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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTONIO SANCHEZ OCHOA, Plaintiff, v. ED W. CAMPBELL, Director of Yakima County Department of Corrections; SCOTT HIMES, Chief of the Yakima County Department of Corrections; and YAKIMA COUNTY, Defendants.	NO. 1:17-cv-03124-SMJ DEFENDANTS' MOTION FOR SUMMARY JUDGMENT Thursday, September 6, 2018 With Oral Argument: 10:00 a.m. Richland, WA

I. MOTION

Defendants seek summary judgment dismissal of all claims alleged by the plaintiff in this matter.

II. FACTUAL BACKGROUND

The facts pertinent to this motion are set forth in defendants' LR 56(1)(a) statement of material facts (herein "DSF #__") (ECF No. 60).

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III. NATURE OF THE CLAIMS

Plaintiff Antonio Sanchez Ochoa ("Mr. Ochoa") brings a claim against Yakima County, the Director of its Department of Corrections, and the Chief of its Department of Corrections. Mr. Ochoa alleges a violation of the Fourth Amendment to the United States Constitution arising under 42 U.S.C. § 1983. (ECF No. 1, ¶ 45). The complaint asks for compensatory damages and seeks declaratory and injunctive relief. (*Id.*, ¶ 2).

IV. SUMMARY OF ARGUMENT

A. Fourth Amendment. The County's detention of Mr. Ochoa was at all times based solely on his pending state law criminal charges of second degree assault and malicious mischief. No Fourth Amendment seizure arises from the fact that bail bondspersons made independent business decisions not to work with Mr. Ochoa.

B. Qualified Immunity. Director Ed Campbell and Chief Scott Himes are entitled to qualified immunity. Even if Mr. Ochoa could demonstrate a Fourth Amendment violation, the conduct of Director Campbell and Chief Himes did not violate clearly established constitutional rights of Mr. Ochoa of which a reasonable person would have known.

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C. Declaratory Ruling. Mr. Ochoa is no longer in the custody of Yakima County. A declaratory ruling would be inappropriate and serve no useful purpose.

D. Injunctive Relief. Mr. Ochoa is no longer in the custody of Yakima County. His claim for injunctive relief should be denied as moot.

V. LEGAL ARGUMENT

A. Summary judgment standard.

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

B. Mr. Ochoa's 42 U.S.C. § 1983 claim should be dismissed.

1. Fourth Amendment claim elements.

42 U.S.C. § 1983 creates a cause of action against any person who, acting under color of state law, violates the constitutional rights of another person. 42 U.S.C. § 1983; *Mabe v. San Bernardino County Dep't of Public Soc. Serv.*, 237 F.3d 1101, 1106 (9th Cir. 2001). To succeed on a § 1983 claim, Mr. Ochoa must show that (1) the conduct complained of was committed by a person acting under color of state law; and (2) the conduct deprived him of his

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constitutional rights. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

Mr. Ochoa alleges an unlawful seizure in violation of the Fourth Amendment to the United States Constitution. (ECF No. 1, ¶ 45). Mr. Ochoa must show that he was seized by an instrumentality put in place for the purpose of achieving that result rather than as a mere effect of otherwise lawful governmental conduct. *Brower v. County of Inyo*, 489 U.S. 593, 599 (1989). He must also demonstrate that any seizure was unreasonable. *Id.*

2. Mr. Ochoa's allegations.

Mr. Ochoa's Fourth Amendment claim is directed at the manner in which the Yakima County Jail processed receipt of a Form I-200, Warrant for Arrest of Alien ("administrative warrant"), issued by ICE. The receipt of an administrative warrant was entered into the electronic Jail Management System ("JMS"). (DSF #15). The JMS then populated an online, publicly accessible jail register. (*Id.*). The jail register identifies charges and warrants outstanding for each inmate. (DSF #16). In the case of Mr. Ochoa, the register indicated charges of First Degree Assault (not filed), Second Degree Assault, and Second Degree Malicious Mischief, and that Mr. Ochoa was subject to an "immigration hold" by ICE. (*Id.*).

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The Yakima County Jail documented the receipt of administrative warrants issued by ICE for the purpose of ensuring that when inmates are released from the County's custody, either by posting bail or upon the termination of their local charges, they are released to ICE. (DSF #17).

Mr. Ochoa alleges that the manner in which the defendants recorded receipt of an administrative warrant issued by ICE rendered him "unable to secure services of a bail bondsperson to post bond on his criminal charges[.]" (ECF No. 1, ¶ 41). Mr. Ochoa's allegations do not, as a matter of law, demonstrate a seizure under the Fourth Amendment.

3. Mr. Ochoa cannot identify an event of seizure giving rise to a claim under the Fourth Amendment.

The allegation that certain bail bonding companies refused to do business with Mr. Ochoa because of the "immigration hold" notation cannot, as a matter of law, establish a Fourth Amendment seizure. The County website notation itself did nothing to Mr. Ochoa because it did not affect his detention. The actions—or, more accurately, the inactions—of the bail bonds agents were not "governmental termination of freedom of movement *through means intentionally applied*." *Brower*, 489 U.S. at 597 (emphasis in original). Mr. Ochoa's detention was the lawful result of his prior arrest on local charges.

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There was no new seizure—as the term is defined for Fourth Amendment purposes—due to any effect that the website notation may have had on bail bondspersons. The Fourth Amendment's conception of seizure is not adaptable to the claim made by Mr. Ochoa here, which relies on both a predicate event (the notation, which even Mr. Ochoa does not claim was itself a seizure) in conjunction with consequential actions of third persons who had nothing to do with the County. (ECF No. 1, ¶ 45).

a. Posting notice on a website is not a "seizure" for purposes of the Fourth Amendment.

The essence of a Fourth Amendment seizure is an application of force or a show of authority to which the accused yielded. *California v. Hodari D.*, 499 U.S. 621, 626-27 (1991) ("We do not think it desirable, even as a policy matter, to stretch the Fourth Amendment beyond its words and beyond the meaning of arrest[.]").

A seizure is a single event. *Id.*, 499 U.S. at 625 (citing *Thompson v. Whitman*, 18 Wall. 457, 471, 21 L.Ed. 897 (1874)). It requires either physical force or, absent physical force, submission to the assertion of authority. *Id.*, at 626.

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"Mere words will not constitute an arrest[.]" *Id.*, 499 U.S. at 626. No seizure occurs, for example, where a police officer yells "Stop, in the name of the law!" at a fleeing suspect who continues to flee. *Id.* No seizure occurs in such circumstances because there is neither the application of physical force nor submission to an assertion of authority. *Id.*

Here, the seizure was Mr. Ochoa's initial arrest, which was lawful. Posting a notice that Mr. Ochoa was the subject of an "immigration hold" by ICE on a local jail register was not a seizure for purposes of the Fourth Amendment. The act of posting the notice took place administratively. (DSF #15). Mr. Ochoa was not physically touched. The notice did not require Mr. Ochoa to submit to the County's custody. (DSF #17).

The notice did not alter Mr. Ochoa's status relative to his detention in Yakima County custody. (DSF #18, #21). Had Mr. Ochoa offered to post bail on his local charges, the Yakima County Jail would have accepted bail and released Mr. Ochoa from Yakima County custody. (DSF # 24).

Aside from the County's willingness to accept bail for Mr. Ochoa, even ICE understood that bail remained available for him. In an email dated July 6, 2017, ICE employee Brenda McClain noted that "an 'ICE hold' does not prevent a person from posting bail on their criminal charges." (DSF #7). This

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statement was echoed by ICE Assistant Field Director Michael Melendez, who wrote in an email to Director Ed Campbell also dated July 6, 2017, that "[t]he I-200 only serves as a mechanism for [Yakima County] to contact [ICE] should an individual be released from the Yakima County Jail. It does not preclude them from posting bail." (DSF #8).

Mr. Ochoa's Fourth Amendment claim should be dismissed with prejudice because posting notice of an "immigration hold" cannot, as a matter of law, constitute an application of physical force and thus is not a seizure under the Fourth Amendment.

b. The website notice was a lawful governmental action and any alleged effect it had on third parties is irrelevant for seizure analysis.

Mr. Ochoa's Fourth Amendment claim also fails because his explanation of the occurrence of the seizure relies on alleged effects of the website posting on third party bail bond agents. This is a causal narrative that implies an alleged link between the website and Mr. Ochoas's access to bail, but it is not a seizure.

A plaintiff seeking to demonstrate a Fourth Amendment seizure must show they were seized "by the very instrumentality set in motion or put in place in order to achieve that result." *Brower*, 489 U.S. at 599. The

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intentionality of the actual restraint imposed on a person's freedom of movement, rather than its mere causal effect, is the "sine qua non" of a Fourth Amendment seizure. *United States v. Al Nasser*, 555 F.3d 722, 730 (2009).

No Fourth Amendment seizure arises from acts that have the incidental effect of restraining the liberty of an individual and this remains true even if the act itself was deliberately performed. *See Al Nasser*, 555 F.3d at 730, 732 (no seizure occurred when police signaled to driver to continue driving and he misinterpreted signal and stopped); *Logan v. City of Pullman*, 392 F. Supp. 2d 1246, 1260 (E.D. Wash. 2005) (where police officers sprayed pepper spray at individuals on first floor of restaurant, persons on the second floor who suffered secondary exposure to the pepper spray were not "seized" for purposes of the Fourth Amendment because they "were not the deliberate and intended object" of the use of the pepper spray).

Here, the jail register notation was lawful. The notation was recorded in the same manner that the Yakima County Jail recorded notices of warrants or criminal charges issued by any other jurisdiction. (DSF #18). Its purpose was to ensure that when Mr. Ochoa was released from custody on his local criminal charges, either by posting bail or the termination of his local charges, he was released to ICE. (DSF #17). Its effect on bail bondspersons arising from their

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expectation that he would then be taken into custody by ICE was not a seizure. (DSF #24).

No Fourth Amendment claim can arise from the happenstance that third parties refused to do business with Mr. Ochoa due to the website notation. *Al Nasser*, 555 F.3d at 732 (citing *Brower*, 489 U.S. at 596-97).

Mr. Ochoa's § 1983 claim against all defendants should be dismissed with prejudice.

4. This case is unlike cases in which courts have found Fourth Amendment seizures in the immigration context.

This case is factually distinguishable from others in which Fourth Amendment violations have been found. The plaintiff in *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (D. Or. Apr. 11, 2014), was told that she would not be released from custody if she posted bail. *Id.*, at *2. More importantly, the plaintiff was held in custody for 19 hours without lawful authority after being entitled to release on her state law charges. *Id.*, at *3.

In *Orellana v. Nobles County*, 230 F. Supp. 3d 934 (D. Minn. 2017), the plaintiff tried to post bail but was told by jail employees that they would not accept the bail.

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Finally, the plaintiff in *Lunn v. Commonwealth*, 477 Mass. 517, 78 N.E.3d 1143 (2017), was held in custody without lawful authority after state criminal charges against him had been dismissed.

This case is not comparable. Mr. Ochoa never offered to post bail. (DSF #22). No defendant told Mr. Ochoa he could not post bail. (DSF #23). It was, and remains, the policy and practice of Yakima County to allow inmates, including those for whom ICE had issued a Form I-200, to post bail. (DSF #19). Mr. Ochoa was never held by Yakima County for any reason other than his state law local charges. (DSF #21). The factual circumstances in *Miranda-Olivera*, *Orellana*, and *Lunn* are distinguishable in ways that favor summary judgment dismissal of Mr. Ochoa's Fourth Amendment claim.

C. Director Campbell and Chief Himes should be dismissed from this lawsuit on grounds of qualified immunity.

"[Q]ualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Qualified immunity applies "regardless of whether the government official's error is a mistake of law, a mistake of fact,

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or a mistake based on mixed questions of law and fact." *Pearson*, 555 U.S. at 231 (internal citations omitted).

To address a qualified immunity claim, the Court must apply a two-pronged test: (1) whether the facts alleged, taken in the light most favorable to the plaintiff, show that the defendants' conduct violated a constitutional right, and (2) whether that right was "clearly established." *Community House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 967 (9th Cir. 2010) (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *modified by Pearson*, 555 U.S. 223). Courts need not address both prongs of the test and may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Community House, Inc.*, 623 F.3d at 967; *see also Pearson*, 555 U.S. 235.

1. No defendant violated Mr. Ochoa's constitutional rights.

Where no constitutional right would be violated under the facts as alleged by a plaintiff, "there is no necessity for further inquiries concerning qualified immunity." *Saucier*, 533 U.S. at 201.

For reasons explained more fully, *supra*, Section V.B, Mr. Ochoa cannot establish that any conduct attributable to any defendant resulted in a seizure

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implicating the Fourth Amendment. Defendants Director Campbell and Chief Himes are entitled to dismissal on grounds of qualified immunity.

2. Mr. Ochoa's constitutional rights were not clearly established.

For a constitutional right to be clearly established, "its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Boyd v. Benton County*, 374 F.3d 773, 780-81 (9th Cir. 2004). "[A]n officer who makes a reasonable mistake as to what the law requires under a given set of circumstances is entitled to the immunity defense." *Id.* at 781 (citation omitted). The pertinent inquiry is whether a reasonable officer would have understood that posting notice of an immigration hold on the jail register would give rise to a seizure for purposes of the Fourth Amendment.

The Court begins this inquiry by looking to binding precedent. *Id.* In the absence of binding precedent, the Court looks to whatever law is available to ascertain whether the law is clearly established for qualified immunity purposes. *Id.* (citing *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1060 (9th Cir. 2003)).

Case law establishes several guiding rules. Yakima County may not detain an inmate in Yakima County's custody absent probable cause to believe

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the inmate committed a criminal offense. *Miranda-Olivera*, 2014 WL 1414305 at *9-11. Likewise, Yakima County must allow an inmate to post bail on local criminal charges regardless of whether it has been notified that ICE wants to obtain custody of that individual. *Id.*, at 11. The policies implemented by the Yakima County Department of Corrections under the direction of Director Campbell and Chief Himes are consistent with this authority. (*See* DSF #29).

Defendants are unaware of any authority that would support the proposition that a public notice, without more, can amount to a Fourth Amendment seizure. The plaintiff in *Nasious v. Two Unknown B.I.C.E. Agents*, 657 F. Supp. 2d 1218 (D. Colo. 2009), alleged a due process violation against ICE agents who lodged, and later withdrew, an immigration detainer (Form I-247) against the plaintiff while he was detained in the Denver County Jail on state law charges. Rejecting the plaintiff's claims, the district court noted that "[a]most all of the circuit courts considering the issue have determined that the lodging of an immigration detainer, without more, is insufficient to render someone in custody." 657 F. Supp. 2d at 1229 (citation omitted).

Yakima County noted its receipt of an administrative warrant on the jail register but no new custodial detention by Yakima County occurred at all. To

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find that these facts amount to violation of a clearly established right would be inconsistent with *Nasious*, which is the only known potentially relevant case authority.

Under these circumstances, and particularly given Yakima County's policy of accepting bail for inmates subject to administrative warrants issued by ICE, reasonable officers in Director Campbell's and Chief Himes' positions would not have realized that creating an "immigration hold" notation on the jail register would give rise to a Fourth Amendment seizure.

Summary judgment dismissal of the plaintiff's claims against Director Campbell and Chief Himes on the basis of qualified immunity is appropriate.

D. Mr. Ochoa's claim for declaratory relief should be denied.

Mr. Ochoa asks the Court for a declaratory ruling that the defendants' imposition of an immigration hold on him is unconstitutional. (ECF No. 1, ¶ 2). The request for a declaratory ruling should be denied.

The federal Declaratory Judgment Act at 28 U.S.C. §§ 2201 and 2202 requires an actual case or controversy between the parties before a federal court can constitutionally assume jurisdiction. *Cisco Sys., Inc. v. Alberta Telecommunications Research Ctr.*, 892 F. Supp. 2d 1226, 1229 (N.D. Cal. 2012), *aff'd*, 538 F. App'x 894 (Fed. Cir. 2013). In determining whether to

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exercise declaratory jurisdiction, federal courts "should consider whether a declaratory judgment will serve a useful purpose in clarifying and settling the legal relations between the parties, and whether it will terminate the controversy." *Los Angeles Cty. Bar Ass'n v. Eu*, 979 F.2d 697, 703 (9th Cir. 1992).

Resolution of Mr. Ochoa's § 1983 claim will resolve the dispute between the parties and a declaratory judgment will serve no purpose. Mr. Ochoa has been deported. *Sanchez Ochoa v. Campbell et. al.*, 716 Fed. Appx. 741, 742 (9th Cir. 2018).[1] There is little probability that the policies and practices challenged by Mr. Ochoa may again be enforced against him. Under these circumstances, the Court should decline to issue a declaratory ruling. *United Sweetener USA, Inc. v. Nutrasweet Co.*, 766 F. Supp. 212, 216 (D. Del. 1991) (declaratory ruling inappropriate where it "would serve no useful purpose").

Should the Court be inclined to issue a declaratory ruling, the Court should find that the policies and practices of the defendants are lawful for reasons more fully set forth *supra*, Section V.B.

E. Mr. Ochoa's claim for injunctive relief should be denied as moot.

[1] Cited pursuant to LR 7(f)(2).

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Mr. Ochoa asks the Court for injunctive relief requiring the defendants to "immediately remove the unlawful immigration hold[.]" (ECF No. 1, ¶ 2). Mr. Ochoa has posted bail, been released from the Yakima County Jail, and been deported by ICE. (DSF #27, #28). The request for injunctive relief should be denied as moot.

VI. CONCLUSION

For the reasons set forth above, all claims alleged by Mr. Ochoa in this matter should be dismissed with prejudice.

DATED THIS 6th day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2018, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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