oca, Garzon, Torres and Meier violated the Fifth Amendment to the United States Constitution by, among other things, conducting the non-routine personal search and x-ray exam described above without sufficient legal basis and by illegally detaining Plaintiff incommunicado.

44. Defendants Customs officials' conduct, in violation of the United States Constitution, is the direct and proximate cause of Plaintiff's severe physical, mental and emotional injuries, loss of earning capacity and loss of enjoyment of life.

45. All individual Defendants are, therefore, jointly and severally liable to Plaintiff in this action.

WHEREFORE, Plaintiff respectfully requests that this Court:

- a) declare that the individual Defendants have violated the Constitutional protections guaranteed by the Fourth and Fifth Amendments to the United States Constitution;
- b) enter judgment in favor of Plaintiff and against the individual Defendants;
- c) award damages to compensate Plaintiff for his injuries;

- d) award punitive damages against the individual Defendants to punish and deter them, and others, from engaging in similar conduct in the future;
- e) award Plaintiff pre-judgment interest;
- f) award costs and attorneys' fees; and
- g) award Plaintiff any other relief deemed necessary and proper.

Count IV

Federal Tort Claims Act

46. This claim is brought by Plaintiff against Defendant, the United States of America, for actions undertaken by Customs officers Montes de Oca, Maston, Garzon, Torres and Meier, all acting within the scope of their employment.

47. The aforementioned actions of the United States of America, through the actions of Montes de Oca, Maston, Garzon, Torres and Meier, acting within the scope of their employment, constitute false imprisonment, assault, battery, negligence, intentional infliction of emotional distress, and invasion of privacy under the laws of the State of Florida.

48. Customs officers' conduct, acting as agents of Defendant United States of America, is the direct and proximate cause of Plaintiff's severe physical, mental and emotional injuries, loss of earning capacity and loss of enjoyment of life.

49. In compliance with the requirements of the Federal Tort Claims Act, Plaintiff timely filed an administrative claim for relief with Defendant, the United States Department of Treasury and the United States Customs Service. The claim was denied. Accordingly, Plaintiff has now exhausted all administrative preconditions to filing this legal claim.

WHEREFORE, Plaintiff respectfully requests that this Court:

- a) declare that Defendant, the United States of America, has violated the Federal Tort Claims Act;
- b) enter judgment in favor of Plaintiff and against the Defendant;
- c) award damages in the amount of \$500,000 to compensate Plaintiff for his injuries;
- d) award costs and attorneys' fees; and
- e) award Plaintiff any other relief deemed necessary and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to Count I, II, and III.

Dated: November 6, 2003

Respectfully submitted,

s/ Rosalind J. Matos
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