CASE NO. 22-1795

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

SELEPRI S. AMACHREE,
Plaintiff-Appellant

VERSUS

UNITED STATES, acting in the stead of ICE Officers Brent Kriehn and Joseph Halase, SHERIFF OF DODGE COUNTY (WI) DALE SCHMIDT, DODGE COUNTY INVESTIGATOR ROBERT NEUMAN, DISTRICT ATTORNEY OF DODGE COUNTY KURT KLOMBERG, and DODGE COUNTY (WI),
Defendant-Appellees

A CIVIL PROCEEDING

ORAL ARGUMENT REQUESTED

Respectfully submitted:
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Appellant Brief of Selepri S. Amachree

(1) Disclosure Statement.
(Not Required)

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(3) Table of Authorities

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Nken v. Holder, 556 U.S. 418, 129 S.Ct. 1749 (2009), pp. 22. 23

Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct.1683,1686 (1974), p. 8

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Matter of Yanez, 23 I&N Dec. 390 (BIA 2002), pp. 17, 19

2 Moore's Federal Practice 8.04[1][a] (3d ed. 2019), p. 12

(4) Jurisdictional Statement

a. Federal district court's jurisdiction over defendant USA, standing in the stead of original federal ICE Officers Brent Kriehn and Joseph Halase

The federal district court had jurisdiction over this suit against the federal government, against federal ICE Officers Brent Kriehn and Joseph Halase and their wrongful acts as federal agents, and over cases involving the Constitution and violations of federal laws and court orders. This includes, Board of Immigration Appeals (BIA). Jurisdiction is based on §1331. Federal question, of 28 USC, Ch. 85, District Courts; Jurisdiction. This section provides: "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

ICE Officers Kriehn and Halase unreasonably seized Plaintiff without lawful reason or justification in violation of his right to be secure in his person under the 4th Amendment of our Constitution. In addition, Officer Kriehn agreed with Dodge County Sheriff's Lt. Tom Polsin to invite under false pretenses Plaintiff to the Dodge County Detention Center (hereinafter DCDF) for the purpose of arresting him for no lawful or reasonable purpose and implemented this agreement on February 27, 2017, in violation of

18 U.S. Code §371, Conspiracy to commit offense. Furthermore, ICE Officers Kriehn and Halase acted in violation of the legal authority delegated to ICE as set forth in ERO, Enforcement and Removal Operations; Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act.

b. The federal district court's jurisdiction over Dodge County WI Officers District Attorney Kurt Klomberg, Sheriff Dale Schmidt and employee, Investigator Robert Neuman

This federal district court had jurisdiction under 28 U.Code §1367(a) — Supplemental jurisdiction over Plaintiff's claim that Dodge County WI elected officials District Attorney Kurt Klomberg, Sheriff Dale Schmidt and Sheriff employee Investigator Robert Neuman planned, acted together and conspired to destroy Plaintiff's business, *Xtreme Intervention Project,* and drive him out of Dodge County WI without any legal authority in violation of federal and Wisconsin criminal and civil law and, in that spirit, contacted ICE to inquire about Plaintiff's "status." In addition, Lt. Tom Polsin of the Dodge County Sheriff's Office conspired with ICE Officers Kriehn and Halase to arrest Plaintiff, as explained above.

The federal district court dismissed with prejudice Plaintiff's claims on March 11, 2022, on non-jurisdictional grounds. All state defendants live and work in Dodge County WI.

c. The jurisdiction of this Seventh Circuit Court of Appeals:

This federal Seventh Circuit Court of Appeals has appellate jurisdiction over all timely filed, final decisions of federal district courts within the Seventh Circuit, where all

federal district courts in Wisconsin are located. Because the United States is a party defendant, Plaintiff had 60 days within which to file a Notice of Appeal. The 60 days expired on or about May 10, 2022. See Title II — Appeal from a Judgment or Order of a District Court. Notice of appeal was filed in a timely manner pursuant to Rule 4 of the Federal Rules of Appellate Procedure. This brief will be filed within that time period.

d. Timing Defendants US, ICE and Kriehn arrested and detained Plaintiff on 02/27/2017. He was released from custody on 09/08/2017. Plaintiff sought a resolution with the government in 2018. Because the government failed to respond within six months, Plaintiff was entitled to sue. He filed his Complaint on 03/08/2019. With leave of the district court, Plaintiff filed an Amended Complaint on 09/15/2021. The district court issued its Order to Dismiss with Prejudice on 03/11/2022. Because the U.S. was a party to the case, Plaintiff was entitled to 60 days to file a notice of appeal (Rule 4, Federal Rules of Appellate Procedure). Plaintiff filed his notice of appeal within 60 days. Plaintiff's brief is due on or about 6/10/2022. All these filings comply with the Rules.

(5) Statement of Issues Presented for Review

a. First issue presented for review: "Is the Plaintiff's "statement of his claims" too long? Whether Plaintiff Selepri S. Amachree's (hereinafter: "Plaintiff" or "Selepri") Complaint of 57-pages that claims that 1) two federal defendants, namely ICE Officers Brent Kriehn and Joseph Halase, arrested and detained Plaintiff without legal justification and 2) three state of Wisconsin defendants, namely Dodge County WI District Attorney Kurt Klomberg, Sheriff Dale Schmidt and his employee Robert Neuman, with various efforts — including conspiracy, defamation and negligence — to drive Plaintiff and his business, *Xtreme Intervention Project*, out of Dodge County, was too long and

violated FRCP 8(a)(2)'s requirement of a "short … statement of the claim showing that the pleader is entitled to relief" and justifies the district court's dismissal of all claims with prejudice, thereby eliminating any possibility of a hearing on the merits.

b. Second issue presented for review: Are Plaintiff's "statements of his claims not "plain'?" Plaintiff understands the district court's criticisms of "incoherence," "irrelevances," "inconsistencies," etc. to be judicial constructions of FRCP 8(a)(2)'s requirement of "plainness" during the pleading stage.

Thus, whether Plaintiff's Complaint is" incoherent" 1) in his claim that the two federal ICE defendants [Kriehn and Halase] arrested and detained Plaintiff without legal justification; 2) in his claim that the three state defendants [Klomberg, Schmidt and Neuman] made an effort, likely a conspired effort in violation of Wisconsin law (see below), to drive Plaintiff and his business, *Xtreme Intervention Project*, out of Dodge County); and 3) in that it failed to satisfy the notification purposes of FRCP 8(a). In other words, concerning "3)" above, did the complaint 1) fail to give defendants "fair notice of what the … claim is and the grounds upon which it rests" (***Erickson v. Pardus; Bell Atlantic Corp. v. Twombly***); or 2) fail to show it is "plausible that plaintiff is entitled to relief" (***Ashcroft v. Iqbal***). Or put differently, does Plaintiff's complaint show "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would title him to relief"? (***Scheuer v. Rhodes***). Only this latter situation would justify dismissal.

c. Third issue presented for review Whether Plaintiff's failure to be punctual in responding to several of defendants' many motions to dismiss and motions to strike

was inexcusable under the circumstances and whether this tardiness caused defendants identifiable and serious harm, thus justifying the district court's dismissal.

(6) Concise Statement of Case

a. Plaintiff's case was transferred from Illinois' Northern to Wisconsin's Eastern District, without objection.

b. Because Immigration Judge Cole's 9/8/2017 "cancelation of removal" order is the only "final judgment" ever issued in Plaintiff's immigration case, Defendant Brent Kriehn's only explanation for arresting Plaintiff on 2/28/2017 is incorrect and wrong.

c. The district court's 3/11/2022 Order of "dismissal with prejudice" held that Plaintiff's Complaint violates the pleading requirements of 'shortness" and "plainness" of FRCP 8(a)(2)

d. The district court's Order held in its "dismissal with prejudice" that Plaintiff's Complaint does not give defendants' proper notice of their wrongful behavior.

e. The district court's Order in its "dismissal with prejudice" held that Plaintiff's Complaint is incoherent, inconsistent and contains "irrelevancies" and thus violates FRCP Rule 8(a)(2) requirement of "plain."

f. The tardiness in Plaintiff's responses to the numerous defense motions to dismiss and motions to strike are mentioned by the district court in its Order of Dismissal but this does not appear to be a ground for the dismissal with prejudice.

(7) Summary of the argument

a. Considering the high number of defendants and their many and varied wrongful acts, the idea of "shortness and plainness" in FRCP 8(a)(2) is by necessity a relative and flexible concept. .

b. The Complaint gave each defendant by name adequate notice of his wrongful or negligent acts, thereby satisfying FRCP 8(a)(2)'s implicit requirements of notice and discreteness.

c. The Complaint met the pleading requirements of "short and plain" set forth in FRCP 8(a)(2)'s and enabled each defendant an opportunity to present a defense.

d. The Complaint's narrative of the defendants' behavior and acts are set forth in a "plain" and clear manner, is coherent, consistent, does not contain irrelevancies, and provides defendants adequate notice of wrongdoing and opportunity to provide a defense. Seen together these incidents lead to conclusions of conspiracy and an illegal arrest.

e. The tardiness in responding to the numerous defense motions to dismiss and strike are explainable and have not caused identifiable harm to defendants interests.

(8) The Argument

(**Note to Court:** Every incident set forth in these "contents" is discussed in detail in Plaintiff's Complaint, which is the subject of this appeal, and is cited and explained in Plaintiff's "argument" in **bold** letters.)

a. Standard of Review

The proper level of appellate review for the grant of defendants' motion to dismiss, a question of law, is "*de novo.*" ***Bristol-Myers Squibb Co. v. Royce Lab, Inc.***, 69 F.3d 1130, 1134 (Fed. Cir. 1995). This "*de novo*" standard applies to all parties in this case and to this entire appeal. See also ***Boyle v. United States***, 200 F.3d 1369, 1371 (Fed. Cir. 2000); ***Wyatt v. United States***, 2 F.3d 398, 400 (Fed. Cir. 1993).

b. Issues that apply to all defendants

1. Complexity of case and length of Complaint

There are six defendants in this case represented by three different law firms, four if one includes the U.S. Attorney. The material facts began in 2014 and continued through 2017. At this appellate stage, this case involves the U.S. Attorney's Office representing ICE Officers Kriehn and Halase and presumably the BIA; the Wisconsin Attorney General's Office representing Dodge County WI District Attorney Klomberg; and the Milwaukee/Madison law firm Crivello Carlson representing Dodge County WI Sheriff Schmidt and investigator Neuman.

The nature of each defendant's actions and involvement in this case is different, making it impossible to set forth their different but related tortious/criminal acts in just a few pages. After studying the results of Plaintiff's freedom of information requests, a picture of a conspiracy[1] emerged, namely, a joint effort of defendants Klomberg and Schmidt to drive Selepri and his business, *Xtreme Intervention Project*, out of Dodge County. This made the drafting of the complaint much more challenging.

In drafting the Complaint, Plaintiff decided to relate the significant happenings, *i.e.*, the evidence, concerning each defendant's wrongful acts in a chronological order. This made sense and also relates Plaintiff's story in a logical, understandable and accurate manner.

In addition, the defendants should appreciate this approach, since it sets

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[1] In Wisconsin, there is one "conspiracy" law. It carries both criminal and civil consequences. See 931.31

forth Plaintiff's evidence in support his claims in a clear manner and allows the defendants to see Plaintiff's case from the beginning. There is no hidden information, no secrets and no surprises. The defendants have been able to verify Plaintiff''s claims and evidence early in the case. Plaintiff assumed this approach could result in successful settlement discussions without lengthy discovery.

As emphasized in this next section, FRCP 8(a) "ensure[s] that claims [are] not filtered for merit at the pleading stage, but [are] determined on their merits rather than through missteps in pleading."[2] J.Moore,, 2 Moore's Federal Practice 8.04[1][a] (3d ed. 2019)

2. The length of the Complaint per defendant is not excessive and does not violate FRCP 8(a)(2)'s requirement of a "short and plain" statement of his claim

The standards of judicial judgments "inevitably" lead to the conclusion that "there is no bright line rule and that the sufficiency of a complaint must be determined on a case-by-case basis." ***Frazier v. Southeastern Pennsylvania Transp****,* 785 F.2d 65, 68 (1986).

While a 57-page complaint may on the surface appear too lengthy, it must be

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[2] The district court avoided important issues on the merits with its order to dismiss Plaintiff's case with prejudice on FRCP 8(a)(2) grounds. Here are those issues: 1) Did Dodge County's D.A. Klomberg and Sheriff Schmidt plot, conspire and/or act in concert to drive Plaintiff and his "Xtreme Intervention Project" out of Dodge County? 2) Did Sheriff Schmidt, upon learning from the Neuman Report that Plaintiff was an immigrant with a criminal record, detail Lt. Thomas Polsin to contact ICE Supervising Officer Brent Kriehn to inquire about Plaintiff's immigration status and was D.A. Klomberg part of this plot or did he have previous knowledge of this effort? 3) Did ICE Officer Kriehn conspire with Dodge County Sheriff Schmidt and Lt. Polsin to arrest and detain Plaintiff without legal justification? And 4) did unarticulated political circumstances contribute to the district court's dismissal with prejudice, including the possible criminal activity in this case of D.A. Klomberg and Sheriff Schmidt.

remembered that there are six defendants in this case. That is an average of less than ten pages per defendant. Assuming one defendant, it is most unlikely a court would even dream about rejecting a ten-page complaint for being too long..

It should be noted that the district court's 10-page Order dismissing Plaintiff's Complaint with prejudice had 28 lines of text per page, whereas Plaintiff's Complaint had 17 to 18 lines per page. The explanation for this difference is print size and spacing. The district court's opinion appears to be 12 point and 1.5 spacing, whereas Plaintiff's Complaint is 14 point and double-spaced. Had Plaintiff employed the district court's standards, his complaint would have been 41 pages, or a little less than 7 pages per defendant. This reveals a double standard in this case.

If this Court looks at the pages Plaintiff actually devoted to each defendant, it will find that approximately 10-pages were devoted to defendant D.A. Kurt Klomberg, 8-pages to defendant Sheriff Dale Schmidt, 4-pages to defendant Robert Neuman, 4-pages to ICE Officer Brent Kriehn, 2-pages to ICE Officer Joseph Halase, and there were two mentions of the BIA. Had Plaintiff used the district court's print size and spacing, the above page numbers would be reduced by one-third. Even if ten pages are excessively long, why dismiss the parts of the Complaint that are 8, 4, and 2 pages? Something else is going on in this case..

The court's claim of "excessive length" is not a reasonable ground for dismissing Plaintiff's Complaint under FRCP 8(a)(2). This is a sound ground for reversal.

3. The district court's holdings 1) that Plaintiff's Complaint is "incomprehensible," includes "irrelevancies," and is "confusing" are wrong as shown below and 2) that the court's view that it "cannot expect better from Plaintiff's counsel" is without justification and simply gratuitous.

This part of the district court's holding was surprising and, in Plaintiff's mind, an unfair and unjust attack on Plaintiff's Complaint. While "comprehensible" is not a term of FRCP Rule 8, Plaintiff understands it as judicial interpretation of the idea of "plain" in FRCP Rule 8(a)(2)'s clause: "… a short and plain statement of the claim showing the Pleader is entitled to relief …". Immediately below are judicial thoughts about the meaning of "plain" in Rule 8 of the FRCP..

4. The pleading requirements for claims in federal court are not strict.

FRCP Rule 8(e) Construing Pleadings provides as follows: "Pleadings must be construed so as to do justice." That does not appear to have been the guiding principle in Plaintiff's case.

In ***Conley v. Gibson***, 355 US 41, 45-46 (1957), the Supreme Court held:

> In appraising the sufficiency of the complaint, we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

In ***Bell Atlantic v. Twombly***, 550 US 544 (2007) and ***Ashcroft v. Iqbal***, 556 US 662, 678 (2009), the Court held that the Complaint must have enough detail that it is at least plausible that the plaintiff is entitled to relief.

FRCP Rule 8(a)(2) also requires that the "statement of the claim be 'plain'," meaning that "liberally construed," a pleading 'identifies discrete defendants and the actions taken by these defendants" in regard to plaintiff's claims. See ***Harnage v. Lightner***, 916 F.3d 138, 141 (2d Cir. 2019) (per curiam). Plaintiff has certainly met that standard. The Complaint identifies discrete individuals (Brent Kriehn, Joseph Halase,

Dale Schmidt, Kurt Klomberg, Robert Neuman) as well as each's wrongful acts, with the exception of the BIA, the liability of which is based on *respondeat superior*.

A pleadings must "present cognizable legal claims to which a defendant can respond on the merits." **Garrett v. Wesford Health**, No. 17-3480, p. 42 (3rd Cir. 2019) Contrary to the district court's conclusions, Plaintiff's pleadings in this case met all these standards.

5. Plaintiff's approach to drafting his Complaint was chronological.

Most narratives are told in this manner, including accounts of historical events in legal matters. However, seeing Plaintiff's Complaint from a slightly non-chronological perspective might display the Complaint's logic more clearly. For that reason, Plaintiff has deviated somewhat from that strict chronology and begins with the involvement of the federal government, *i.e*., ICE. Plaintiff will then show how his Complaint has set forth in a logical and clear manner how these state officials' acts, alone and in concert, led to Plaintiff's unjust arrest and detention for over six months.

c. Issues that apply to individual officers of ICE and Dodge County

1. The Dodge County Sheriff's Office involved ICE in this matter; their coordinated effort to arrest and detain Plaintiff without "probable cause" or other legal grounds

i. Dodge County Sheriff's Office's February 14, 2017, email to ICE Officer Brent Kriehn

On February 14, 2017, Lt. Thomas Polsin of the Dodge County Sheriff's office emailed ICE supervising Officer Brent Kriehn. This very revealing email exchange marked the known beginnings of federal government, *i.e*., ICE, involvement in Plaintiff's case.

Lt. Polsin: Brent Do you happen to know the status of this person in regards to deportation Selepri Amachree Thanks

[Complaint, p. 2, Doc. 70][3]

What motivated Lt. Polsin's call? This will be discussed later in this section. At this point Plaintiff wishes to show only the role of the U.S. and ICE in the arrest and detention of Plaintiff for deportation and how this is clearly set forth in Plaintiff's Complaint. **(See Complaint, pp.3-5, Doc. 70.)**

The next day (2/15/2017), supervising ICE Officer Kriehn replied to Lt. Polsin:

> Tom, He's a **final order of removal**. I believe this is the same guy **McDaniels** called me about last week — he's been visiting DCDF [Dodge County Detention Facility] in some sort of advocacy capacity, but may be scamming people, right? … I (am) going to have DO Halase coordinate with you so he could be present on AMACHREE"s next visit **as long as everything checks out**, he'll arrest him and book him into DCDF. Thanks Brent Kriehn SDDO/MIL

[***ibid***; bold printing added)

Officer Kriehn's above response requires several analyses: 1) What is Kriehn's legal concept of a "final order of removal" and is it correct? 2) Who is "McDaniels" and what roll did he play in Officer Kriehn's decision to arrest Plaintiff? And 3) what did Officer Kriehn do to "check everything out," if anything at all?

2**. How did ICE and Officer Kriehn deal with these issues?**

i. The "Final Order of Removal" Issue What did Officer Kriehn mean by "final order of removal"? The issue Lt. Polsin raised with Kriehn was Plaintiff's "status … regards deportation." (See above.) In Kriehn's mind, the status of being a "final order of

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[3] The Complaint is divided into two parts: Documents 69 & 70. The reason for this is simple: Plaintiff's old printer was unable to print the entire document. The quick solution was to divide the Complaint into two parts. PACER simply put this one document with two parts into two documents, Doc. 69 and Doc. 70.

removal" is offered as the justification of his decision to arrest Plaintiff for deportation and hold him in detention until his actual deportation. Plaintiff wouldn't disagree with the idea if this were really the "final judicial order" in this case. However, to come to that conclusion, Kriehn must have assumed Plaintiff never appealed Immigration Judge Vinikoor's 2002 removal order. Such an assumption is embarrassingly irresponsible and offensive to immigrants under the circumstances.

While it was true, based on the BIA's 2002 decision in ***Matter of Yanez***, 23 I&N dec. 390 (BIA 2002), that "removal" was mandatory upon conviction of a state cocaine felony, the question raised here is whether Judge Vinikoor's removal decision was indeed the "**final order of removal.**" In other words, was that decision the "final" judicial decision in Plaintiff's removal case? Plaintiff's Complaint shows clearly and beyond any doubt that it was NOT! **(See Complaint [hereinafter "C"], pp.10-13. Doc. 69)** Immigration Judge Samuel Cole's decision of September 8, 2017 was the final order.

Judge Cole cancelled Judge Vinikoor's 2002 "removal order" made pursuant to the BIA's ***Yanez*** decision that the Supreme Court ruled invalid in its 2006 ***Lopez v. Gonzales*** decision. The government never questioned or appealed Judge Cole's "cancellation of removal" order of September 8, 2017. Thirty days later, Judge Cole's ruling became the "final order" in this case. This "final judicial decision" in this case was a decision of "cancellation of removal," not "removal." **(C, pp. 6, 7, Ex. 3; Doc. 70)**

If Judge Vinikoor's removal order of 2002 were the final judicial decision in this case and if Plaintiff had been dodging immigration authority for 15 years, Plaintiff would have had no case against Kriehn, ICE or the U.S.

However, as emphasized throughout, Plaintiff appealed Judge Vinikoor's deci-

sion,[4] and that appeal was still active and on going when ICE arrested Plaintiff. And this makes all the difference! If Kriehn had actually "check[ed} every thing out,"[5] he would have surely learned 1) that Plaintiff's case was one of his Chicago Field Office headquarters' biggest cases, 2) that Plaintiff appealed Judge Vinikoor's decision to the BIA, which affirmed, 3) that Plaintiff appealed to the 7th Circuit, which also affirmed, 4) that the 7th Circuit put Plaintiff's case on hold pending a U.S. Supreme Court decision in ***Lopez v. Gonzales,*** **(C, pp. 10-11; Doc. 69)** and 5) issued a "stay of removal" order.

The ***Lopez*** case raised the same issue as Plaintiff's, that is, whether a state felony conviction for possession of a small amount of cocaine (Plaintiff had a half a gram) justified deportation when, under the federal "Controlled Substance Act," such an offense is a misdemeanor[6] and does not require or even allow deportation. In ***Lopez***, the Supreme Court held that Congress, not the states, determines immigration law and policy as well as the consequences of a violation, such as deportation. Since possession of a small amount of cocaine is a federal misdemeanor and doesn't require deportation, an immigration court may not order deportation for possession of that same small amount based on a state statute that classified that small amount a felony.

The 7th Circuit remanded Plaintiff's case to the BIA with the instruction "for fur-

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[4] Well aware of the pending appeals in ***Yanez*** and ***Lopez***, Judge Vinikoor, as noted in the **Complaint (p. 10, para 13, Doc. 69)**, allowed Plaintiff to remain free during his appeal and encouraged Plaintiff to appeal his decision. Plaintiff followed that advice.

[5] Plaintiff's case was handled by Kriehn's Chicago Field Office. It knew all about Plaintiff's case. Indeed, ICE Chief Counsel Karin Lundgren handled much of it.

[6] As it also was in several states. Under the Federal Controlled Substance Act, possession of 10 grams of cocaine or less is a misdemeanor. **(C, p. 9-10, para. 10-12; Doc. 69)**

ther consideration in light of *Lopez v. Gonzales*, 127 S.Ct. 625 (2006)." **(*ibid*. p. 13)** This is discussed in the Complaint. **(C, p. 3, para. 137, Doc 70; pp. 12&13; Doc. 69)**

While this point was not explicitly made in the Complaint, there is no available evidence that the Government, during Plaintiff's over six month detention, made any effort with the government of Liberia, Plaintiff's country of birth, to receive Plaintiff. If Plaintiff were a "final order of removal, as Officer Kriehn claimed, all that remained to be done was to make the necessary arraignments with Liberia. There must be an explanation for this lack of effort. Is it because the Government did not believe there was any sound ground for deporting Plaintiff? Here again discovery is critical, but due to the district court's dismissal with prejudice the truth was and is not within his grasp.

ii. The "McDaniels" Issue and Kriehn's "mysterious" sources of "knowledge" of Plaintiff's "status" and fair treatment.

The email exchange (pages 15 & 16 of this document) between Lt. Polsin and ICE Officer Kriehn raises other serious questions. For example, who is "McDaniels"? It is assumed he is an ICE employee detailed to the DCDF and regularly makes reports to his superior Defendant Brent Kriehn about what's going on in the federal section of the detention facility.

Plaintiff neither knows McDaniels nor anything about him, including the sources of McDaniel's information about Plaintiff. It appears, however, that Kriehn already "knew enough," based on McDaniel's gossip, *e.g*., he "may be scamming people, right?," about Plaintiff to make an immediate decision to arrest him without any input from Lt. Polsin or an investigation. This suggests that Kriehn's information about Plaintiff was hearsay and deficient and came from sources that were hostile toward Plaintiff. (See generally **C. pp. 3 & 4, Doc 70)** This suggests how important it is to overrule the

district court's "dismissal with prejudice" and remand for discovery to find truth and seek justice.

Citizens, permanent residents and, for that matter, all persons are entitled to fair and thoughtful treatment from federal law enforcement agents. This includes the duty to base important decisions that affect one's interests on sound, reliable evidence. Officer Kriehn in his email response to Lt. Polsin said "this is the same guy McDaniels called me about last week — he's been visiting DCDF in some sort of advocacy capacity, but may be scamming people, right?" There is no indication about what other gossip, claims and tales McDanials may have shared with Officer Kriehn and how this may have influenced Kriehn. This much is clear: Officer Kriehn asked no questions of Lt. Polsin before making his snap decision to arrest Plaintiff. McDaniels' hearsay info must have sufficed for ICE Officer Kriehn. It should not suffice for the judiciary.

iii. Did Officer Kriehn "check everything out" as he said he would? And if so, how did he verify the evidence he found in less than a day?

Plaintiff knows virtually nothing about what Kriehn actually checked out. It is surely not "everything." In fact, he checked out "nothing" as Officer Kriehn admitted in a letter[7] he submitted to Illinois federal Judge Robert Guzman. All this shows the importance of discovery. There has not been any discovery. And based on the district court's dismissal with prejudice, there can be none.

iv. The conspiracy between ICE Officers Kriehn and Halase and Dodge County officers Lt. Polsin and Sheriff Schmidt to coax under false pretenses Plaintiff to come to the DCDF where Halase — under humiliating circumstances — would publicly arrest and detain Plaintiff without probable cause.

[7] This admission came as a result of Judge Robert Guzman's question put to Kriehn's lawyers in the Federal District Court of the Eastern District of Illinois, Eastern Division.

Note these last lines from the above email exchange between Polsin and Kriehn: ICE Officer Kriehn:

> " … I [am] going to have DO [Joseph] Halase coordinate with you so he could be present on AMACHREE"s next visit **as long as everything checks out**, he'll arrest him and book him into DCDF. "

Officer Kriehn instructed and detailed Halase as he indicated. Halase and Lt. Polsin developed a sure plan: Sheriff Schmidt would invite Plaintiff to the DCDF to discuss his "professional jail visitation privileges."[8] And when Plaintiff shows up, Halase would arrest and book him into DCDF. **(C, pp. 3 & 4, para 58-60, Doc 70)**

Sheriff Schmidt did invite Plaintiff to the jail on 02/27/2017 on the pretense of discussing Plaintiff's "professional jail visitation rights," a sure incentive for Plaintiff to come to the jail and on that day when Plaintiff appears at the jail, Halase would be there waiting to greet, arrest and book Plaintiff. These acts happened exactly as planned. (i*bid*. pp. 4&5)

This behavior was a conspiracy under Wisconsin law[9] and knowingly involved the U.S.'s ICE Officers Kriehn and Halase and Dodge County's Sheriff Schmidt and his Lt. Polsin. If Plaintiff had actually committed an offense, such unscrupulous tactics might be arguably defensible. But Plaintiff had neither been charged with a crime nor had he or did he commit one, as Sheriff Schmidt later admitted. (The Sheriff wrote on

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[8] As a result of D.A. Klomberg's 2014 prohibition of Plaintiff's future interaction with the District Attorney or his office and the Sheriff's 12/1//2016 withdrawal of Plaintiff's "professional jail visitation privileges," Plaintiff's value to Dodge County criminal defense lawyers was non-existent. He thus had no reason to go to the Dodge County Jail. Sheriff Schmidt's insincere invitation to discuss "professional visitation privileges" provided a well-calculated incentive for Plaintiff to do so.

[9] See Wis. 134.01 Injury to business; restraint of will; 942.01 Defamation; and 939.31 Conspiracy.

the morning of Plaintiff's arrest in a memo to 31 local personages, including judges, police chiefs, that he has "no evidence at this time to proceed with a criminal investigation." (**See Complaint; C, p. 7; Doc.70.**) All of the above facts are set forth in the Complaint in clear and unambiguous terms. **(See C, pp. 1-7, para 55-64; Doc. 70.)**

v. The 7th Circuit's "Stay Order" and its violation Had Kriehn "checked everything thing out," he would have also learned that the 7th Circuit had "STAYED [Plaintiff's] removal pending appeal". **(C, p. 11, Doc 69; p. 6 & Ex. 3 of Attachments, Doc. 70)** The government makes the unreasonable claim that this stay order applies only to the actual physical removal from the U.S., not to arresting Plaintiff for the purpose of removal at some indefinite time in the future.

There is no evidence that Kriehn knew this "stay order" existed or anything about Plaintiff's appeals of his removal. (It is clearly discussed in Plaintiff's **Complaint, pp. 10-11 & fn.3, Doc. 69**) as well as in the remand fiasco at the BIA. **(C, pp. 10-13, Doc 69)**). The district court in its order of dismissal ridicules this argument and seems mystified by the practical effect of the stay order, if any, and its enforceability. In short, the district court rendered the 7th Circuit's stay order to be without any real significance. (See Order of Dismissal.) On the other hand, Plaintiff and his lawyer believed that the 7th Circuit's stay order provided Plaintiff with protection from arbitrary arrest and removal during the appeal process. As it turned out, this was not to be the case.

The Supreme Court in ***Nken v. Holder***, 556 U.S. 418, 129 S.Ct. 1749 (2009), provides guidance. Nken's situation was similar to Plaintiff's. He is an immigrant, the immigration judge ordered his removal, he appealed to the BIA and then to the 4th Circuit, where he sought a "stay of removal pending adjudication of his petition for

review." The appellate court denied the request. He petitioned the Supreme Court for a writ of certiorari and a stay of removal pending a resolution of his case. The Court issued the stay. Chief Justice Roberts, writing for the Court, explained the meaning of a stay and contrasted it with an injunction, which orders someone to do or not do something. A "stay" has a different function:

> An appellate court's power to hold an order in abeyance while it assesses the legality of the order has been described as "inherent," preserved in the grant of authority to federal courts to 'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.' . . . The authority to hold an order in abeyance pending review allows an appellate court to act responsibly. A reviewing court must bring considered judgment to bear on the matter before it, but that cannot always be done quickly enough to afford relief to the party aggrieved by the order under review. The choice for a reviewing court should not be between justice on the fly or participation in what may be an "idle ceremony." Id., at 10, 62 S.Ct. 875. The ability to grant interim relief is accordingly not simply "[a]n historic procedure for preserving rights during the pendency of an appeal," id., at 15, 62 S.Ct. 875, but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.

(**Nken**, 129 S.Ct. 1749, at 1756-1757 (2009))

In short, the 7th Circuit's "stay order" in this case held Immigration Judge Vinikoor's removal order in abeyance during the appeal process. Thus, Officer Kriehn had no authority whatsoever to arrest Plaintiff under Vinikoor's removal order for the purpose of removal. This would be true even if Vinikoor's removal were a final order. And it wasn't.

vi. The several Courts' rulings that Plaintiff remain free during Plaintiff's cancellation of removal case

There is also no evidence that Kriehn knew that four judges (Immigration Judge Vinikoor, three judges at the BIA based on Capt. James Bond's interview and recommendation, and implicitly the 7th Circuit, all without objection of ICE Chief Counsel Karen Lundgren, ruled that Plaintiff could remain free from custody during the penden-

cy of his "cancellation of removal" case and appeals. Kriehn's arrest and detention of Plaintiff "overruled" in any practical sense these judges and courts. **(C, pp. 10 & 11, Doc 69)** If Kriehn knew about any of this history, he was in defiance and in contempt.

Importantly, 8 USC §1536. Custody and release pending removal hearing, of the Aliens and Nationality Act, provides that permanent resident aliens shall be entitled to release pending removal hearings. Immigration Judge Vinikoor found that Plaintiff met all the conditions for release, as did the other judges mentioned above.

3. Conclusion concerning ICE and Kriehn This section dealt mainly with ICE and its officers Kriehn and Halase. Dodge County officials participated only at the beginning and end. The blunders were of ICE's making.

The many citations in bold direct this Court to the passages in the Complaint where these matters are discussed in a logical and clear manner. The district court's claim that Plaintiff's complaint is irredeemably incomprehensible is far off the mark.

We now turn to the acts and likely motivations of Dodge County officials that led to Sheriff Schmidt detailing Lt. Thomas Polsin to email on February 14, 2017, to ICE, which resulted in Officer Brent Kriehn's wrongful act of arresting and detaining Plaintiff.

c. The Acts and Motivations of Dodge County Officers and Defendants District Attorney Kurt Klomberg and Sheriff Dale Schmidt that led to Defendants ICE and Officer Brent Kriehn's wrongful arrest and detention of Plaintiff

1. Reasons in Complaint for Plaintiff's background and connection to Dodge County

Plaintiff's background, successful business model, work with Attorney William Mayer, and introduction to Dodge County and its court system is well set forth in his Complaint **(C, pp. 4-6, 8-9, and 16-18, Doc 69)** only for the purpose of establishing that

the motivation behind the Dodge County Defendants Kurt Klomberg and Dale Schmidt's conspiracy to defame Plaintiff, destroy his Xtreme Intervention Project business, and interfere with his marriage was the result of a personal vendetta that arose over their professional differences.

2. Kassie Gehler's case and the deterioration of cooperation between Plaintiff and Defendant Klomberg

Plaintiff's Complaint outlines how the 2014 felony case of Kassie Gehler was the turning point of the working relationship between Defendant Klomberg and Plaintiff and also shows the origin of the animosity that fueled Klomberg's decision to conspire to destroy and defame Plaintiff and his business.

Kassie Gehler was in a serious snowmobile accident at the age of 13. Dealing with that pain and subsequent surgeries led Gehler to become a heroin addict who, at the time Plaintiff had become involved in her life through his work with defense attorney William Mayer, had been charged as an accessory to multiple burglaries to support her addiction. Klomberg sought serious imprisonment, but her defense attorney, William Mayer, saw the very imperative need for Kassie to receive serious help for her drug addiction. Mayer encouraged Kassie's parents to hire Plaintiff to work with his law firm to help Kassie get into a treatment facility. In 2014, Plaintiff began working with Kassie. He successfully persuaded her to allow him to place her into the Teen Challenge "Home of Hope for Women & Children" in Arizona. Attorney Mayer emailed Plaintiff a letter saying that Assistant D.A. Yolanda Tienstra had "expressed to me that she is hopeful Kassie is successful with treatment." Tienstra and Mayer worked out a

telephone status call for September 3, 2014, and Judge Joseph Sciascia presided over the decision to allow Kassie to go to Arizona. **(C, pp. 13-15, Doc 69)**

Hearing he had the approval of the D.A. Office and an "okay" from attorney Mayer, Plaintiff flew Kassie to Arizona and enrolled her into that Teen Challenge program. While in treatment in Arizona, a hearing for a criminal charge in neighboring Jefferson County arose, and Kassie failed to appear. The D.A. in Jefferson County contacted D.A. Klomberg about Kassie's missing this court date. Plaintiff was notified, and a second court date was set. Klomberg, however, placed the blame for Kassie's failure to appear on Plaintiff, and wrote him as follows:

> **"Y**ou are a liar. You are willing to say anything to con your way into the system. ...Your apology is not accepted as I doubt it is sincere … **Remove me from your contact list. Do not contact me again. Do not attempt to intervene in any criminal case in Dodge County.**

(**Bold** print and underlining in original; **C, pp. 19-21**)

This began several years of hostility, which eventually led to ICE's arrest and detention of Plaintiff several years later.

3. Plaintiff's working principles

Here are Plaintiff's working principles: 1) Addictions overcome good judgment and are very hard to overcome; 2) the addict needs faith and the help of a higher power to overcome addictions; 3) the addict must leave the environment of his/her fellow addicts and drug dealers; and 4) the addict must make a long term commitment (a year or more) at a respected addiction recovery institution, such as Teen Challenge, that focuses every day to overcoming one's addiction. While this isn't easy or inexpensive, his success rate is very high. Plaintiff assures his "students" that with faith and hard work, they can overcome their addiction problems and lead very productive, joyful

lives. It's an "I understand. I've been there too. But, if I can do it, you can too!" Plaintiff makes an effort to become long-term friends with these addicts and to be there for them when they stumble.

4. Contrasted with Klomberg's and TAD's working principles

In 2014, Dodge County began its involvement with the Wisconsin Treatment Alternatives and Diversion (TAD) program. Statewide, it is administered by the Wisconsin Department of Justice. D.A. Klomberg became its director. Its focus is on periodic visits to its local office to speak with a drug counselor and support from local resources. In Plaintiff's mind there is an inherent conflict between addiction treatment and incarceration for criminal activity caused in part by addiction. This became clear from the disagreement with Plaintiff in Kassie's case. Plaintiff's focus is on overcoming the addiction, while D.A. Klomberg seeks imprisonment for the offenses first and treatment for addictions second.

5. D.A. Klomberg's effort to terminate Plaintiff's involvement in a criminal case

In Zack Turck's robbery case, D.A. Klomberg urged Zack's mother, Wendy Borner, to terminate Zack's professional relationship with Plaintiff.

This 2015 case followed the usual pattern. Zack's mother retained William Mayer to represent Zack. Mayer recommended she also hire Plaintiff as a consultant and she did. Klomberg urged her to severe this relationship. When she resisted, Klomberg made it clear that if she did not get rid of Plaintiff in this case, her son Zackery would "pay the price," which she understood to be a harsher sentence. Zack's attorney William Mayer eventually emailed Ms. Borner and suggested that Zack's interests

would best be served if Plaintiff "worked behind the scenes." (**C, pp. 22-23, Doc 69**) Zack did receive a severe sentence and is still in prison.

D.A. Klomberg's effort to persuade defendants and/or their families not to hire (or if already hired, to terminate) Plaintiff as a consultant and addiction expert appears just another step toward reducing Plaintiff's value to local attorneys in criminal cases.

6. Sheriff Schmidt's decision to terminate Plaintiff's "professional jail visitation privileges"

In 2013, when Plaintiff first arrived in Dodge County and began working with Defense Attorney William Mayer, he wrote a letter to Sheriff Schmidt in which he set forth his background and credentials and requested "professional jail visitation privileges" for his work as a consultant to attorneys in cases involving drug addiction matters. Sheriff Schmidt granted him this privilege. This was a very important tool in his work with criminal defense lawyers. He could talk with the clients at length and under confidential circumstances and encourage them to overcome their underlying addictions.

In 2016, it appears that Klomberg urged Sheriff Schmidt to withdraw Plaintiff's Professional Jail Visitation Privileges. See Sheriff Schmidt's email of 12/01/2016), in which the Sheriff assures Klomberg as follows:

> "Kurt. I spoke with the jail staff and they are going to make the necessary adjustments regarding Selepri so he will have to be on the visitor's list.
> Respectively, Sheriff Dale J. Schmidt.

(**C, p. 28, Doc. 69**)

The Sheriff was under no obligation to inform D.A. Klomberg about this. Managing the DCDF is the responsibility of the Sheriff, not the Dodge County District Attorney. However, the language of the Sheriff's email implies that the Sheriff was responding to

a request or suggestion by D.A. Klomberg previously made and that they worked together on this matter. Again, discovery is necessary to establish the truth. In any case, this marked the end of Plaintiff's "Professional Jail Visitation Privileges" held since 2013 as well as an end to Plaintiff's value as an addiction consultant and expert witness to Dodge County defense attorneys representing clients with underlining drug addictions. Note the date of this email: 12/01/2016.

Here is the pattern: first, D.A. Klomberg banned Plaintiff from future intercourse with his office; next D.A. Klomberg urges the mother of an addicted criminal defendant to terminate her employment of Plaintiff as a consultant and expert witness under threat of a harsher prison sentence for her son; and now the Sheriff withdraws Plain-tiff's professional jail visitation privileges.

7. D.A. Klomberg uses Kimberly Roemer, Case Manager of the Dodge County TAD program, of which Klomberg is director, to gather damaging information about Plaintiff

Correspondence between D.A. Klomberg and Ms. Roemer between January 11 to February 12, 2017, shows that Klomberg actively used Roemer to find damaging information about Plaintiff and his working relationship with Teen Challenge. For example, she sent him a "screen shot of Selepri's post with judges, to your FB." (Presumably FaceBook) Why via FB? To maintain confidentiality?

Klomberg also urged her to contact Teen Challenge in Florida to "get something in writ-ing … something that indicates he is blacklisted." Roemer indicated she'd be "more than happy to call tomorrow." Klomberg responded: "I hope you are seeing the judges soon." (**C, pp. 29-30, Doc 69**) Is playing spy, gathering damaging information

about Plaintiff and being a clandestine conduit to the District Attorney, her TAD director, a proper role for a Case Manager of a TAD program? Thorough discovery is needed!

8. Sheriff Schmidt assigns Investigator Robert Neuman to conduct a background investigation of Plaintiff on the pretense of determining professional jail visitation privileges

At the end of January 2017, two months after he had already withdrawn Plaintiff's "professional jail visitation privileges," Sheriff Schmidt employed Robert Neuman to conduct a background investigation. Neuman filed his report with Sheriff Schmidt on February 21, 2017, six days before Lt. Polsin of the Sheriff's office contacted ICE Officer Brent Kriehn.

Generally, the Neuman report is accurate, with one serious exception discussed in the next paragraph below. The report states that Plaintiff is an immigrant and relates his criminal background from during the 1990s to his imprisonment in 1999. Plaintiff has always been candid about this. It is part of his story about drugs, addiction, drug related crimes, imprisonment, commitment to Christ, and addiction recovery with the help of Teen Challenge. He candidly shares his story with others in the spirit of "I understand, I've been there. I recovered. And you can too." (**See C, throughout**)

Neuman's report contains one very serious falsehood. He reports as follows: "**Note: Selepri Amachree used the alias of Tonye B. Amachree DOB-11/01/1968**." Neuman continued to report that six complaints were filed against Selepri Amachree,

Armed with Neuman's "information," Sheriff Schmidt assigned Lt. Polsin to email ICE Officer Brent Kriehn to inquire about Plaintiff's "immigration status." This brings us back to ICE's arrest and detention of Plaintiff. (See above.)

d. Sheriff Schmidt's and D.A. Klomberg's post-arrest efforts "to make sure it sticks."

1. Sheriff Schmidt's email to important local judges, police chiefs, etc

On the very morning of Plaintiff's arrest on February 27. 2017, Defendant Sheriff Schmidt sent an already prepared email to 31 or so local personages, including judges, police chiefs in Dodge and surrounding, counties in which to announce Plaintiff's arrest. The Sheriff's email untruthfully reported "disturbing facts surrounding Selepri and young women …" and his "breaking into women's rooms and taking their underwear." (This, of course, was all based on the Neuman Report.). The Sheriff also wrote that he "has no evidence to proceed with a criminal investigation." (See **C, p. 7 & Ex. #5, Doc 70**) Two months later, Sheriff Schmidt wrote a revised memo for the file and perhaps others. This was defamation under Wisconsin law.

2. D.A. Klomberg's "confidential" effort with Wisconsin Teen Challenge Women's Director "to make sure it sticks"

On March 29, 2017, a month after ICE's arrest of Plaintiff, D.A. Klomberg sent a "confidential " email to Jennifer Fyock, Wisconsin Teen Challenges Women's program director. Klomberg sought "updates on this matter" and informed her that Plaintiff "is in Federal detainment for immigration issues." He continued: "… **there are things that <u>we</u> are trying to shore up to make sure it sticks**. Your information would be extremely helpful. Please advise. Kurt F. Klomberg, Dodge County District Attorney." (**Bold** letters added; <u>underlining</u> of "we" added.)

Who are "we" in Klomberg's email? Based on Plaintiff's Freedom of Information Requests, Sheriff Schmidt is the only other person in Dodge County working with him on this matter.

It appears that Klomberg feared ICE might eventually release Plaintiff from custody (as Immigration Judge Samuel Cole did five months later) and Plaintiff would return to Dodge County (as Plaintiff did). Based on the Neuman Report of a perversion, Klomberg was fishing for a state crime with which to charge Plaintiff. He wanted to "make it stick." (See **C. p. 8, Doc 70**.)

3. Sheriff Schmidt's effort to find evidence that Plaintiff sexually abused his "students"

In March 2017, Sheriff Schmidt rehired Detective Robert Neuman and assigned Detective Michael Reissmann to conduct an in depth interview of Kassie Gehler and her trip to Arizona with Plaintiff. The likely purpose was to have Kassie report that Plaintiff had made sexual advances toward her. Neuman told Kassie that Plaintiff is "an illegal" and "awaiting processing" to be shipped back to Liberia. (This was not true.). Kassie never accused Plaintiff of taking sexual advantage of her. (**C, p. 9, Doc 70**)

4. Sheriff Schmidt's unwelcomed and unsuccessful calls to Plaintiff's wife

During Plaintiff's first month of detention, Sheriff Schmidt contacted Plaintiff's wife Danyelle by phone and suggested that she divorce Plaintiff because he is a "bad guy." Schmidt offered to come to her home to show her proof. Danyelle refused. He then invited her to his office for an explanation. She refused. A month later, he called and repeated his advice and offer. She again refused. (**C, p. 10, Doc 70**)

5. Post arrest conclusions: These four post-arrest incidents show beyond a doubt the persistent and joint effort of District Attorney Klomberg and Sheriff Schmidt to drive Plaintiff out of Dodge County. The Sheriff's February 27, 2017, email to the local personages, discussed here, shows how damaging false information can be easily

and irresponsibility spread. It establishes Sheriff Schmidt's and Robert Neuman's tort of defamation, either through negligence or malice.

It also shows that Plaintiff has offered an important and successful alternative solution to the serious drug addiction problems facing our society. He should be appreciated for this, not driven out of town like a common criminal.

(9) Conclusion & Relief sought

The district court's judgment of dismissal with prejudice should be vacated and this case returned to the district court for discovery, negotiation and dealing with the merits of this dispute and doing justice. That is the goal and purpose of the judiciary. *(See Rule 8(e))*

Most importantly for this appeal, this brief shows how all of these claims were prominently displayed throughout his Complaint in a clear, unambiguous and comprehensive manner. It names discrete defendants, identifies each's wrongful acts, and allows them to prepare a defense. In addition, it shows evidence available to Plaintiff to prove his contentions.

Plaintiff Selepri S. Amachree respectfully prays this Honorable Court to vacate the district court's March 11, 2022, "Order of Dismissal with Prejudice" and remand this case to the district court for discovery, settlement negotiations and, if necessary, a judicial judgment on the merits.

(10). Certificate of Compliance

I, John D. Gorby, attorney for Plaintiff, hereby certify that this Appellants Brief complies with Rule 32(a)(7) & (f) of the FRAP (2022 edition) in that it does not exceed 30 pages.

s/ *John D. Gorby*

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