IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SELEPRI S. AMACHREE,

Plaintiff,

vs **Case Action No. 19-cv-01772**

KURT KLOMBERG, District Attorney of Dodge County, DALE SCHMIDT, Sheriff of Dodge County, DODGE COUNTY, WI,
***et al*,**

Defendants

PLAINTIFF'S RESPONSE TO DEFENDANT KLOMBERG'S MOTION TO DISMISS

INTRODUCTION

This lawsuit began with a disagreement between Plaintiff and the District Attorney of Dodge County, Wisconsin, about rehabilitation from drug addiction and grew into one involving the Justice Department and the U.S. Attorney's Office representing the U.S.A. (acting for ICE, the supervising officer Brent Kriehn of its Milwaukee/Chicago office and ICE Officer Joseph Halase), the Attorney General of Wisconsin representing Kurt Klomberg, the District Attorney of Dodge County, Wisconsin, and Crivello & Carlson S.C. a mid-sized law firm in Milwaukee and Madison, representing, Dale Schmidt, Sheriff of Dodge County, Investigator Robert Neuman, and Dodge County, Wisconsin. In other words, it involves three, perhaps four, levels of American government, many players and many lawyers.

The specific cause of the disagreements revolved around the best and most effective method of dealing with a young female drug addict, Kassie Gehler, her addiction and her recovery (see below, pp. 18 *et seq*.). Kassie and her addicted boyfriend committed 12 or so criminal property offenses, including low-level felonies, in Dodge and surrounding counties. Upon her apprehension her parents retained local criminal defense attorney William Mayer who in turn recommend to Kassie's

parents that they retain as a consultant Plaintiff **Selepri Amachree**, a relative newcomer to Dodge County.

Plaintiff in the 1990s was also an addict and committed several drug related crimes. He also violated terms of his probation and was sentenced to prison.

While incarcerated, Plaintiff accepted Jesus as his Lord and Savior, and, upon being released from incarnation, entered into a series of Teen Challenge addiction recovery programs, after which he became the administrative director of such a program in Virginia. Plaintiff has been free from drugs and has committed no criminal offenses since the day he made his commitment, now over twenty-one years ago.

During his six years with Teen Challenge and as administrative director of the Youth Challenge program in Virginia, Plaintiff learned much about addiction and addiction recovery, including these principles:

1) Without the help of some higher power and structure, recovery is likely impossible;

2) to recover, one needs to be far away from the environment of one's addiction, *i.e*., addicted friends and drug dealers; and

3) to overcome the addiction, one needs to commit oneself to a long-term (perhaps a year or more) total addiction recovery program, such as offered by Teen Challenge.

In addition, one must recognize that a commitment to these principles is frightening, difficult and often expensive. An addict needs a persuasive, committed "intervener" who will persuade and guide the addict and help him/her avoid "wavering" from a commitment to recover.

In contrast, Dodge County District Attorney, Defendant Kurt Klomberg is most hesitant to let those charged with criminal offenses to leave the jurisdiction of the state of Wisconsin and his control. In addition, he believed that Wisconsin's Treatment Alternatives and Diversion Program (TAD) is perfectly adequate. (It is now defunct due to lack of success.) And TAD was under his control. In short, Plaintiff Amachree's approach and District Attorney Klomberg's approach to drug rehabilitation were and are incompatible.

In addition, there may have been an unspoken, but growing, economic rivalry over limited drug rehabilitation funds and competition between the TAD program in Dodge County, WI, and the Teen Challenge approach embraced by Plaintiff. During it all, defendant Klomberg developed a personal vendetta against Plaintiff Amachree.

To understand the legal issues involved in this case it is important to understand the background of this case. This background is mostly presented in "**Part I"**, which deals with Plaintiff's life before moving to Beaver Dam, Dodge County, Wisconsin and before Plaintiff's arrest by

ICE on February 27, 2017. **Part II** deals mostly with happenings after the arrest. **Part III** (p. 42 below) deals with Defendant District Attorney Kurt Klomberg's specific grounds for Dismissal.

Part I. Plaintiff's early life and addiction; INS & DHS/ICE's Involvement in Plaintiff's Life: Addiction, Detention and Redemption, and his "Xtreme Intervention Project"

a. Early life

This case began a long time ago. Plaintiff was born in Liberia on November 14, 1966. His father was Nigerian; his mother Liberian. They met as graduate students at Michigan State University and married in Michigan. Wanting to have her first child in the presence of her family, she traveled back to Liberia when she learned she was pregnant. Her husband joined her. Three years later the Amachrees returned to the U.S., when Dr. Amachree received a professorship in sociology at Western Illinois University. All three members of the family became permanent residents of the United States in 1970. At the time, Plaintiff was three and a half years old.

Plaintiff grew up in Macomb, IL, where he showed considerable musical and athletic talent. Ranked the fourth best running back in the state, he received an athletic scholarship at Western IL University. He suffered a serious football injury, which ended his playing career, and

turned his attention to his music and went to Hollywood to further his career, where he became involved in drugs and became addicted.

b. The legal issues

Plaintiff was charged in October 1997 with possession of a half gram of cocaine, pled guilty and placed on probation.

At that time in Illinois as in several other states, the possession of cocaine in any amount was a felony. Several years later, due to a violation of probation, Plaintiff was sentenced to a term in prison. Upon his release from state custody on February 8, 2001,[1] he enrolled in a Teen Challenge rehabilitation program in Chicago. On February 20, 2001, the Immigration Service filed removal proceedings against him. Through counsel, Plaintiff moved the immigration court to "cancel removal." The first hearing was on March 13, 2001.

c. Immigration Judge Vinikoor allowed Plaintiff to remain free from custody throughout the cancellation of removal hearings; Judge Vinikoor's removal decision; and Plaintiff's Appeal to the BIA

[1] When Plaintiff was released from prison, the state of Illinois took custody due to an old, unresolved "possession of drug paraphernalia" charge. Plaintiff pled guilty to that charge, was given credit for time served, and was released from custody. There was no federal detainer. He enrolled in a Teen Challenge program in Chicago and appeared with his attorney Royal Berg in his first appearance in immigration court.

As said, upon his release from state custody, Plaintiff enrolled in a Teen Challenge program to deal with his addictions. Respecting his commitment to live a drug free life, Immigration Judge Robert Vinikoor ruled that Plaintiff would be free from custody.

On the other hand, Judge Vinikoor held that he was bound by the recent BIA decision in ***Matter of Yanez***, 23 I&N Dec. 390 (BIA) 2002), and, therefore, Plaintiff should be "removed." The Judge also noted that the ***Yanez*** decision is on appeal and encouraged Plaintiff to appeal his decision within 30 days or the removal would become a "final removal," in case Plaintiff would be deported.[2] Plaintiff appealed to the BIA within the 30-day period.

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[2]. Typical boilerplate instruction is this one issued by the BIA:

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
325 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

IN THE MATTER OF FILE A 031-107 DATE: MAY 27, 2017
AMACHREE, SELEPRI

__X__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS

Judge Vinikoor also announced that he had decided to allow Plaintiff to remain out of custody during his appeal process and, if the government objects to this decision, it should move the court to reconsider. Chief Counsel Karen Lundgren did not make such a motion which was understood as "no objection to the immigration court's decision."[3]

d. Plaintiff's appeal to the BIA and the BIA's affirmance; his appeal to the 7th Circuit Court of appeals, and its affirmance

The BIA upheld Judge Vinikoor's removal decision on the ground of its own ***Matter of Yanez*** decision. Plaintiff appealed to the 7th Circuit Court. And he remained free from custody. The 7th Circuit upheld the BIA. At that time, the 8th Circuit's ***Lopez v. Gonzales*** decision reached the Supreme Court. Knowing Plaintiff's case and ***Lopez*** raised the same issue, the 7th Circuit held Plaintiff's case in abeyance pending the Supreme Court's ruling in ***Lopez***.

e. Plaintiff's rehabilitation from addiction; his work with Teen Challenge, and appointment as Administrative Director at an addiction rehabilitation institution in Virginia

During the time his appeals were going through the federal courts, Plaintiff focused on his own rehabilitation. He completed the initial drug rehabilitation courses at Teen Challenge in Chicago, enrolled in Teen

[3] This decision raises a question about the meaning of 8 U.S.C, § 1535(b)(1), discussed in Part III below.

Challenge's advanced drug rehabilitation courses in Pennsylvania and graduated from its programs. He then accepted a position as Administrative Director of a similar rehabilitation program in Newport News, Virginia. In total, Plaintiff spent over six years overcoming his own addiction, learning how to help others overcome theirs, and administering such programs.

f. The lessons Plaintiff learned during these six years with Teen Challenge and his directorship

Plaintiff learned that overcoming drug addiction is a long-term and difficult task. As pointed out above, here are the basic principles:

1) An addict must spend a year or so at a well-structured drug rehabilitation institution like those offered by Teen Challenge.

2) An addict must separate him/herself from the environment that gave rise to the addiction. This means no contact with old "friends" who are addicted, and from drug dealers.

3) It is important to seek the help and support of God as a higher power.

Plaintiff also learned that many addicted persons may make a commitment to him/herself or to others to enter a rehabilitation program but get "week knees" and waver at the moment of action, break the commitment, and revert to their drug habits. What is missing in most rehabilitation programs is someone to support and encourage the addict

to stay the course during these crucial moments, honor the commitment, and enter the program.

g. Plaintiff's "Xtreme Intervention Project" and its approach

During this period of freedom from custody, Plaintiff started his "Xtreme Intervention Project," became a well-known drug interventionist, music entertainer, and advocate of an addiction free life in talks with his students and to audiences at public gatherings. It's a message of hope and a sober life. Plaintiff's past is not a personal secret. He makes no effort to hide his immigrant status, his previous addictions, or criminal history. It's a candid, honest, and humble message: "I understand. I've been there, I've been an addict too. With the help of Christ, I recovered. You can too."

During this entire period, Plaintiff's appeals were pending, there was no "final removal" order, and he was free from custody. He took full advantage of this freedom.

h. The "STAY ORDER of 7th Circuit Court of Appeals

After the BIA affirmed Judge Vinikoor's removal decision on the ground of the then recent ***Yanez*** decision, Plaintiff appealed to the 7th Circuit. Once in the 7th Circuit, Plaintiff immediately moved the Court for a stay of his removal, which the Court allowed.

The Court provided:

> **IT IS ORDERED THAT [Plaintiff's] emergency motion for stay of removal is GRANTED and petitioner's removal is STAYED pending appeal.**
> **(July 14, 2004)**

However, the 7th Circuit upheld the BIA on the merits.

i. The Supreme Court and *Lopez v. Gonzales* (2006)

In the meantime, Jose A. Lopez obtained a writ of *certiorari* from the Supreme Court. After a complete review, the Supreme Court ruled that Congress determines immigration policy, not the states, and that Congress had determined that only the possession of an amount of cocaine large enough to constitute "drug trafficking" offense requires deportation. On those grounds, the Court reversed the Lopez conviction and deportation. See ***Lopez v. Gonzales*****,** 549 U.S. 47 (2006).

J. The 7th Circuit's "remand" of Plaintiff's case back to the BIA; the inexplicable "ten plus year delay" at the BIA; and the BIA's eventual remand in late August 2017 to the Chicago immigration court

A consequence of the Supreme Court's ***Lopez v. Gonzales*** *decision* was the 7th Circuit's remand of Plaintiff's case back to the BIA with the instruction to resolve it in light of ***Lopez v. Gonzalez*****.**

The BIA, it appears, sensing the importance of Plaintiff's case, stamped in large black letters the word "**PRIORITY**" on Plaintiff's remand order, suggesting that the case should be handled with dispatch.

But somehow the opposite occurred: the BIA misplaced that remand order for over ten years.

During this time, Plaintiff's appeal was pending, albeit "stalled" in the BIA, he was free from custody, and he continued to develop his drug intervention work, helped his "students" overcome their addictions, and worked on his music.

k. Plaintiff marries a Beaver Dam woman in 2014; moves his Xtreme Intervention Project and Wisdom Records/My Light Ministry to Beaver Dam while Plaintiff's case was pending in the BIA; he continued to focus on his drug intervention business and his music. His business location was in Macomb IL, his hometown. His intervention work and its reputation, however, grew and soon he had "students" from all over the country. And the location of "official" site of business became not very important.

Hearing about Plaintiff's success, William Mayer, a criminal lawyer in Dodge County WI, retained Plaintiff as a consultant in an illegal drug case. He was impressed with Plaintiff's work and retained him in other cases. It was during one of his trips to Wisconsin that he met his future wife in Beaver Dam, a Dodge County community. They married in 2014, and Plaintiff moved to Beaver Dam and relocated the *situs* of his intervention project and music to Beaver Dam. This became a watershed moment for Plaintiff.

l. A summary of Part I: What we knew about Plaintiff's state of legal affairs at the dawn of the 27th day of February 2017, and how it all changed later that day.

1) Judge Vinikoor's "removal order" never became "final" and could not be legally executed.

At the dawn of that day, the Board of Immigration Appeals had not yet located the 7th Circuit's 2006 remand order that it had somehow misplaced. That order directed the BIA to resolve Plaintiff's case in light of ***Lopez v. Gonzales***.

At issue in both ***Lopez*** and Plaintiff's case was the validity of the "removal order" issued by their respective immigration courts. As said, the Supreme Court held in ***Lopez*** that possession of a small amount of cocaine was insufficient to constitute a drug trafficking offense and wasn't an aggravated offense. The foreseeable legal result in Plaintiff's case at this stage was the cancellation of Judge Vinikoor's removal order. It is just that, for over ten years, the BIA didn't know where the case was.

On the 27th of February, Judge Vinikoor's order to remove Plaintiff had not become final, was still pending before the BIA, could not be executed, and was "en route" to being cancelled. Expressed differently, Judge Vinikoor's order of removal could not legally be enforced at any time during the 11 years it was misplaced in the BIA and was still on appeal, as it was early on February 27, 2017.

What was the ultimate and foreseeable fate of this removal order? As explained in greater detail below, Immigration Judge Samuel Cole on

September 8, 2017, cancelled it. The problem, however, was that Plaintiff was wrongfully sitting in jail and had been for over six months in fear of deportation to a land he hardly knew and brooding over the possible loss of his family, his work, friends, and the only life he knew. (See below at ???.)

2) The violation of Immigration Judge Vinikoor's decision to allow Plaintiff to remain free from custody during the pendency of his "cancellation of removal" hearing and subsequent happenings

As explained earlier (page 6 above), when Plaintiff's "cancellation-of-removal" motion was filed in 2001, the issue of freedom from custody arose. Without objection from Chief Counsel Karen Lundgren of the INS, Judge Vinikoor ruled that Plaintiff could remain free from custody as long as he appeared in court when required. Plaintiff complied. This actual freedom from custody, as shown above, continued throughout the appeal and remand process and through two levels of courts, namely the BIA and 7th Circuit and back throughout the remand process.

While Plaintiff's case was in the BIA, the BIA assigned its chief investigator Captain James Bond to interview Plaintiff. Capt. Bond conducted the interview and supported Plaintiff's freedom from custody. And the BIA allowed Plaintiff to remain free. On the other hand, it upheld Judge Vinikoor's removal decision. Plaintiff appealed to the 7th Circuit Court. The 7th Circuit upheld the BIA's affirmance of the removal

decision. The issue of Plaintiff's freedom from custody never arose again.

When the Supreme Court reversed a similar removal order in ***Lopez v. Gonzales***, the 7th Circuit remanded Plaintiff's case back to the BIA. By that time, seven federal judges (Vinikoor, three BIA judges, and three 7th Circuit judges) and Captain Bond had reviewed this case. None took issue with Plaintiff's freedom from custody. In short, they all agreed that Plaintiff should remain free from custody during his appeals. During all these years, Plaintiff always appeared in court when required. That was the state of affairs on the dawn of the 27th of February.

As will be discussed in **Part II**, later in the morning of the 27th of February, ICE Officer Halase, pursuant to instructions from supervising ICE Officer Brent Kriehn, placed Plaintiff in custody. This arrest was a violation of these judges' judgments and orders allowing Plaintiff to remain free from custody. So much for the authority of the judiciary!

Part II. The Great Change in Plaintiff's case: ICE's Arrest and Detention of Plaintiff later in the morning of the 27th of February 2017; and its Cause: the Disagreements between the Dodge County District Attorney Klomberg and Plaintiff: a) Different approaches to Addiction Treatment, b) the Kassie Gehler Case, and c) the far-reaching consequences of this disagreement

a) Different approaches to Addiction Treatment and Additional details

As pointed out above (p. 12), Plaintiff makes a sincere effort to become a friend, who is understanding, and committed to his "students," as he calls them. He spends considerable time with them, gets "to know them" on a deeper level, tries to find a drug rehabilitation program (there are many) best suited for each "student's" personal needs and situation, is consistent with his principles of addiction recovery set forth above (p. 9), encourages and persuades them to enter into the chosen program, makes necessary arrangements for admission, takes them to the rehabilitation institute, and "holds their hand" when they "waiver," as most addicts do, particularly during the moments preceding entry into the program.

This is a labor intensive and time-consuming job that usually involves a lot of air and auto travel, since one principle of his project is to separate the addict from the environment in which he/she acquired the addiction.

Since beginning his Xtreme Intervention Project in 2006, he has helped over 300 addicts recover with over 80% now living a drug free life. (See Dodge County Judge Joseph Sciascia's letter of recommendation to Jefferson County District Attorney Susan Happ, the text of which is set forth below in footnote[4].)

[4] Date: "7/3/14" To: "Atty. Susan V. Happ … " "Dear Atty. Happ, Selepri Amachree of the Extreme Intervention Program has met with me on several

Plaintiff gets paid for his efforts by "sponsors," as he puts it, usually parents but others who may wish to contribute to the addict's recovery. The "tuition" costs for the rehabilitation institute, such as Teen Challenge, which may be a year or so, are separate and not included in Plaintiff's "intervention" retainer. These terms are unambiguously set forth in a contract between Plaintiff and the sponsors.

b) The Kassie Gehler Case

(1) The circumstances of Kassie Gehler's Case and Defendant Klomberg's Reaction to Plaintiff's solution to Kassie's addiction problem; collaboration between Sheriff Schmidt and D.A. Klomberg

In Kassie Gehler's case, Plaintiff recommended to Attorney Mayer and Kassie, the **Teen Challenge Home of Hope Women and Children's Center** in Case Grande, Arizona. This recommendation was acceptable to both. Attorney Mayer kept Assistant District Attorney Yolanda Tienstra, who was handling Kassie's case, aware of his and Plaintiff's efforts on behalf of Kassie. In his June 23, 2014, letter to

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occasions. The Extreme Intervention Program assists persons with substance abuse issues in finding and enrolling in in recovery programs nationwide. I am informed that Mr. Amachree has placed two Dodge County residents in treatment and I have received reports from the treatment providers that Mr. Amachree's referrals are doing well. I believe Mr. Amachree can be a valuable resource in providing treatment to citizens with substance abuse problems, especially in view of the lack of adequate government funding for treatment. Please feel free to contact me if you have any questions. Sincerely, [signature] Joseph G. Sciascia, Circuit Court Branch 3"

Plaintiff, Mr. Mayer wrote that Dodge County Assistant D.A. Tienstra "has expressed to me that she is hopeful Kassie is successful with treatment." In this letter, he continued: "Kassie's case is currently set for a telephone status conference on September 1, 2014. I expect to use this conference to update the Court as to Kassie's progress in treatment." In addition, attorney Mayer called Plaintiff and told him to take Kassie to treatment in Arizona. With this understanding, Plaintiff took Kassie to **Home of Hope**.

2) Defendant D.A. Klomberg's unethical reaction to the "Home of Hope" - solution to Kassie's addiction problem

Defendant DA Klomberg was very displeased that Kassie was outside the jurisdiction of Wisconsin and his control. He canceled the scheduled September 1st telephone conference, rescheduled it for the end of September, and insisted that Kassie appear in court. She complied. At some expense, she flew back to Wisconsin, appeared in court when required, and returned to Arizona with Klomberg's permission to continue her rehabilitation. It is important to note that Assistant D.A. Tienstra agreed to delay sentencing until Kassie completed her rehabilitation treatment.

On July 14, 2014, Defendant Klomberg wrote the following to Plaintiff:

" **You are a liar … <u>Remove me from your contact list. Do not contact me again. Do not attempt to intervene in any criminal case in Dodge County</u>**. … **<u>I do not give you consent in any way to use my name or the name of my office for any purpose.</u>**"

(Klomberg email to Plaintiff of 7/14/2014; bold type, underlining, and larger print in original: see also Complaint, p. 21)

To this day, Defendant Klomberg refuses to communicate, receive telephone calls, or otherwise work with Plaintiff. This hostility has seriously affected Plaintiff's value as a drug addiction consultant to lawyers, including attorney William Mayer. It has also adversely affected his Xtreme Intervention business in Dodge County, his home county.[5] This hostility has been going on since 2014 and can be fairly described as a personal vendetta.

A remarkable indication of D.A. Klomberg's hostility toward Plaintiff is found in Klomberg's remarks made during a sentencing hearing in a completely different case, Wisconsin v. Tartar.[6] The Court had asked:

[5] Plaintiff moved from Illinois to Beaver Dam, Wisconsin, when he married a Wisconsin woman in 2014.

"Okay, Attorney Klomberg, what should I do [regarding Patrick Tartar, sentencing]?" D.A. Klomberg's response:

> **. . . there's a lot of things that are going through my mind right now and . . . I wanna make sure that I touch on them all. . . . I'm afraid that we have now had people come into our midst that want to make money off the problem, not just drug dealers, and I brought up the Xtreme Intervention Program and Selepri Amachree. And I can't help but make mention here, particularly because the defendant [Tratar] has so victimized his family that I don't want to see them get victimized by someone who I think has very questionable motives, and has come in to basically take money from desperate people what are looking for help, an individual who forged a letter of recommendation to a member of our county government, used members' names of county officials here and in other counties to try to promote himself without permission, and generally has shown to be someone who plays by his own rules, spiriting a defendant away in another case to another state and, in fact, seriously damaging the outcome for that defendant. The State now has no choice but to seek a higher penalty because she fled because he told her, hey, come along, this will be a good thing for you. And I really recommend that the Tratars keep a wide birth around him and don't give him any money. He's not the answer. . . ."**

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[6] Circuit Court, Judge Steven G. Bauer, Presiding. Circuit Court, Branch IV, Dodge County, WI; Case Nos. 10CF369, 11CF35, 14CF145. August 11, 2014.

Defendant Klomberg's diatribe made reference to the Kassie Gehler case. Here is a quick report on Kassie. After completing her rehabilitation at **Home of Hope**, Kassie returned to Dodge County, was sentenced to several years in prison, and – to the best of Plaintiff's knowledge -- has been drug free ever since, as have 80% or more of Plaintiff's "students." (See below for more info about Kassie.)

Not only was Defendant Klomberg's statement about Plaintiff and Kassie "fleeing" [to] "another state" totally false, but it was also unrelated and gratuitous to the case before Judge Bauer, Klomberg's claim that he had "no choice" but to increase Kassie's prison sentence because of Plaintiff's action is complete, utter nonsense as well as revealing. It reveals Klomberg's intent and willingness to harm Kassie in order to place blame on Plaintiff.

Kassie's attorney William Mayer, with the concurrence of Defendant Klomberg's Assistant DA Tienstra, who wished Kassie "success with treatment" (see above p. 18), clearly authorized Plaintiff to take Kassie out of state for a yearlong first-rate drug rehabilitation program. Putting the blame on Plaintiff for taking Kassie out of state was outrageous, unethical, and contrary to reality and the law. Plaintiff worked with

Attorney William Mayer and would not have taken Kassie out of the state's jurisdiction contrary to Mayer's permission.

While Plaintiff may have recommended **Home of Hope** to Attorney Mayer and Kassie as the best rehabilitation option for her, he was not the decision maker and did not "spirit" her away to Arizona. And as said, DA Klomberg's assistant district attorney appears to have supported this plan.

There is reason to believe that Kassie did in fact receive a stiffer sentence. If this is indeed true, what motivated Defendant Klomberg to implement his statement appears to be his vendetta against Plaintiff. This is clearly not part of his official duties as District Attorney of Dodge County. An offender's punishment should fit the circumstances of the offense and those of the defendant. Satisfying the prosecutor's angry emotions toward Plaintiff is not a circumstance of the offense or the defendant. In Kassie's case, she simply followed her attorney's and her consultant's counsel, hardly a ground for a stiffer sentence.

3. The effect of Klomberg's statements on the local criminal defense bar

To make a statement on a Dodge County court's record that working with Plaintiff will result in a harsher sentence for one's client sends several messages. One such message is that it is unwise for local attorneys to retain Plaintiff. Attorney William Mayer seems to have gotten this message and come to this conclusion. He wrote Plaintiff in an email that Plaintiff will have to work "behind the scenes"[7] in the future. And William Mayer hasn't retained Plaintiff as a consultant since then.

c) Defendant Klomberg pulls Dodge County Sheriff Dale Schmidt into his plan to drive Plaintiff and his addiction consulting work out of Dodge County

[7] The context of this statement was the Turk case. In 2014, Zachery Turk was in custody in Dodge County on the serious drug related charge of armed robbery. His underlying problem was a substantial heroin addiction. His mother, Wendy Borner, an 18-year employee of the Wisconsin Department of Corrections, was terribly upset by Zachery's situation. Ms. Borner employed Attorney Scott Rasmussen to represent **Z**achery; attorney William Mayer was also involved. They initially planned at the bail hearing to move the Court to release Zachery from jail and place him in the custody of an out-of-state Teen Challenge facility to deal with his addiction problem before his sentencing. According to Ms. Borner, D.A. Klomberg sensed that Plaintiff Selepri Amachree was behind this idea and opposed it.

Zach's attorneys concluded that Amachree's involvement with treatment, obtaining a bed for Zach at Teen Challenge, or appearing in court hearings would be a detriment to the case due to Attorney Klomberg's dislike for Mr. Amachree. Attorney Mayer ended a February 5, 2015, email to Ms. Borner with this statement: "I think Zach should speak directly with Selepri and advise [Plaintiff] given his issues with Klomberg it would serve Zach best if Selepri worked "behind the scenes."

Zachery Turk pled guilty, was sentenced to prison in Wisconsin, has not received any rehabilitation treatment at all, and is still serving time.

Ms. Wendy Borner is able and willing to testify to the above and more.

(1) Klomberg contacts Sheriff Dale Schmidt about his concern with Plaintiff's professional visitation rights at the Dodge County Jail

Although Plaintiff had held professional visitor status at the Dodge County Jail since 2014, Defendant Klomberg encouraged Sheriff Schmidt to terminate Plaintiff's authority to make professional visits with inmates at the Dodge County Detention Center.

On December 1, 2016, Defendant Schmidt responded to Klomberg in an email saying:

> **Kurt, I spoke with the Jail Staff and they are going to make the necessary adjustments regarding Selepri so he will need to be on the visitor's list.**
> **Respectfully, Sheriff Dale J Schmidt**

These changes were made.

(2) Consequences of losing professional visitor status

Depriving Plaintiff of his professional privileges is important to Klomberg's plan because it now renders Plaintiff useless to defense attorneys and anyone who would want professional help from Plaintiff for a loved one struggling with addiction in the Dodge County court system.

d) Defendant Klomberg was also successful in transmitting his hostility towards Plaintiff to others as indicated by their "cheering" after word of Plaintiff's arrest on February 27, 2017, became known

Defendant Klomberg shared his hostility toward Plaintiff with others and actively tried to recruit several of these persons to his cause.

1) Wisconsin Teen Challenge Jennifer Fyock's involvement

On March 29, 2017, DA Klomberg wrote Jennifer Fyock of Wisconsin Teen Challenge in a "confidential" email to inform her as follows:

> **Our Sheriff's Office alerted ICE of [Plaintiff Amachree's] presence and he is in federal detainment for immigration issues, but there are some things <u>we are trying to shore up to make sure it sticks</u>.[8] Your information would be extremely helpful.**

(Underlining added for emphasis; see Complaint, pp. 41, 42.)

Who are the "we" in D.A. Klomberg's message? While this may not be totally certain at this point, the likelihood that "we" includes Sheriff Schmidt is high. Discovery should verify this statement.

2) Jefferson County D.A Susan Happ's involvement

Defendant Klomberg forwarded Sheriff Schmidt's February 27, 2017, email to Susan Happ, Jefferson County District Attorney.

[8] One suspects that D.A. Klomberg and perhaps Sheriff Schmidt feared that ICE may eventually release Plaintiff from detention, in which case it would be desirable to charge him beforehand with state of Wisconsin offenses that are under the control of the state, not federal authority, and Klomberg and Schmidt. The second Neuman investigation of Kassie Gehler may be an example of such an effort. See text, next page.

When DA Happ learned of ICE's detention of Plaintiff', she responded to Defendant Klomberg: "Wow. Just … wow." (DA Happ email of 3-2-2017 to Defendant Klomberg)

3) TAD Case Manager Kim Roemer's involvement

It is likely D.A. Klomberg also forwarded the February 27, 2017, Schmidt email to Kim Roemer, TAD case manager of Dodge County.[9] Roemer responded: "Just heard Selepri is in jail, being held by ICE! Best news all day!!!" (Roemer email to Klomberg of 3-27-2017) The hostility toward Plaintiff had spread.

e) Sheriff Schmidt employs retired detective Robert Neuman to conduct background investigations of Plaintiff.

This Neuman investigation noted that Plaintiff is an immigrant.[10] His report also claimed that Plaintiff used the alias "Tonye Amachree" and, under that name, broke into women's rooms, touched their feet and stole their underwear. (This claim is based on several levels of hearsay and was made by Macomb, IL police in Macomb. And it is not true. On

[9] There is likely an indirect financial relationship between TAD in Dodge and Jefferson Counties, a factor that should and will be explored during discovery. In short, if Dodge County addicts go to Teen Challenge for addiction recovery, they don't go to TAD. To the extent TAD funding depends upon the number participating addicts, the financial impact of this indirect relationship is clear.

[10] As explained in Part I, Plaintiff came from Liberia with his parents when he was three years old and became a legal permanent resident at the age of three and a half years.

the contrary, these most strange offenses occurred in Iowa City, Iowa, not Macomb. Importantly, Tonye Amachree and Selepri Amachree are not the same person. And Neuman notes that they have different birthdates. It was Tonye Amachree that was arrested and charged with these offenses, not Plaintiff.

Without making any effort to confirm these bizarre stories, Sheriff Schmidt, immediately after ICE's detention of Plaintiff on February 27, 2017, at the Dodge County Sheriff's Office, sent an email to 35 prominent Dodge and surrounding county personages, including judges and police chiefs. This email included this false accusation and other false claims. Schmidt ended his email with the following:

> **I will not in any way support Selepri, and I want everyone here to be on the same page.**

(Plaintiff's underlining for emphasis.) This is a "Let's all jump on the same bandwagon" and present a united front of rejection of Plaintiff! Three months after Plaintiff's arrest and detainment defendant Schmidt repeated this false claim in his June 1, 2017, memo for the Sheriff's Office records.

There are other persuasive reasons to believe that defendants Schmidt and Klomberg worked together on this "Selepri" matter. Again, the most likely motivation was to satisfy Klomberg's vendetta against Plaintiff and to destroy Plaintiff's reputation and drive him and his Xtreme Intervention Project out of Dodge County.

The Dodge County Sheriff's Department made an additional effort "after – Plaintiff's – arrest – and – incarceration effort" "to make sure it sticks." Defendant Schmidt sent Detective Neuman and a second detective to interview Kassie Gehler while she was in prison. From the tenor of the interview, it becomes clear that the goal was to get Kassie to say that Plaintiff made unwanted sexual advances while they were in Arizona awaiting admission into Teen Challenge's **Home of Hope**.

At the time of their trip, Kassie was high on drugs and **Home of Hope** wouldn't admit her until she was cleared and no longer under the influence of drugs. This resulted in Plaintiff taking Kassie to a detox facility in Mesa, Arizona. In spite of this pressure from Neuman and his deputy, Kassie would not and did not claim that Plaintiff made sexual advances.

f) Sheriff Schmidt's revealing admission

Most revealing is Sheriff 'Schmidt's email of February 27, 2017, to the 35 local personages, where he made this statement:

> **I have no evidence at this time to proceed with a criminal investigation…**

This later Neuman interview of Kassie didn't change the Sheriff's conclusion. Plaintiff had committed no offense that warranted the attention of defendant Klomberg's office, however, "Everyone" should

get "on the same page" with the Dodge County conspiracy to reject the services of plaintiff, view him as a criminal, and drive him out of the area.

In spite of all Defendants Klomberg and Schmidt's efforts and wishful thinking, they have not to this day found a basis for any criminal charges against Plaintiff. Nonetheless, Dodge County has neither restored Plaintiff's professional privileges nor has it attempted to correct the false image it portrayed of Plaintiff or communicate with him.

g) Sheriff Schmidt's office reaches out to ICE Officer Brent Kriehn and his ICE office in the effort to rid Dodge County of Plaintiff and his Xtreme Intervention Project.

The Neuman report noted that Plaintiff was born in Liberia. This apparently motivated defendant Schmidt to contact ICE as claimed by defendant Klomberg. Defendant D.A. Klomberg wrote in a March 29, 2017, email to Jennifer Fyock that "[o]ur sheriff's office alerted ICE of [Plaintiff's] presence ...." Klomberg's statement about who contacted whom and when has considerable support:

For example, here is the email exchange between Dodge County Sheriff's Lieutenant Thomas Polsin and supervising ICE Officer Brent Kriehn. This exchange began on February 14, 2017, thirteen days before Plaintiff's arrest on February 27, 2017. It presents a truthful version of how and why Plaintiff was detained by DHS/ICE:

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

ICE Officer Brent Kriehn, replying the next day: "Tom, He's a final[11] order of removal. I believe this is the same guy McDaniels[12] called me about last week – he's [meaning Plaintiff] been visiting DCDF in some sort of advocacy capacity, but may be scamming people. Right? … [I'll] have DO Halase coordinate with you so he could be present on AMACHREE's next visit as long as everything checks out."[13]

There is no evidence or other indication that ICE Officer Kriehn "checked [anything] out." Had he done so, he would have surely learned the following:

1) There was no "final order of removal" for Plaintiff. Plaintiff's case was still on appeal and 7th Circuit's remand was lost somewhere in the BIA, as explained in the above discussion in **Part I**, pp.12.).

[11] Plaintiff underlined "final" for emphasis. This may be one of the most important facts in this case. See below..

[12] Plaintiff does not know who "McDaniels" is other than an ICE employee assigned to the Dodge County [immigrant] Detention Facility. It appears that he is the source of much gossip and tales about happenings in the detention center. What is true, what is false, what is planted, etc., is unknown. Discovery would resolve this ignorance, including whether he was used to influence Brent Kriehn..

2) In 2006, the U.S. Supreme Court ruled in ***Lopez* v. Gonzales** that the statute Jose Lopez was convicted of violating did not support or authorize deportation. And,

3) After the Supreme Court's ***Lopez*** decision, the 7th Circuit Court of Appeals remanded Plaintiff's case and ***Matter of Yanez*** to the BIA with the instruction to review "in light of ***Lopez***." The basis of Judge Vinikoor's 2002 removal order in Plaintiff's case was the BIA's 2002 ***Yanez*** decision, which, being identical in all significant respects to ***Lopez***, did not support Plaintiff's deportation either. (See above discussion in Part I, pp. 11 *et seq*.)

But ICE Officer Kriehn did not "check [everything] out." One doubts if he "checked [anything] out." In either case, he remained in a woeful state of ignorance about a very important aspect of immigration law and Plaintiff's case.

There is no reasonable excuse for this gross negligence. Kriehn's superior Chicago ICE Field Office and its Chief Counsel Karen Lundgren represented ICE in Plaintiff's case in the Chicago/Milwaukee immigration court, in the BIA and in the 7th Circuit. All Kriehn had to do was to inquire. Had he done so, he would have learned about the Supreme Court's ***Lopez*** decision and its relationship to Plaintiff's case. In fact, when Ms. Lundgren learned that ICE had incarcerated Plaintiff on

February 27, 2017, she sensed an injustice and immediately filed a motion with the BIA to recalendar Plaintiff's case. When BIA ignored this motion for several months, she renewed that motion several months later.

What were the consequences of Kriehn's failure to "check [everything] out"? (See below.)

h) ICE arrested Plaintiff on February 27, 2017, at the Dodge County Detention Facility (DCDF) for reasons never articulated and detained him for over six months in the DCDF.

Pursuant to the plan agreed upon during the telephone meeting between Lt. Polsin and ICE Officer Brent Kriehn, Defendant Sheriff Schmidt arranged a meeting at his office on February 27, 2017, with Plaintiff to discuss visitation privileges with inmates in the Dodge County Jail and ICE Officer Joseph Halase would arrive at the Sheriff's office at about the same time to arrest Plaintiff.

Plaintiff arrived at the Sheriff's office on schedule and met with the Sheriff in his office for several minutes. Sheriff Schmidt told Plaintiff he's like to introduce him to several others, took Plaintiff in to an adjacent room, where four or five others were sitting around a table. He introduced Plaintiff to each one. The last in the group was ICE Officer Joseph Halase to whom Sheriff Schmidt introduced Plaintiff. They

exchanged pleasantries, after which ICE Officer Halase in front of the others there put handcuffs on Plaintiff wrists and arrested him.

Officer Halase took Plaintiff across the street to the Dodge County Detention Facility, where he was imprisoned for over six months. This was clearly designed to be a humiliating experience for Plaintiff. And it was.

Plaintiff suffered six and a half months of frustrating, frightening detention awaiting deportation to a country he knew little about and would likely be permanently separated from his immediate family, his mother, cousins, friends and the only life he knew.

Upon learning of Plaintiff's detention, Chief Counsel Karen Lundgren of the Chicago Field Office immediately moved the BIA to recalendar Plaintiff's case, as explained above. And Plaintiff remained in custody. Had the BIA been receptive, it would have learned that Plaintiff was in custody on the basis of a statute likely identical to the one the Supreme Court had ruled in ***Lopez*** did not support deportation. Attorney Lundgren refiled the motion several months later. The BIA finally responded in late August 2017 by remanding the case to the Chicago immigration court, Judge Samuel Cole then presiding. As pointed out, Judge Cole, having jurisdiction, cancelled Plaintiff's removal on September 8, 2017, after six and a half months of detention. There

was no appeal of this Cole decision, and it thus became "final." This brought an end to Plaintiff's torment.

i) Sheriff Schmidt's failed effort at historical revisionism; the Sheriff's revisionist tale: *viz*., all fault for Plaintiff's detainment lies with DHA/ICE and specifically with ICE Officer Brent Kriehn, and not with Dodge County

Plaintiff's incarceration immediately attracted considerable, widespread attention and became a significant, ongoing news event in Dodge and surrounding counties. The story was not dying out. This likely caused Sheriff Schmidt and fellow county officials considerable consternation.

On June 1, 2017, over three months after DHS/ICE first detained Plaintiff on February 27, 2017, Defendant Sheriff Dale Schmidt wrote a memo[14] with this passage:

> **. . . Additionally, prior to this [February 27, 2017] meeting [at which ICE arrested Plaintiff], the sheriff's office investigator[15] was made aware of a <u>detainer request which had been made by the federal government</u>. Federal officials**

[14] Since there are no recipients indicated in the memo, the most reasonable explanation for its existence is that the Sheriff hoped to create a new "official" version, a new narrative, of Plaintiff's arrest, one in which the Sheriff and other Dodge County officials are completely innocent of Plaintiff's detention. This narrative is a blatant lie. Plaintiff obtained the memo with a freedom of information request that requested all materials related to Plaintiff's arrest and case.

.

requested to be present at the time of my meeting with Amachree which I approved. Following that meeting federal authorities had a follow up meeting with Amachree separate from any business that I had with him. …

(Underlining added for emphasis.)

In light of Plaintiff's chronicle of his detention set forth here, Defendant Sheriff Schmidt's statements are seriously contradictory. Schmidt's above statements are designed to create the impression that DHS/ICE's arrest and detention of Plaintiff was totally unrelated to anything Dodge County officials did or initiated, other than to permit, in a "gesture of professional cooperation," ICE to arrest Plaintiff at the Dodge County Sheriff's facility following an already scheduled meeting between the Sheriff and Plaintiff to discuss Plaintiff's jail visitation privileges.

The evidence Plaintiff has set forth in this memo tells a very different story of ICE's arrest of Plaintiff. Here's the summary:

1. DA Kurt Klomberg's March 29, 2017, statement in a confidential email to Jennifer Fyock, Wisconsin Teen Challenge Program Director, that "Our Sheriff's Office alerted ICE of [Plaintiff Amachree's] presence and he is in federal detention for immigration issues … " (See pp. 33 & 36 above.)

2, The email exchange of February 14, and 15, 2017, between Dodge County Lt. Thomas Polsin and ICE Officer Brent Kriehn in

which Polsin asks Kriehn: "Brent Do you happen to know the status of this person. Selepri Amachree Thanks" The next day, Kriehn responds: "Tom, He's a final order of removal" (See pages 21 & 22.)

3. The Sheriff does not indicate who this "investigator" is. Nor did the Sheriff indicate who the federal authority who called the "investigator" No simple oversight! And Plaintiff has no idea who they might be. It is significant that Sheriff Schmidt did not identify him/her. While Detective Neuman's February 22, 2017, background report on Plaintiff notes that Plaintiff is an "immigrant," it makes no mention of a "detainer request" or removal order. This suggests that the "investigator" is not Neuman. Why would the "federal government" make such a request to an investigating officer and not the Sheriff himself? Strange!

Neither Plaintiff himself nor his lawyer has ever seen such a "detainer request." Neither DHS nor ICE has produced such a request. And, in spite of ICE Officer Kriehn's claim, Judge Vinikoor's "removal order" had never become final. It's hard to imagine DHS issuing a "detainer request" for a non-final removal decision still on appeal.

4. At this time, the 7th Circuit Court's remand order of 2006 was somewhere at the BIA. It was not final then and could never be final under the ***Lopez*** decision and remand. It is inconceivable that the DHS would issue a detainer request on the basis of a decision by an immigration court that is "on appeal" and not final and violates a federal appellate court "stay of removal" order. All this leads one to believe that Sheriff Dale Schmidt's June 1, 2017, memorandum was not truthful. Defendant Schmidt wanted a version of events for his office that aligned with his agenda and falsely showed Dodge County and its officials as innocent and without fault. This means defendant Schmidt filed a false report to avoid incrimination in connection to Plaintiff's arrest. Why?

This is like the proverbial criminal suspect who claims an alibi that turns out to be false. Prosecutors usually treat such a false claim as an admission of guilt. Plaintiff sees this false tale of innocence in this same way.

Plaintiff's evidence clearly shows that Dodge County initiated the inquiry with ICE about Plaintiff's immigration status. And Defendant Schmidt is attempting to revise history.

PART III. Plaintiff's Responses to Defendant District Attorney Kurt Klomberg's Specific Grounds for Dismissal

a) Response to Defendant Klomberg's claim that Plaintiff failed to plead facts that satisfy the requirements of FRCP 12(b)(6).

This case involves several party defendants and their torts. One tort is DHS/ICE Officer Brent Kriehn's wrongful claim that Plaintiff was a "Final Removal" (see Complaint, pp. 35 & 36; this document throughout.) This false statement became the ground for arresting Plaintiff on February 27, 2017. It is true that Immigration Judge Vinikoor in 2002 issued a removal order on the ground that the BIA's ***Yanez*** decision was the controlling law. It is also true that Plaintiff, with Judge Vinikoor's encouragement, appealed that decision within 30 days, thereby keeping Plaintiff's case active. This "removal" case remained active, either in the immigration/trial court, on appeal to the BIA or 7th Circuit or in remand to the 7th Circuit, BIA or Judge Cole's immigration Court. This was the state of affairs on September 8, 2017. A total of 15 years! During this entire time, there never was a "final removal," period! And certainly not one that could justify ICE's Joseph Halase's arrest of Plaintiff on February 27, 2017, or at any other time.

During this entire time, the judiciary at three levels had either released Plaintiff from custody or approved his release. (See Complaint, pp. 7 & 8;) Thus, there is no basis for ICE Officers Kriehn and Halase's arrest of Plaintiff on that ground.

When on September 8, 2017, Immigration Judge Samuel Cole, after learning the history and circumstances of Plaintiff's case, immediately canceled Plaintiff's removal (see above, p. 15; Complaint, p. 44) and ordered Plaintiff's immediate release from custody. As emphasized above, the basis of Plaintiff's arrest on February 27, 2017, was ICE Officer Brent Kriehn's action based on his wrongful claim (belief?) that Plaintiff was a "Final Removal." Kriehn's claim is simply not true. An immigration judge's removal decision that is "on appeal" or "in remand" back to a lower court is not a "final removal." Plaintiff's case was either "on appeal" or "in remand" until Immigration Judge Samuel Cole cancelled Plaintiff's removal on September 8, 2017. Because ICE did not appeal, Judge Cole's judgment became "final" after 30 days.

Officer Kriehn was simply wrong in his claim that "removal decision was a 'Final Removal'." (See Complaint, p.21) This raises the question: **"What does this have to do with Defendant D.A. Kurt Klomberg?"**

The evidence set forth throughout **Parts I** and **II** as well as in the Complaint show that Defendant Dodge County District Attorney Klomberg felt great animosity toward Plaintiff (see pp. 20 *et seq*.) He

1) made every effort to persuade the defense bar in Dodge County not to employ or use Plaintiff as a consultant in their drug related criminal cases;

2) conspired with fellow Defendant Dodge County Sheriff Dale Schmidt to remove Plaintiff from the list of professional visitors at the jail (see Sheriff's email of 12/01/2016 to Defendant Klomberg[16]);

3) conspired with TAD Case Manager Kimberly Roemer (Complaint, pp. 29 – 31) to feed damaging information to Dodge County judges about Plaintiff; and

4) conspired with Sheriff Schmidt and others to drive Plaintiff and his "Xtreme Intervention Project" out of Dodge County.

None of this was related to the responsibilities or duties of a Wisconsin district attorney. More likely, it was a personal power thing. In addition, Sheriff Schmidt initiated the contact with ICE Officer Brent Kriehn. The evidence suggests that D.A. Klomberg was involved in this effort to contact ICE Officer Brent Kriehn about Plaintiff's immigration status. It makes no difference whether or not Officer Kriehn was aware or unaware of the conspiracy. If conspirators Sheriff Schmidt and D.A. Klomberg used ICE Officer Kriehn to further their ends, Kriehn became part of the conspiracy, albeit unwittingly.

[16] Sheriff Schmidt wrote D.A. Klomberg the following: "Kurt, I spoke with the jail staff and they are going to make the necessary adjustments regarding Selepri so he will need to be on the visitor's list. Respectfully, Sheriff Dale J. Schmidt" In this instance, it looks like the Sheriff Schmidt is assuring the District Attorney that he has complied with D;A. Klomberg's wishes or with a previous agreement. According to Wisconsin law, it is the Sheriff who is responsible for administering the jail, not the District Attorney.

Because Defendant Klomberg was uncertain that ICE would actually deport Plaintiff, he made an additional effort in a "confidential" email to persuade Wisconsin Teen Challenge director Jennifer Fyock to help him and another find damaging evidence against Plaintiff. His exact explanation for this request was: "… but there are some things we are trying to shore up to make sure it sticks." (Plaintiff's underlining of "we" is for emphasis ; see pp. 26 & 27; Complaint, pp. 41, 42.) Who is/are "we"? What does defendant Klomberg mean by "make sure it sticks"? Without discovery Plaintiff cannot fully explore this issue. The evidence makes it reasonably clear that Defendant Klomberg's personal vendetta against Plaintiff led to the actions and events that generated the torts in this claim.

In January 2017, Defendant Klomberg engaged in an email exchange with Kimberly Roemer, a TAD Program case manager. D.A. Klomberg was using Ms. Roemer to feed defamatory material about plaintiff to the Dodge County judges and gather damaging information about him and his effort to get a Dodge County defendant (Emily Hanefeld) into a Teen Challenge Program in Florida. Klomberg asked: "Can you get something in writing"? Roemer asks: "From Teen Challenge?" Klomberg responds: "Yes. Something that indicates he is blacklisted. We can discuss what I'm thinking tomorrow. This could end our problem". It is clear! Defendant Klomberg is secretly conspiring to

harm plaintiff with the intent to enlist the help of others. It is important to note that he refers to Plaintiff as "our problem". This is not a legal problem requiring the duties of a district attorney, but a personal agenda and vendetta in which DA Klomberg fully intends to use the influence of his office to carry out his purpose.

Defendant Sheriff Schmidt in his 2/27/2017 email to "Judges, Police Chiefs" and 20 "other" personages, in which he announced Plaintiff's arrest and boasted about his role, he made it clear that "I want everyone here to be on the same page." He included in the email his investigator's background investigation and "other investigation" documents. On the same day, Kimberly Roemer, TAD Case Manager, emailed Defendant Klomberg: "Just heard Selepri is in the jail. … Best news all day!!!" This evidence seems to confirm that defendant Klomberg had succeeded in his defamation campaign against plaintiff Amachree and had manipulated others into seeing his personal vendetta as "Our Problem" among Dodge County officials and anyone else he could persuade.

Defendant Klomberg cannot reasonably expect Plaintiff to know all about his case before Plaintiff has the opportunity to engage in discovery. What Plaintiff does know is that Defendant Klomberg and Sheriff Schmidt have plotted harm to Plaintiff and have used the influence of their public office to and recruit other public employees into

their scheme. Furthermore, as a co-conspirator Defendant D.A. Klomberg is responsible for Defendant Schmidt's bringing ICE and Officer Kriehn into their plot or conspiracy and its agreements. Finally, as a co-conspirator D.A. Klomberg is also responsible for Sheriff Schmidt's failing alibi of June 1, 2017, in which he claims he had nothing to do with ICE's arrest of Plaintiff on February 27, 2017, other than providing ICE a place for arresting Plaintiff, (See above, p. 37.)

Plaintiff has set forth reasons in the complaint (see pp. 39 & 40) and in the text above that there were no legal or justifiable grounds for his arrest and detention. (See also above, pp. 30 to 33.).

These facts establish a legally plausible and cognizable claim and grounds on which the claim rests. They are provable and meet legal standards and provide Defendant Klomberg no basis for dismissal.

b) Response to Defendant District Attorney Kurt Klomberg's claim of immunity and violation of Wis. Stat. § 893.83(3)

In the United States, "qualified immunity" is a doctrine of the Supreme Court first introduced in ***Pierson v. Ray***, 386 U.S. 547 (1967). Its purpose is to shield government officials performing discretionary functions from liability for civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," ***Harlow v. Fitzgerald***, 457 U.S. 800, at 818 (1982).

Wisconsin also has sovereign and qualified immunity laws. (See Law of Soverign Immunity – doc.legis.wisconsin.gov) Wisconsin courts interpret Article IV, Section 27, of the Wisconsin Constitution to mean that the state has sovereign immunity in state actions except when the Legislature consents to suits against the state.

> **893.82 Claims against state employees; notice of claim; limitation of damages.**
> **(1)** The purposes of this section are to:
> **(a)** Provide the attorney general with adequate time to investigate claims which might result in judgments to be paid by the state.
> **(b)** Provide the attorney general with an opportunity to effect a compromise without a civil action or civil proceeding.
> **(c)** Place a limit on the amounts recoverable in civil actions or civil proceedings against any state officer, employee or agent.
> **(2)** In this section:
> **(a)** "Civil action or civil proceeding" includes a civil action or civil proceeding commenced or continued by counterclaim, cross claim or 3rd-party complaint.
> **(b)** "Claimant" means the person or entity sustaining the damage or injury or his or her agent, attorney or personal representative.
> **(c)** "Damage" or "injury" means any damage or injury of any nature which is caused or allegedly caused by the event. "Damage" or "injury" includes, but is not limited to, any physical or mental damage or injury or financial damage or injury resulting from claims for contribution or indemnification.
> **(d)** "State officer, employee or agent" includes any of the following persons:
> **. . .**
> **(2m)** No claimant may bring an action against a state officer, employee or agent unless the claimant complies strictly with the requirements of this section.
> **(3)** Except as provided in sub. (5m), no civil action or civil proceeding may be brought against any state officer, employee or agent for or on account of any act growing out of or committed in the course of the discharge of the officer's, employee's or agent's duties, and . . .

(Underlining added for emphasis.)

The dispositive clause in the immunity law cited above is ". . . no civil action or civil proceeding may be brought against any state officer, employee or agent for or on account of any act growing out of or committed in the course of the discharge of the officer's, employee's or agent's duties, . .". Did admitted "state officer" Defendant Klomberg's "acts" "grow out of" or "were committed in the course of the discharge of the officer's duties"?

Plaintiff submits that all of D.A. Klomberg's acts discussed above were personally motivated and unrelated to his "duties." (See p. 46 & 47 above.). Klomberg never charged Plaintiff with an offense. See pp. 33 *et seq*. and Sheriff Schmidt's email to 35 prominent persons in Dodge and surrounding counties, including judges and police chiefs, on the day ICE arrested Plaintiff on an immigration matter, where he writes: "While I have no evidence at this time to proceed with a criminal investigation, …"

There is no evidence that anyone urged D.A. Klomberg to charge Plaintiff with a crime or swore out a complaint against him. To the contrary, there is evidence to support that defendant Klomberg and Schmidt tried to solicit complaints from Dodge County residents who refused. Conspiring with others to slander, defame, and ruin one's career in Dodge County is not in the district attorney's job description. It's a tort.

It is not a crime to offer those suffering from drug additions a truly promising solution for their addictions. Perhaps Klomberg could explain how this hatred of Plaintiff is part of his job as a Wisconsin district attorney.

c) The Court of Appeals "Stay of Removal" Order.

Defendant Klomberg argues (p. 3 of his Motion) that "[t]his Court has no jurisdiction to hold a person in contempt for violating an order of another court in a separate action." The reference, one assumes, is to the 7th Circuit's "stay of removal" order. Plaintiff does not ask this Court to cite anyone for contempt. However . . . If 1) the 7th Circuit's "stay of removal" order granted rights and protections to Plaintiff (as this attorney believes it does) and 2) those rights were violated when ICE incarcerated Plaintiff for over six months, there is no reason why this federal district court should not exercise jurisdiction over this issue. Indeed, this is the Court's job. If this Court rules on this matter and its ruling is appealed, it will land in the lap of the 7th Circuit, the very court that issued the stay order long ago.

Defendant Klomberg also argues that the 7th Circuit's "stay of removal" order should be narrowly construed to just mean actually putting Plaintiff on a boat or airplane and shipping him off to Liberia, the country of his birth. Based on this narrow construction, Defendant

claims that, since Plaintiff was never shipped back to Liberia, there was no violation of the 7th Circuit's "stay of removal" order.

If this understanding of the "stay of removal" order is correct, the 7th Circuit's stay order becomes irrelevant in this litigation, since no one put Plaintiff on a boat and shipped him off. It also would mean that the government, including ICE and its officers at the lowest level, may overrule the judgments of the judiciary on matters of the custody of immigrants during cancellation of removal proceedings. This would mean that ICE Officer Brent Kriehn had the authority to overrule highly respected Immigration Judge Vinikoor, three BIA judges and three 7th Circuit judges. All this happened without objection by DHS Chief Counsel Karen Lundgren. Klomberg's argument smacks of those made by absolute sovereigns of ancient times.

In contrast, Plaintiff urges this Court to construe the 7th Circuit's "stay of removal" in the broader sense of staying "removal proceedings." In this case, the stay order was issued pending the outcome of a similar case in the Supreme Court. This broader construction would put everything "on hold" until an important underlying legal issue is resolved at a higher level. This broader construction would inform the government, including ICE, that the total matter is in the hands of the

Courts, a separate and independent branch of government, until the legal issue is resolved.

This Court should note that, while ICE had the opportunity, it never suggested to Immigration Judge Samuel Cole that the ***Lopez*** decision doesn't apply to Plaintiff's case. The BIA never told Judge Cole what decision to make. Rather, it issued a typical remand with an instruction to apply a higher court case and make a decision. ICE never appealed Judge Cole's judgment and cancellation of removal. It had 30 days to do so and didn't appeal. Thus, the cancellation of Plaintiff's removal became the "final order," and the end of this removal case.

If this Court accepts the broader interpretation advanced by Plaintiff, ICE's arrest of Plaintiff on February 27, 2017, and its six-month detainment of Plaintiff violated the 7th Circuit's stay order.
Furthermore, if this Court also accepts Plaintiff's argument that Defendants Klomberg and Schmidt conspired to have Plaintiff arrested by ICE and/or used ICE Officer Brent Kriehn to achieve that wrongful end, they committed a tort that seriously harmed Plaintiff. Under these circumstances, Plaintiff is entitled to fair compensation.
All this happened without objection of DHS Chief Counsel Karen Lundgren.

d) The Fourth Amendment argument

The Fourth Amendment limits the power of the federal government. It provides in important part:

> **The right of the people to be secure in their persons, . . . against unreasonable . . . seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons . . . to be seized.**

ICE, being part of the federal government, is bound by this Amendment.

Defendants Klomberg and Schmidt, being state officers and part of a conspiracy involving ICE as shown, are also bound. In addition, the powers of the States are limited by this Amendment (see landmark case ***Mapp v. Ohio***, 367 U.S. 643 (1961)). Plaintiff, as a permanent resident of the United States is entitled to these fundamental protections.

ICE seized Plaintiff on February 27, 2017, without presenting any proof or evidence of Plaintiff having committed a criminal offense since Judge Vinikoor's judgment allowing him to be free from custody in 2001. And ICE presented no warrant for Plaintiff's seizure or made any showing of "probable cause."

e) Additional Response to Klomberg's Parts IV, Fourth Amendment, & V, 8 U.S.C. § 1537(b)(1) 8 U.S.C. 1226

In 2001, Plaintiff was released from Illinois custody. There was no hold on him, and he immediately enrolled in Chicago's Teen Challenge's drug rehabilitation program. Also in 2001, the INS, soon to become DHS, filed removal proceedings based on Plaintiff's felony conviction for possession of half a gram of cocaine, a felony in Illinois but only a misdemeanor in federal criminal law. Also, during this period, the BIA held in ***Yanez*** that a narcotics felony conviction in a state court required deportation, in spite of the fact that possession of such small amounts of cocaine under federal law was a misdemeanor and not deportable. Plaintiff retained counsel and moved for cancellation of removal. Plaintiff appeared in court at the first hearing and at every other required hearing in immigration court, Judge Robert Vinikoor presiding. INS was represented by Chief Counsel Karen Lundgren. Without objection, Judge Vinikoor allowed Plaintiff to remain free from custody.

Based on the BIA's ***Yanez*** decision, Judge Vinikoor in 2002 ordered Plaintiff's removal from the United States. And at the same time, Vinikoor encouraged Plaintiff to appeal, noting that ***Yanez*** and similar case ***Lopez v. Gonzales*** were already on appeal.

Judge Vinikoor also informed Chief Counsel Karen Lundgren that he was inclined to allow Plaintiff to remain free from custody and if the

government had any objections to this it should file a motion and he would set a hearing date and rule on the motion. Ms. Lundgren did not file a motion or otherwise object. Judge Vinikoor entered an order allowing Plaintiff to be free from custody during his appeals.

It is important to note that ICE never raised the issue of Plaintiff's freedom from custody in the BIA, the Seventh Circuit, or elsewhere.

For reasons unknown, in July of 2004 Plaintiff was asked to return to Chicago for an interview with Captain James Bond. He interviewed Plaintiff and confirmed that Plaintiff should remain free from custody during appeals.

The BIA, following its ***Yanez*** precedent, affirmed Judge Vinikoor's removal order. At the same time, it did not question Judge Vinikoor's decision allowing Plaintiff to remain free during the appeal process.

Plaintiff appealed the BIA's affirmance to the 7th Circuit. Three judges from that Court issued the Stay order discussed above and, when the Supreme Court issued a writ of certiorari in ***Lopez v. Gonzales***, it placed Plaintiff's case on hold pending that decision. No judge questioned Plaintiff's freedom from custody.

The score card at this point shows Immigration Judge Vinikoor, the three BIA judges and three 7th Circuit judges supported his freedom from custody during appeal. That's 7 judges for Plaintiff's freedom from custody, 0 judges against.

The government and state defendants in this case find Judge Vinikoor's decision contrary to law, and they cite **8 U.S.C. § 1537(b)(1)**. It provides as follows:

> **(b) Custody and removal,**
>
> **(1) Custody**
>
> **If the judge decides that an alien shall be removed, the alien shall be detained pending the outcome of any appeal.**

This provision looks mandatory and, according to Defendants Kriehn and Klomberg in this case, it justifies ICE Officer Brent Kriehn's rather bold act of taking the law into his hands, overruling all these seven judges, and arresting and holding Plaintiff in custody for over six months. Bold? Yes. Thoughtful? No.

Congress passed **8 U.S.C. § 1537(b)(1)** on June 27, 1972, and amended it several times, the last amendment on September 30, 1996.

On the exact same days, Congress passed and amended **8 U.S.C. § 1226** - **Apprehension and detention of aliens**. It provides:

> **(a) Arrest, detention, and release**
> **On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—(1) may continue to detain the arrested alien; and (2) may release the alien on—bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General;**

Immigration Judges read **8 U.S.C. § 1537(b)(1)** and **8 U.S.C. § 1226** together. They were passed and amended together. While the two statutes may look somewhat inconsistent, they were passed and amended by the same body of Congress on the same days. Accordingly, they must be read together. The judiciary believes that **§ 1226** authorizes the immigration courts, all part of the Attorney General's office, to exercise discretion in matters of custody. This has long been the custom and understanding of these two statutes. The immigration judges and ICE officers operate under the Attorney General's office and its authority. There is nothing in these provisions that authorizes an ICE officer in the field to override the decisions of the immigration judicial system.

Officer Kriehn made his decision to arrest Plaintiff within less than 24 hours after receiving Lt. Polsin's email and listening to gossip from his associate, McDaniels, who was detailed to the Dodge County Detention Facility. There was no time or effort made to be careful and thoughtful.

In addition, **§ 1226 (a) authorizes an arrest of an alien** "**on warrant issued by the Attorney General …"**. As far as Plaintiff can determine, there was no warrant. Defendant Kriehn should be ordered to produce this warrant in discovery.

f) Defendant Klomberg's unjustified and irresponsible attacks on Plaintiff's motivation

Defendant Klomberg claims that "ICE issued a hold against Plaintiff." Plaintiff has never seen such a "hold" and the government has never produced evidence of a hold. Klomberg claims that Plaintiff was "lucky to evade ICE as long as he did" and explains the BIA's over ten year delay in remanding Plaintiff's case to the immigration court by being "overwhelmed with cases" while Plaintiff sat in jail for six and a half months. Imagine a physician or investment firm attempting to explain away a disastrous blunder resulting of in loss of life, time, or money with the excuse "we were too busy."

Klomberg claims "Plaintiff has no legitimate complaint that he spent some time in custody once ICE finally caught up with him." There is no evidence that ICE was even looking for Plaintiff. ICE knew as well as Plaintiff about the Supreme Court's rejection in ***Lopez*** of the premise of Plaintiff's deportation, as explained above.

In fact, Plaintiff had no reason to believe that ICE was even looking for him. In many public appearances across the country, Plaintiff told audiences that he was born in Liberia and his experiences in the courts.

Defendant Klomberg claims that Plaintiff "had been evading the immigration authorities from 2002—2017." Plaintiff never evaded, nor had any need or reason to evade, immigration authorities. His focus was

on helping addicts to overcome their addictions, and he was very successful in doing so. The truth please!

Respectfully Submitted,

s/ Selepri Saingayko Amachree,

by: John D. Gorby.
his Attorney

Certificate of Plaintiff:

I, Selepri S. Amachree, plaintiff in this case, have read this Response to Defendant Klomberg's Motion to Dismiss several times, know the contents thereof, and the claims of fact therein, and state that all claims of fact are true to the best of my knowledge.

s/ Selepri Saingayko Amachree

SELEPRI S. AMACHREE

Certificate of Attorney:

Under FRCP 11, by signing below, I certify to the best of my knowledge, information, and belief that this response: (1) is not being presented for an improper purpose, such as to harass, cause

unnecessary delay, or needlessly increase the cost of litigation: (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; or (4) this response otherwise complies with the requirements of Rule 1

Date of Signing:	December 31, 2021
Signature of Attorney:	s/ John D. Gorby
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