

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

MIRNA RUBIDIA ARTIGA CARRERO
218 Melvin Avenue
Baltimore, Maryland 21228

Plaintiff,

v.

CHRISTOPHER FARRELLY;
2518 228th Street
Pasadena, Maryland 21122

Case No.: _____

BALTIMORE COUNTY, MARYLAND;
Serve on: Michael E. Field, Cty. Attorney
Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

THE UNITED STATES OF AMERICA;
Serve on: U.S. Department of Justice
Washington, D.C. 20530

LORETTA LYNCH;
U.S. Department of Justice
Washington, D.C. 20530

JEH CHARLES JOHNSON;
U.S. Department of Homeland Security
Washington, D.C. 20528

and,

SARAH SALDAÑA;
U.S. Immigration and Customs Enforcement
Washington, D.C. 20536

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF,
COMPENSATORY DAMAGES, AND PUNITIVE DAMAGES**

PRELIMINARY STATEMENT

1. Plaintiff Mirna Rubidia Artiga Carrero (“Plaintiff” or “Ms. Artiga”) brings this civil rights complaint against Baltimore County Police Officer Christopher Farrelly, Baltimore County, the United States of America, and certain federal officials for monetary damages and injunctive relief based on their respective roles in causing Ms. Artiga to be unconstitutionally and otherwise unlawfully stopped, seized, and detained by Officer Farrelly in August 2014.

2. Ms. Artiga is a 29-year-old citizen of El Salvador residing in Maryland. On August 26, 2014, Officer Farrelly racially profiled and unconstitutionally stopped, seized, and detained Ms. Artiga before he transferred her to the custody of United States Immigration and Customs Enforcement (“ICE”), where she remained for six weeks, separated from her husband and son, a United States citizen who was scheduled for surgery at the time and who has ongoing special needs.

3. Officer Farrelly stopped Ms. Artiga on the basis of her ethnicity, detained her unlawfully to investigate her immigration status, and continued to hold her on the basis of an outstanding civil immigration warrant, all in violation of well-established law.

4. The federal government caused this unlawful conduct by its practice of wrongly entering and maintaining civil immigration records in the National Crime Information Center (“NCIC”) database, which is accessed by state and local law enforcement officers, like Officer Farrelly, across the country. The entry of such records is ultra vires to the authority conferred on the relevant federal agencies by Congress.

5. Ms. Artiga seeks monetary damages for this unconstitutional or otherwise unlawful conduct by the Baltimore County and federal officials. Mr. Artiga also seeks

declaratory and injunctive relief against the federal officials responsible for maintaining and entering her civil immigration information into the NCIC database in order to prevent these, or similar, violations of her constitutional rights from reoccurring.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and § 1343 (civil rights) because it arises from the U.S. Constitution and 42 U.S.C. § 1983. The Court has authority to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. On September 17, 2015, Ms. Artiga filed an administrative complaint with the federal government as required by the Federal Tort Claims Act (“FTCA”). Her claim was denied on July 19, 2016. *See* Ex. 1, FTCA Claim Denial Letter. She has therefore exhausted her administrative remedies for purposes of her claims against the United States under the FTCA. *See* 28 U.S.C. § 2401(b).

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1402(b).

PARTIES

9. Plaintiff Mirna Artiga is a 29-year old citizen of El Salvador who lives, and, at all relevant times, lived in Baltimore County, Maryland with her husband and son.

10. Defendant Christopher Farrelly has been at all relevant times a police officer employed by the Baltimore County Police Department acting within the scope and course of his employment with the Baltimore County Police Department. Officer Farrelly is sued in his individual capacity.

11. Defendant Baltimore County is a political subdivision of the State of Maryland that can sue and be sued in its own name. Defendant Baltimore County includes, operates, and is responsible for the Baltimore County Police Department and all of its officers.

12. The United States is sued under the FTCA for the acts and omissions of its law enforcement officials, namely, the Department of Homeland Security officials who enter information about civil immigration violations into the NCIC database and the ICE officials who direct state and local law enforcement officials to act on those civil immigration records.

13. Defendant Loretta Lynch is the Attorney General of the United States and the head of the United States Department of Justice, which is responsible for the policy authorizing the entry, maintenance, and dissemination of civil immigration records into the NCIC database. She is sued in her official capacity.

14. Defendants Jeh Charles Johnson and Sarah Saldaña are, respectively, the Secretary of the United States Department of Homeland Security (“DHS”) and the Director of ICE, a component agency of DHS. Both agencies populate the NCIC database with civil immigration records including outstanding civil administrative warrants of arrest or orders of removal like the one that Officer Farrelly and ICE agents relied on to detain Ms. Artiga. Defendants Johnson and Saldaña are sued in their official capacities.

FACTUAL ALLEGATIONS

Officer Farrelly Illegally Stops and Detains Ms. Artiga

15. At approximately 12:30 a.m. on August 26, 2014, after a long night's work at a fast food restaurant in Ellicott City, Maryland, Ms. Artiga began to drive home with her sister, who was also working the same shift.

16. Following her usual route, Ms. Artiga turned right out of the parking lot and drove east along U.S. Route 40. Shortly after crossing into Baltimore County from Howard County, Ms. Artiga noticed an unusually heavy police presence.

17. As Ms. Artiga approached the intersection with Rolling Road, Officer Farrelly was stopped in the left lane of the two eastbound lanes on Route 40 at that intersection. Ms. Artiga slowed her vehicle to stop at the red light in the right lane next to Officer Farrelly's vehicle. Officer Farrelly turned to look at her. Ms. Artiga is a native of El Salvador, and, on information and belief, Officer Farrelly could clearly observe that Ms. Artiga appeared to be Latina.

18. When the light turned green, Ms. Artiga moved her vehicle forward and Officer Farrelly moved into the right lane behind her. Although Ms. Artiga had not committed any traffic or criminal violation, Officer Farrelly activated the signal lights on his vehicle and instructed Ms. Artiga to pull over shortly after she turned right onto Old Frederick Road. Ms. Artiga pulled over immediately.

19. Officer Farrelly had no lawful justification to stop Ms. Artiga. Although Officer Farrelly was required to document any traffic stop, including the original purpose for such a stop regardless of the outcome, no record of the stop exists and Ms. Artiga was not issued any citation. *See* Md. Code Ann., Transp. § 25-113, and Baltimore County

Police Department Policy, Ex. 2, Baltimore County Police Department Special Order #07-01; *see also* Ex. 3, MPIA Response from the Baltimore County Police Department finding no record of any traffic stop or citation against Ms. Artiga on that date.

20. Once their vehicles were stopped, Officer Farrelly got out of his car and approached Ms. Artiga's vehicle. Ms. Artiga lowered her window and Officer Farrelly asked for her driver's license and proof of insurance. Ms. Artiga handed him her driver's license, which is marked "Not Acceptable for Federal Purposes." That notation is reserved for driver's licenses issued to individuals who are not able to provide proof of lawful immigration status to the Maryland Motor Vehicle Administration.

21. Officer Farrelly told Ms. Artiga to wait and returned to his vehicle. While at his vehicle, Officer Farrelly searched the NCIC database for information about Ms. Artiga. The NCIC database revealed that Ms. Artiga had only an outstanding administrative warrant of removal, and no criminal record.

22. By contrast to judicial warrants, which are issued only upon a showing of probable cause to believe that an individual has or is engaged in criminal activity, an administrative warrant of removal is issued by an ICE employee, without any judicial review or showing of probable cause, and is civil in nature. Local officials, like Officer Farrelly, do not have authority to detain an individual on the basis of an administrative warrant of removal. Nevertheless, Officer Farrelly prolonged his stop of Ms. Artiga and detained her solely on that basis.

23. About ten minutes later, after taking Ms. Artiga's identification information, Officer Farrelly returned to Ms. Artiga's car. Ms. Artiga then asked Officer Farrelly why he had stopped her. Officer Farrelly replied that he had stopped her because

she did not have insurance. Officer Farrelly's statement was false. Ms. Artiga's vehicle was properly insured by State Farm. Ex. 4, Payment Confirmation for Auto Policy Premium for Period May 2014 through November 2014. After Ms. Artiga told Officer Farrelly that her vehicle was insured, he told her to wait in her car again.

24. Officer Farrelly returned to his car and remained there for about another ten minutes. When he returned to Ms. Artiga's car he began asking her questions that were unrelated to any motor vehicle violation that could have justified the stop. Instead, Officer Farrelly began to ask her questions regarding her immigration status. For example, Officer Farrelly asked Ms. Artiga (a) whether she had ever had problems with the police or with immigration authorities, (b) whether she had any children, (c) the names of her parents and other family members, and (d) whether she had any tattoos.

25. At the conclusion of his questions, Officer Farrelly told Ms. Artiga that he had to arrest her. When she asked him why, Officer Farrelly simply stated that he had to investigate her situation further and needed to get more information. Officer Farrelly instructed Ms. Artiga to get out of her car and placed her in the back of his patrol vehicle.

26. Officer Farrelly then called someone using his cell phone. It appeared to Ms. Artiga that the person on the other end of the phone was instructing him to transport Ms. Artiga to a specific location and was giving him directions. Officer Farrelly appeared unfamiliar with their destination. He made several U-turns and additional calls on his cell phone to ask for assistance.

27. At approximately 2 a.m. on August 26, 2014, Officer Farrelly arrived with Ms. Artiga at the Howard County Detention Center in Jessup, Maryland. They waited in the parking lot for a few minutes until a black vehicle pulled up next to them. A man

wearing a black shirt emblazoned with the letters “I.C.E.” got out of the vehicle and Officer Farrelly transferred Ms. Artiga to his custody. The ICE agent placed her in handcuffs and escorted her inside the Howard County Detention Center.

28. Ms. Artiga remained in the Howard County Detention Center until approximately 7 a.m. on August 26, 2014, when the same ICE officer who had met her and Officer Farrelly earlier that morning transported her to the ICE office in Baltimore. In Baltimore, Ms. Artiga was interviewed by an ICE Deportation Officer who stated: “We weren’t looking for you, but we found you.”

29. After being interviewed and fingerprinted in Baltimore, Ms. Artiga was transferred to an immigration detention facility in Snow Hill, Maryland, where she remained for six weeks until an attorney hired by her husband was able to secure her release.

30. During her detention, Ms. Artiga was separated from her young U.S. citizen son, who was scheduled for surgery at the time and who has ongoing special needs, as well as the rest of her family and friends. She was afraid and confused, and she suffered severe emotional distress, both as a result of the traffic stop itself and the detention that followed.

Limitations on Immigration Enforcement by Baltimore County

31. State and local law enforcement officials do not have the authority to arrest, detain, or prolong the detention of someone solely for civil immigration enforcement purposes. *See Arizona v. United States*, 132 S.Ct. 2492 (2012); *Santos v. Frederick County Board of Commissioners*, 725 F.3d 451 (4th Cir. 2013). At the time Officer Farrelly stopped, seized and detained Ms. Artiga, Baltimore County supervisors

and officials were aware that their police officers do not have this authority. *See* Ex. 5, September 25, 2013 Letter to Baltimore County Police Department from the ACLU and CASA detailing limits on authority of local police to enforce immigration law.

32. Notwithstanding the well-established legal limitations on such conduct, Officer Farrelly unlawfully stopped and detained Ms. Artiga solely to investigate her immigration status and prolonged the stop on the basis of the records unlawfully placed into NCIC indicating that she had an outstanding administrative warrant of removal

33. On information and belief, at no time before Ms. Artiga was stopped did the Baltimore County Police Department provide specific training to Officer Farrelly or to any of his fellow patrol officers about the unlawfulness of stopping and arresting a person solely on suspicion of a civil immigration violation.

34. The Baltimore County Police Department field manual did not (and to this day, does not) advise officers that it is unlawful to stop, arrest, or otherwise detain someone solely on suspicion of that person's immigration status. *See* Ex. 6, Baltimore County Field Manual Excerpt.

35. Further, the Baltimore County Police Department field manual does not (and before Ms. Artiga was stopped, did not) advise that prolonging a stop solely for the purpose of civil immigration enforcement is unlawful. It only encourages its officers to contact ICE when they arrest a person who is not a U.S. citizen. *See id.*

36. On information and belief, at some point during Officer Farrelly's stop of Ms. Artiga, ICE officials became aware that Officer Farrelly had stopped, detained, and prolonged his detention of Ms. Artiga based on the civil administrative immigration record in NCIC. Further, those officials knew that state and local law enforcement

officials do not have the authority to enforce civil immigration laws. Notwithstanding that knowledge, the ICE officials with whom Officer Farrelly communicated instructed Officer Farrelly to detain and transport Ms. Artiga to ICE custody in Howard County, Maryland. In doing so, they encouraged and perpetuated her unlawful seizure by Officer Farrelly.

37. On information and belief, before this incident, an official or officials at DHS entered and has or have since continued to maintain the civil administrative warrant of arrest or order of removal against Ms. Artiga in the NCIC database. He, she, or they did so pursuant to policies issued by the Department of Justice, even though the NCIC authorizing statutes (as described more fully below) limit the information allowed to be entered into the database to *criminal* warrants of arrest, with a few enumerated exceptions that do not permit the entry of civil immigration warrants or final orders of removal. *See* 28 U.S.C. § 534 and 8 U.S.C. § 1252c(b).

**The Illegal Entry and Maintenance of Ms. Artiga’s
Civil Immigration Records in NCIC**

38. Pursuant to 28 U.S.C. § 534, Congress has limited the type of information that may be entered into the NCIC database. Section 534 only permits the Attorney General to “acquire, collect, classify, and preserve identification, criminal identification, crime, and other records.”

39. Since its passage in 1930, Congress has amended the language now found in § 534 multiple times, but has never authorized federal agencies to enter information about civil immigration warrants wholesale into NCIC. In 1996, in a separate section of the United States Code, 8 U.S.C. § 1252c, Congress authorized the entry of records related to previously deported felons. The history of Congress’ amendments to § 534 and

its special treatment of a subset of immigration records in § 1252c indicate that the language in § 534 is limiting.

40. Notwithstanding the limiting nature of that language, in late 2001, the Department of Justice via its then-subordinate agency the Immigration and Naturalization Service (“INS”) began identifying persons with outstanding civil immigration warrants in NCIC, for example, because they had been ordered removed but had not yet departed the United States.

41. The decision to include immigration information in NCIC was made by high-ranking officials in the Department of Justice and caused the names of persons who had only outstanding civil immigration warrants, and no criminal record, to be placed into the NCIC.

42. By authorizing the entry of civil immigration information into the NCIC, Department of Justice and INS officials intended to induce and cause state and local law enforcement officers to unilaterally detain individuals based solely on their suspected immigration status, just as Officer Farrelly did when he stopped and detained Ms. Artiga.

43. Entering immigration information into NCIC represented a sea change in the interpretation of both 28 U.S.C. § 534 and the federal government’s view of the authority that state and local police officers have to make immigration arrests.

44. At the time the decision to enter immigration information into NCIC was made, longstanding guidance from the Department of Justice advised that state and local police officers were prohibited from making immigration arrests. *See* Ex. 7, Memorandum for Joseph R. Davis, Assistant Director – Legal Counsel FBI from USDOJ OLC, April 11, 1989 at 2 n.3 (citing Memorandum for Acting Director, FBI from

Raymond F. Farrell, Commissioner, INS, Jan. 11, 1973 at 2 (“[S]tate or local law enforcement officials are not authorized to execute INS warrants of arrest.”); *id.* at 4 (“[W]e question whether state or local law enforcement officers may make [immigration-related] arrests where the alien has not committed a criminal offense.”); Ex. 8, Assistance by State and Local Police in Apprehending Illegal Aliens (Feb. 5, 1996). As a result, these government officials set out to undermine the prior Department of Justice guidance on the issue and to actively encourage state and local police officers to make immigration-based arrests.

45. A July 2002 Department of Justice memorandum stated that “[m]ost state authorities do not believe they have authority to arrest for civil immigration violations, based in part on Department of Justice statements on the issue in recent decades.” Accordingly, the memorandum continued, “there is a substantial likelihood that many states will decline to respond to INS entries in NCIC, undercutting the effectiveness of the” program pursuant to which such entries were authorized. The memorandum therefore advocated the release of another April 3, 2002, memorandum prepared by the Office of Legal Counsel (“OLC”), which effectively undid decades of prior Department of Justice legal guidance by affirmatively, though incorrectly, stating that state police have inherent authority “to arrest aliens on the basis of civil deportability.”

46. For their part, Department of Justice officials used their government positions to encourage local police officials to make immigration arrests and to enforce immigration laws. Michael J. Wishnie, State and Local Police Enforcement of Immigration Laws, 6 U. Pa. J. Const. L. 1084, 1085-87 (2004) (citing Letter from John Ashcroft, Attorney General, to William Casey, Deputy Superintendent, Boston Police

Department (May 13, 2003) and Minutes from Criminal Justice Information Services Division, Advisory Policy Board meeting 45-48 (June 4-5, 2003)); Hannah Gladstein, et al., Migration Policy Institute, Blurring the Lines: A Profile of State and Local Police Enforcement of Immigration Law Using the National Crime Information Center Database, 2002-2004 (2005).

47. Since that time, both the Supreme Court and the Fourth Circuit have reaffirmed that, contrary to the novel and unprecedented legal argument asserted in the April 2002 OLC memorandum, state and local officials do not have the inherent authority to arrest someone solely for civil immigration violations.

48. On information and belief, the civil immigration information about Ms. Artiga was unlawfully entered into the NCIC system sometime in 2005 pursuant to the Department of Justice and INS orders in 2001 and 2002, and continues to be maintained in NCIC to this day.

49. Although it is illegal for state and local law enforcement officials to arrest, detain, or prolong the detention of someone solely for immigration enforcement purposes, the Attorney General, the Secretary of DHS, and the Director of ICE continue to authorize a policy of maintaining immigration information into the NCIC system and disseminating that information to state and local law enforcement authorities. In doing so, they are unlawfully causing civil immigration records concerning Ms. Artiga to remain in the NCIC system.

50. The presence of Ms. Artiga's immigration records in NCIC enabled and encouraged Officer Farrelly to unlawfully arrest, detain, and prolong the detention of Ms. Artiga for the sole purpose of investigating her immigration status and enforcing civil

immigration laws. Because Ms. Artiga's arrest would not have occurred but for the presence of the civil immigration information in the NCIC database, the existence of this information in NCIC without any statutory authority caused Ms. Artiga's arrest and is likely to lead to her unlawful arrest again in the future.

CAUSES OF ACTION

First Cause of Action Fourth and Fourteenth Amendments (42 U.S.C. § 1983) Unreasonable Seizure Against Officer Farrelly and Baltimore County

51. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as though set forth fully herein.

52. Each of Officer Christopher Farrelly's actions in stopping, arresting, and detaining Ms. Artiga, whether based on her Latino appearance, or whether for the sole purpose of investigating her immigration status and enforcing civil immigration laws, constituted an unreasonable seizure in violation of Ms. Artiga's rights under the Fourth and Fourteenth Amendments.

53. The Baltimore County Police Department, a division of Baltimore County, failed to train Officer Farrelly that such conduct is illegal, which caused Ms. Artiga's unlawful detention.

Second Cause of Action Fifth and Fourteenth Amendments (42 U.S.C. § 1983) Equal Protection Against Officer Farrelly and Baltimore County

54. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as though set forth fully herein.

55. Each of Officer Christopher Farrelly's actions in stopping, arresting, and detaining Ms. Artiga, whether based on her Latino appearance, or whether for the sole purpose of investigating her immigration status and enforcing civil immigration laws, constituted a violation of Ms. Artiga's Equal Protection rights under the Fifth and Fourteenth Amendments.

56. The Baltimore County Police Department, a division of Baltimore County, failed to train Officer Farrelly that such conduct is illegal, which caused Ms. Artiga's unlawful detention.

**Third Cause of Action
Fourth Amendment
Unreasonable Seizure
Against Defendants Lynch, Johnson, and Saldaña**

57. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as though set forth fully herein.

58. Defendants Lynch, Johnson, and Saldaña's perpetuation and continuing authorization of the entry and maintenance of the civil administrative warrant or final order or removal against Ms. Artiga into the NCIC, which Defendants know is disseminated to state and local law enforcement agencies and officers, caused Ms. Artiga's unlawful detention by Officer Farrelly.

59. As a proximate result of Defendants' action, or inaction, in failing to remove immigration records from NCIC, Ms. Artiga is at imminent risk of suffering an unlawful seizure by state or local law enforcement officials in the future. Ms. Artiga has no plain, adequate, or complete remedy at law to address this wrong and the injunctive and declaratory relief she seeks is necessary to prevent a future injury like the one she suffered as a result of Officer Farrelly's conduct.

Fourth Cause of Action
Agency Action Ultra Vires to Statutory Authority Under 28 U.S.C. § 534
Against Defendants Lynch, Johnson and Saldaña

60. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as though set forth fully herein.

61. The decision by former DOJ, INS, and DHS officials to include immigration records like Ms. Artiga's in NCIC exceeded the authority granted to them by statute.

62. As a proximate result of that decision and Defendants' action, or inaction, in failing to remove records from NCIC, Ms. Artiga is at imminent risk of suffering an unlawful seizure by state or local law enforcement officials in the future. Ms. Artiga has no plain, adequate, or complete remedy at law to address this wrong and the injunctive and declaratory relief she seeks is necessary to prevent a future injury like the one she suffered as a result of Officer Farrelly's conduct.

Fifth Cause of Action
False Arrest/False Imprisonment
Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346
Against the United States

63. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as though set forth fully herein.

64. DHS employees' unlawful entry of the civil administrative warrant against Ms. Artiga into NCIC and its dissemination to state and local law enforcement offices caused Ms. Artiga to be unlawfully and tortiously arrested and imprisoned.

65. The inducement and encouragement of Officer Farrelly's unlawful behavior by the ICE officials with whom he communicated on the day he stopped Ms. Artiga further caused Ms. Artiga to be unlawfully and tortiously arrested and imprisoned.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Declare that Officer Farrelly's stop, arrest, and detention of Ms. Artiga was unlawful under the Fourth, Fifth, and Fourteenth Amendments;

B. Declare that Defendant Baltimore County's failure to train its officers was unlawful and caused Ms. Artiga's unconstitutional arrest and detention;

C. Declare that the federal defendants' policy and practice of entering and disseminating civil immigration information to state and local law enforcement officials through the NCIC database is not authorized by statute, and that it caused or induced Officer Farrelly and other state and local officials to make unconstitutional arrests, including the arrest and detention of Ms. Artiga;

D. Enjoin the federal defendants from maintaining a record of Ms. Artiga's civil immigration information in the NCIC database, and order its immediate expungement from that database;

E. Award Ms. Artiga compensatory damages as to Defendants Officer Farrelly, Baltimore County, and the United States of America for the harm she suffered as a result of their unlawful conduct;

F. Award her punitive damages as to Defendants Officer Farrelly and Baltimore County based on their roles in causing her arrest and detention despite their knowledge that it is unlawful for state and local law enforcement officials to arrest, detain, or prolong the detention of someone solely for immigration enforcement purposes;

G. Award reasonable attorneys' fees and costs; and

H. Award any such other further relief the Court deems just and appropriate.

Respectfully Submitted,



Of Counsel:

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