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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IGNACIO LANUZA,

Mr. Lanuza,

v.

JONATHAN M. LOVE, et. al.

Defendants.

CASE NO. C14-1641 MJP

ORDER ON MOTIONS

THIS MATTER comes before the Court on Defendant Jonathan M. Love’s Motion to Dismiss, (Dkt. No. 9), and Defendant United States’ Motion to Dismiss, (Dkt. No. 14). The Court reviewed the motions, Plaintiff Ignacio Lanuza’s response briefs, (Dkt. Nos. 18, 24), and the related record. The Court GRANTS Defendant Love’s Motion to Dismiss and DISMISSES Plaintiff’s claims against Defendant Love, (Dkt. No. 9). The Court GRANTS in part DENIES in part Defendant United States’ Motion to Dismiss, (Dkt. No. 14). In light of its rulings on these motions, the Court DENIES Defendant Love’s pending Motion to Stay, (Dkt. No. 10), as moot and DENIES Mr. Lanuza’s pending Motion to Compel, (Dkt. No. 30), as moot.

### Background

1  
2 Plaintiff Ignacio Lanuza alleges the following facts in his complaint. (Dkt. No. 1.) On or  
3 about June 25, 2008, while he was in custody on suspicion of a weapons violation, Mr. Lanuza  
4 met Immigration and Customs Enforcement (“ICE”) Officer Anthony Dodd at King County Jail.  
5 (Id. at 4.) During their meeting, Mr. Lanuza admitted to Officer Dodd that he did not have  
6 authorization to be in the United States. (Id.)

7 On June 25, 2008, Officer Dodd completed an I-213 Form (“Record of  
8 Deportable/Inadmissible Alien”) recounting his interaction with Mr. Lanuza along with an I-826  
9 Form (“Notice of Rights”). (Id.) Officer Dodd wrote on the I-213 Form that Mr. Lanuza had  
10 been advised of his rights per the I-826 Form. (Id.)

11 Mr. Lanuza was transferred to immigration custody about one week after his meeting  
12 with Officer Dodd. (Id.) Officer Dodd served Mr. Lanuza with a Warrant for Arrest of Alien  
13 and a Notice to Appear in removal proceedings on July 3, 2008. (Id. at 5.) Although Mr.  
14 Lanuza was initially placed in removal proceedings at the Tacoma Immigration Court, he  
15 subsequently posted bond and his removal proceedings were transferred to the Seattle  
16 Immigration Court. (Id.)

17 On May 6, 2009, at his master calendar hearing, Mr. Lanuza indicated to the Immigration  
18 Judge (“IJ”) that he would apply for cancellation of removal. (Id.) Cancellation of removal is a  
19 form of relief that allows the IJ to cancel removal proceedings and adjust the applicant’s  
20 immigration status to that of a lawful permanent resident. (Id.) At the time he was placed in  
21 removal proceedings, Mr. Lanuza satisfied the statutory requirements for cancellation of  
22 removal, including ten years of continuous presence in the United States. (Id.)

23 During his May 2009 immigration hearing, the IJ asked Defendant Love to confirm  
24 representations that Defendant Love had made off the record. (Id. at 6.) Specifically, the IJ

1 asked Defendant Love to confirm that there were documents in Mr. Lanuza's file that showed he  
2 had waived his opportunity to appear before an IJ when he was apprehended at the U.S.-Mexico  
3 border in January of 2000. (Id.) Defendant Love responded affirmatively to the IJ's question,  
4 asserting that Mr. Lanuza had signed an I-826 Form. (Id.)

5 On May 11, 2009, Defendant Love submitted the additional evidence requested by the IJ,  
6 including an I-826 Form that Mr. Lanuza contends was falsified, along with a motion opposing  
7 Mr. Lanuza's application for cancellation of removal. (Id.)

8 The I-826 Form was critical in determining whether Mr. Lanuza would be able to remain  
9 in the United States with his family because a signed I-826 Form would render him ineligible for  
10 cancellation of removal. (Id.) By signing an I-826 Form, a non-citizen accepts an administrative  
11 voluntary departure instead of exercising his right to appear before an IJ in removal proceedings  
12 and thereby breaks whatever continuous physical presence he may have by then accrued. (Id. at  
13 7.)

14 In its submission to the IJ, the Department of Homeland Security ("DHS") argued that  
15 Mr. Lanuza was made ineligible for cancellation of removal because his continuous presence in  
16 the United States was broken by the January 2000 voluntary departure. (Id.) Mr. Lanuza  
17 challenged DHS's position, arguing:

18 Nobody ever read to me or gave me any copy of the paper that my attorney []  
19 showed me. The only thing that I did was to sign where the [Immigration] official  
20 indicated and the official did not explain anything in detail to me about the reason  
for the paper. I remember everything happened very fast, we were about 70 to 80  
persons when everybody simply signed to leave voluntarily.

21 (Dkt. No. 1-6 at 40.) Mr. Lanuza requested that the IJ issue a subpoena requiring Border Patrol  
22 Agent Davis to testify under oath as to the circumstances under which the I-826 Form was  
23 signed. (Dkt. No. 1 at 7-8.) The IJ denied his request for subpoena in June 2009. (Id. at 8.)

1 On January 5, 2010, the IJ found Mr. Lanuza ineligible for cancellation of removal and  
2 ordered him removed from the United States. (Id.) The IJ's decision that Mr. Lanuza was not  
3 eligible for cancellation of removal was based on the I-826 Form. (Id.) Mr. Lanuza appealed  
4 the IJ's decision to the Board of Immigration Appeals ("BIA"), and DHS defended its position  
5 before the BIA. (Id.) The BIA upheld the IJ's decision, "which was based exclusively on the  
6 January 2000 I-826, and ordered [Mr. Lanuza] removed to Mexico." (Id. at 9.)

7 Mr. Lanuza hired new counsel on December 9, 2011 to represent him in the Ninth  
8 Circuit. (Id.) In December of 2011, Mr. Lanuza's new counsel, Mr. Hilary Han, discovered  
9 irregularities in the I-826 Form, as well as other documentation, while reviewing the agency file.  
10 (Id.) These irregularities indicated the I-826 Form had been manipulated. (Id.) Mr. Han ordered  
11 a forensic evaluation of the I-826 Form. (Id.) The forensic evaluation was completed on  
12 February 1, 2012. (Dkt. No. 1-7 at 22-26.) The results of the evaluation demonstrated the I-826  
13 Form had been falsified. (Dkt. No. 1 at 9.)

14 Mr. Lanuza filed a motion to reopen his removal proceedings before the BIA on February  
15 11, 2012. (Id.) The government did not respond to his motion. (Id.) The BIA granted Mr.  
16 Lanuza's motion and remanded his case for a full evidentiary hearing on April 20, 2012, citing to  
17 the "seriousness and particularity of the allegations" raised by Mr. Lanuza. (Id. at 10.)

18 On remand, DHS did not contest Mr. Lanuza's eligibility for cancellation of removal.  
19 (Id.) On January 9, 2014, the IJ granted his application, adjusting his status to that of lawful  
20 permanent resident. (Id.)

21 On February 13, 2014, Mr. Lanuza filed a tort claim against the United States. (Dkt. No.  
22 1-6 at 2.) The tort claim was denied on August 11, 2014. (Id.)

1 Mr. Lanuza commenced this action on October 23, 2014 against Defendant Jonathan M.  
2 Love and Defendant United States. (Dkt. No. 1.) Mr. Lanuza alleges claims of: (1) abuse of  
3 process; (2) malicious prosecution; (3) intentional infliction of emotional distress; (4)  
4 negligence; and (5) negligent infliction of emotional distress against Defendant United States  
5 pursuant to the Federal Tort Claims Act (“FTCA”). (Id. at 14-22.) Mr. Lanuza alleges  
6 Defendant Love violated his substantive and procedural due process rights under the Fifth  
7 Amendment to the Constitution. (Id. at 18-19.) Both Defendants move to dismiss Mr. Lanuza’s  
8 complaint. (Dkt. Nos. 9,14.) In addition, Defendant Love has filed a motion to stay this case  
9 pending the Court’s ruling on his motion to dismiss in which Defendant United States also joins.  
10 (Dkt. No. 10.)

### 11 Discussion/Analysis

#### 12 **I. Legal Standard Motion to Dismiss**

13 The Federal Rules require a plaintiff to plead “a short and plain statement of the claim  
14 showing that [he] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “To survive a motion to dismiss, a  
15 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
16 plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v.  
17 Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual  
18 content that allows the court to draw the reasonable inference that the defendant is liable for the  
19 misconduct alleged.” Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 545) (further noting  
20 that plausibility lies somewhere between allegations that are “merely consistent” with liability  
21 and a “probability requirement”). In determining plausibility, the Court accepts all facts in the  
22 complaint as true. Barker v. Riverside County Office of Educ., 584 F.3d 821, 824 (9th Cir.  
23 2009). The Court need not accept as true any legal conclusions put forth by the plaintiff. Iqbal,  
24 556 U.S. at 678.

1 Rule 12(b)(1) permits a motion to dismiss based on lack of subject matter jurisdiction. It  
2 is a fundamental precept that federal courts are courts of limited jurisdiction. Vacek v. UPS, 447  
3 F.3d 1248, 1250 (9th Cir. 2006). “A federal court is presumed to lack jurisdiction in a particular  
4 case unless the contrary affirmatively appears.” A–Z Int’l v. Phillips, 323 F.3d 1141, 1145 (9th  
5 Cir. 2003) (citations omitted). The plaintiff has the burden of establishing that subject matter  
6 jurisdiction is proper. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994).

## 7 **II. Defendant Love’s Motion to Dismiss**

8 Defendant Love argues Mr. Lanuza’s claims against him should be dismissed because:  
9 (1) Mr. Lanuza seeks to impermissibly extend Bivens liability to a new context; (2) Mr. Lanuza’s  
10 complaint is time-barred; (3) Defendant Love is entitled to qualified immunity; and (4) Mr.  
11 Lanuza’s complaint fails to provide the level of specificity required by federal case law. (Dkt.  
12 No. 9 at 1-17.)

### 13 **A. Bivens Liability**

14 Defendant Love argues Mr. Lanuza impermissibly seeks to extend Bivens liability to a  
15 new context, citing Mirmehdi v. United States, 689 F.3d 975, 981 (9th Cir. 2011). (Dkt. No. 9 at  
16 4-9.) Mr. Lanuza contends: (1) that this case does not present a new context for Bivens liability;  
17 and (2) even if it did, Bivens liability is appropriate under the two-prong test announced by the  
18 Supreme Court in Wilkie v. Robbins, 551 U.S. 537 (2007). (Dkt. No. 18 at 3-13.) The Court  
19 agrees with Mr. Lanuza that a Bivens remedy should be available to him. Nevertheless, the  
20 Court finds the Ninth Circuit’s opinion in Mirmehdi forecloses such a remedy.

21 The Ninth Circuit has defined “context,” for purposes of Bivens liability, as “a potentially  
22 recurring scenario that has similar legal and factual components.” Mirmehdi, 689 F.3d at 981.  
23 Mr. Lanuza brings suit against Defendant Love for constitutional violations he alleges occurred  
24 during deportation proceedings. “Deportation proceedings” provide the appropriate context for

1 this case because the remedies available to non-citizens for constitutional violations differ from  
2 those available to citizens. Id. The cases to which Mr. Lanuza cites for the proposition that this  
3 case does not present a new context for Bivens liability are factually and legally dissimilar from  
4 this case. See e.g., Papa v. United States, 281 F.3d 1004, 1010-11 (9th Cir. 2002) (holding that a  
5 non-citizen could bring a Bivens action for alleged due process violations that occurred during  
6 immigration detention); see also Guerra v Sutton, 783 F.2d 1371, 1375 (9th Cir. 1986) (holding a  
7 Bivens action is available where an INS agent conducts a search or makes an arrest “without  
8 knowledge of the details of the warrant under which he presumes to act”). Therefore, the Court  
9 must determine whether a Bivens remedy is appropriate in the context this case presents.

10 In Wilkie v. Robbins, 551 U.S. 537 (2007), the Supreme Court set forth a two-part test  
11 courts should apply to determine the appropriateness of a Bivens remedy in a given case. First,  
12 the Court must determine whether there is “any alternative, existing process for protecting the  
13 plaintiff’s interests.” W. Radio Servs. Co. v. U.S. Forest Serv., 578 F.3d 1116, 1120 (9th Cir.  
14 2009) (citations omitted). If there is such a remedy, the Court’s inquiry stops there. Mirmehdi,  
15 689 F.3d at 982. If there is not an alternative remedy, the Court must ask “whether there  
16 nevertheless are factors counseling hesitation before devising such an implied right of action.”  
17 W. Radio Servs. Co., 578 F.3d at 1120.

18 In Mirmehdi, the Ninth Circuit considered whether a Bivens remedy was available to the  
19 Mirmehdis, non-citizens suspected of involvement with the terrorist group Mujahedin-e Khalq,  
20 who brought suit against an FBI agent and an INS agent for wrongful detention pending  
21 deportation. 689 F.3d at 980. The Mirmehdis alleged these government officials presented false  
22 testimony and evidence at their bond revocation hearing resulting in their unlawful detention. Id.

1 at 979. The Ninth Circuit found “deportation proceedings” were the appropriate context in  
2 which to determine whether a Bivens remedy was available. Id. at 981.

3 The Ninth Circuit then applied the Wilkie test. Id. at 982. It found that the Mirmehdis’  
4 Bivens claim foundered at the first prong of the Wilkie test because the Mirmehdis were able to  
5 challenge their detention through two different remedial systems—the immigration system and  
6 habeas. Id. The Ninth Circuit noted that “Congress has established a substantial,  
7 comprehensive, and intricate remedial scheme in the context of immigration.” Id. (citing Arar v.  
8 Ashcroft, 585 F.3d 559, 572 (2d Cir. 2009).) The Ninth Circuit rejected the Mirmehdis’  
9 argument that a Bivens remedy was appropriate because the immigration laws did not provide  
10 monetary compensation for unlawful detention. Id. It reasoned that Congress’ failure to provide  
11 monetary relief could not be inadvertent given the multiple changes to the immigration laws. Id.

12 The Ninth Circuit also found that the Mirmehdis’ Bivens claim foundered at the second  
13 prong of the Wilkie test. Id. It noted that “immigration issues have the natural tendency to  
14 affect diplomacy, foreign policy, and the security of the nation” which “counsels hesitation in  
15 extending Bivens.” Id. at 982-83 (citations omitted). The Ninth Circuit further noted that  
16 “concerns that always mitigate against subjecting a prosecutor’s motives and decision-making to  
17 outside inquiry have particular force in the immigration context.” Id. (quotations omitted).

18 This case demonstrates the problems that flow from the Ninth Circuit’s analysis in  
19 Mirmehdi. It is true that Mr. Lanuza was able to challenge the IJ’s removal order by filing an  
20 appeal to the Ninth Circuit and by petitioning the BIA to reopen his case and remand it for an  
21 evidentiary hearing. (Dkt. No. 1 at 9-10.) Under the rationale of Mirmehdi, the availability of  
22 these procedures forecloses a Bivens remedy under the first prong of Wilkie. But this analysis  
23 conflates the availability of procedures to challenge an immigration decision with the availability  
24



1 of protections to deter constitutional violations in the first instance. For example, in Bivens, 403  
2 U.S. at 397-98, the Supreme Court held petitioner could bring suit for damages against six  
3 federal agents for violating his Fourth Amendment rights even though the criminal complaint  
4 against petitioner—the result of the unlawful search—had been dismissed. Bivens v. Six  
5 Unknown Named Agents of Fed. Bureau of Narcotics, 409 F.2d 718, 719 (2d Cir. 1969).

6 Further, this analysis leads to the precise result a Bivens remedy is intended to prevent.  
7 Carlson v. Green, 446 U.S. 14, 21 (1980) (“ . . . the Bivens remedy, in addition to compensating  
8 victims, serves a deterrent”). If a Bivens remedy is not available wherever a non-citizen has the  
9 ability to seek review of an immigration decision, there is little to deter immigration officials  
10 from presenting false evidence or testimony during immigration proceedings or from otherwise  
11 compromising the integrity of such proceedings, the outcomes of which have significant  
12 consequences for non-citizens.

13 It is also true that Mr. Lanuza’s claims implicate immigration issues. Under the rationale  
14 of Mirmehdi, this forecloses a Bivens remedy under the second prong of Wilkie. But while  
15 some immigration cases may implicate issues of national security, diplomacy or foreign policy,  
16 the facts of this case show that immigration cases often do not strongly implicate such concerns.

17 But because the Ninth Circuit’s opinion in Mirmehdi forecloses a Bivens remedy, the  
18 Court GRANTS Defendant Love’s Motion to Dismiss and DISMISSES Mr. Lanuza’s claims  
19 against Defendant Love.

## 20 **B. Qualified Immunity**

21 Although it finds the Ninth Circuit’s opinion in Mirmehdi forecloses a Bivens remedy in  
22 this case, the Court nonetheless addresses Defendant Love’s argument that he is shielded from  
23 liability by the defense of qualified immunity. (Dkt. No. 9 at 11-15.)

1 “The doctrine of qualified immunity protects government officials ‘from liability for civil  
2 damages insofar as their conduct does not violate clearly established statutory or constitutional  
3 rights of which a reasonable person would have known.’” Pearson v. Callahan, 555 U.S. 223,  
4 230 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). To be “clearly  
5 established,” “[t]he contours of the right must be sufficiently clear that a reasonable official  
6 would understand that what he is doing violates that right.” Anderson v. Creighton, 483 U.S.  
7 635, 640 (1987). In other words, the proper inquiry focuses on whether “it would be clear to a  
8 reasonable officer that his conduct was unlawful in the situation he confronted . . . or whether the  
9 state of the law [at the time] gave fair warning to the officials that their conduct was  
10 unconstitutional.” Clement v. Gomez, 298 F.3d 898, 906 (9th Cir. 2002) (citations omitted).

11 Qualified immunity does not shield a federal official from suit where it is alleged that he  
12 submitted false evidence during an immigration proceeding. It should be obvious to any  
13 reasonable federal official that submitting false evidence in an immigration proceeding, or in any  
14 judicial or quasi-judicial proceeding for that matter, is unlawful and unconstitutional and would  
15 undermine the integrity of such a proceeding. See Malley v. Briggs, 475 U.S. 335, 341 (1986)  
16 (qualified immunity available to all but the “plainly incompetent or those who knowingly violate  
17 the law.”)

### 18 **III. Defendant United States’ Motion to Dismiss**

19 Defendant United States raises three arguments in support of its Motion to Dismiss: (1)  
20 Mr. Lanuza’s claims against the United States are time-barred pursuant to the FTCA’s two-year  
21 statute of limitations; (2) Mr. Lanuza’s claims for malicious prosecution and abuse of process are  
22 not cognizable; and (3) Mr. Lanuza’s claims for intentional and negligent infliction of emotional  
23 distress and negligence are not cognizable. (Dkt. No. 14 at 1-14.)

24 /

1       **A. Statute of Limitations**

2       Defendant United States argues Mr. Lanuza's claims are barred by the FTCA's two-year  
3 statute of limitations for filing tort claims. (Dkt. No. 14 at 8); See 28 U.S.C. §§ 2401(b) and  
4 2675 (an injured party must present a tort claim to the government within two years after his  
5 claim accrues). Defendant United States contends Mr. Lanuza's tort claim accrued on February  
6 1, 2012, at the very latest, when Mr. Lanuza and his counsel received the forensic evaluation of  
7 the I-826 Form. (Id. at 9.) Defendant United States argues that because Mr. Lanuza did not file  
8 his FTCA tort claim with ICE until February 13, 2014, his claims against the United States are  
9 time-barred. (Id.)

10       Mr. Lanuza argues his tort claim was timely filed for three reasons: (1) the continuing tort  
11 doctrine; (2) equitable tolling; and (3) the accrual principles set forth by the Supreme Court in  
12 Heck v. Humphrey, 512 U.S. 477 (1994). (Dkt. No. 24 at 1-8.)

13       Courts apply the continuing tort doctrine where there is "no single incident that can fairly  
14 or realistically be identified as the cause of significant harm." Flowers v. Carville, 310 F.3d  
15 1118, 1126 (9th Cir. 2002). Because the alleged introduction of false evidence during Mr.  
16 Lanuza's immigration proceedings is identifiable as the cause of the harm Mr. Lanuza alleges,  
17 the continuing tort doctrine does not apply.

18       A litigant seeking equitable tolling bears the burden of establishing two elements: (1) that  
19 he has been pursuing his rights diligently; and (2) that some extraordinary circumstances stood in  
20 his way. See Wong v. Beebe, 732 F.3d 1030, 1052 (9th Cir. 2013) (citations omitted). With  
21 respect to the second element, "equitable tolling is typically granted when litigants are unable to  
22 file timely [documents] as a result of external circumstances beyond their direct control." Id.  
23 (citing Harris v. Carter, 515 F.3d 1051, 1055 (9th Cir. 2008)). Mr. Lanuza fails to show  
24 extraordinary circumstances prevented him from filing his tort claim on time. Mr. Lanuza avers

1 he did not file his tort claim until after his removal proceedings had been terminated because he  
2 was afraid the government might retaliate. (Dkt. No. 25 at 4-5.) But aside from his allegations  
3 regarding the introduction of false evidence during his immigration proceedings, Mr. Lanuza has  
4 not alleged facts that show Defendant United States, or Defendant Love for that matter, took  
5 steps to prevent him from pursuing his tort claim. Further, Mr. Lanuza was represented by  
6 counsel at the time he allegedly discovered that the I-826 Form had been falsified. (Dkt. No. 1 at  
7 9.) Although the Court finds Mr. Lanuza's concerns reasonable, equitable tolling does not  
8 apply.

9 In Heck, the Supreme Court held that a claim for damages against the government for an  
10 unconstitutional conviction or imprisonment did not accrue until the imprisonment was finally  
11 overturned because in order to "recover damages for allegedly unconstitutional conviction or  
12 imprisonment . . . a §1983 plaintiff must prove that the conviction or sentence has been reversed  
13 on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called  
14 into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 486-87.

15 Although it appears the Ninth Circuit has not yet spoken on the issue of whether Heck applies in  
16 the civil immigration context, the Ninth Circuit has not limited its application of Heck to Section  
17 1983 claims and has applied Heck's rule regarding accrual to FTCA claims as well. See Erlin v.  
18 United States, 364 F.3d 1127 (9th Cir. 2004). Further, to maintain an action for malicious  
19 prosecution, Mr. Lanuza must allege and prove that his removal order was reversed. See e.g.  
20 Peasley v. Puget Sound Tug & Barge Co., 13 Wash.2d 485, 497 (1942) (to maintain an action for  
21 malicious prosecution, a plaintiff must allege and prove that ". . . the proceedings terminated on  
22 the merits in favor of the plaintiff, or were abandoned . . .") Because Mr. Lanuza's malicious  
23 prosecution claim could not have accrued until his deportation order was reversed, the Court  
24

1 finds Mr. Lanuza's malicious prosecution claim is timely under Heck's rule regarding accrual.  
2 However, Mr. Lanuza's abuse of process, negligence, negligent infliction of emotional distress,  
3 and intentional infliction of emotional distress claims do not require proof that his removal order  
4 was reversed. Therefore, Heck's rule regarding accrual does not apply to these claims. Because  
5 these claims accrued on February 1, 2012, at the latest, they are time-barred.

#### 6 **B. Malicious Prosecution Claim**

7 Defendant United States argues Mr. Lanuza's malicious prosecution claim should be  
8 dismissed for two reasons: (1) the FTCA specifically excludes claims of malicious prosecution  
9 unless those claims are based on actions by an "investigative or law enforcement officer," citing  
10 28 U.S.C. §2680(h); and (2) the FTCA specifically excludes tort claims based on  
11 misrepresentation and deceit. (Dkt. No. 14 at 11.)

12 Defendant United States argues Mr. Lanuza's malicious prosecution claim is not  
13 plausible and should be dismissed because Defendant Love is not an investigative or law  
14 enforcement officer. (Id.) But Mr. Lanuza's allegations are not limited to actions taken by  
15 Defendant Love. In his complaint, Mr. Lanuza alleges "[t]he I-826 was falsified by an ICE  
16 official to make it appear as if it had been signed and dated in January of 2000." (Dkt. No. 1 at  
17 10.) Because it is plausible that an investigative or law enforcement officer engaged in actions  
18 that form the basis of Mr. Lanuza's malicious prosecution claim, dismissal of Mr. Lanuza's  
19 malicious prosecution claim is inappropriate. As such, the Court does not reach Defendant  
20 United States' argument that the United States has not waived sovereign immunity for claims  
21 based on the conduct of federal officials who act like investigative or law enforcement officers.  
22 (Dkt. No. 14 at 11-12.)

23 Defendant United States does not explain how Mr. Lanuza's malicious prosecution claim  
24 falls under the FTCA's misrepresentation and deceit exception. (Dkt. No. 14 at 11-12.) Further,

1 it does not appear that the misrepresentation and deceit exception encompasses the tort of  
2 malicious prosecution because the FTCA expressly permits suits for malicious prosecution based  
3 on acts or omissions of investigative or law enforcement officers of the United States. 28 U.S.C.  
4 §2680(h) (“ . . . with regard to acts or omissions of investigative or law enforcement officers of  
5 the United States Government, the provisions of this chapter . . . shall apply to any claim arising .  
6 . . out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious  
7 prosecution.”)

8 The Court DENIES Defendant United States’ Motion to Dismiss as to Mr. Lanuza’s  
9 malicious prosecution claim and GRANTS the motion as to Mr. Lanuza’s remaining claims.

10 **Conclusion**

11 The Court GRANTS Defendant Love’s Motion to Dismiss and DISMISSES Mr.  
12 Lanuza’s claims against Defendant Love, (Dkt. No. 9). The Court GRANTS in part DENIES in  
13 part Defendant United States’ Motion to Dismiss, (Dkt. No. 14.) In light of its rulings on these  
14 motions, the Court DENIES Defendant Love’s pending Motion to Stay, (Dkt. No. 10), as moot  
15 and DENIES Mr. Lanuza’s pending Motion to Compel, (Dkt. No. 30), as moot.

16 Therefore, Mr. Lanuza’s malicious prosecution claim may proceed against Defendant  
17 United States.

18 The clerk is ordered to provide copies of this order to all counsel.

19 Dated this 20th day of March, 2015.

20 

21 \_\_\_\_\_  
22 Marsha J. Pechman  
23 United States District Judge  
24