

make the following findings of fact.

FINDINGS OF FACT

1. Plaintiff Keith Douglas was born on January 5, 1979 in Jamaica.
2. On January 26, 1984, Plaintiff lawfully entered the United States with his mother Beulah M. Douglas, and his two sisters.
3. The Government has no record of Plaintiff's father ever entering the United States. Plaintiff's parents were divorced on or about May 1, 1987.
4. On March 16, 1994, when Plaintiff was fifteen years old, his mother Beulah M. Douglas was naturalized as a U.S. citizen.
5. Plaintiff did not apply for U.S. citizenship until 2013.
6. Sometime in approximately June of 2012, the Department of Homeland Security, Immigration and Customs Enforcement Office ("ICE") received a referral from Citizen and Immigration Services ("CIS") as a result of Plaintiff applying for a replacement Permanent Resident Card through the Jamaican consulate, in May of 2011, with the assistance of an attorney named Ricky Palladino, Esq. ("Palladino").
7. When CIS received Plaintiff's application for a replacement Permanent Resident Card, it ran a criminal background check on Plaintiff. The referral from CIS was received by Ryan Spruance ("Sprunace"), a Deportation officer with ICE.
8. When Spruance received the referral, he did a records check to determine Plaintiff's immigration status and whether Plaintiff had any criminal convictions on his record.
9. When Spruance checked Plaintiff's criminal history, he determined that on March 24, 1999, he was arrested for the crime of "forgery," which resulted in a conviction. He

also determined that Plaintiff, on May 14, 1998, was arrested for the crime of burglary, which resulted in a conviction.

10. Spruance also reviewed Plaintiff's alien file ("A file"), as well as Plaintiff's mother's A file.

11. Spruance also reviewed immigration databases.

12. Spruance searched for, but did not find, any information about Plaintiff's father or any custody arrangement in force at the time of Plaintiff's mother's naturalization.

13. Spruance did not find any evidence that Plaintiff had applied for or been granted U.S. citizenship.

14. The research did reveal that Plaintiff had applied to renew his "green card" (Lawful Permanent Resident card) representing that he was not a U.S. citizen, and been arrested and convicted of crimes three times, including that he pleaded guilty to the crime of forgery in the Municipal Court of Philadelphia, Pennsylvania.

15. Plaintiff concedes that, prior to August 29, 2012, his status of record was that of Lawful Permanent Resident and citizen of Jamaica.

16. Based upon this research and record, Spruance believed he had probable cause to arrest Plaintiff, and applied for a Warrant of Arrest and Notice to Appear for immigration proceedings for Plaintiff, both of which were issued.

17. On August 29, 2012, ICE issued a Notice to Appear and a Warrant of Arrest for Plaintiff.

18. On September 6, 2012, Spruance arrested Plaintiff at his home.

19. Plaintiff was arrested pursuant to 8 U.S.C. § 1226(c), which provides that any

alien who is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(iii) shall be taken into custody. 8 U.S.C. § 1226(c)(1)(B). The offenses referred to include the aggravated felony of forgery. 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. § 1101(a)(43)(R).

20. Plaintiff was charged as being a non-citizen native of Jamaica admitted to the United States in 1984 as a permanent resident, who was deportable because he had been convicted of the crime of forgery in Philadelphia, and sentenced to three to twenty-three months of confinement.

21. Plaintiff concedes that there was no record of his being a U.S. citizen at the time of his arrest.

22. At the time of Plaintiff's arrest, there was no record of Plaintiff's mother having sole custody of Plaintiff at the time that she was naturalized.

23. Spruance transported Plaintiff to the ICE detention center located at 1600 Callowhill Street in Philadelphia.

24. Plaintiff never told Spruance that he was a U.S. citizen derivatively through his mother's naturalization when he was fifteen years old.

25. During the car ride, Spruance allowed Plaintiff to make a phone call, and he called his sister, Ann Marie Jarrett-Johnson ("Jarrett-Johnson").

26. Plaintiff handed the phone to Spruance who briefly spoke with Jarrett-Johnson.

27. Jarrett-Johnson never told Spruance that Plaintiff had derived U.S. citizenship through their mother's naturalization when Plaintiff was fifteen years old.

28. Sprunace truthfully testified that Plaintiff did not make a claim that he was a U.S. citizen at the Callowhill Facility.

29. Plaintiff did not recall if he told anyone at the Callowhill Facility that he was a U.S. citizen.

30. Upon his arrest, on September 6, 2012, Plaintiff signed a request to communicate with diplomatic officers of the country of his nationality, and represented in writing to ICE that he was a citizen of Jamaica.

31. At the time of his arrest, Plaintiff also requested a prompt hearing on his immigration status.

32. After processing at 1600 Callowhill Street, Plaintiff was transported to Pike County jail where he was to be held pending a removal hearing.

33. David Clark, who is a Supervisory Detention and Deportation Officer with ICE at the Pike County Correctional Facility, truthfully testified that Plaintiff never orally or in writing claimed that he was a U.S. citizen. N.T. 110.

34. Days after Plaintiff was taken into custody, on September 10, 2012, Plaintiff's attorney, Palladino, made a claim that Plaintiff was a United States citizen.

35. After Palladino made the claim that Plaintiff was a United States citizen and provided some supporting evidence that Plaintiff may have derived citizenship through his mother, Plaintiff was released from custody on September 13, 2012, pending his removal hearing.

36. Plaintiff's claim of derivative citizenship was litigated before an immigration judge by Palladino against ICE attorneys on behalf of the United States

37. While the litigation was pending, Plaintiff applied for U.S. citizenship on July

15, 2013.

38. While considering Plaintiff's application, on September 23, 2013, ICE asked Plaintiff to provide evidence supporting his claim of derivative citizenship through his mother, specifically, evidence that his mother had sole custody of him when she became a naturalized citizen on March 16, 1994.

39. Plaintiff supplied documents (letter from his school, affidavits from relatives) supporting the claim, all of which were dated after the date of his arrest.

40. After Plaintiff supplied adequate evidence supporting his claim of derivative citizenship through his mother based upon her sole custody of him, on December 26, 2013, Plaintiff's application for citizenship was approved.

41. Plaintiff took the oath of citizenship on February 20, 2014.

42. On February 24, 2014, Plaintiff received a Certificate of Citizenship indicating that he became a citizen on March 16, 1994, the day that his mother was naturalized.

43. One month after he took the oath of citizenship, Plaintiff submitted an administrative claim for damages seeking \$250,000 in damages against the United States asserting that he had been illegally detained and incarcerated by ICE agents.

44. The claim was denied, whereupon Plaintiff filed this lawsuit.

CONCLUSIONS OF LAW

1. Pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b)(1), federal district courts have jurisdiction over civil actions against the United States for damages "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or

employment, under the circumstance where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1).

2. The FTCA requires a claimant to file a claim with the agency allegedly responsible for his injuries. See 28 U.S.C. § 2675(a). If the agency denies the claim or does not make a final disposition within six months, the claimant may then file suit in federal court. Id. This jurisdictional requirement is mandatory and cannot be waived. See Roma v. United States, 344 F.3d 352, 362 (3d Cir. 2003).

3. Plaintiff has exhausted his remedies under the FTCA.

4. “[T]he United States is liable only to the extent that in the same circumstances the applicable local law would hold ‘a private person’ responsible.” Lomando v. United States, 667 F.3d 363, 373 (3d Cir. 2011) (citing 28 U.S.C. § 1346(b)(1)). “Congress reiterated that precept in 28 U.S.C. § 2674, which provides that the United States is answerable under the FTCA ‘in the same manner and to the same extent as a private individual under like circumstances.’” Id. (citing United States v. Olson, 546 U.S. 43, 46 (2005) (“Our cases have consistently adhered to this ‘private person’ standard.”)).

5. “[T]he FTCA does not itself create a substantive cause of action against the United States; rather, it provides a mechanism for bringing a state law tort action against the federal government in federal court.” Lomando, 667 F.3d at 372 (quoting In re Orthopedic Bone Screw Prod. Liab. Litig., 264 F.3d 344, 362 (3d Cir. 2001)).

6. “[T]he liability of the United States under the FTCA is determined by the law of the state where the allegedly tortious act occurred.” DeJesus v. U.S. Dep’t of Veterans Affairs, 479 F.3d 271, 279 (3d Cir. 2007).

7. In this case, Plaintiff’s claim arose in Pennsylvania; therefore, Pennsylvania law determines the extent of the United States’ liability under the FTCA.

8. “The FTCA provides a limited waiver of immunity for actions in tort against the United States for the actions or negligence of employees of the government.” Priovolos v. F.B.I., 632 F. App’x 58, 60 (3d Cir. 2015) (citing 28 U.S.C. § 2674; § 2675(a)). “The waiver of sovereign immunity in the FTCA does not apply to ‘[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights’ except when the acts or omissions are by an investigative or law enforcement officer.” Id. (citing 28 U.S.C. § 2680(h); Millbrook v. United States, – U.S. –, 133 S. Ct. 1441, 1446, 185 L. Ed. 2d 531 (2013) (holding that this exception to the § 2680(h) bar applies “regardless of whether the officers are engaged in investigative or law enforcement activity, or are executing a search, seizing evidence, or making an arrest”)).

9. 28 U.S.C. § 2680(h) defines an investigative or law enforcement officer as “any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.” 28 U.S.C. § 2680(h).

10. Plaintiff’s false arrest and false imprisonment claims are not barred under Section 2680(h) because they arise out of the actions of Agent Spruance, who was an ICE Deportation Officer, that occurred during a law enforcement activity. See 28 U.S.C. § 2680(h)

11. In Pennsylvania, “false arrest and false imprisonment are essentially the same claim.” Stewart v. Moll, 717 F. Supp. 2d 454, 467 (E.D. Pa. 2010) (quoting Olender v. Twp. of Bensalem, 32 F. Supp. 2d 775, 791 (E.D. Pa. 1999)).

12. “False arrest is defined as (1) an arrest made without probable cause, or (2) an arrest made by a person without privilege to do so.” Stewart, 717 F. Supp. 2d at 467 (citing McGriff v. Vidovich, 699 A.2d 797, 799 (Pa. Cmmw. Ct. 1997)).

13. “False imprisonment is the (1) detention of another person, and (2) the unlawfulness of such detention.” Stewart, 717 F. Supp. 2d at 467 (citing Renk v. City of Pitts., 641 A.2d 289, 293 (Pa. 1994)).

14. “Probable cause for an arrest will defeat actions for both false arrest and false imprisonment.” Glass v. City of Phila., 455 F. Supp. 2d 302, 365 (E.D. Pa. 2006) (citing Gilbert v. Feld, 842 F. Supp. 803, 821 (E.D. Pa. 1993)).

15. “An arrest based upon probable cause would be justified, regardless of whether the individual arrested was guilty or not.” Renk, 641 A.2d at 293.

16. “Under Pennsylvania law, ‘[t]he issue of probable cause is one for the court to decide, and it should be found to exist if there was a ‘reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that the party is guilty of the offense.’” Pellegrino v. U.S. Transp. Sec. Admin., 855 F. Supp. 2d 343, 358 (E.D. Pa. 2012) (quoting Logan v. Salem Baptist Church of Jenkintown, No. 10-0144, 2010 WL 3364203, at *2 (E.D. Pa. Aug. 17, 2010); Miller v. Pa. R.R. Co., 371 Pa. 308 (1952)).

16. “Under former section 321(a) of the Immigration and Naturalization Act, 8 U.S.C. § 1432(a), a child born outside the United States automatically acquires United States

citizenship if, while the child is under the age of eighteen, the parent with legal custody of the child is naturalized while that child's parents are legally separated.”¹ Morgan v. Attorney Gen. of United States, 432 F.3d 226, 228 (3d Cir. 2005) (citing 8 U.S.C. § 1432(a)(3)).

17. “The burden of proof of eligibility for citizenship is on the applicant.” Bagot v. Ashcroft, 398 F.3d 252, 256–57 (3d Cir. 2005) (citing Berenyi v. Dist. Dir., INS, 385 U.S. 630, 637 (1967)). “All doubts ‘should be resolved in favor of the United States and against the claimant.’” Id. (quoting Berenyi, 385 U.S. at 637).

18. Under 8 U.S.C. § 1226(c), the government must take custody of any alien who has committed an aggravated felony pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii). See 8 U.S.C. § 1226(c)(1)(B); Demore v. Kim, 538 U.S. 510, 517-18 (2003) (finding that 8 U.S.C. § 1226(c) mandates that the Government “take into custody” aliens who are convicted of certain crimes, including aggravated felonies).

19. The offenses referred to in 8 U.S.C. § 1227(a)(2)(A)(iii) include the aggravated felony of forgery. See 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. § 1101(a)(43)(R).

20. The records in this case, including the Notice to Appear and a Warrant of Arrest, demonstrate that Spruance and the ICE officers, had probable cause to arrest, detain, and place Plaintiff into removal proceedings. They were executing 8 U.S.C. § 1226(c), which mandates that an alien convicted of an aggravated felony (in this case, forgery, which Plaintiff had pleaded guilty) be taken into custody. Spruance and the ICE officers had reason to believe

¹“On October 30, 2000, Congress repealed § 1432 by enacting the Child Citizenship Act of 2000, Pub.L. No. 106–395, 114 stat. 1631, effective February 27, 2001.” Morgan, 432 F.3d at 228 n.1. Former section 321(a) of the Immigration and Naturalization Act, 8 U.S.C. § 1432(a), is applicable to our case because it was the law in effect at the time when all of the critical events giving rise to the claim for derivative citizenship occurred. See id. at 230.

that Plaintiff was an alien in the United States illegally because of the following: he held a Permanent Resident Card; he had not established his citizenship; and there was no information available to indicate that Plaintiff's mother had the requisite legal custody at the relevant time for Plaintiff to have received derivative citizenship pursuant to 8 U.S.C. § 1432(a). Also, Plaintiff had a criminal conviction for the aggravated felony of forgery, which made him a deportable alien pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii).

21. Based upon the evidence of record in this action, we find that any reasonable person or ICE agent in the same situation would have concluded that probable cause existed to both arrest Plaintiff, and to apply for a Warrant of Arrest and Notice to Appear for immigration proceedings for Plaintiff.

22. As a result, we find that Spruance and the ICE officers had probable cause to arrest Plaintiff, and to apply for a Warrant of Arrest and Notice to Appear for immigration proceedings for Plaintiff; therefore, the arrest and imprisonment were lawful.

23. Plaintiff's false arrest and false imprisonment claims are denied.

24. Regarding Plaintiff's negligence claim, "[t]he FTCA extends to claims brought against the United States for money damages arising from the negligent acts or omissions of federal employees." Drummond v. Del. Transit Corp., 365 F. Supp. 2d 581, 585 (D. Del. 2005).

25. "To demonstrate a prima facie case for negligence under Pennsylvania law, a plaintiff must show that: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) there is a causal connection between the breach and the resulting injury; and (4) the plaintiff suffered actual loss or damage." Abuhouran v. United States, 595 F. Supp. 2d 588, 594 (E.D. Pa. 2009), aff'd, 389 F. App'x 179 (3d Cir. 2010) (citing Martin v. Evans, 711

A.2d 458, 461 (Pa. 1998)). “Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances.” Id. (quoting Martin, 771 A.2d at 461). “The plaintiff has the initial burden of proving by a preponderance of the evidence that the defendant’s act or omission deviated from the general standard of care under the circumstances and that the deviation proximately caused actual harm.” Id. (citing Martin, 771 A.2d at 461).

26. “Pennsylvania has adopted a comparative negligence statute.” Est. of Possinger v. United States, 351 F. App’x 694, 696 (3d Cir. 2009) (citing 42 Pa. Cons. Stat. Ann. § 7102). “Therefore, if the negligence of [the plaintiff] was greater than the negligence, if any, of [the defendant], Plaintiff[] cannot recover.” Id. (citing Elder v. Orluck, 515 A.2d 517, 525 (Pa. 1986)).

27. Plaintiff asserts that the United States acted negligently because he was a U.S. citizen at the time of his arrest. However, he had not yet established his citizenship such that immigration officials had reason to know of his citizenship status. Furthermore, the information that they did have clearly and convincingly evidenced that Plaintiff was a deportable alien because he was born in Jamaica and was convicted of an aggravated felony. See 8 U.S.C. § 1226(c).

28. Once foreign birth is established, the presumption that the person is an alien arises and persists until the person meets his burden of producing evidence that supports his claim to U.S. citizenship. Orea-Hernandez v. Attorney Gen. of United States, 449 F. App’x 143, 145 (3d Cir. 2011).

29. Plaintiff did not meet his burden of proof of eligibility for citizenship until he provided satisfactory evidence relating to his mother’s custody of him, which was after his arrest

and detention in the Pike County Correctional Facility. At this time, Plaintiff's status was established.

30. At the time that the Notice to Appear and a Warrant of Arrest were issued on August 29, 2012, Spruance and the ICE officers had probable cause to believe that Plaintiff was a Lawful Permanent Resident who pleaded guilty to forgery, especially in light of Plaintiff's application for a replacement Lawful Permanent Resident card through the Jamaican consulate in May of 2011. Based upon all of the information available to Spruance and ICE officers at the pertinent time, they acted reasonably and did not deviate from the general standard of care under the circumstances.

31. Plaintiff's arrest and removal proceedings were appropriate.

32. Based on the evidence of record in this action, and the totality of the circumstances, we find that the ICE officers and Spruance exercised the level of care that a reasonably prudent person would have employed under the same circumstances.

33. Plaintiff has failed to make the requisite showing that the ICE officers or Spruance breached any duty of care owed to him.

34. The United States was not negligent.

35. Although we do not find any negligence by Spruance or any ICE officers, we note that any alleged negligence under the facts of this case would pale in comparison to the negligence of Plaintiff, which includes, *inter alia*, his obtaining a replacement Permanent Lawful Resident Card through the Jamaican consulate in May of 2011.

36. Plaintiff's claim for negligence against the United States is denied.

DISCUSSION

Agent Ryan Spruance is currently employed with the General Services Administration's Office of Inspector General, prior to that he worked for ICE in Philadelphia for seven and a half years. Prior to that he worked for the U.S. Border Patrol for two and a half years in California. N.T. 76. After joining ICE he attended the Deportation Officers Training Program. At the time of the events involved in this case, he was a Deportation Officer. N.T. 77.

Spruance was assigned Plaintiff's case in June 2012 after Plaintiff had applied for a replacement green card. N.T. 77. Spruance's responsibility was to determine if Plaintiff was not a U.S. citizen, and if not, did his criminal conviction warrant a notice to appear before an Immigration Judge. He was also to determine if there was probable cause for a warrant to be issued. N.T. 78.

In this process, Spruance reviewed Plaintiff's alien file and the alien files related to it. N.T. 79. He saw that Plaintiff's mother had been naturalized. The only thing that he was able to determine as to Plaintiff's father was a name and date of birth, but could not find an alien file for him. N.T. 79.

During this process, Spruance reviewed the CIS database, the Claims database and the National Criminal Investigation Center database. N.T. 79. The Claims database would have included a claim or application for a Certificate of Citizenship but none was listed. N.T. 79-80. The National Criminal database contained entries indicating that Plaintiff was a U.S. citizen. Spruance testified that such entries are made by local booking agencies such as local police departments who make the arrest. He stated the F.B.I. does not verify this information input by other agencies. N.T. 80-81. Spruance testified further that they are trained not to rely on these

entries, “because we don’t know who is inputting that data.” N.T. 82. He testified further that, for purposes of immigration, they rely on Department of Homeland Security run databases. N.T. 82.

Spruance came to the conclusion that Plaintiff was not a United States citizen, that he had a criminal conviction in his past that would warrant a notice of appearance before an immigration judge. N.T. 82. Spruance also, in his investigation, looked into the issue of sole custody of Plaintiff by his mother because if they were able to show that she had sole custody he would be able to derive citizenship through his mother. N.T. 82-83. In an effort to determine this issue, he ran Plaintiff’s father’s name and date of birth through all the databases, but could find no information on Plaintiff’s father. N.T. 83. Spruance submitted the results of his investigation to his superiors in the form of a report and warrant of arrest of alien. N.T. 84. A warrant of arrest was authorized. N.T. 87.

In an effort to establish that Spruance was on notice that Plaintiff claimed to be a U.S. citizen, Plaintiff produced testimony that after his arrest, while they were driving to 1600 Callowhill Street, he was allowed to make a phone call. He said he called his sister who also testified at trial. Plaintiff, at one point, gave the phone to Spruance who spoke with the sister briefly. N.T. 67-68. Spruance was asked at trial, “But you don’t . . . recall her saying hey, my brother is a citizen?,” to which, he answered, “No, she did not tell me that. . . .” N.T. 68-69. Spruance testified that if either Plaintiff or his sister had told him that Plaintiff had derived citizenship through his mother, he would have notified his chain of command at the next practical moment, N.T. 73, and maybe he would not have taken him into custody. N.T. 75. Spruance testified that there was no reason why he would not tell his superiors of the claim of U.S.

citizenship. N.T. 90. He further said he had no arrest quota to fill and if the claim had been made and he failed to notify his superiors he would be disciplined. N.T. 90. Spruance further testified that Plaintiff never made a claim to be a United States citizen while he was at the Callowhill facility. N.T. 91.

I found Spruance's testimony to be truthful. He was experienced, well trained and knew the law that applied to the work he was performing. He appeared to have no animosity toward the plaintiff and nothing to gain or lose from the outcome of this case.

I, therefore, enter the following Order.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____	:	
KEITH DOUGLAS	:	CIVIL ACTION
	:	
Plaintiff	:	
vs.	:	
	:	
UNITED STATES OF AMERICA	:	NO. 15-6389
	:	
Defendant	:	
_____	:	

ORDER

AND NOW, this 8th day of February, 2017, it is hereby **ORDERED** that Judgment is granted in favor of Defendant, United States of America, on all of Plaintiff Keith Douglas' claims for false arrest, false imprisonment, and negligence.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE