

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 31, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTONIO SANCHEZ OCHOA,

No. 1:17-CV-03124-SMJ

Plaintiff,

**ORDER GRANTING PLAINTIFF’S
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

v.

ED W. CAMPBELL, Director of the
Yakima County Department of
Corrections; SCOTT HIMES, Chief of
the Yakima County Department of
Corrections; YAKIMA COUNTY,

Defendants.

I. INTRODUCTION

Plaintiff Antonio Sanchez Ochoa is currently in Yakima County Department of Corrections’ (DOC) custody on state criminal charges. He alleges that he is unable to post bail on his state criminal charges because Defendants Director Ed Campbell, Chief Scott Himes, and Yakima County (collectively “Defendants”) placed an immigration hold on him. Sanchez Ochoa alleges that the immigration hold has resulted in continued detention without probable cause in violation of the Fourth Amendment to the United States Constitution, and he seeks a temporary restraining order from this Court directing Defendants to remove the immigration

1 hold so he can post bail on his state criminal charges and be released from DOC's
2 custody. Defendants oppose the request.

3 The Court has reviewed the entire docket in this matter, the applicable law,
4 and heard argument from the parties and the United States on July 25, 2017. For the
5 reasons detailed below, the Court concludes that Defendants' placement of a hold
6 on Sanchez Ochoa caused a seizure for Fourth Amendment purposes. Defendants
7 have referred to the hold as an "ICE hold" and an "immigration hold." An
8 immigration hold by any other name is still an immigration hold. To place the
9 immigration hold, Defendants impermissibly relied on an administrative warrant
10 issued by immigration authorities. Further, the Court concludes that Sanchez Ochoa
11 is likely to succeed on the merits of his Fourth Amendment claim and meets the
12 standard for obtaining the requested relief. At the hearing, the Court granted
13 Sanchez Ochoa's motion. This Order memorializes, supplements, and clarifies the
14 Court's oral ruling.

15 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

16 On July 17, 2017, Plaintiff Antonio Sanchez Ochoa filed an unverified
17 complaint against Ed W. Campbell, Director of the Yakima County Department of
18 Corrections (DOC), Scott Himes, Chief of the DOC, and Yakima County pursuant
19 to 42 U.S.C § 1983, alleging that his detention violates the Fourth Amendment.
20 ECF No. 1 at 10. Specifically, he asserts that Defendants' policy and practice of

1 detaining individuals before they are released from DOC's custody based solely on
2 an immigration hold issued pursuant to a U.S. Department of Homeland Security
3 (DHS) administrative warrant violates his Fourth Amendment right to be free from
4 unreasonable seizure. *Id.* at 1–2 and 10. Sanchez Ochoa argues that such
5 administrative warrants—issued by DHS personnel without a judicial warrant or
6 independent finding of probable cause that the person subject to the warrant has
7 committed a crime—do not provide state or local law enforcement officers authority
8 to arrest or detain individuals for immigration violations. *Id.* at 2.

9 Sanchez Ochoa is currently charged with second degree assault and malicious
10 mischief in state court and has been in the DOC's custody since May 3, 2017. *Id.* at
11 3; ECF No. 7-2 at 7; ECF No. 22 at 2. He has not been charged with a federal
12 offense, he has not been sentenced, and he is not awaiting transport to a Bureau of
13 Prisons facility. ECF No. 1 at 4.

14 Sanchez Ochoa's immigration status became an issue shortly after his
15 detention began, on May 4, 2017, when ICE Enforcement and Removal Operations
16 Deportation Officer Terrence Hawkinson learned that ICE previously encountered
17 Sanchez Ochoa in August 2008. ECF No. 26-1 at 2. In August 2008, Jackson
18 County, Oregon officials detained Sanchez Ochoa on a state criminal charge (and
19 subsequent conviction) of driving under the influence (DUI). *Id.* at 2. After his
20 release by local law enforcement, ICE officers took Sanchez Ochoa into custody.

1 *Id.* at 2. ICE ultimately granted Sanchez Ochoa’s request to voluntarily return to
2 Mexico, and released him. *Id.* at 2.

3 After learning Sanchez Ochoa’s prior contact with ICE officials in 2008,
4 Officer Hawkinson interviewed Sanchez Ochoa at the Yakima County jail. ECF
5 No. 1 at 4; ECF No. 26-1 at 3. Sanchez Ochoa identified himself and admitted that
6 he is a citizen of Mexico.¹ ECF No. 26-1 at 3. But Sanchez Ochoa refused to answer
7 Officer Hawkinson’s subsequent questions. ECF No. 1 at 4; ECF No. 26-1 at 3.

8 Thereafter, DHS issued an administrative warrant for Sanchez Ochoa’s arrest
9 using Form I-200. ECF No. 7-1 at 5; ECF No. 26-1 at 3. This document is directed
10 to “any immigration officer” authorized by the Immigration and Nationality Act
11 (INA) and implementing regulations to “serve warrants of arrest for immigration
12 violations.” ECF No. 7-1 at 5. ICE Enforcement and Removal Supervisory
13 Detention and Deportation Officer Michael Gladish signed the administrative arrest
14 warrant on Form I-200 after Officer Hawkinson presented information about
15 Sanchez Ochoa. ECF No. 7-1 at 5; ECF No. 26-1 at 3.

16 The administrative warrant states that Gladish “determined that there is
17 probable cause to believe that Sanchez Ochoa, Antonio is removable from the
18 United States.” ECF No. 7-1 at 5. Gladish’s determination was based on “statements
19

20 ¹ Sanchez Ochoa alleges that no DOC employee advised him that he could choose
not to speak with immigration officials. ECF No. 1 at 4.

1 made voluntarily by” Sanchez Ochoa “to an immigration officer and/or other
2 reliable evidence that affirmatively indicate [Sanchez Ochoa] either lacks
3 immigration status or notwithstanding such status is removable under U.S.
4 immigration law.” *Id.* at 5. The warrant commands any authorized immigration
5 officer to “arrest and take [Sanchez Ochoa] into custody for removal proceedings.”

6 *Id.*

7 Sanchez Ochoa also alleges that DOC no longer accepts ICE detainers (I-247
8 Forms) alone as the basis for detaining an individual on ICE’s behalf. ECF No. 1 at
9 6–7; ECF No. 7-3 at 9. However, Sanchez Ochoa asserts that DOC currently places
10 immigration holds on individuals based solely on administrative warrants (I-200
11 Forms). ECF No. 1 at 7; ECF No. 7-3 at 9, 16. The record reflects that DOC placed
12 an “immigration hold” on Sanchez Ochoa’s jail roster—which is a document
13 produced by DOC pursuant to Washington Revised Code (RCW) § 70.48.100²—
14 citing “ICE” as the relevant statute giving rise to his detention. ECF No. 7-2 at 7.

16 ² RCW 70.48.100(1) provides that “a department of corrections or chief law
17 enforcement officer responsible for the operation of a jail *shall* maintain a [public]
18 jail register” containing, among other things, the “name of each person confined in
19 the jail with the hour, date, and *cause of confinement*.” (emphasis added). RCW
20 70.48.100(2) directs that “the records of a person confined in jail shall be held in
confidence and shall be made available only to *criminal justice agencies* as defined
in RCW 43.43.705.” (emphasis added). “Criminal justice agencies” are defined as
“those public agencies within or outside the state which perform, as a principal
function, activities directly relating to the apprehension, prosecution, adjudication
or rehabilitation of criminal offenders.” RCW 43.43.705.

1 There is no case number or bond amount listed for Sanchez Ochoa's immigration
2 hold. ECF No. 7-2 at 7.

3 DOC contests Sanchez Ochoa's characterization of the facts. *See generally*
4 ECF No. 24. Scott Himes, Chief of the DOC, states that he is not sure what
5 "immigration hold" means. ECF No. 22 at 3. Himes, and all Defendants, maintain
6 that DOC is holding Sanchez Ochoa pursuant to state criminal charges only, and
7 that Sanchez Ochoa's detention continues because he has not posted bail on those
8 charges. ECF No. 24 at 3. Defendants assert that they "noted in [their] records that
9 [DHS] has issued a Form I-200 [] concerning Mr. Ochoa." *Id.* But they allege the
10 purpose of this notation is only "to ensure that when he is released, Mr. Ochoa will
11 be released into the custody of DHS." *Id.* Chief Himes describes DOC's policy with
12 regard to administrative warrants issued on I-200 Forms as follows:

13 The Yakima County Jail's notation regarding the I-200 is similar to the
14 manner in which the jail would record any notice of a warrant or
15 criminal charges issued by another jurisdiction. For example, if the
16 Yakima County Jail received notice that criminal charged [*sic*] have
17 been filed against an inmate in another county, such notice is also
18 entered into the electronic jail management system, which then
19 populates the online jail web portal. As with the I-200, the purpose of
20 recording the notice is to ensure that the inmate is transferred to the
appropriate jurisdiction upon release from custody of Yakima County.

ECF No. 22 at 2–3.

On July 5, 2017, Sanchez Ochoa requested that Defendants remove the
immigration hold. ECF No. 1 at 8. In a letter dated July 6, 2017, Defendant Director

1 Campbell made no decision or promises about removing the “ICE hold,” but said
2 that Sanchez Ochoa could post bail on the ICE hold “through the Federal Courts.”
3 ECF No. 1 at 8; ECF No. 7-4 at 16.

4 Sanchez Ochoa contends that his family has the resources to pay the \$ 50,000
5 bond on his state charges but that DOC will not accept bail because of the
6 immigration hold. ECF No. 1 at 8; ECF No. 6 at 2; ECF No. 8 at 2. Moreover, he
7 alleges bail bondspersons will not provide services on state charges to individuals
8 with immigration holds detained in Yakima County because they will not be
9 released from custody. ECF No. 1 at 9; ECF No. 9 at 2; ECF No. 10.

10 Defendants contest Sanchez Ochoa’s factual allegations. They state that the
11 jail is willing to accept bail on Sanchez Ochoa’s state charges, that he is being
12 detained on state charges only and not because of an immigration hold, and that the
13 immigration hold is a notation meant to ensure that DOC releases Sanchez Ochoa
14 to DHS’s custody, should he be released from DOC custody. ECF No. 24 at 2–3.

15 The day after he filed this lawsuit, Sanchez Ochoa filed the present motion
16 for a temporary restraining order (TRO) asking this Court to direct Defendants to
17 remove the immigration hold so that he can post bail on his state charges and be
18 released. ECF No. 6 at 1–2. Defendants counter that he is free to post bail on his
19 state charges. ECF No. 24 at 3.

1 The day after Sanchez Ochoa filed his motion seeking a TRO, he served
2 Defendants Himes and Yakima County with notice of this lawsuit and the TRO
3 motion, among other documents. ECF No. 12 and 13. Defendant Campbell was not
4 served with notice of either the suit or the TRO motion. ECF No. 14. Two days
5 later, on July 20, 2017, Quinn N. Plant and Kenneth W. Harper of Menke, Jackson,
6 Beyer, Ehlis & Harper entered their appearance as attorneys for Defendants. ECF
7 Nos. 15 and 16. Defendants answered the complaint and filed a memorandum
8 opposing Sanchez Ochoa's TRO motion. ECF Nos. 21 and 24.

9 In addition, the United States, through the Department of Justice (DOJ) and
10 the U.S. Attorney for the Eastern District of Washington, sought leave from the
11 Court to potentially file a statement of interest in this case. ECF No. 18. The United
12 States also requested a seven-day continuance of the TRO hearing, ECF No. 18, to
13 which Sanchez Ochoa objected, ECF No. 19. The Court granted a four-day
14 postponement of the TRO hearing and allowed the United States to file a statement
15 of interest. ECF No. 25. The United States filed its statement of interest on July 21,
16 2017. ECF No. 26. On July 24, 2017, Sanchez Ochoa filed a response to the United
17 States' statement of interest, ECF No. 27, supporting declaration, ECF No. 28, and
18 reply memorandum in support of his motion for a temporary restraining order, ECF
19 No. 29.

1 **III. THE STATUTES, REGULATIONS, AND ICE DETAINER POLICY**
2 **AT ISSUE HERE**

3 **A. Cooperation between federal, state, and local officials on immigration**
4 **matters**

5 The Immigration and Nationalization Act (INA) contemplates both formal
6 and informal cooperation between federal, state, and local authorities on
7 immigration matters. *See* 8 U.S.C. § 1357(g). Pursuant to 8 U.S.C. § 1357(g)(1)–
8 (9), state and local officials may enter into written agreements with DHS to perform
9 certain functions usually conducted by federal immigration officers respecting the
10 investigation, apprehension or detention of certain immigrants. State and local
11 authorities who enter into these formal written agreements are subject to the
12 “direction and supervision” of the DHS Secretary. 8 U.S.C. § 1357(g)(3).³ Federal
13 authorities may also enter into agreements with state and local authorities to confine
14 and detain persons detained by ICE. 8 U.S.C. § 1103(a)(11)(B).

15 A formal agreement, however, is not required for all cooperation between
16 federal, state, and local entities. Pursuant to 8 U.S.C. § 1357(g)(10)(A) and (B),
17 “any officer or employee of a State or political subdivision of a State” can (1)

18 ³ Although Congress initially charged the Attorney General with implementing the
19 INA, Congress abolished the Immigration and Naturalization Service (INS) in 2002
20 and transferred jurisdiction to enforce and administer the nation’s immigration laws
to the Secretary of Homeland Security. *See* 6 U.S.C. §§ 202, 291, & 557; 8 U.S.C.
§ 1103; *La. Forestry Ass’n, Inc. v. Sec’y U.S. Dep’t of Labor*, 747 F.3d 653, 659
(3rd Cir. 2014).

1 communicate with DHS regarding a person's immigration status or (2) "otherwise
2 cooperate" with DHS in the "identification, apprehension, detention, or removal"
3 of persons unlawfully present in the United States. The precise contours and limits
4 of communication and cooperation between federal, state, and local officials is not
5 clear. While no federal, state, or local government entity or official may prohibit or
6 restrict any government entity or official from sending or receiving information
7 regarding a person's citizenship or immigration status with another federal, state,
8 or local government entity, it is unclear precisely what actions are covered by this
9 rule. *See* 8 U.S.C. § 1373. Regarding informal cooperation between federal, state,
10 and local officials, the Supreme Court has explained:

11 There may be some ambiguity as to what constitutes cooperation under
12 the federal law; but no coherent understanding of the term would
13 incorporate the unilateral decision of state officers to arrest an alien for
14 being removable absent any request, approval, or other instruction
15 from the Federal Government. The Department of Homeland Security
16 gives examples of what would constitute cooperation under federal
17 law. These include situations where States participate in a joint task
18 force with federal officers, provide operational support in executing a
19 warrant, or allow federal immigration officials to gain access to
20 detainees held in state facilities. . . . State officials can also assist the
Federal Government by responding to requests for information about
when an alien will be released from their custody.

Arizona v. United States, 567 U.S. 387, 410 (2012) (citations omitted).

18 Additionally, the Supreme Judicial Court of Massachusetts recently held that §
19 1357's provisions on state cooperation with federal immigration officials do not
20 affirmatively grant authority to state or local officers to make arrests not otherwise

1 authorized by state law. *Lunn v. Commonwealth*, __ N.E.3d __, 2017 WL 3122363,
2 at *11–13 (Mass. 2017).

3 **B. Federal immigration detainers**

4 DHS issues immigration detainers pursuant to sections 236 and 287 of the
5 INA and 8 C.F.R. § 287.7. “A detainer serves to advise another law enforcement
6 agency that the Department seeks custody of an alien presently in the custody of
7 that agency, for the purpose of arresting and removing the alien.” 8 C.F.R. §
8 287.7(a). Such a request is made because it is impracticable or impossible for DHS
9 to assume custody over a person. *Id.* Presently, DHS uses Form I-247A
10 (Immigration Detainer – Notice of Action) to issue immigration detainers. ECF No.
11 26 at 8. Detainers ask that cooperating agencies keep a person in custody for no
12 longer than 48 hours, excluding Saturdays, Sundays, and holidays. 8 C.F.R. §
13 287.7(d).⁴ Further, 8 C.F.R. § 287.7(b) lists the officers authorized to issue
14 immigration detainers. These include, as relevant here, “supervisory and managerial
15 personnel who are responsible for supervising the activities of” immigration
16 enforcement agents, among others. 8 C.F.R. § 287.7(b)(1)–(8).

17 _____
18 ⁴ The United States provides a long and detailed description of detainers in cases
19 where a person has been arrested for a controlled substance violation by a state,
20 local, or federal law enforcement agency. Here, while Sanchez Ochoa was arrested
in 2008 for a DUI, his present criminal charges concern assault and malicious
mischief. ECF No. 7-2 at 7. Nothing suggests that a controlled substance is at issue.
Accordingly, provisions related to detainers in cases where a person is arrested for
a controlled substance violation are inapposite here.

1 **C. Warrants issued by DHS**

2 Pursuant to 8 U.S.C. § 1226(a), a person may be “arrested and detained
3 pending a decision on whether the alien is to be removed from the United States”
4 on a warrant issued by the Attorney General.⁵ A warrant issued under this
5 discretionary authority is necessarily a warrant for civil—as opposed to criminal—
6 immigration enforcement. *See Arizona*, 567 U.S. at 407 (“As a general rule, it is not
7 a crime for a removable alien to remain present in the United States.”). This is also
8 the case when a warrant is issued after a person is ordered removed following a
9 removal hearing. *Id.* at 408 (citation omitted). Moreover, as the Supreme Court has
10 noted, when either of the immigration related warrants described above are issued,
11 they “are executed by federal officers who have received training in the
12 enforcement of immigration law.” *Id.* (citation omitted).

13 **D. Warrantless arrests by immigration officials**

14 When no warrant to arrest or detain a person pending a decision as to his or
15 her removability from the United States has issued, immigration enforcement
16 officers may arrest a person for “being ‘in the United States in violation of any
17 [immigration] law or regulation,’ for example, but only when the alien ‘is likely to
18

19 ⁵ As explained above, following Congress’ reorganization of the agencies tasked
20 with enforcing the immigration laws, references to the Attorney General in certain
immigration related statutes, including § 1226, actually refer to the Secretary of
DHS.

1 escape before a warrant can be obtained.” *Id.* at 408 (quoting 8 U.S.C. §
2 1357(a)(2)). Moreover, in other litigation, ICE has conceded that detaining a person
3 pursuant to an ICE immigration detainer constitutes a warrantless arrest. *Moreno v.*
4 *Napolitano*, 213 F. Supp. 3d 999, 1005 (N.D. Ill. Sept. 20, 2016) (citing the
5 defendants’ summary judgment briefing and *Morales v. Chadbourne*, 793 F.3d 208,
6 217 (1st Cir. 2015)). The *Moreno* court further held that “because immigration
7 officers make no determination whatsoever that the subject of a detainer is likely to
8 escape upon release before a warrant can be obtained, ICE’s issuance of detainers
9 that seek to detain individuals without a warrant goes beyond its statutory authority
10 to make warrantless arrests under 8 U.S.C. § 1357(a)(2).” *Id.* at 1008–09.

11 **E. ICE’s immigration detainer policy**

12 Relevant to the relief Sanchez Ochoa requests is ICE’s policy for issuing
13 immigration detainers asking local law enforcement to hold people suspected of
14 being unlawfully present in the United States. On March 24, 2017, Thomas D.
15 Homan, ICE’s Acting Director, issued Policy Number 10074.2 regarding the
16 Issuance of Immigration Detainers by ICE Immigration Officers (“Policy”).
17 Available at [https://www.ice.gov/sites/default/files/documents/Document/2017/](https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf)
18 [10074-2.pdf](https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf) (last visited on July 27, 2017). The Policy became effective on April
19 2, 2017, and established ICE’s current “policy and procedures regarding the
20 issuance of civil immigration detainers to federal, state, local, and tribal law

1 enforcement agencies (LEAs).” *Id.* at 1. The Policy defines a detainer as “[a] notice
2 that ICE issues to a federal, state, local, or tribal LEA to inform LEA that ICE
3 intends to assume custody of a removable alien in the LEA’s custody.” *Id.* at 3.

4 Under the Policy, ICE may issue a detainer to a LEA only if “the LEA has
5 arrested the alien for a criminal offense in an exercise of the LEA’s independent
6 arrest authority.” *Id.* at 2. The Policy directs ICE immigration officers to issue all
7 ICE detainers accompanied by either (1) a Form I-200 (warrant for arrest of alien)
8 or (2) a Form I-205 (warrant of removal/deportation), either of which must be
9 signed by an authorized ICE officer. *Id.* The Policy directs officers to follow this
10 procedure to “establish probable cause to believe that the subject is an alien who is
11 removable from the United States before issuing a detainer with a [LEA].” *Id.* ICE
12 implemented these measures—even though it maintains that it is unnecessary—
13 because a district court ruled that “detention pursuant to an ICE detainer constitutes
14 a warrantless arrest” and the INA “only authorizes a warrantless arrest if there is
15 reason to believe the alien will escape before an arrest warrant can be secured.” *Id.*
16 at 2 n. 2 (citing *Moreno*, 213 F. Supp. 3d at 1008–09).

17 The Policy defines “probable cause” as “the facts and circumstances within
18 the officer’s knowledge and of which they have reasonably trustworthy information
19 that are sufficient in themselves to warrant a person of reasonable caution in the
20 belief that an individual is a removable alien.” *Id.* at 2. It further directs that an ICE

1 officer cannot establish probable cause for purposes of the detainer “solely based
2 on evidence of foreign birth and the absence of records in available databases.” *Id.*
3 It does, however, provide four circumstances that may establish probable cause: (1)
4 where there is a final order of removal; (2) where there is an ongoing removal
5 proceeding; (3) where a person’s biometric information matches information in a
6 federal database confirming that a person lacks lawful immigration status; and (4)
7 where a person makes voluntary statements to an ICE officer “and/or other reliable
8 evidence” indicates that a person lacks lawful immigration status. *Id.* at 4. If a
9 person is not subject to a final order or removal, the Policy instructs ICE officers to
10 issue a detainer with an administrative warrant. *Id.* at 5.

11 **IV. LEGAL STANDARD**

12 Federal Rule of Civil Procedure 65 governs preliminary injunctions and
13 temporary restraining orders. Plaintiffs seeking a TRO must provide written or oral
14 notice to the party or parties potentially subject to a TRO unless the plaintiff seeking
15 the TRO meets the requirements of Rule 65(b)(1)(A)–(B).

16 Once a plaintiff meets the notice requirements, he or she must also meet the
17 standard for issuing a TRO. The standard for issuing preliminary injunctions and
18 TROs is the same. *See, e.g., Koller v. Brown*, 224 F. Supp. 3d 871, 875 (N.D. Cal.
19 Dec. 12, 2016) (citing *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S.
20 1345, 1347 n. 2 (1977)). A TRO, however, is “an extraordinary remedy that may

1 only be awarded upon a clear showing that the plaintiff is entitled to such relief.”
2 *Id.* at 875 (citing *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 22
3 (2008)).

4 To obtain a TRO, a plaintiff must demonstrate “that he is likely to succeed
5 on the merits, that he is likely to suffer irreparable harm in the absence of
6 preliminary relief, that the balance of equities tips in his favor, and that an injunction
7 is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
8 1131 (9th Cir. 2015) (quoting *Winter*, 555 U.S. at 19). Whether the plaintiff is likely
9 to succeed on the merits is a threshold inquiry. “[W]hen ‘a plaintiff has failed to
10 show the likelihood of success on the merits, [the court] need not consider the
11 remaining three *Winter* elements.’” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th
12 Cir. 2015) (en banc) (quoting *Ass’n des Eleveurs de Canards et d’Oies du Quebec*
13 *v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)) (internal quotations and alterations
14 omitted).

15 V. DISCUSSION

16 A. Sanchez Ochoa has notified Defendants of the TRO.

17 It is uncontested that Sanchez Ochoa properly notified Defendants of the
18 TRO motion. Quinn N. Plant and Kenneth W. Harper of Menke, Jackson, Beyer,
19 Ehliis & Harper entered their appearances as attorneys for Defendants. ECF Nos. 15
20 and 16. Indeed, Defendants answered the complaint and filed a memorandum

1 opposing Sanchez Ochoa's TRO motion. ECF Nos. 21 and 24. Moreover, the
2 United States has filed a statement of interest in this case. ECF No. 26. Accordingly,
3 the notice requirement is met.

4 **B. Sanchez Ochoa is likely to succeed on the merits of his Fourth
Amendment claim.**

5 To establish liability under 42 U.S.C. § 1983, "a plaintiff must show both (1)
6 deprivation of a right secured by the Constitution and laws of the United States, and
7 (2) that the deprivation was committed by a person acting under color of state law."
8 *Chudacoff v. Univ. Med. Cntr. of S. Nev.*, 649 F.3d 1143, 1149 (9th Cir. 2011).
9 Municipalities may be subject to damages liability under § 1983. *See Monell v.*
10 *Dep't of Soc. Servs.*, 436 U.S. 658 (1978).⁶ Here, Sanchez Ochoa alleges that
11 Defendants violated his Fourth Amendment rights by impermissibly reporting an
12 immigration hold on the jail roster pursuant to a DHS administrative warrant,
13 thereby preventing his release from DOC custody. ECF No. 1 at 4–10.

14 **1. The Fourth Amendment's protection against unreasonable
15 seizures in the context of pretrial detention.**

16 The Fourth Amendment protects against "unreasonable searches and
17 seizures." U.S. Const. amend. IV. A defendant may rely on the Fourth Amendment
18

19 ⁶ Defendants assert in their answer that Sanchez Ochoa has failed to establish
20 municipal liability pursuant to *Monell*. ECF No. 21 at 9. But Defendants do not raise
this argument in opposition to Sanchez Ochoa's Motion for Temporary Restraining
Order. *See* ECF No. 24.

1 to challenge his pretrial detention. *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 917
2 (2017) (“This Court decided some four decades ago that a claim challenging pretrial
3 detention fell within the scope of the Fourth Amendment.”). This protection
4 “prohibits government officials from detaining a person in the absence of probable
5 cause.” *Id.* at 918. “[P]robable cause for the issuance of an arrest warrant must be
6 determined by someone independent of police and prosecution.” *Gerstein v. Pugh*,
7 420 U.S. 103, 117–18 (1975) (citing *Coolidge v. N.H.*, 403 U.S. 443, 449–453
8 (1971); *Shadwick v. City of Tampa*, 407 U.S. 345 (1972)). Accordingly, holding a
9 person in custody “for a substantial period solely on the decision of a prosecutor”
10 is unlawful. *Manuel*, 137 S. Ct. at 917 (quoting *Gerstein*, 420 U.S. at 106). In short,
11 pretrial detention is “unlawful unless a judge (or grand jury) first makes a reliable
12 finding of probable cause.” *Id.*

13 **2. Sanchez Ochoa has established that his immigration hold led to a**
14 **subsequent seizure by Defendants subject to Fourth Amendment**
15 **protections.**

16 Where detention is extended as a result of an immigration hold, that extension
17 is a subsequent seizure for Fourth Amendment purposes. *See Morales*, 793 F.3d at
18 217 (holding that an immigration detainer that resulted in additional detention after
19 criminal custody terminated constituted a new seizure for Fourth Amendment
20 purposes); *Trujillo Santoyo v. United States, et al*, 5:16-cv-855-OLG, 2017 WL
2896021, at *6 (W.D. Tex. June 5, 2017) (“[D]etention pursuant to an ICE detainer

1 request is a Fourth Amendment seizure that must be supported by probable cause
2 or a warrant.”); *Miranda-Olivares v. Clackamas Cnty.*, No. 3:12-cv-02317-ST,
3 2014 WL 1414305 (D. Or. Apr. 11, 2014) (holding that continuation of detention
4 pursuant to an ICE detainer constituted a new seizure independent of plaintiff’s
5 detention on state charges). Defendants and the United States argue that there has
6 been no subsequent seizure in this case because the legal basis of Sanchez Ochoa’s
7 present detention is his alleged state-law violations only, not his immigration status.
8 ECF No. 24 at 6; ECF No. 26 at 17–19. They suggest that a subsequent seizure can
9 occur only if a person’s state custody ends through some administrative or judicial
10 action and the person is then taken into ICE’s custody. ECF No. 24 at 4–6; ECF No.
11 26 at 19. That is simply not the case. A new Fourth Amendment seizure occurs if,
12 as a factual matter, a person’s detention is extended because of an immigration hold.

13 This is illustrated by *Miranda-Olivares*, where the Plaintiff could have posted
14 bail on her state charges, but did not do so because she was told that, even if she
15 did, she would not be released because of her ICE detainer. 2014 WL 1414305, at
16 *2. Her family was allegedly willing and able to pay to post bail, but did not do so
17 because of their understanding that she would not be released. *Id.* As a technical
18 matter, *Miranda-Olivares* remained in custody on state charges, but the cause of her
19 continued custody was not the state charges, it was her ICE detainer. In this context,
20 the court concluded that *Miranda-Olivares*’s detention was not a continuation of her

1 initial arrest; instead, it was an independent seizure resulting from the ICE detainer.

2 *Id.* at *9.

3 Accordingly, to decide whether a subsequent seizure has occurred here, the
4 Court must determine whether the immigration hold has caused or will cause
5 Sanchez Ochoa to remain in custody longer than he otherwise would on the basis
6 of his state charges. Defendants argue that the immigration hold will not extend
7 Sanchez Ochoa’s detention because DOC will release him if he posts bail. ECF No.
8 24 at 2. This argument fails, at least at the TRO stage, for two independent reasons.
9 First, Sanchez Ochoa has adequately pleaded facts, with supporting documents, to
10 show that Defendants were not willing to release him even if he posted bail on his
11 state charges. ECF No. 7-3 at 9–10, 16. Second, regardless of whether, in the
12 abstract, Defendants intended to accept bail on Sanchez Ochoa’s state charges,
13 Sanchez Ochoa has shown that bail was unavailable to him as a matter of fact. ECF
14 Nos. 8, 9, and 10.

15 **a. Sanchez Ochoa alleges facts showing that the County did not**
16 **intend to accept bail.**

17 Defendants argue that they will release Sanchez Ochoa from state custody if
18 he posts bail on his state charges. ECF No. 24 at 2. Further, Scott Himes, Chief of
19 the DOC, states that he is “not sure what [‘immigration hold’] means.” ECF No. 22
20 at 3. He, and all Defendants, maintain that DOC is holding Sanchez Ochoa pursuant
to state criminal law charges only, and that DOC “will accept bail for Mr. Ochoa

1 and, upon receipt, will release Mr. Ochoa from the custody of Yakima County and
2 the Yakima County Jail.” ECF No. 22 at 7; ECF No. 24 at 3.

3 First, it is disingenuous for Mr. Himes to assert that he does not know what
4 “immigration hold” means, as DOC itself placed an “immigration hold” on Sanchez
5 Ochoa’s jail roster, citing “ICE” as the relevant “statute” for placing the hold. ECF
6 No. 7-2 at 7; ECF No. 22 at 3. Further, nothing in the record indicates that placing
7 immigration holds on persons in Yakima County’s custody is a new policy. Indeed,
8 it is the Court’s understanding that Yakima County has been placing immigration
9 holds on persons in their custody for years. Nothing in the record supports
10 Defendants’ supposed ignorance.

11 Moreover, DOC’s communications to Sanchez Ochoa’s counsel before this
12 lawsuit was filed belie DOC’s current claims that it intends to release Sanchez
13 Ochoa from the Yakima County jail upon his posting bail. In a July 5, 2017 letter
14 to DOC Director Ed Campbell, Sanchez Ochoa’s counsel expressed concern that,
15 among other things, that “[b]y accepting administrative warrants as a basis for
16 detaining individuals, Yakima County is unlawfully preventing Mr. Sanchez from
17 being released on bail.” ECF No. 7-3 at 9. In his response, Mr. Campbell does not
18 address bail on Sanchez Ochoa’s state charges at all. Instead, he explains: “We have
19 confirmed that Mr. Sanchez can bail on his ICE hold. Unfortunately, we do not
20 accept the bail here at the Yakima County Jail. It must be processed through the

1 Federal Courts.” ECF No. 7-4 at 16. This discussion implicitly acknowledges that
2 DOC had no intention of releasing Sanchez Ochoa if he posted bail on his state
3 charges. Accordingly, Sanchez Ochoa’s allegation that he will continue to be
4 detained on the basis of his immigration hold, regardless of whether he posts bail
5 on his state charges, is well supported.⁷

6 **b. Sanchez Ochoa has shown that he is unable to obtain bail**
7 **because of his immigration hold.**

8 Irrespective of whether DOC would release Sanchez Ochoa if he posted bail,
9 he has shown that he will be unable to post bail because of his immigration hold.
10 Plaintiff and his family represent that they have the resources to obtain a bond to
11 post bail on his state charges. ECF No. 8. However, Sanchez Ochoa alleges that he
12 has been unable to post the \$50,000 bond on his state charges because bondspersons
13 will not provide services on state charges to individuals with immigration holds
14 detained in Yakima County. ECF No. 1 at 9. This allegation is supported by the
15 declarations of Sanchez Ochoa’s sister, Griselda Reyes, who states that she has

16
17 ⁷ To the extent DOC now in-fact intends to release Sanchez Ochoa if he posts bail,
18 this voluntary act does not moot the controversy here because there can be no
19 assurance that DOC will not revert to its alleged prior practice of not releasing
20 persons with immigration holds. *See Friends of the Earth, Inc. v. Laidlaw*, 528 U.S.
167, 173 (2000) (“It is well settled that a defendant’s voluntary cessation of a
challenged practice does not deprive a federal court of its power to determine the
legality of the practice. If it did, the courts would be compelled to leave the
defendant . . . free to return to his old ways.” (internal quotation marks and citations
omitted)).

1 sufficient financial resources and is willing to pay the amount necessary for a bail
2 bondsperson to post bond, but that she has “spoken to several bail bonds[persons]
3 who have told [her] [Sanchez Ochoa] cannot be bonded out because of the
4 immigration hold,” ECF No. 8 at 1–2; a bail bondsmen, Javier Isquierdo, who states
5 that his company “will not provide bond services on state court charges to
6 individuals detained in Yakima County Jail when those individuals have an
7 immigration hold, because in [his] experience those individuals will not be released
8 from custody,” ECF No. 9 at 1–2; and a criminal and immigration attorney with
9 many years’ experience practicing in Yakima, Amanda Stevens, who states that
10 “[i]n [her] experience individuals with immigration holds are not able to obtain
11 services to post bond through bail bond companies because those companies
12 understand that individuals will not be released from custody,” ECF No. 10 at 1–2.
13 Moreover, in the Court’s many years of experience practicing law in Yakima
14 County before joining the bench, it was also the case then that an immigration hold
15 placed on a person in Yakima County’s custody resulted in his or her inability to
16 post bail on state charges.

17 At oral argument, Defendants suggested that even if the immigration hold is
18 removed from the jail roster, bail bondspersons could still make a public records
19 request for the immigration status of an inmate and may refuse to provide services
20 to such person on the basis that they will likely be detained by ICE upon release.

1 There is nothing in the record to support this assertion. On the record presently
2 before the Court, Sanchez Ochoa's allegations and supporting documents indicate
3 that bail bondspersons rely on DOC's notation of an immigration hold on the jail
4 roster because the notation indicates the person will not be released from DOC
5 custody. There is no indication in the record that any bail bondsperson would seek
6 out the immigration status of an inmate if there was no published notice of an
7 immigration hold,⁸ or that a person would be unable to obtain the services of a bail
8 bondsperson on the basis that they may be detained by ICE after release from DOC
9 custody.

10 Sanchez Ochoa has adequately alleged that the immigration hold noted by
11 DOC will result in his continued detention because he cannot post bail. This is
12 sufficient to establish that the immigration hold caused a subsequent seizure for
13 Fourth Amendment purposes. *See Miranda-Olivares*, 2014 WL 1414305, at *9; *cf.*
14 *Mendia v. Garcia*, 768 F.3d 1009, 1013 (9th Cir. 2014) (ICE detainer that prevented
15 plaintiff from obtaining services of bail bondsman was sufficient to establish cause
16 element of Article III standing for suit against DHS for claims based on unlawful
17 pretrial detention).

18
19
20

⁸ The Court expresses no opinion on whether, under state public records law, DOC
would be required or permitted to share the immigration status of a person in its
custody with a private citizen.

1 **3. Defendants placed an immigration hold on Sanchez Ochoa**
2 **pursuant to an administrative warrant that was supported by a**
3 **probable cause determination made by an ICE officer.**

4 Having found that the immigration hold Defendants placed against Sanchez
5 Ochoa caused a subsequent seizure for Fourth Amendment purposes, the Court
6 considers the probable cause that supported the Form I-200 administrative warrant.

7 It is undisputed that Michael Gladish, a Supervisory Detention and
8 Deportation Officer with ICE, signed the administrative warrant at issue. ECF No.
9 7-1 at 5. The administrative warrant states Gladish “determined that there is
10 probable cause to believe that Sanchez Ochoa, Antonio is removable from the
11 United States.” *Id.* Gladish’s determination was based on “statements made
12 voluntarily by” Sanchez Ochoa “to an immigration officer and/or other reliable
13 evidence.” *Id.* It is also undisputed that Gladish is not a neutral magistrate.
14 Accordingly, the probable cause determination here was made by an ICE officer,
15 not a neutral magistrate.

16 It is also important to note that nowhere on the administrative warrant does
17 Gladish provide any factual details about what led him to make his determination.
18 It does not mention the August 2008 encounter with ICE. ECF No. 26-1 at 2. There
19 is nothing on the face of the document other than a marked checkbox next to the
20 last option for probable cause available on the form. Nevertheless, Gladish signed

1 the administrative warrant asserting that he has probable cause to believe Sanchez
2 Ochoa is removable.

3 **4. Defendants cannot rely on the probable cause determination**
4 **provided in the administrative warrant to detain Sanchez Ochoa.**

5 **a. Defendants currently informally communicate and**
6 **cooperate with federal authorities on enforcement activities**
7 **related to immigration law.**

8 It is undisputed that states and localities may communicate and cooperate
9 with federal law enforcement agencies on immigration enforcement at the request
10 of federal authorities. ECF No. 26 at 21–26; ECF No. 27 at 2–4; *see also* 8 U.S.C.
11 § 1357(g). Such communication and cooperation can be formal or informal. *See*
12 discussion re communication and cooperation, *supra* at section III.A.

13 Here, the communication and cooperation between Defendants and federal
14 immigration authorities is conducted without a formal written agreement. The
15 record reflects that Defendants no longer accept ICE detainer requests alone as a
16 basis for detaining individuals. ECF No. 7-3 at 9. Defendants have a policy and
17 practice of noting administrative warrants received from federal authorities on their
18 jail roster to ensure release of persons subject to administrative warrants to DHS,
19 ECF No. 22 at 2, and Defendants routinely allow ICE officers into Yakima County
20 jail and also inform ICE of a person’s release date and time at ICE’s request. ECF
No. 26-1 at 4.

1 In addition, the United States Marshals Service and Yakima County have
2 entered into an Intergovernmental Agreement (IGA) regarding the housing of
3 persons under federal custody in Yakima County jail. ECF Nos. 26-1 and 28-1 at 9.
4 However, nothing in the record establishes or suggests the existence of a formal
5 written agreement between Defendants and federal immigration authorities
6 regarding the performance of immigration-officer functions by Defendants. *See* 8
7 U.S.C. § 1357(g).

8 That an IGA exists does not negate that there is no written agreement for the
9 purposes of inter-agency communication and cooperation regarding the
10 enforcement of immigration law. The IGA addresses housing of persons under
11 federal custody in facilities owned and operated by Defendant Yakima County. ECF
12 No. 28-1. Persons housed in Yakima County's facilities under the IGA include, but
13 are not limited to, those who are suspected to be unlawfully present in the United
14 States. ECF No. 28-1 at 9 ("The population . . . will include individuals charged
15 with federal offenses and detained while awaiting trial, individuals who have been
16 sentenced and are awaiting designation and transport to a Bureau of Prisons (BOP)
17 facility, and individuals who are awaiting a hearing on their immigration status or
18 deportation.").

19 Accordingly, the communication and cooperation between Defendants and
20 federal immigration enforcement authorities is best described as informal. *See* 8

1 U.S.C. § 1357(g)(10); *see also* discussion re communication and cooperation *supra*
2 section III.A.

3 **b. Defendants are limited in the activities they can undertake**
4 **related to the enforcement of immigration law.**

5 Communication and cooperation between federal, state, and local officials on
6 immigration matters is clearly permissible, but the role state and local officials can
7 take in such matters is limited. *Arizona*, 567 U.S. at 408, 411–12. Indeed, state and
8 local law enforcement and other officials are *presumed* to be unqualified and unable
9 to perform the functions of federal immigration law enforcement officers, at least
10 as those functions pertain to enforcement of *civil* immigration violations. *See* 8
11 U.S.C. § 1357(g)(1); *cf. Santos v. Frederick Cnty. Bd. of Comm’rs*, 725 F.3d 451,
12 464 (4th Cir. 2013) (citing *Arizona*, 567 U.S. at 407) (“Although the Supreme Court
13 has not resolved whether local police officers may detain or arrest an individual for
14 suspected *criminal* immigration violations, the Court has said that local law officers
15 generally lack authority to arrest individuals [for] *civil* immigration violations.”).
16 The fact that the federal immigration enforcement statutory and regulatory scheme
17 explicitly states that state and local law enforcement *may* become qualified to
18 “perform a function of an immigration officer in relation to the investigation,
19 apprehension, or detention of aliens in the United States” when the Attorney
20 General enters into a written agreement with state or local governments supports
this point. 8 U.S.C. § 1357(g)(1). It is only through such formal, written agreements,

1 and adequate training, that state and local officials can perform the functions of an
2 immigration officer as relates to the “investigation, apprehension, or detention” of
3 individuals unlawfully present in the country. 8 U.S.C. § 1357(g)(1); *see also* 8
4 C.F.R. §§ 287.5(e)(1), (e)(2)(iii), (e)(3), (e)(4), and (f) (noting that listed
5 “immigration officers who have successfully completed basic immigration law
6 enforcement training,” are authorized to conduct immigration related enforcement
7 activities, including executing arrest warrants for administrative immigration
8 violations).

9 A recent decision by the Supreme Judicial Court of Massachusetts lends
10 further support to the proposition that a written agreement is generally required for
11 state and local officials to perform the functions of an immigration officer. In *Lunn*
12 *v. Commonwealth*, __ N.E. 3d __, 2017 WL 3122363 (Mass. 2017), the question
13 before the court was whether Massachusetts state law authorized state court officers
14 “to arrest someone at the request of Federal immigration authorities, pursuant to a
15 civil immigration detainer, solely because the Federal authorities believe the person
16 is subject to civil removal.” *Id.* at *1. In holding that no Massachusetts state law
17 provides state court officials such authority, the court discussed the inter-agency
18 communication and cooperation contemplated in 8 U.S.C. § 1357(g). *Id.* at 11–12.
19 Particularly, with regard to communication and cooperation under section
20 1357(g)(10), the court explained that “it is not reasonable to interpret § 1357(g)(10)

1 as affirmatively granting authority to all State and local officers to make arrests that
2 are not otherwise authorized by State law.” *Id.* at *12. The court further explained
3 that,

4 [s]ection 1357(g)(10), read in the context of § 1357(g) as a whole,
5 simply makes clear that State and local authorities, even without a
6 287(g) agreement that would allow their officers to perform the
7 functions of immigration officers, may continue to cooperate with
8 Federal immigration officers in immigration enforcement to the extent
9 they are authorized to do so by their State law and choose to do so.

10 *Id.*

11 As discussed above, no written agreement under § 1357(g) exists in this case.
12 And the Court will not imagine or create an agreement where none exists. This is
13 not a minor point. Because no such written agreement exists here—nor is there any
14 indication that Defendants or anyone in their employment are qualified to perform
15 the functions of an immigration officer—Defendants are necessarily limited in the
16 communication and cooperation they can provide to federal immigration
17 enforcement. *See Arizona*, 567 U.S. at 407–415 (discussing the immigration
18 enforcement scheme Congress established and the ways in which state and local
19 officials may become involved).

20 **c. The administrative warrant at issue here was not directed to
Defendants and is not a request from DHS to Defendants
asking that Defendants detain Sanchez Ochoa.**

The record contains only an administrative warrant on a Form I-200. ECF
No. 7-1 at 5. In defending Defendants’ action placing an immigration hold based

1 on the administrative warrant, the United States describes ICE’s current
2 immigration detainer Policy and argues that when states and localities comply with
3 ICE issued detainers under the Policy, there is no Fourth Amendment violation.
4 ECF No. 26 at 29–35. The Court need not decide whether this argument is correct
5 because no ICE detainer has been issued in this case. An administrative warrant
6 alone is not an ICE issued detainer sent to state and local authorities informing them
7 that ICE intends to assume custody over a person. *See* discussion re ICE’s
8 immigration detainer policy, *supra* section III.E. Indeed, ICE’s current Policy
9 regarding immigration detainers—which, again, are the documents ICE issues to
10 inform state and local officials that “ICE intends to assume custody of a removable
11 alien in [the LEA’s] custody”—states that “[a]ll immigration detainers . . . must be
12 accompanied by either Form I-200 . . . or Form I-205.” Policy at 3, 4, *available* at
13 <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>
14 (last accessed on July 27, 2017).

15 In this case, there is only an administrative warrant. Nothing in the record
16 suggests that ICE requested or in any other way asked that Defendants arrest or
17 detain Sanchez Ochoa. On this point, ICE Assistant Field Director Michael A.
18 Melendez’s declaration is helpful. Melendez describes both what happened in
19 Sanchez Ochoa’s case and ICE’s procedures as practiced in Yakima County. In
20 Sanchez Ochoa’s case, ICE Officer Hawkinson interviewed Sanchez Ochoa in the

1 Yakima County jail on May 4, 2017, after learning about Sanchez Ochoa’s prior
2 encounter with ICE in 2008. ECF No. 26-1 at 2–3. Officer Hawkinson thereafter
3 sought the administrative warrant at issue here. *Id.* at 3. Then “[Officer] Hawkinson
4 gave a copy of the executed Form I-200 to Yakima County Jail staff.” *Id.* There is
5 no mention in the record that Officer Hawkinson or anyone else did anything other
6 than hand the Form I-200 administrative warrant to Yakima County jail staff.

7 As discussed above, the administrative warrant issued against Sanchez Ochoa
8 is directed at “any immigration officer” authorized by the INA and implementing
9 regulations to “serve warrants of arrest for immigration violations.” ECF No. 7-1 at
10 5. Defendants are not authorized or qualified to perform the duties of immigration
11 officers. *See* discussion re state and local official’s immigration authority, *supra*
12 section V.B.4.a & b. Nothing in the administrative warrant indicates that it is
13 directed at Yakima County officials or anyone other than authorized immigration
14 officers. Thus, the administrative warrant cannot be read as directed to Defendants.

15 To the extent the United States argues that an ICE detainer and an
16 administrative warrant are both requests from federal to state and local authorities,
17 the Court finds that argument unavailing. The Form I-200 alone, on its face, did not
18 provide a sufficient basis from which Defendants—who are not qualified to make
19 determinations of immigration law and cannot themselves enforce immigration
20 laws—could understand that federal authorities were making a request for

1 cooperation from them. And merely handing the warrant to Yakima County jail
2 staff does not magically convert it into such a request, much less authorization for
3 detention.

4 Accordingly, the administrative warrant at issue here cannot be seen as a
5 request, direction, authorization, or other instruction from DHS to Defendants
6 seeking their assistance in detaining Sanchez Ochoa.

7 **d. Defendants' placement of an immigration hold on Sanchez**
8 **Ochoa does not fall within the permissible exchange or**
9 **maintenance of information about his immigration status.**

10 As discussed above, communication and cooperation between Defendants
11 and federal immigration authorities is permissible. That means, for example, that
12 Defendants may inform ICE about Sanchez Ochoa's release date from Yakima
13 County's custody. *See* 8 U.S.C. § 1357(g)(10).

14 This manner of information sharing is also subject to 8 U.S.C. § 1373. This
15 section states that government entities or officials cannot "prohibit, or in any way
16 restrict, any government entity or official from sending to, or receiving from
17 [federal immigration authorities] information regarding the citizenship or
18 immigration status" of any individual. 8 U.S.C. § 1373(a). It also prohibits any
19 restrictions on the ability of any federal, state, or local government entity to (1) send
20 to or request or receive information from ICE; (2) maintain information about an
individual's immigration status; or (3) exchange such information with other

1 federal, state, or local government entities. 8 U.S.C. § 1373(b). Lastly, it obligates
2 federal immigration authorities to respond to inquiries about a person's immigration
3 status by other federal, state, or local agencies. 8 U.S.C. § 1373(c).

4 As discussed above, the administrative warrant here was not a request for
5 information from ICE to Defendants. To the extent ICE, other federal immigration
6 authorities, or Yakima County provided information about Sanchez Ochoa's
7 immigration status in this case, 8 U.S.C. § 1373 prohibits any restraint on the flow
8 of such information between the government agencies involved in this case.

9 However, to the extent Defendants viewed the administrative warrant as a
10 request to place an immigration hold on Sanchez Ochoa, that action went beyond
11 the bounds of communication and cooperation under 8 U.S.C. § 1357(g)(10)
12 because there was no request for Defendants to place an immigration hold.

13 Additionally, Defendants placement of an immigration hold cannot
14 reasonably be construed as "maintaining" information regarding Sanchez Ochoa's
15 immigration status. *See* 8 U.S.C. § 1373(b). The administrative warrant is not a final
16 order of removal and it is not an immigration detainer request directed at Defendants
17 asking them to hold Sanchez Ochoa. It is a document reflecting ICE's intent to arrest
18 Sanchez Ochoa on suspicion that he is unlawfully present in the country. Again, it
19 is generally not a crime for a person who is removable in the United States to remain
20 in the United States. *Arizona*, 567 U.S. at 407. And the predicate for stopping

1 someone, let alone detaining a person, is absent when police stop a person based on
2 nothing more than possible removability from the United States. *See Santos*, 725
3 F.3d at 464; *Trujillo Santoyo*, 2017 WL 2896021, at *6 (discussing *Arizona* and
4 *Santos*). Here, it is disingenuous to argue that the term “immigration hold,” or
5 similar language such as “ICE hold,” means anything other than an intention not to
6 release a person subjected to such a hold for at least some time before conferring
7 with ICE. Indeed, as discussed, the record supports that Defendants did not intend
8 to release Sanchez Ochoa: Director Campbell’s statement that “[DOC] has
9 confirmed that Mr. Sanchez can bail on his ICE hold,” implies that Defendants
10 understood that Sanchez Ochoa was being detained because of immigration issues,
11 ECF No. 7-4; and the jail roster lists “immigration hold” as an offense and “ICE”
12 as the “statute” as a reason, among others, for Sanchez Ochoa’s detention with
13 DOC, ECF No. 7-2 at 7.

14 Accordingly, Defendants could not “hold” Sanchez Ochoa in any sense of
15 the word based solely on an administrative warrant that reflects only the *suspicion*
16 that Sanchez Ochoa is removable from the United States. Exchanging information
17 and cooperating is one thing. What happened here was quite another—it was a
18 detention.

1 **e. No other authority permitted Defendants to place the**
2 **immigration hold in reliance on the administrative warrant.**

3 At oral argument, Defendants' counsel conceded that the administrative
4 warrant is a civil warrant issued to immigration officers, that it authorizes
5 immigration officers to detain the person who is the subject of the administrative
6 warrant, and that Yakima County officials could not enforce the warrant. Only the
7 United States argues that Defendants could act on the administrative warrant. ECF
8 No. 26 at 35–47. The United States argues that it cannot be the case that federal
9 officials can legally execute an administrative warrant yet it would be illegal for
10 state and local officials to do so. In making its argument, the United States relies on
11 a litany of cases stating that law enforcement routinely relies on other officers' and
12 jurisdictions' probable cause determinations. In short, the United States argues that
13 cooperating state and local governments and officers (1) can rely on ICE's probable
14 cause determination under the "collective knowledge" doctrine and (2) temporarily
15 detain removable persons at the federal government's request or direction based
16 solely on probable cause of a civil immigration violation. *Id.*

17 Sanchez Ochoa counters that state and local officials cannot rely on
18 administrative warrants issued by someone other than a neutral magistrate. He
19 further argues that though the federal statutory and regulatory scheme permits
20 federal officials to execute administrative warrants, it does not follow that state and
 local officials may also rely on and execute such warrants. ECF No. 27 at 5–8.

1 **i. The collective knowledge doctrine does not apply in**
2 **this case and the Court declines to extend it to the**
3 **immigration context.**

4 Relying on the “collective knowledge” doctrine, the United States asserts that
5 “[i]t is well-established that Local officers are entitled to rely on ICE’s findings of
6 probable cause as articulated in the administrative warrant.” ECF No. 26 at 35. The
7 “collective knowledge” doctrine allows courts to “determine whether an
8 investigatory stop, search, or arrest complied with the Fourth Amendment by
9 look[ing] to the collective knowledge of the officers involved in the criminal
10 investigation although all of the information known to the law enforcement officers
11 involved in the investigation is not communicated to the officer who actually
12 [undertakes the challenged action].” *United States v. Ramirez*, 473 F.3d 1026, 1032
13 (9th Cir. 2007) (citations and quotation marks omitted). The United States concedes
14 that courts have not previously applied this rule in the immigration context or to
15 violations of civil law. ECF No. 26 at 37.

16 On this point, the court’s reasoning in *Trujillo Santoyo* is instructive. 2017
17 WL 2896021. There, on summary judgment, the court considered, among other
18 things, whether Bexar County’s policy of honoring ICE detainer requests was “the
19 moving force” behind violations of Trujillo Santoyo’s Fourth and Fourteenth
20 Amendment rights which led to his unlawful detention. *Id.* at *8. In finding that yes,
Bexar County’s policy was indeed the moving force behind the constitutional

1 violations Trujillo Santoyo alleged, the court discussed the “collective knowledge”
2 doctrine and found that county officials there were not entitled to rely upon ICE’s
3 probable cause determination. *Id.* at *6. First, the court was skeptical that the
4 “probable cause requirements between County officials and 8 U.S.C. § 1357(d)(1)
5 were interchangeable.” *Id.* The court nevertheless assumed, for the sake of
6 argument, that the requirements were interchangeable, but went on to find that the
7 “collective knowledge” doctrine did not apply there because “the record [did] not
8 indicate any communication or cooperation between the ICE personnel who made
9 the probable cause determination and the County officials who processed the
10 detainer request.” *Id.*

11 Although in the instant case there is no detainer request, just an administrative
12 warrant, the *Trujillo Santoyo* court’s reasoning is persuasive. Here, Officer Gladish
13 was the officer who made the probable cause determination. ECF No. 7-1 at 5. To
14 make that determination, he allegedly relied on the information Officer Hawkinson
15 presented to him. ECF No. 26-1 at 3. The record does not indicate that Gladish
16 interacted with Yakima County officials at all. At most, the only interaction
17 between ICE personnel and Defendants related to Sanchez Ochoa’s case is Officer
18 Hawkinson’s handing a copy of the executed Form I-200 to Yakima County jail
19 staff. *Id.* That ICE officers are in Yakima County jail almost daily and that Officer
20 Hawkinson interviewed Sanchez Ochoa, *Id.*, says nothing about communication or

1 cooperation between the ICE officer who made the probable cause determination,
2 Gladish, and the County officials who placed the immigration hold.

3 Accordingly, the “collective knowledge” doctrine does not provide a basis
4 for Defendants to rely on ICE’s probable cause determination.

5 **ii. Defendants were not authorized to temporarily detain**
6 **Sanchez Ochoa.**

7 Furthermore, to the extent the United States argues that Defendants here
8 could temporarily detain Sanchez Ochoa at the federal government’s request or
9 direction based solely on the probable cause determination of a civil immigration
10 violation, the Court disagrees. As discussed above, the Court has determined that
11 there was no request, direction, authorization, or other instruction from federal
12 authorities to Defendants asking for Sanchez Ochoa’s detention and Defendants
13 could not rely on ICE’s probable cause determination. Accordingly, this argument
14 also fails.

15 **5. Because Defendants cannot enforce immigration laws and do not**
16 **otherwise have the authority to detain Sanchez Ochoa, Sanchez**
17 **Ochoa is likely to succeed on the merits of his Fourth Amendment**
18 **claim.**

19 Courts around the country have held that local law enforcement officials
20 violate the Fourth Amendment when they temporarily detain individuals for
immigration violations without probable cause. *Santos v. Frederick Cnty. Bd. of*
Com’rs, 725 F.3d 451, 468 (4th Cir. 2013); *Miranda-Olivares v. Clackamas Cnty.*,

1 No. 3:12-cv-02317-ST, 2014 WL 1414305 at *11 (D. Or. Apr. 11, 2014) (“the
2 Fourth Amendment applies to County’s detention of Miranda-Olivares after she
3 was entitled to pre-trial release on bail.”). Having already determined that (1)
4 Defendants’ placement of the immigration hold caused his detention beyond the
5 time he would otherwise be in Yakima County’s custody, (2) Defendants have no
6 authority to effectuate the administrative warrant because they cannot enforce
7 immigration laws, and (3) no other authority allowed them to act upon the
8 administrative warrant, Sanchez Ochoa is likely to show that Defendants have
9 violated his Fourth Amendment rights. Defendants are local government actors;
10 therefore they are acting under the color of state law. *Lugar v. Edmondson Oil Co.*,
11 457 U.S. 922, 936 (1982) (“Our cases have accordingly insisted that the conduct
12 allegedly causing the deprivation of a federal right be fairly attributable to the
13 State.”); *Chudacoff*, 649 F.3d 1143, 1149 (9th Cir. 2011) (citing *Lugar*, 457 U.S. at
14 928) (“The ‘under color of law’ requirement under § 1983 is the same as the
15 Fourteenth Amendment’s ‘state action’ requirement.”)

16 Accordingly, Sanchez Ochoa has demonstrated that he is likely to succeed on
17 the merits of his Fourth Amendment claim.

18 **C. The balance of the hardships and public interest inquiries merge and tip**
19 **sharply in favor of Sanchez Ochoa.**

20 When the government is a party to a dispute where a plaintiff seeks a
preliminary injunction, the balance of the hardships and public interest factors

1 merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)
2 (citation omitted). Since the standard for issuing preliminary injunctions and TROs
3 is the same, the factors merge when deciding whether to grant a TRO as well. *See*,
4 *e.g.*, *Koller*, 224 F. Supp.at 875. In considering these factors, courts must consider
5 “competing claims of injury and must consider the effect on each party of the
6 granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24.

7 Here, if the Court does not issue a TRO, Sanchez Ochoa will continue to be
8 held in DOC’s custody, even though a state Superior Court judge has already
9 determined that he is eligible for pre-trial release on his state criminal charges.
10 Sanchez Ochoa represents that his state court trial, currently scheduled for August
11 7, 2017, is likely to be delayed, so it is unclear how long he might be held in pre-
12 trial detention. ECF No. 6 at 10.

13 Defendants assert that balancing the equities here is “largely an academic
14 exercise.” ECF No. 24 at 7. They also do not identify any harm they would suffer
15 should a TRO issue.

16 The Court disagrees that the question here is largely academic. Irrespective
17 of what happens once Sanchez Ochoa is released from Yakima County’s custody,
18 a TRO will materially impact him. If he posts his \$50,000 bond, he will be released
19 from Yakima County’s custody.

20

1 Moreover, to the extent Defendants argue that a TRO will create confusion
2 about liability, ECF No. 24 at 8, the Court disagrees. A TRO will clarify, pending
3 the resolution of this case, that Sanchez Ochoa has demonstrated that Defendants'
4 reliance on an administrative warrant to place an immigration hold likely violated
5 Sanchez Ochoa's Fourth Amendment rights. Defendants have not identified any
6 potential liability they would face as a result of this ruling, and Defendants can
7 choose to amend their policies and practices however they see fit.

8 The Court finds that the balance of the hardships tips sharply in Sanchez
9 Ochoa's favor.

10 **D. Sanchez Ochoa will suffer irreparable harm in the absence of a TRO.**

11 Defendants argue that the relief Sanchez Ochoa seeks is already available to
12 him and he therefore will not suffer irreparable harm. ECF No. 24 at 6–7. However,
13 as discussed above, the Court has determined that he is likely to prevail on the merits
14 of his Fourth Amendment claim. “It is well establish that the deprivation of
15 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*
16 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,
17 373 (1976)). Accordingly, the Court finds that this factor is met.

18 **E. Sanchez Ochoa is not required to post a bond.**

19 Defendants ask the Court to require that Sanchez Ochoa post a security bond
20 because it granted the requested relief. ECF No. 24 at 9. Defendants assert that they

1 may have “unforeseen civil liability arising from restrictions on the ability of
2 Yakima County to manage its jail operations consistent with past practice.” ECF
3 No. 24 at 9. Federal Rule of Civil Procedure 65(c) instructs that courts may issue a
4 TRO “only if the movant gives security in an amount that the court considers proper
5 to pay the costs and damages sustained by any party found to have been wrongfully
6 enjoined or restrained.” Though this language appears mandatory, district courts
7 have discretion to set the security bond amount, if any. *Johnson v. Couturier*, 572
8 F.3d 1067, 1086 (9th Cir. 2009) (citation omitted). Particularly, a “district court
9 may dispense with the filing of a bond when it concludes there is no realistic
10 likelihood of harm to the defendant from enjoining his or her conduct.” *Id.* (citation
11 and quotations marks omitted).

12 Here, Defendants make reference only to “unforeseeable civil liability.” ECF
13 No. 24 at 9. The relief the Court is granting affects the status of only one individual,
14 Sanchez Ochoa. It is very unlikely that, based solely on this Order, Defendants will
15 be subject to substantial civil liability. Accordingly, the Court declines to order
16 Sanchez Ochoa to post any security bond.

17 VI. CONCLUSION

18 Based on the record presented to the Court, applicable law, and for the
19 reasons detailed above, the Court grants Sanchez Ochoa’s request for a temporary
20 restraining order. The purpose of this order is to ensure that Sanchez Ochoa will be

1 able to post bail on his state charges, and that he will be physically released from
2 DOC custody upon doing so.

3 Accordingly, it is hereby **ORDERED**:

4 1. Plaintiff Sanchez Ochoa's Motion in Support of Temporary Restraining
5 Order, ECF No. 6, is **GRANTED**;

6 2. Defendants Ed W. Campbell, Director of Yakima County Department of
7 Corrections; Scott Himes, Chief of the Yakima County Department of
8 Corrections; Yakima County, and all their respective officers, agents,
9 servants, employees, attorneys, and persons acting in concert or participation
10 with them **SHALL**:

11 a. Immediately remove the immigration hold presently in place against
12 Mr. Antonio Sanchez Ochoa from the jail roster, and

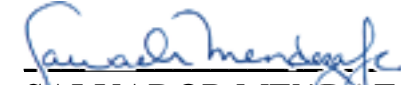
13 b. physically release him should he post bail on his state criminal charges;

14 3. Defendants Ed W. Campbell, Director of Yakima County Department of
15 Corrections; Scott Himes, Chief of the Yakima County Department of
16 Corrections; Yakima County, and all their respective officers, agents,
17 servants, employees, attorneys, and persons acting in concert or participation
18 with them are **PROHIBITED** from placing an immigration hold on Mr.
19 Antonio Sanchez Ochoa's jail roster again at some future time based solely
20 on the administrative warrant at issue here, ECF No. 7-1 at 5;

1 4. Defendants Ed W. Campbell, Director of Yakima County Department of
2 Corrections; Scott Himes, Chief of the Yakima County Department of
3 Corrections; Yakima County, and all their respective officers, agents,
4 servants, employees, attorneys, and persons acting in concert or participation
5 with them are **PROHIBITED** from relying on the administrative warrant at
6 issue here, ECF No. 7-1 at 5, to communicate to third parties that Mr. Antonio
7 Sanchez Ochoa is being “held” because of his immigration status. This
8 should not be read to conflict with 8 U.S.C. § 1373 or other applicable law
9 concerning disclosure of information about Sanchez Ochoa’s immigration
10 status.

11 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
12 provide copies to all counsel.

13 **DATED** this 31st day of July 2017.

14 
15 SALVADOR MENDOZA, JR.
16 United States District Judge
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18
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