

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES AZIZ MAKOWSKI,)
))
Plaintiff,)
))
v.)
))
ERIC HOLDER, JR., ATTORNEY GENERAL)
OF THE UNITED STATES; **ROBERT**)
MUELLER III, DIRECTOR OF THE FEDERAL)
BUREAU OF INVESTIGATION (FBI); **DAVID**)
CUTHBERTSON, FBI ASSISTANT DIRECTOR)
FOR CRIMINAL JUSTICE INFORMATION)
SERVICES (CJIS); **JANET NAPOLITANO,**)
SECRETARY OF THE DEPARTMENT OF)
HOMELAND SECURITY (DHS); **JOHN**)
MORTON, DIRECTOR OF U.S. IMMIGRATION)
AND CUSTOMS ENFORCEMENT (ICE) AND)
ITS OFFICE OF ENFORCEMENT AND)
REMOVAL OPERATIONS (ERO); **RAND**)
BEERS, DHS UNDER SECRETARY FOR THE)
NATIONAL PROTECTION AND PROGRAMS)
DIRECTORATE (NPPD); **DAVID C.**)
PALMATIER, UNIT CHIEF, ICE/ERO LAW)
ENFORCEMENT SUPPORT CENTER (LESC);)
RICARDO WONG, ICE/ERO DIRECTOR,)
CHICAGO FIELD OFFICE,)
))
IN THEIR OFFICIAL CAPACITIES,)
))
Defendants.)

CASE NO:

COMPLAINT

STATEMENT OF THE CASE

1. This complaint alleges that the Federal Bureau of Investigation’s (FBI) policy and practice of disclosing the fingerprints of United States citizens to Immigration and Customs Enforcement (ICE)¹ as part of the FBI’s participation in the immigration enforcement program Secure Communities, also known as Interoperability (hereinafter

¹ Immigration and Customs Enforcement is an agency within the Department of Homeland Security.

“Secure Communities/Interoperability”), violates the Privacy Act, 5 U.S.C. § 552a. As of April 30, 2012, the FBI has disclosed 16,160,398 fingerprints to ICE under the program, of which 15,241,874 are likely from U.S. citizens or non-removable Legal Permanent Residents and thus in violation of the Privacy Act.

2. In particular, on or around July 7, 2010, the FBI unlawfully disclosed the fingerprints of James Aziz Makowski (“Plaintiff”), a U.S. citizen from the age of one, to ICE in violation of 5 U.S.C. § 552a(b). As a result of the FBI’s violation of Mr. Makowski’s rights under the Privacy Act, Plaintiff suffered approximately two months of imprisonment, lost wages, attorneys’ fees and costs, and emotional pain and suffering.

3. This complaint further alleges that the Department of Homeland Security’s (DHS) failure to maintain its records as to Mr. Makowski’s citizenship with “accuracy, relevance, timeliness, and completeness” violated Plaintiff’s rights under 5 U.S.C. §§ 552a(g)(1)(C), (e)(5). Secure Communities/Interoperability relies heavily on the accuracy, relevance, timeliness, and completeness of DHS’s electronic database records. Through Secure Communities/Interoperability, ICE often initiates enforcement against an individual without ever interviewing the subject. DHS’s failure to maintain its records in accordance with its legal obligations resulted in its issuance of an immigration detainer against Plaintiff on July 8, 2010. ICE’s erroneous immigration detainer resulted in his imprisonment for approximately two months. As a result of DHS and ICE’s violations of Plaintiff’s rights under the Privacy Act, Plaintiff suffered his loss of liberty, lost wages, attorneys’ fees and costs, and emotional pain and suffering.

4. Plaintiff seeks to hold the FBI and ICE jointly and severally liable for the damages he has suffered due to the defendants’ violations of his rights under the Privacy

Act. Plaintiff seeks reasonable attorneys' fees and litigation costs for having to bring this action.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

6. This Court has jurisdiction to consider Plaintiff's Privacy Act claim pursuant to 5 U.S.C. §§ 552a(g)(1), (g)(5).

7. Venue is proper in this judicial district pursuant to 5 U.S.C. § 552a(g)(5) because Plaintiff resides in the district.

8. Venue is also proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1)(B) because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this district.

9. Finally, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1)(C) because Plaintiff resides in the district and the defendants are sued in their official capacities as officials and employees of the United States Government.

PARTIES

10. Plaintiff, James Aziz Makowski, acquired U.S. citizenship at the age of one through his adoptive U.S. parents. The former Immigration and Naturalization Service (INS), now DHS, issued Plaintiff a certificate of his U.S. citizenship on March 6, 1989. Plaintiff was arrested on July 7, 2010 in DuPage County, Illinois. Based on information and belief, the DuPage County Sheriff submitted Plaintiff's fingerprints to the FBI for a criminal background check. Through Secure Communities/Interoperability, the FBI automatically disclosed Plaintiff's fingerprints to ICE in violation of the Privacy

Act. Due to ICE's failure to update its records in over 20 years to reflect Plaintiff's citizenship, ICE erroneously issued an immigration detainer against Plaintiff, which resulted in his imprisonment for approximately two months.

11. Defendant Eric Holder, Jr. is the Attorney General of the United States. In his official capacity, Attorney General Holder has authority over the U.S. Department of Justice (DOJ), including the FBI. Attorney General Holder has ultimate authority over the FBI's development and participation in the Secure Communities/Interoperability immigration enforcement program. As a general matter, Attorney General Holder is ultimately responsible for the FBI's enforcement activities and the use of criminal history records, including fingerprints submitted to the FBI for review against its Integrated Automated Fingerprint Identification System (IAFIS) database.

12. Defendant Robert Mueller III is the Director of the Federal Bureau of Investigation. In his official capacity, Director Mueller is responsible for the FBI's development and participation in the Secure Communities/Interoperability immigration enforcement program. Director Mueller has day-to-day responsibility for the FBI's enforcement activities, oversight of the Bureau's Criminal Justice Information Services (CJIS) Division, and the Bureau's use of criminal history records, including fingerprints submitted to the FBI for review against its IAFIS database.

13. Defendant David Cuthbertson is FBI Assistant Director for CJIS. In his official capacity, Assistant Director Cuthbertson is responsible for the management of the CJIS Division and particularly the use of criminal history records, including fingerprints submitted to the FBI for review against its IAFIS database. Based on information and belief, Assistant Director Cuthbertson is responsible for oversight of the FBI's day-to-day

participation in Secure Communities/Interoperability—namely, all transmission of fingerprints and other records from the FBI to ICE’s Automated Biometric Identification System (IDENT) database for immigration background checks and the FBI’s decision to submit the results of the immigration background checks and FBI records for further immigration enforcement to ICE’s Law Enforcement Support Center (LESC).

14. Defendant Janet Napolitano is the Secretary of DHS, which includes the office of Immigration and Customs Enforcement (ICE). In her official capacity, Secretary Napolitano has ultimate authority over ICE’s development and participation in the Secure Communities/Interoperability immigration enforcement program. The Secure Communities/Interoperability program relies heavily on the accuracy, relevance, timeliness, and completeness of DHS’s electronic databases. Through Secure Communities/Interoperability, ICE does not require and often does not conduct interviews with individuals prior to initiating immigration enforcement against them through the issuance of an immigration detainer. Secretary Napolitano has ultimate responsibility for ensuring that DHS’s records are maintained in accordance with the Department’s legal obligations.

15. Defendant John Morton is the Director of Immigration and Customs Enforcement (ICE) and its division of Enforcement and Removal Operations (ERO) for DHS. In his official capacity, Director Morton is responsible for ICE’s development and participation in the Secure Communities/Interoperability immigration enforcement program. Director Morton is responsible for ICE’s policies and practices related to Secure Communities/Interoperability. The Secure Communities/Interoperability program relies heavily on the accuracy, relevance, timeliness, and completeness of DHS’s

electronic databases. As part of Secure Communities/Interoperability, ICE does not require and often does not conduct interviews with individuals prior to initiating immigration enforcement against them through the issuance of an immigration detainer. Director Morton has responsibility for ensuring that ICE maintains its records in accordance with its legal obligations and the development and implementation of ICE's policies and procedures before initiating immigration enforcement through an immigration detainer.

16. Defendant Rand Beers is DHS Under Secretary for the National Protection and Programs Directorate (NPPD). In his official capacity, Under Secretary Beers oversees the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program, which currently houses the DHS IDENT database used in the Secure Communities/Interoperability program. Under Secretary Beers is responsible that the records contained in the IDENT database are maintained in accordance with DHS's legal obligations.

17. Defendant David C. Palmatier is the Unit Chief for ICE/ERO's Law Enforcement Support Center (LESC) located in Vermont. In his official capacity, Chief Palmatier is responsible for oversight of the LESL's day-to-day participation in Secure Communities/Interoperability—namely, receipt of the FBI fingerprints, records, and immigration background checks of individuals against DHS's Automated Biometric Identification System (IDENT) database. Unit Chief Palmatier develops policies regarding and supervises any follow-up investigation of individuals against other records and coordinates with ICE's Field Offices in determining whether to issue immigration detainers against individuals.

18. Defendant Ricardo Wong is the Field Office Director (FOD) of the ICE/ERO Chicago Field Office, which has responsibility for Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas. In his official capacity, FOD Wong has responsibility, in coordination with ICE's LESC, for deciding whether to issue immigration detainers against individuals in DuPage County, Illinois who are identified through the Secure Communities/Interoperability program.

FACTUAL ALLEGATIONS

A. Secure Communities/Interoperability Program

19. In the aftermath of the tragedy of September 11, 2001, the U.S. Congress passed the "Enhanced Border Security and Visa Entry Reform Act of 2002," Pub. L. 107-173, 116 Stat. 548 (May 14, 2002) (hereinafter "Enhanced Border Security Act"). Title II, § 202 of the Enhanced Border Security Act instructed that the Executive Branch:

... shall develop and implement an interoperable electronic data system to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is relevant to determine whether to issue a visa or determine the admissibility or deportability of an alien.

8 U.S.C. § 1722(a)(2).

20. In 2005, DOJ, DHS and the State Department started to develop in earnest the contours and protocols for how this "interoperable electronic data system" would function. The plain meaning of 8 U.S.C. § 1722(a)(2) and its legislative history demonstrate that Congress intended ICE and Customs and Border Patrol (CBP) to have ready access to the FBI's records when ICE and CBP are confronted with an immigration enforcement decision against an individual. *See* 147 CONG. REC. S12247, 2001 WL 1521845 (Nov. 30, 2001); 147 CONG REC. H10465, 2001 WL 1637325 (Dec. 19, 2001);

148 CONG. REC. H2137, 2002 WL 876883 (May 7, 2002). Yet, the FBI and ICE decided to interpret Congress's grant of authority to allow for the development of a real-time electronic flow of records and information between the two agencies regardless of an individual's U.S. citizenship or LPR status. The FBI and ICE dubbed this indiscriminate records flow "Interoperability." The FBI and ICE's interpretation of 8 U.S.C. § 1722(a)(2) authority is irreconcilable with the agencies' legal obligations under the Privacy Act and the National Crime Prevention and Privacy Compact of 1998. *See* 5 U.S.C. § 552a; 42 U.S.C. § 14611, *et seq.*

21. In 2008, the FBI and ICE launched the Secure Communities/Interoperability program, which is described as "leveraging" existing criminal enforcement procedures to incorporate immigration enforcement. *See Ex. A*, ICE, "Secure Communities Standard Operating Procedures," at § 2.1 (2009) (hereinafter "Secure Communities SOP").

22. As the Secure Communities SOP describes, once a state or local jurisdiction is activated under Secure Communities/Interoperability, all fingerprints submitted by local law enforcement to the FBI for criminal background checks are automatically transmitted to DHS's IDENT database for immigration background checks and linked to the corresponding FBI record. The FBI and ICE activated DuPage County, Illinois on November 24, 2009. *Ex. B*, ICE, Activated Jurisdictions, at 7 (updated through June 5, 2012). As of June 5, 2012, the FBI and ICE have activated 97% of all law enforcement jurisdictions nationwide for Secure Communities/Interoperability. *Id.*

23. As of April 30, 2012, the FBI has disclosed 16,160,398 fingerprints to ICE under the program, of which ICE has identified 918,524 for possible immigration

enforcement. **Ex. C**, ICE, IDENT/IAFIS Interoperability Statistics, at 2 (updated through April 30, 2012). Accordingly, 15,241,874 fingerprints transmitted from the FBI to ICE are likely from U.S. citizens or non-removable Legal Permanent Residents (“LPRs”). Based on information and belief, ICE is currently storing all of these U.S. citizen fingerprints in violation of the Privacy Act.

24. Once the FBI transmits an individual’s fingerprints to ICE, the FBI receives a response (known as an IDENT Data Response (IDR)/Immigration Alien Response (IAR) or an “IDR/IAR message”) on whether the fingerprints match any contained in ICE’s IDENT database. The FBI reviews these responses and then transmits to ICE’s LESC all responses that match fingerprints in the IDENT database indicating a possible violation of immigration law and all “no match” responses where the individual’s place of birth is believed to be outside the United States or unknown.

25. Based on information and belief, ICE’s LESC reviews the responses transmitted from the FBI, the corresponding linked FBI record, and other DHS records to determine whether to initiate immigration enforcement through the issuance of an immigration detainer. Based on information and belief, ICE does not require its agents to interview individuals prior to issuing immigration detainers against them.

26. Based on its review of DHS’s records, ICE LESC communicates with the appropriate ICE Field Office regarding when to issue an immigration detainer against an individual within its area of responsibility. The ICE Field Office then issues the Form I-247 immigration detainer form, instructing local law enforcement that they must detain the individual for an additional 48 hours after local authority expires, so that ICE can

assume physical custody of the individual. Immigration detainers remain in effect even if an individual is transferred to a different facility, as happened in Plaintiff's case.

B. Application of Secure Communities/Interoperability to Plaintiff

27. Plaintiff was born on July 8, 1987 in Calcutta, India. Plaintiff's U.S. citizen parents adopted him when he was one year old, and he acquired U.S. citizenship through them. On March 6, 1989, the former INS, now DHS, issued Plaintiff a certificate of citizenship, which included his alien registration number. **Ex. D.** DHS uses the alien registration number as the record file number for an individual. Plaintiff has continuously lived in the United States since arriving as an infant, having departed only once for a family vacation to England. Plaintiff has had a U.S. passport since an early age and at all times relevant to this complaint had a current passport. **Ex. E.**

28. While in high school, Plaintiff decided to join the U.S. Marines. As part of the Marine's application process, Plaintiff had to undergo an FBI background check. Based on information and belief, the FBI had record that Plaintiff was a U.S. citizen and continued to have record of his citizenship during all events relevant to this complaint. Plaintiff was accepted into the Marines in 2004, entered active duty on July 18, 2005, and was discharged in October 2006.

29. On July 7, 2010, Plaintiff was arrested by law enforcement in DuPage County, Illinois.

30. DuPage County was activated for the FBI and ICE's Secure Communities/Interoperability on November 24, 2009. The DuPage County Sheriff's office took Plaintiff's fingerprints on July 7, 2010. Based on information and belief, his fingerprints were transmitted to the FBI and then automatically to the DHS IDENT

database through Secure Communities/Interoperability. Based on information and belief, the FBI further transmitted Plaintiff's fingerprints and records to the ICE LESC for follow-up immigration enforcement.

31. On July 8, 2010, without ever interviewing Plaintiff, ICE Agent Edward Stodolny from the ICE Chicago Field office issued an I-247 immigration detainer against Plaintiff to the DuPage County Jail. **Ex. F.** The immigration detainer included Plaintiff's alien registration number but inaccurately listed his nationality as "India." INS and then DHS has not properly updated its records in over 20 years to accurately reflect that Plaintiff was a citizen of the United States, not India.

32. Plaintiff's detainer indicated that ICE had initiated an investigation into whether Plaintiff was removable from the United States. Yet, based on information and belief, ICE did not conduct any further investigation into Plaintiff's case until Plaintiff's father sought assistance from an attorney to get the detainer canceled. Despite not having established probable cause to detain him, ICE instructed the DuPage County Jail that federal regulations required that it detain Plaintiff for an additional 48 hours after its authority expired so that DHS could assume physical custody. DHS never provided Plaintiff with notice of the immigration detainer or a mechanism to challenge its lawfulness. Had ICE interviewed Plaintiff or provided him an opportunity to challenge his detainer, he would have demonstrated his U.S. citizenship through his U.S. passport and other means.

33. On December 6, 2010, Plaintiff pleaded guilty to a drug offense and received a sentence of seven years with a recommendation for Plaintiff to participate in the Illinois Department of Corrections' (IDOC) "impact incarceration" program. **Ex. G.**

The IDOC “impact incarceration” program is a 120-day boot camp that would allow Plaintiff to be released on parole once he successfully completed the boot camp.

34. After sentencing, Plaintiff was transferred to the Stateville Correctional Center in Joliet, Illinois for processing into the “impact incarceration” program. Based on information and belief, ICE stations agents at the Stateville Correctional Center to screen for removable immigrants processed into the IDOC system. Based on information and belief, ICE had knowledge that an immigration detainer would automatically disqualify Plaintiff from the “impact incarceration” program.

35. During processing, Plaintiff met with an ICE officer. The ICE officer asked Plaintiff where he was born. Plaintiff explained that he was born in India but was a U.S. citizen. Plaintiff provided the ICE officer with his U.S. passport, among other identification documents for inspection. Based on information and belief, the ICE agent was aware of Plaintiff’s immigration detainer but did nothing to cancel it.

36. Soon after processing, Plaintiff learned that he had been automatically disqualified from the “impact incarceration” program due to ICE’s wrongful detainer. **Ex. H.** Instead of being transferred into the 120-day boot camp, Plaintiff was transferred from Stateville to the maximum security Pontiac Correctional Center to serve prison time. Plaintiff suffered considerable emotional distress at the prospect of having to serve a seven-year prison sentence instead of the 120-day boot camp.

37. In January 2011, Plaintiff’s father sought assistance from an attorney, Michael Byrne, to cancel the wrongful immigration detainer. Mr. Byrne first tried to make phone calls to ICE headquarters in Chicago, but ICE refused to cancel the detainer. Mr. Byrne ultimately was required to go in person to ICE’s Chicago office to convince

ICE to cancel the detainer. ICE agent Paul Morley canceled Plaintiff's wrongful detainer on January 25, 2011. **Ex. I.** Once the ICE detainer was canceled, Plaintiff was transferred to the Graham Correctional Center for processing into IDOC's "impact incarceration" program.

38. Plaintiff successfully finished the 120-day boot camp without incident and was released on July 20, 2011. Had the wrongful immigration detainer not been lodged against Plaintiff, he would have completed the 120-day boot camp and been released on parole by mid-May 2011.

C. Violations of Plaintiff's Privacy Act Rights

39. The Privacy Act, 5 U.S.C. § 552a, protects U.S. citizens and LPRs from indiscriminate disclosure by federal governmental agencies of records pertaining to them. In particular, 5 U.S.C. § 552a(b) prohibits a federal agency, such as the FBI, from disclosing any record, including fingerprints, contained in its systems of records to any other agency without the written consent of the individual to whom the record pertains.

40. Subsection (b) to the Privacy Act provides for certain limited exceptions by which an agency may be permitted to disclose a record without prior written consent of an individual. With respect to the FBI's disclosure of Plaintiff's fingerprints and other records to ICE, the FBI does not satisfy any of the exceptions listed in 5 U.S.C. § 552a(b). Moreover, 5 U.S.C. §§ 552a(j) & (k) do not permit the FBI to exempt itself from its legal obligations under 5 U.S.C. § 552a(b) nor from any civil liabilities that may flow from the FBI's breach of Plaintiff's rights under 5 U.S.C. § 552a(b).

41. Similarly, the Privacy Act requires that an agency, such as DHS and ICE, maintain its records on individuals "with such accuracy, relevance, timeliness, and

completeness as is reasonably necessary to assure fairness in any determination relating to the . . . rights . . . [of an] individual that may be made on the basis of such record” 5 U.S.C. § 552a(g)(1)(C); *see* 5 U.S.C. § 552a(e)(5). On March 6, 1989, the former INS, now DHS, issued Plaintiff a certificate of U.S. citizenship, yet it evidently never updated its internal records to reflect that he was a U.S. citizen. The Privacy Act does not permit DHS and ICE to exempt themselves from their legal obligations under 5 U.S.C. §§ 552a(g)(1)(C) & (e)(5) nor from any civil liabilities that may flow from DHS and ICE’s breach of Plaintiff’s rights under those subsections. *See* 5 U.S.C. §§ 552a(j) & (k).

42. The FBI’s disclosure of Plaintiff’s fingerprints and records and DHS’s and ICE’s failure to maintain their records in accordance with their legal obligations resulted in Plaintiff serving approximately two months in prison due to a wrongful immigration detainer lodged against him. In addition to his loss of liberty and the psychological trauma of prison, Plaintiff suffered lost wages and had to seek legal assistance to cancel the unlawful immigration detainer.

FIRST CLAIM FOR RELIEF
Against Holder, Mueller, and Cuthbertson
(Privacy Act Violation, 5 U.S.C. § 552a(b))

43. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 42.

44. Through the FBI’s development and participation in the Secure Communities/Interoperability program, Defendants Holder, Mueller and Cuthbertson (collectively “DOJ Defendants”) decided to disclose fingerprints of all U.S. citizens and non-removable LPRs to ICE in violation of the Privacy Act, 5 U.S.C. § 552a(b). On

November 24, 2009, the FBI (in consultation with ICE) activated the Secure Communities/Interoperability program in DuPage County, Illinois.

45. Plaintiff acquired U.S. citizenship at the age of one. The FBI had record of Plaintiff's citizenship by 2004 at the latest, when Plaintiff underwent a background check to enter the U.S. Marines, and has continued to have record of his citizenship to the present.

46. On or around July 7, 2010, the FBI transmitted Plaintiff's fingerprints and other FBI records from its IAFIS database to the DHS IDENT database to check for immigration violations. That same day or the next, the FBI further transmitted Plaintiff's fingerprints and records to the ICE LESC for follow-up immigration enforcement.

47. Plaintiff asserts that the FBI's transmission of his fingerprints and records to the DHS IDENT database and follow-up transmission to the ICE LESC violated his rights under 5 U.S.C. § 552a(b).

48. The FBI's disclosure of Plaintiff's fingerprints and records in violation of 5 U.S.C. § 552a(b) caused Plaintiff an adverse effect. 5 U.S.C. § 552a(g)(1)(D). The FBI's decision to share Plaintiff's fingerprints and records through Secure Communities/Interoperability was intentional and willful within the meaning of 5 U.S.C. § 552a(g)(4).

49. As a proximate result of DOJ Defendants' violations of his rights under the Privacy Act, Plaintiff had a wrongful immigration detainer lodged against him, which resulted in him serving approximately two months in prison. In addition to his loss of liberty and the psychological trauma of prison, Plaintiff suffered lost wages and had to

seek legal assistance to cancel the unlawful immigration detainer. 5 U.S.C. § 552a(g)(4)(A).

SECOND CLAIM FOR RELIEF
Against Napolitano, Morton, Beers, Palmatier and Wong
(Privacy Act Violation, 5 U.S.C. §§ 552a(g)(1)(C) & (e)(5))

50. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 49.

51. In developing the Secure Communities/Interoperability program Defendants Napolitano, Morton, Beers, Palmatier, and Wong (collectively, “DHS Defendants”) decided that they would rely heavily on the accuracy, relevance, timeliness, and completeness of DHS’s electronic database records. This reliance is heightened because under the Secure Communities/Interoperability program, DHS Defendants do not require that an individual be interviewed before initiating immigration enforcement through the issuance of a detainer.

52. Plaintiff acquired U.S. citizenship at the age of one. On March 6, 1989, DHS’s predecessor agency, INS, issued Plaintiff a certificate of U.S. citizenship. The certificate included Plaintiff’s alien registration number, which indicates that the certificate and other documentation of his citizenship should have been incorporated in his DHS records. Likewise, Plaintiff obtained a U.S. passport at an early age and has had a current passport to the present.

53. Plaintiff asserts that DHS’s failure to update its records in over 20 years to reflect his U.S. citizenship violates the Department’s legal obligations to maintain its records with such accuracy, relevance, timeliness, and completeness as required by 5 U.S.C. §§ 552a(g)(1)(C) & (e)(5).

54. DHS's failure to comply with its legal obligations under the Privacy Act caused Plaintiff an adverse effect. 5 U.S.C. § 552a(g)(1)(C). DHS's failure to maintain its records with the requisite accuracy, relevance, timeliness, and completeness was intentional and willful within the meaning of 5 U.S.C. § 552a(g)(4).

55. As a proximate result of DHS Defendants' violations of Plaintiff's rights under the Privacy Act, Plaintiff had a wrongful immigration detainer lodged against him, which resulted in him serving approximately two months in prison. In addition to his loss of liberty and the psychological trauma of prison, Plaintiff suffered lost wages and had to seek legal assistance to cancel the unlawful immigration detainer. 5 U.S.C. § 552a(g)(4)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Issue an order holding the DOJ and DHS Defendants jointly and severally liable for Plaintiff's damages, including but not limited to his loss of liberty for approximately two months, emotional distress, lost wages, and attorneys' fees and costs related to canceling his immigration detainer;
- b. Grant Plaintiff reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552a(g)(4)(B), and other applicable law; and
- c. Grant such other relief as this Court deems just and proper.

Respectfully submitted this 3rd day of July, 2012,

/s/ Geoffrey A. Vance
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