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U.S. citizenship no defense against deportation threat

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MINNEAPOLIS - A Minneapolis man was arrested and illegally detained for 43 days by federal immigration agents who sought to have him deported even though he is a U.S. citizen, according to a lawsuit filed recently in federal court in Minneapolis.

Federal agents arrested Anthony A. Clarke during a late-night raid in 2008 at his sister's house in Columbia Heights, then shuttled him back and forth between a Sherburne County jail and an unidentified detention facility in South Dakota, the suit says.

The case is thought to be the first federal suit of its kind in Minnesota, and it appears to follow a national pattern. A recent study at Northwestern University found thousands of cases in which U.S. citizens were arrested in error and held for deportation. Collectively, they raise disturbing questions about the tactics of immigration agents and the adequacy of checks and balances in a parallel court system overseeing the federal Immigration and Customs Enforcement (ICE) agency.

"He got caught in a horrible trap," said Angela Bortel, Clarke's Minneapolis attorney.

An ICE spokesman said that the agency does not comment on pending cases and would not comment on the alleged actions of agents involved in Clarke's case.

Clarke's history is complicated: He was born in Jamaica, came to the United States as a teenager, and was granted American citizenship when his mother became a naturalized citizen in 1975. He had an arrest for marijuana in the mid-1990s and, according to ICE, an unidentified felony.

But FBI records available at the time of Clarke's immigration arrest in 2008 clearly show him to be a U.S. citizen, and documents in his immigration file show that immigration agents were aware of his status the day he was taken into custody.

Clarke, 53, is seeking more than \$1 million in damages for false arrest and malicious prosecution.

"It was really terrible," he said in an interview. "Here I am, a citizen ... I didn't know what to think or why they would do this to me." Clarke, a house painter, has lived in the Twin Cities since 1974. "All I've got to say is make sure you have your papers right - which I thought I did - and get a good lawyer. Mine is like a bodyguard now."

Finally, in late 2009, a U.S. immigration judge in Bloomington ordered Clarke's case closed after government attorneys concluded themselves that Clarke was, indeed, a U.S. citizen all along.

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Clarke's case is the apparent fallout of an aggressive ICE campaign to deport illegal immigrants who also have criminal records that show up during cross-checks of federal databases.

While those efforts have resulted in the deportation of hundreds of thousands of dangerous criminals, thousands of U.S. citizens have been snagged along the way, in part because agents operate in a secretive judicial environment where detention hearings are held out of public view.

After a detailed examination of federal immigration records, professor Jacqueline Stevens of Northwestern University estimated this year that about 4,000 American citizens were illegally detained or deported as aliens in 2010. In a study published last summer, she found that as many as 20,000 citizens may have been wrongly held or deported since 2003.

"If they can't even protect the rights of citizens, think about the others who are being put through this system," Stevens said. "You have agents making life-and-death types of decisions and there is no check on their honesty."

In 2009, The Associated Press conducted a monthlong review of federal records and found more than 50 U.S. citizens who have been illegally detained and in some cases deported. In one case, an Army veteran from Washington state who was naturalized in 1998 was awarded \$400,000 because ICE had wrongly held him for seven months while agents tried to deport him. He received a letter of apology from the government in addition to financial compensation.

In building its case against Clarke, ICE reached back to the 1990s. In 1975, Clarke emigrated from Jamaica with his mother and brothers. They were admitted as permanent residents - commonly referred to as "green card holders." His mother soon became a naturalized American citizen and Clarke, still a minor, derived his citizenship from her under then-existing immigration law.

In 1996, Clarke was arrested on a marijuana charge, but the charge was stayed on the condition that he obey the law. The case was dismissed after three years, but it apparently sufficed to catch ICE's attention nearly a decade later.

In 2004, Clarke was arrested and booked into the Hennepin County jail for driving without a license. Soon he was interviewed by two immigration agents who apparently checked his criminal background. Court filings indicate that an ICE agent at that point filled out a form labeling Clarke a permanent resident - not a citizen - and, as a result, Clarke became eligible for removal from the United States.

In 2004, alleging that Clarke was not a citizen and had committed a drug offense and an unidentified felony, agents built their case for deportation. In January 2005, Immigration Judge Kristin Olmanson, acting on that information, ordered Clarke deported.

For more than three years, however, ICE took no action.

Then, in May 2008, Clarke went to the immigration office in Bloomington to obtain proper documentation of his citizenship. On a form, he marked he was an American citizen and listed his address.

Two weeks later, ICE agents raided his sister's home in Columbia Heights in the early morning. In court filings, she said agents told her through the door that there was an "issue" in the neighborhood and that they then "barged" in. Clarke's sister said agents then illegally searched her home and found her brother sleeping. ICE would not comment on the incident.

On the day Clarke was arrested, an ICE agent ran a background check on him, using the FBI's fingerprint database. That electronically retrieved document, contained in Clarke's immigration file, lists his citizenship as "United States."

Nevertheless, Clarke was held and moved in late June from the ICE holding block at the Sherburne County jail in Elk River to an unidentified facility in South Dakota, according to court documents.

"I knew they'd taken me to South Dakota because I saw the signs as they were driving me," he said. "They took me into

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the bush to keep me away from my family."

A month later, an ICE agent apparently checked an immigration database compiled by another agency, the Citizenship and Immigration Services (CIS). It showed the 1975 date when Clarke's mother became a naturalized citizen, thus making her minor children citizens.

A copy of that document reviewed by the Star Tribune shows his mother's naturalization date and that it was electronically accessed by someone at 11:35 on July 18.

Six days later, an ICE officer ordered Clarke released from custody. Still, he remained under ICE's jurisdiction until mid-December 2009, a total of 508 days.

That month, CIS issued what Clarke had originally sought at the immigration office in Bloomington in 2008: a certificate of citizenship. Soon after, attorneys for ICE decided to drop their attempt to deport him.

Even though ICE finally acknowledged Clarke's citizenship, the case reveals fundamental failings of due process in the court system that oversees immigration agents, according to Northwestern's Stevens.

"There are rules in place to be followed," she said. "But there's still no check to make sure the abuses by the agents stop."

MCT photo

Federal agents arrested Anthony A. Clarke of Minneapolis, Minn., during a late-night raid in 2008 at his sister's house in Columbia Heights, then shuttled him back and forth between a Sherburne County jail and an unidentified detention facility in South Dakota, the suit says. According to a lawsuit filed recently in federal court in Minneapolis, he was arrested and illegally detained for 43 days by federal immigration agents who sought to have him deported even though he is a U.S. citizen.

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