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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERTO J. BLANDINO,)	No. C 11-4807 JSW (PR)
Plaintiff,)	ORDER OF SERVICE
v.)	
UNITED STATES; DOES 1-10,)	
Defendant.)	

INTRODUCTION

Plaintiff, a detainee of the United States Customs Enforcement (“ICE”), filed this complaint under the Federal Tort Claims Act. Plaintiff is granted leave to proceed in forma pauperis in a separate order. The Court now reviews the amended complaint and orders it served upon Defendant.

DISCUSSION

I. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not

1 necessary; the statement need only "give the defendant fair notice of what the . . . claim
2 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
3 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
4 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
5 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
6 recitation of the elements of a cause of action will not do. . . . Factual allegations must
7 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
8 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
9 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
10 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
11 699 (9th Cir. 1990).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:

13 (1) that a right secured by the Constitution or laws of the United States was violated, and
14 (2) that the alleged violation was committed by a person acting under the color of state
15 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 II. Legal Claims

17 Plaintiff alleges that while he was detained in an ICE facility in San Francisco,
18 two ICE officers "maliciously" beat him up, causing him to suffer injuries. He claims
19 that they committed "assault, battery, false imprisonment, false arrest, and/or abuse of
20 process.

21 In 1946, Congress passed the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b),
22 2671-2680 ("FTCA"), which waived the sovereign immunity of the United States for
23 certain torts committed by federal employees acting within the scope of their
24 employment. *See FDIC v. Meyer*, 510 U.S. 471, 475-76 (1994). The FTCA provides
25 that district courts have exclusive jurisdiction of civil actions against the United States
26 for money damages "for injury or loss of property, or personal injury or death caused by
27 the negligent or wrongful act or omission of any employee" of the federal government
28 while acting within the scope of his office or employment. 28 U.S.C. § 1346(b).

1 attached page headed "NOTICE -- WARNING (EXHAUSTION)." See *Wyatt v.*
2 *Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003)

3 c. Defendants shall file a reply brief no later than **fifteen (15) days** after
4 Plaintiff's opposition is filed.

5 d. The motion shall be deemed submitted as of the date the reply brief is
6 due. No hearing will be held on the motion unless the Court so orders at a later date.

7 4. Discovery may be taken in accordance with the Federal Rules of Civil
8 Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) or
9 Local Rule 16 is required before the parties may conduct discovery.

10 5. Extensions of time are not favored, though reasonable extensions will be
11 granted. Any motion for an extension of time must be filed no later than **five** days prior
12 to the deadline sought to be extended.

13 6. All communications by Plaintiff with the Court must be served on Defendant,
14 or Defendant's counsel once counsel has been designated, by mailing a true copy of the
15 document to Defendant or Defendant's counsel.

16 7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
17 Court informed of any change of address and must comply with the Court's orders in a
18 timely fashion. Failure to do so may result in the dismissal of this action for failure to
19 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

20 IT IS SO ORDERED.

21 DATED: October 26, 2011

22 
23 _____
24 JEFFREY S. WHITE
25 United States District Judge
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27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 ROBERTO X BLANDINO,
6 Plaintiff,

Case Number: CV11-04807 JSW

CERTIFICATE OF SERVICE

7 v.

8 UNITED STATES et al,
9 Defendant.
10 _____/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 26, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Roberto X. Blandino 077 223 173
18 ICE Detention Facility
19 1623 East J Street
Suite 5
Tacoma, WA 98421-1615

20 Dated: October 26, 2011


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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