

The Honorable Richard A. Jones

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Wilson RODRIGUEZ MACARENO,

Plaintiff,

v.

Joel THOMAS, in his official and individual capacities; Craig GARDNER, in his official and individual capacities; Peter TIEMANN, in his official and individual capacities; Arthur STEPHENSON, in his official and individual capacities; and CITY OF TUKWILA,

Defendant.

No. C18-421 RAJ

MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF BY
AMERICAN CIVIL LIBERTIES
UNION OF WASHINGTON

**NOTE ON MOTION CALENDAR:
NOVEMBER 16, 2018**

I. INTRODUCTION

American Civil Liberties Union of Washington (“ACLU-WA”) hereby respectfully submits this Motion for Leave to File an *Amicus Curiae* Brief. A copy of the proposed brief is attached as Exhibit A to this motion. ACLU-WA conferred with counsel for the parties in writing before filing this Motion. Counsel for Plaintiff Wilson Rodriguez Macareno (“Mr. Rodriguez”) did not oppose the filing of this amicus brief. Counsel for Mr. Rodriguez asked ACLU-WA to contact Defendants separately. ACLU-WA contacted Counsel for Defendants, who declined to consent.

1
2
3
4
5
6
7
8
9

II. IDENTITY AND INTEREST OF AMICUS CURIAE

ACLU-WA is a statewide, nonpartisan, nonprofit organization of over 80,000 members and supporters dedicated to the preservation of civil liberties. ACLU-WA works in courts, legislatures, and communities to preserve the individual rights and liberties guaranteed to all people by the Constitution and laws of the United States. ACLU-WA frequently participates as a party and *amicus curiae* in cases involving civil liberties and criminal justice issues, including unlawful detention and immigrants' rights. In order to promote its organizational mission and the interests of its members, ACLU-WA engages in community education and has led local efforts to inform government officials and others about the issues implicated in this case.

10
11
12
13
14
15
16
17
18

III. REASONS WHY MOTION SHOULD BE GRANTED

District courts have "broad discretion" to appoint *amicus curiae*. *Skokomish Indian Tribe v. Goldmark*, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)). "District courts frequently welcome *amicus* briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the *amicus* has 'unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.'" *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)).

19
20
21
22
23
24
25
26
27

The Court should exercise its discretion to permit ACLU-WA to file the attached *amicus* brief. As a nonprofit public interest legal organization dedicated to the preservation of civil liberties, ACLU-WA has a strong interest in ensuring law enforcement agencies in Washington do not exceed their authority under federal and Washington state law. ACLU-WA will draw upon its expertise to provide a criminal justice perspective in this case, so as to fulfill "the classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Comm'r of Labor & Indus., State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). ACLU-WA respectfully submits that its experience and perspective as a

1 nonprofit public interest legal organization representing and advising individuals on civil
2 liberties, criminal justice, and immigration matters will assist the Court in addressing the legal
3 authority—or lack thereof—which Defendants rely on to support their unlawful detention of
4 Mr. Rodriguez.

5
6 **IV. CONCLUSION**

7 For these reasons, ACLU-WA respectfully requests the Court grant it leave to file the
8 amicus curiae brief attached as Exhibit A.

9
10 DATED this 29th day of October, 2018.

11 DAVIS WRIGHT TREMAINE LLP
12 Cooperating Attorneys for ACLU-WA

13 By s/Kenneth E. Payson
14 Kenneth E. Payson, WSBA # 26369

15 By s/Jennifer K. Chung
16 Jennifer K. Chung, WSBA # 51583
17 1201 Third Avenue, Suite 2200
18 Seattle, WA 98101-3045
19 Tel: (206) 622-3150
20 Fax: (206) 757-7700
21 E-mail: kenpayson@dwt.com
22 jenniferchung@dwt.com

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

ACLU-WA FOUNDATION

By s/Eunice Cho
Eunice Cho, WSBA # 53711
901 Fifth Avenue, Suite 630
Seattle, WA 98164
Tel: (206) 624-2184
Fax: (206) 624-2190
E-mail: echo@aclu-wa.org

*Attorneys for Proposed Amicus Curiae
American Civil Liberties Union of
Washington*

CERTIFICATE OF SERVICE

1 I hereby certify that on October 29, 2018, I electronically filed the foregoing document
2 with the Clerk of the Court using the CM/ECF system, which will send notification of such
3 filing to the attorneys of record registered on the CM/ECF system. All other parties (if any)
4 shall be served in accordance with the Federal Rules of Civil Procedure.
5

6 DATED this 29th day of October, 2018.

7 s/Jennifer K. Chung
8 Jennifer K. Chung, WSBA #51583
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT A

The Honorable Richard A. Jones

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Wilson RODRIGUEZ MACARENO,

Plaintiff,

v.

Joel THOMAS, in his official and individual capacities; Craig GARDNER, in his official and individual capacities; Peter TIEMANN, in his official and individual capacities; Arthur STEPHENSON, in his official and individual capacities; and CITY OF TUKWILA,

Defendant.

No. C18-421 RAJ

BRIEF OF AMICUS CURIAE
AMERICAN CIVIL LIBERTIES
UNION OF WASHINGTON IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS
THOMAS, GARDNER, TIEMANN,
AND STEPHENSON'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT REGARDING
QUALIFIED IMMUNITY

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I. INTRODUCTION 1

II. IDENTITY AND INTEREST OF AMICUS CURIAE 1

III. BACKGROUND 2

IV. ARGUMENT 2

 A. Defendants’ Actions Were Not Authorized by Federal Law. 2

 1. The ICE Form Did Not Authorize Defendants to Detain Mr. Rodriguez. 2

 a. ICE Forms Do Not Authorize State Officials to Effect a Criminal Arrest or Seizure Because the Forms Are Not Issued by a Neutral Magistrate and Do Not Show Probable Cause That the Individual Committed a Crime..... 2

 b. Defendants Could Not Rely on ICE Forms to Detain Mr. Rodriguez. 5

 2. No Valid Federal Statutory Authority Allowed Defendants to Detain Mr. Rodriguez..... 6

 a. Generally Only Federal Law Enforcement Officers Are Authorized to Arrest and Detain Individuals Who Are Suspect of Civil Immigration Violations..... 6

 b. Defendants’ Detention Did Not Satisfy Any of the Limited Statutory Exceptions that Authorize State Law Enforcement Officers to Arrest and Detain Individuals Based on Civil Immigration Violations..... 7

 c. Defendants’ Detention Did Not Qualify As Cooperation Under § 1357(g)(10)(B). 8

 B. Defendants’ Detention Was Not Authorized Under Washington State Law..... 9

 1. Washington Law Did Not Authorize Defendants to Detain Mr. Rodriguez. 9

 2. Defendants Lacked the Required Probable Cause of a Felony to Justify a Warrantless Arrest..... 10

V. CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Arizona v. United States,
567 U.S. 387 (2012) *passim*

Brendlin v. California,
551 U.S. 249 (2007) 2

City of El Cenizo, Tex. v. Texas,
890 F.3d 164 (5th Cir. 2018) 9

Coolidge v. New Hampshire,
403 U.S. 443 (1971) 3

Galarza v. Szalczyk,
745 F.3d 634 (3d Cir. 2014) 4

Heikkinen v. United States,
355 U.S. 273 (1958) 11

Lopez-Aguilar v. Marion Cty. Sheriff’s Dep’t,
296 F. Supp. 3d 959 (S.D. Ind. 2017) 4, 8

Miranda-Olivares v. Clackamas County,
2014 WL 1414305 (D. Or. Apr. 11, 2014) 4

Moreno v. Napolitano,
213 F. Supp. 3d 999 (N.D. Ill. 2016) 4

Ochoa v. Campbell,
266 F. Supp. 3d 1237 (E.D. Wash. 2017) 3, 4, 6

Roy v. County of Los Angeles,
2018 WL 914773 (C.D. Cal. Feb. 7, 2018) (“*Roy I*”) 4

Roy v. County of Los Angeles,
2018 WL 3439168 (C.D. Cal. July 11, 2018) (“*Roy II*”) 4, 9

Santos v. Frederick Cty. Bd. of Comm’rs,
725 F.3d 451 (4th Cir. 2013) *passim*

United States v. Mischzuk,
847 F. Supp. 2d 227 (D. Mass. 2012) 11, 12

1 *United States v. Ramirez*,
473 F.3d 1026 (9th Cir. 2007)5

2 *United States v. Xiang Wang*,
3 2014 WL 6472857 (D. Kan. Nov. 18, 2014)11

4 *United States v. Yan Naing*,
5 820 F.3d 1006 (8th Cir. 2016)12

6 **State Cases**

7 *Esparza v. Nobles County*,
No. 53-CV-18-751 (Minn. Dist. Ct. Oct. 19, 2018)4, 9

8 *Lunn v. Commonwealth*,
9 477 Mass. 517 (2017)4, 9

10 *Ramirez-Rangel v. Kitsap County*,
11 No. 12-2-09594-4 (Wash. Sup. Ct., Aug. 16, 2013)9

12 *State v. Chenoweth*,
160 Wn.2d 454 (2007)9

13 *State v. Scott*,
14 93 Wn.2d 7 (1980)10

15 **Federal Statutes**

16 8 U.S.C.

17 § 1103(a)(10)7

18 § 12263

19 § 1227(a)11

20 § 1253(a)11

21 § 1253(a)(1)11, 12

22 § 1253(a)(1)(A)11

23 § 13573

24 § 1357(a)7

25 § 1357(a)(2)7

26 § 1357(g)3, 7, 8

27 § 1357(g)(1)7

§ 1357(g)(1)-(5)3

§ 1357(g)(2)7

§ 1357(g)(10)(B)8

Immigration and Nationality Act (INA)6, 7

State Statutes

Revised Code of Washington

10.31.10010
 71.05.23012

Regulations

8 C.F.R.

§ 287.1(g)7
 § 287.5(c)-(e)7
 § 287.5(e)(2)3
 § 287.5(e)(3)3
 § 287.74

Constitutional Provisions

U.S. Constitution amendment IV2, 5
 Washington State Constitution Article I, § 75, 9

Other Authorities

Statement of Washington State Sheriffs’ Ass’n at 1 (Mar. 31, 2017),
<https://bit.ly/2OY4NV1>4
 U.S. Department of Homeland Security, Guidance on State and Local
 Governments’ Assistance in Immigration Enforcement and Related Matters
 at 13-14, <https://bit.ly/2AtytR4>8
 U.S. Immigration & Customs Enforcement, Delegation of Immigration
 Authority Section 287(g) Immigration and Nationality Act (last updated
 Aug. 10, 2018), <https://www.ice.gov/287g>3, 8
 Washington State Office of the Attorney General, Guidance Concerning
 Immigration Enforcement at 26 (April 2017), <https://bit.ly/2zgWglg>
 (“Washington Attorney General Guidance”)5, 10

1 **I. INTRODUCTION**

2 Plaintiff Wilson Rodriguez Macareno (“Mr. Rodriguez”), a resident of Tukwila, called
3 911 because he trusted the Tukwila Police Department to protect him. But when they arrived,
4 the City of Tukwila and its officers (“Defendants”) violated that trust by detaining him solely on
5 their suspicion that Mr. Rodriguez had committed a civil immigration violation. Defendants had
6 no authority under federal or state law to detain Mr. Rodriguez. By doing so, they violated Mr.
7 Rodriguez’s Constitutional rights. Defendants’¹ motion should be denied.

8 Defendants’ detention of Mr. Rodriguez was not justified by any federal authority.
9 Defendants were not authorized to execute the Form I-247A detainer (“ICE form”); nor could
10 Defendants have been authorized to execute an ICE administrative “warrant,” as only authorized
11 federal immigration officers—not Defendants—may detain the individual named for an alleged
12 civil immigration violation. And, unlike ordinary warrants, ICE forms are not based on probable
13 cause of a crime or signed by a judge. Nor was Defendants’ detention authorized by any of the
14 narrow provisions permitting state officers to enforce federal immigration law. Defendants’
15 characterization of this issue as “clear as mud” is incorrect—the law is *crystal clear*, and
16 Defendants cannot rely on qualified immunity to escape liability for violating Mr. Rodriguez’s
17 clearly established constitutional rights. Nor does Washington law authorize state law
18 enforcement officers to arrest individuals on the basis of probable cause of a federal civil
19 immigration violation. Because Defendants’ detention of Mr. Rodriguez was not authorized, the
20 Court should deny Defendants’ motion.

21 **II. IDENTITY AND INTEREST OF AMICUS CURIAE**

22 American Civil Liberties Union of Washington (“ACLU-WA”) is a statewide,
23 nonpartisan, nonprofit organization of over 80,000 members and supporters dedicated to the
24 preservation of civil liberties. ACLU-WA works in courts, legislatures, and communities to
25 preserve the individual rights and liberties guaranteed to all people by the Constitution and laws
26 of the United States. ACLU-WA frequently participates as a party and *amicus curiae* in cases

27 ¹ Defendants Thomas, Gardner, Tiemann, and Stephenson have moved for partial summary judgment. Dkt. 25.
AMICUS CURIAE BRIEF OF ACLU-WA

1 involving civil liberties and criminal justice issues, including unlawful detention and immigrants’
 2 rights. In order to promote its organizational mission and the interests of its members, ACLU-
 3 WA engages in community education and has led local efforts to inform government officials
 4 and others about the issues implicated in this case.

5 **III. BACKGROUND**

6 ACLU-WA adopts the factual background set forth in Mr. Rodriguez’s Opposition to
 7 Motion for Partial Summary Judgment. *See generally* Opp. (Dkt. 42) at 2-7.

8 **IV. ARGUMENT**

9 **A. Defendants’ Actions Were Not Authorized by Federal Law.**

10 The Fourth Amendment protects all people, including noncitizens, from “unreasonable
 11 searches and seizures.” U.S. Const. amend. IV. Here, Mr. Rodriguez was seized for Fourth
 12 Amendment purposes because Defendants prevented him from leaving the scene, placed him in
 13 handcuffs, and transported him in their patrol vehicle to the ICE field office. *See Brendlin v.*
 14 *California*, 551 U.S. 249, 255 (2007) (seizure occurs when police actions “show an unambiguous
 15 intent to restrain or when an individual’s submission to a show of governmental authority takes
 16 the form of passive acquiescence”); *Santos v. Frederick Cty. Bd. of Comm’rs*, 725 F.3d 451, 462,
 17 465 (4th Cir. 2013). But Defendants were not authorized to detain Mr. Rodriguez under federal
 18 law.

19 **1. The ICE Form Did Not Authorize Defendants to Detain Mr. Rodriguez.**

20 **a. ICE Forms Do Not Authorize State Officials to Effect a Criminal Arrest or Seizure Because the Forms Are Not Issued 21 by a Neutral Magistrate and Do Not Show Probable Cause 22 That the Individual Committed a Crime.**

23 The words at issue in this case—“warrant,” “arrest warrant,” “probable cause,” “charging
 24 document”—have meaning. They are terms of art that trigger particular responses from criminal
 25 justice system actors and corresponding constitutional protections. When ICE improperly
 26 appropriates these terms in the immigration context, it engages in Doublespeak: The words
 27

1 continue to have power, but come with none of the associated protections. The administrative
2 “warrant” lodged against Mr. Rodriguez did not authorize arrest by local officials.

3 **First**, as a matter of federal law, ICE forms may be executed only by trained immigration
4 agents. 8 C.F.R. § 287.5(e)(2) (providing “authority to execute warrants” only to “immigration
5 officials who have been authorized or delegated such authority”). Indeed, only a limited set of
6 trained “immigration officers” may issue and execute such “warrants.” See 8 U.S.C. §§ 1226,
7 1357; 8 C.F.R. § 287.5(e)(3) (“immigration officers” must “successfully complete[] basic
8 immigration law enforcement training” in order to execute warrants); *Arizona v. United States*,
9 567 U.S. 387, 408 (2012) (emphasizing that I-200s “are executed by federal officers who have
10 received training in the enforcement of immigration law”). It is clear even from the face of these
11 ICE forms that only such agents may execute them. See *Ochoa v. Campbell*, 266 F. Supp. 3d
12 1237, 1255 (E.D. Wash. 2017) (only “an[] immigration officer’ authorized by [the INA]” may
13 execute ICE administrative warrant), *appeal dismissed as moot*, 716 F. App’x 741 (9th Cir.
14 2018).

15 The only circumstance in which a local officer is permitted to execute an ICE form is
16 when he has been authorized to perform that immigration function pursuant to a “written
17 agreement” under 8 U.S.C. § 1357(g) (also known as a “287(g) agreement”); see *id.*
18 § 1357(g)(1)-(5) (listing training and other requirements for officer to perform immigration-
19 officer functions). Indeed, that is routinely a specifically delegated authority in such agreements,
20 underscoring that local officials may not do so absent an agreement. See U.S. Immigration &
21 Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and
22 Nationality Act (last updated Aug. 10, 2018), <https://www.ice.gov/287g> (collecting current
23 agreements). There is no such agreement here. *Id.*

24 **Second**, while local law enforcement officers may ordinarily execute criminal arrest
25 warrants signed by judges, ICE forms are not signed by a judge or based on probable cause that a
26 crime was committed. See *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971). The
27 “probable cause” mentioned on the ICE form relates to a suspected *civil* violation of immigration

1 law, not criminal. *See Arizona*, 567 U.S. at 407 (“As a general rule, it is not a crime for a
 2 removable alien to remain present in the United States.”); *see also* Gardner Decl. (Dkt. 38) Ex. B
 3 (Form I-247A containing check boxes indicating immigration officer only has probable cause to
 4 believe individual is removable, not whether a crime has been committed). And no court
 5 participated in issuing or reviewing the Form I-247A detainer. *See, e.g.*, 8 C.F.R. § 287.7 (listing
 6 DHS officers who can issue I-247s).

7 Numerous courts have come to the same conclusion: No matter what ICE forms are
 8 called, local law enforcement officers cannot constitutionally rely on them to provide the basis
 9 for arrest. *See, e.g., Roy v. County of Los Angeles*, 2018 WL 914773, at *23 (C.D. Cal. Feb. 7,
 10 2018) (“*Roy I*”), *reconsideration denied, Roy v. County of Los Angeles*, 2018 WL 3439168 (C.D.
 11 Cal. July 11, 2018) (“*Roy II*”); *Lopez-Aguilar v. Marion Cty. Sheriff’s Dep’t*, 296 F. Supp. 3d
 12 959, 975 (S.D. Ind. 2017); *Ochoa*, 266 F. Supp. 3d, at 1255-56; *Lunn v. Commonwealth*, 477
 13 Mass. 517, 527-28, 537 (2017); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1008-09 (N.D. Ill.
 14 2016); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305, at *8 (D. Or. Apr. 11, 2014);
 15 *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014). As one court recently explained, relying
 16 on an ICE form for authority to arrest would be “similar to allowing a county child support
 17 enforcement worker to issue detainers or warrants ... [for] contempt of court of nonpayment of
 18 child support.” *Esparza v. Nobles County*, No. 53-CV-18-751, slip op. at 15 (Minn. Dist. Ct.
 19 Oct. 19, 2018) (*see* Appendix A).

20 Indeed, numerous law enforcement agencies in Washington have enacted policies and
 21 issued guidance prohibiting officers from relying on ICE forms as the basis for arrest due to the
 22 unconstitutionality of this behavior. For instance, Washington State’s county sheriffs have
 23 explained that ICE “‘detainers’ are nothing more than a request to keep someone in custody
 24 beyond their release date ***without any judicial authority.***” Statement of Washington State
 25 Sheriffs’ Ass’n at 1 (Mar. 31, 2017) (emphasis added), <https://bit.ly/2OY4NV1>.

26 The Washington State Attorney General provided guidance explaining that
 27 “[g]overnment entities that receive detainer requests are not relieved of their obligation to

1 comply with the Fourth Amendment to the U.S. Constitution and article I, § 7 of the Washington
 2 Constitution” and reminding that “[a]bsent a judicial warrant, a government entity may only hold
 3 an individual in custody if the officer has probable cause to believe that the person has
 4 committed a crime.” Washington State Office of the Attorney General, Guidance Concerning
 5 Immigration Enforcement at 26 (April 2017), <https://bit.ly/2zgWglg> (“Washington Attorney
 6 General Guidance”). By December 11, 2017, *the City of Tukwila itself* had also recognized that
 7 Tukwila police officers were not authorized to detain individuals solely based on civil
 8 immigration status. *See* Compl. (Dkt. 1) ¶ 70.

9 Despite the weight of this authority and widespread recognition of the unconstitutionality
 10 of detention based on ICE forms generally—and Form I-247A detainers specifically—by the
 11 local law enforcement community, Defendants wrongly treated Mr. Rodriguez’s ICE “warrant”
 12 as equivalent to a criminal warrant by using it to justify their detention. But ICE forms are
 13 constitutionally defective because they are not issued by neutral magistrates, and they cannot
 14 show probable cause of a crime.

15 For similar reasons, the “collective knowledge” doctrine cannot authorize this arrest. *See*
 16 Mot. (Dkt. 25) at 11. Under this doctrine, courts “look to the collective knowledge of all the
 17 officers involved in the criminal investigation” when determining whether an arrest complied
 18 with the Fourth Amendment. *United States v. Ramirez*, 473 F.3d 1026, 1032 (9th Cir. 2007)
 19 (citation & internal quotation marks omitted).

20 **b. Defendants Could Not Rely on ICE Forms to Detain Mr.**
 21 **Rodriguez.**

22 Defendants rely on the existence of ICE forms to justify their detention of Mr. Rodriguez.
 23 But even on their face, ICE forms do not authorize Defendants’ detention. Defendants cannot
 24 rely on an “administrative warrant” or “ICE fugitive warrant” to justify the detention. *See* Dkt.
 25 25 at 4, 6. Defendants have not pointed to any document for this “warrant” other than the Form
 26 I-247A detainer. *Id.* As explained above, Form I-247A cannot justify their detention of Mr.
 27 Rodriguez. And the other forms which ICE styles as “warrants” do not direct local jurisdictions

1 to arrest or detain the individuals named in the form. *See, e.g., Ochoa*, 266 F. Supp. 3d at 1243-
 2 44 (describing Form I-200 administrative “warrant” which is “directed to ‘[a]ny immigration
 3 officer’ authorized by the Immigration and Nationality Act (INA)” —not local law
 4 enforcement—and “commands any authorized immigration officer to arrest and take [the named
 5 individual] into custody for removal proceedings”).

6 As the Supreme Court has explained, federal law prohibits state officers from making the
 7 “unilateral decision” to arrest a noncitizen absent a request from federal authorities, and restricts
 8 even those federal requests to “limited circumstances in which state officers”—after written
 9 certification and adequate training—“may perform the functions of an immigration officer.”
 10 *Arizona*, 567 U.S. at 408-10. Such arrests are preempted because they “would disrupt the federal
 11 framework to put state officers in the position of holding aliens in custody for possible unlawful
 12 presence without federal direction and supervision.” *Id.* at 412-13; *see also Santos*, 725 F.3d at
 13 465; *infra* Part IV.A.2.a. Defendants’ unilateral decision to initially detain Mr. Rodriguez based
 14 on a notice in the National Crime Information Center (“NCIC”) database, and where that notice
 15 was based on a Form I-247A detainer that was not in effect because it was not served on Mr.
 16 Rodriguez, violated clearly established federal law.

17 **2. No Valid Federal Statutory Authority Allowed Defendants to Detain**
 18 **Mr. Rodriguez.**

19 **a. Generally Only Federal Law Enforcement Officers Are**
 20 **Authorized to Arrest and Detain Individuals Who Are Suspect**
 21 **of Civil Immigration Violations.**

22 “The Government of the United States has broad, undoubted power over the subject of
 23 immigration and the status of aliens.” *Arizona*, 567 U.S. at 394. But local police officers lack
 24 authority to arrest or detain individuals suspected of civil immigration violations. This is
 25 because “the removal process is entrusted to the discretion of the Federal Government.” *Id.* at
 26 409. The federal statutory structure in place for immigration enforcement vests authority to
 27 arrest for civil offenses exclusively with federal agents and local officers deputized under a
 287(g) agreement. *Id.* To minimize erroneous actions and ensure the integrity of the removal

1 process, Congress has required that important decisions be made only by these specially trained
2 officers. *See* 8 U.S.C. §§ 1357(a), (g)(2); 8 C.F.R. §§ 287.1(g), 287.5(c)-(e). This system
3 ensures that immigration enforcement remains the prerogative and responsibility of “one national
4 sovereign, not the 50 separate States.” *Arizona*, 567 U.S. at 395.

5 The Immigration and Nationality Act (“INA”) *forbids* local officers, absent a formal
6 agreement, from performing “a function of an immigration officer in relation to the investigation,
7 apprehension, or detention of aliens in the United States (including the transportation of such
8 aliens across State lines to detention centers).” 8 U.S.C. § 1357(g)(1). Those functions include,
9 as already explained, executing ICE “warrants,” as well as effecting warrantless arrests, *see id.*
10 § 1357(a)(2). Except for narrow exceptions noted below, a local officer may perform such
11 functions *only* pursuant to a 287(g) agreement. Neither the narrow exceptions nor a 287(g)
12 agreement apply in this case.

13 **b. Defendants’ Detention Did Not Satisfy Any of the Limited**
14 **Statutory Exceptions that Authorize State Law Enforcement**
15 **Officers to Arrest and Detain Individuals Based on Civil**
16 **Immigration Violations.**

17 In the few places where Congress has chosen to allow states and localities to perform
18 immigration functions without a formal agreement, it has explicitly granted that power in
19 narrowly drawn statutory grants authorizing discrete actions. *See Arizona*, 567 U.S. at 408-10;
20 *e.g.*, 8 U.S.C. § 1103(a)(10) (permitting, with the Attorney General’s authorization, local officers
21 to perform immigration functions where there is an “actual or imminent mass influx of aliens”
22 presenting “urgent circumstances”). None of these narrow exceptions apply here.

23 Federal immigration duties may also be delegated to local law enforcement under a
24 287(g) program, which is a voluntary partnership that deputizes local law enforcement to carry
25 out ICE duties. *See* 8 U.S.C. § 1357(g). While these agreements may grant local police
26 immigration enforcement authority, no such authority exists here because neither the City of
27 Tukwila nor any other jurisdiction in Washington has entered into a 287(g) program. *See*

1 Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,
 2 <https://www.ice.gov/287g>.

3 **c. Defendants' Detention Did Not Qualify As Cooperation Under**
 4 **§ 1357(g)(10)(B).**

5 Defendants also cannot rely on 8 U.S.C. § 1357(g)(10)(B). This section provides that
 6 nothing in subsection (g)—the provision requiring written agreements for states and localities to
 7 perform immigration functions—“shall be construed to require an agreement” for an officer “to
 8 cooperate with the Attorney General in the identification, apprehension, detention, or removal of
 9 aliens not lawfully present in the United States.” *Id.* But the cooperation proviso cannot be read
 10 to permit local officials to perform the functions of an immigration officer, like arrest. Doing so
 11 would effectively read out of the statute the emphasis Congress put on training. *See Arizona*,
 12 567 U.S. at 409 (“arrest power [is] contingent on training”).

13 The narrowness of § 1357(g)(10)(B) is underscored by *Arizona*; its examples of
 14 “cooperation” included only highly circumscribed support activities, such as “responding to
 15 requests for information,” or “provid[ing] operational support.” *Arizona*, 567 U.S. at 410.
 16 Similarly, DHS’s “cooperation” guidance does not mention arrests, even pursuant to federal
 17 requests, as examples of cooperation under § 1357(g)(10)(B). *See* U.S. Department of
 18 Homeland Security, Guidance on State and Local Governments’ Assistance in Immigration
 19 Enforcement and Related Matters at 13-14, <https://bit.ly/2AtytR4>.

20 Defendants cannot cite dicta from *Arizona* to change these rules. *See* Dkt. 25 at 11
 21 (referring to *Arizona* court’s statement that “there may be some ambiguity as to what constitutes
 22 cooperation under the federal law”). “Only when acting under color of federal authority, that is,
 23 *as directed, supervised, trained, certified, and authorized* by the federal government, may state
 24 officers effect constitutionally reasonable seizures for civil immigration violations.” *Lopez-*
 25 *Aguilar*, 296 F. Supp. 3d at 977 (emphasis added). Defendants can find no such authority here.
 26
 27

1 **B. Defendants’ Detention Was Not Authorized Under Washington State Law.**

2 **1. Washington Law Did Not Authorize Defendants to Detain Mr. Rodriguez.**

3 The Washington Constitution prohibits prolonged detention for mere questioning related
4 to immigration status. “Article 1, § 7 of the Washington State Constitution forbids local
5 enforcement officers from prolonging a detention to investigate or engage in questioning about
6 an individual’s immigration status, citizenship status and/or national origin.” *Ramirez-Rangel v.*
7 *Kitsap County*, No. 12-2-09594-4, slip op. at 4 (Wash. Sup. Ct., Aug. 16, 2013) (*see* Appendix
8 A). Just as Washington officers are constitutionally prohibited from extending an otherwise
9 lawful detention to interrogate the detainee about his or her immigration status, neither can they
10 detain someone in custody based solely on a suspected civil immigration violation. *See State v.*
11 *Chenoweth*, 160 Wn.2d 454, 472-73 (2007) (“In instances where a warrant is facially
12 insufficient ... a constitutional violation clearly exists because of the demonstrable absence of
13 ‘authority of law’ to justify the search or arrest.”).

14 No authority exists under Washington law for Defendants to detain someone on a federal
15 civil immigration warrant. On this point, Defendants misplace reliance on *City of El Cenizo*.
16 *See* Dkt. 25 at 10-11. Whether “[i]t is undisputed that *federal* immigration officers may seize
17 aliens based on an administrative warrant” is beside the point. *Id.* at 10 (quoting *City of El*
18 *Cenizo, Tex. v. Texas*, 890 F.3d 164, 187 (5th Cir. 2018)) (emphasis added). Defendants are
19 local law enforcement officers, not federal, and the Texas law at issue in that case specifically
20 authorized state officers to carry out federal detention requests. *See City of El Cenizo*, 890 F.3d
21 at 188. The question is whether Defendants were authorized under *Washington* law—not Texas
22 law—to detain Mr. Rodriguez based on a civil immigration violation. *Cf. Roy II*, 2018 WL
23 3439168, at *3 (“the local law enforcement in this case does not have the authority to arrest
24 individuals for civil immigration violations, which is in line with Supreme Court precedent”);
25 *Lunn*, 477 Mass. at 532 (noting that no Massachusetts statute “either directly or indirectly
26 authorizes the detention of individuals based solely on a Federal civil immigration detainer”);
27 *Esparza*, slip op. at 15-18 (“[t]here does not exist within Minnesota Statute the power for

1 Minnesota peace officers to arrest a person for a federal civil offense at the request of ICE
2 officers”). Under Washington law, the answer is no. RCW 10.31.100 provides the narrow
3 circumstances in which a police officer can make a warrantless arrest. *Id.* But there is no
4 suggestion that the county had probable cause of any crime.

5 **2. Defendants Lacked the Required Probable Cause of a Felony to**
6 **Justify a Warrantless Arrest.**

7 Defendants’ unconstitutional detention of Mr. Rodriguez cannot be cured by their
8 tentative, after-the-fact speculation that Mr. Rodriguez “may” or “might” have committed a
9 crime. Dkt. 25 at 12. “Mays” and “mights” are not “probable cause” as Washington law
10 requires to justify a warrantless arrest. RCW 10.31.100; *State v. Scott*, 93 Wn.2d 7, 10 (1980).
11 Even Defendants’ own cited authority requires “reasonable suspicion to believe” a suspect has
12 committed an immigration crime. *See* Dkt. 25 at 13 (quoting *Ortega-Melendres v. Arpaio*, 836
13 F. Supp. 2d 959, 973 (D. Ariz. 2011), *aff’d sub nom. Melendres v. Arpaio*, 695 F.3d 990, 1001
14 (9th Cir. 2012)). “Proper cause for arrest has often been defined to be a reasonable ground of
15 suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious
16 man in believing the accused to be guilty.” *Scott*, 93 Wn.2d at 10-11 (citation & internal
17 quotation marks omitted). The circumstances Defendants describe do not give rise to reasonable
18 suspicion of a criminal—rather than civil—immigration violation. “[T]he Supreme Court has
19 long characterized deportation as a civil proceeding.” *Santos*, 725 F.3d at 467 (citing *Padilla v.*
20 *Kentucky*, 559 U.S. 356, 365-66 (2010) and *United States ex rel. Bilokumsky v. Tod*, 263 U.S.
21 149, 155 (1923)). The information Defendants received from the NCIC database specifically
22 described Mr. Rodriguez as having an outstanding “**ADMINISTRATIVE WARRANT**”—not a
23 criminal one. Dkt. 25 at 4 (emphasis added). NCIC database information, moreover, does not
24 provide probable cause for an arrest. Because ICE populates the NCIC database with civil
25 immigration information, and because unlawful status itself is not a crime, an entry in the NCIC
26 database does not provide probable cause for detention. Washington Attorney General Guidance
27 at 19-20.

1 Defendants requested and received a Form I-247A detainer—a civil ICE form—not a
2 criminal warrant from ICE. *Id.* at 6. Nor did the information leading to Defendants’ initial
3 detention of Mr. Rodriguez—before the request from ICE and before they received Form I-
4 247A—include any suggestion of criminality. *See Santos*, 725 F.3d at 466 (“[T]he
5 reasonableness of an official invasion of a citizen’s privacy must be appraised on the basis of the
6 facts as they existed at the time that invasion occurred.”). Indeed, Defendants have not argued
7 they had any real belief that Mr. Rodriguez committed a criminal immigration violation, or even
8 that they had any real belief that ICE was interested in Mr. Rodriguez for criminal, rather than
9 civil, reasons.

10 Defendants’ reliance on 8 U.S.C. § 1253(a) also fails. Section 1253(a) is an “unusual
11 criminal offense” which requires much more than a final order more than ninety days old to
12 establish guilt. *United States v. Miszczuk*, 847 F. Supp. 2d 227, 229 (D. Mass. 2012). Among
13 other things, this crime of “willful failure to depart” requires at least that—willfulness. 8 U.S.C.
14 § 1253(a)(1)(A). The Supreme Court has long held willfulness requires, at minimum, proof of a
15 country willing to receive the suspect—that is, some indication that the suspect has the ability to
16 comply with the requirement to depart. *See Heikkinen v. United States*, 355 U.S. 273, 276
17 (1958); *see also United States v. Xiang Wang*, 2014 WL 6472857, at *3-4 (D. Kan. Nov. 18,
18 2014) (discussing and applying *Heikkinen*).

19 Further, “willful failure to depart” also requires “a final order of removal [that] is
20 outstanding by reason of being a member of any of the classes described in section 1227(a).” 8
21 U.S.C. § 1253(a)(1). But despite apparently having access to the predicate removal order
22 supporting the alleged crime, *see* Dkt. 25 at 7, Defendants cannot articulate why they reasonably
23 suspected Mr. Rodriguez was a member of a statutorily required class. *See id.* at 12 n.4. Even if
24 Mr. Rodriguez were a class member and knew which class formed the basis of the order,
25 Defendants cannot base *their* belief on *Mr. Rodriguez’s* knowledge. *See Santos*, 725 F.3d at 467
26 (“[L]aw enforcement officers, *not detainees*, are responsible for identifying evidence justifying a
27 seizure.”) (emphasis added). And the underlying removal order must be valid—something that

1 would be impossible to ascertain from the Form I-247A on which Defendants rely in this case—
2 an issue of particular concern where, as here, Mr. Rodriguez was ordered removed *in absentia*
3 and the order of removal has not been judicially reviewed. “In cases where the order of removal
4 did not receive judicial review, Congress appropriately provided that a defendant charged with
5 violating section 1253(a)(1) may file a motion to dismiss in the federal district court before trial,
6 so that a federal judge may review the validity of the order of removal.” *Miszczuk*, 847 F. Supp.
7 2d at 229. A defendant can successfully mount a collateral attack against this charge by
8 challenging the validity of the removal order. *See United States v. Yan Naing*, 820 F.3d 1006,
9 1009 (8th Cir. 2016). Defendants did not have reasonable suspicion that Mr. Rodriguez violated
10 criminal immigration law and cannot use this crime to justify their unauthorized detention.

11 Neither does the County’s detention satisfy any other aspect of Washington’s warrantless
12 arrest statute. This does not qualify as a valid civil detention, such as one relating to mental
13 health involuntary commitment. *See, e.g.*, RCW 71.05.230. No Washington statute permits
14 seizure in these circumstances and no authority exists under Washington law for the County to
15 detain someone on a federal civil immigration warrant. *See also Santos*, 725 F.3d at 465.
16 Defendant’s arrest and detention of Mr. Rodriguez was unreasonable and violated his rights
17 under the Washington State Constitution and Washington statutes.

18 V. CONCLUSION

19 For all of the reasons stated above, ACLU-WA respectfully requests this Court deny
20 Defendants’ partial motion for summary judgment.

1 DATED this 29th day of October, 2018.

2 DAVIS WRIGHT TREMAINE LLP
3 Cooperating Attorneys for ACLU-WA

4 By s/Jennifer K. Chung
5 Kenneth E. Payson, WSBA # 26369
6 Jennifer K. Chung, WSBA # 51583
7 1201 Third Avenue, Suite 2200
8 Seattle, WA 98101-3045
9 Tel: (206) 622-3150
10 Fax: (206) 757-7700
11 E-mail: kenpayson@dwt.com
12 jenniferchung@dwt.com

13 ACLU-WA FOUNDATION

14 Eunice Cho, WSBA # 53711
15 901 Fifth Avenue, Suite 630
16 Seattle, WA 98164
17 Tel: (206) 624-2184
18 Fax: (206) 624-2190
19 E-mail: echo@aclu-wa.org

20 *Attorneys for Proposed Amicus Curiae*
21 *American Civil Liberties Union of*
22 *Washington*

APPENDIX A

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF NOBLES

FIFTH JUDICIAL DISTRICT

FILE #53-CV-18-751

Rodrigo Esparza, Maria de Jesus de Pineda,
Timoteo Martin Morales,
And Oscar Basavez Conseco,
Plaintiffs,

-vs-

ORDER

Nobles County; Nobles County Sheriff
Kent Wilkening, in his individual and
Official capacity,
Defendants.

The above-entitled matter came before the Honorable Gregory J. Anderson, Judge of District Court, on September 21, 2018 for temporary restraining order hearing. Attorneys Ian Bratlie, Norman Pentelovitch and Teresa Nelson appeared on behalf of the Plaintiffs. Attorney Stephanie Angolkar appeared with an on behalf of the defendants.

Based on the testimony, exhibits, file and records herein, the Court makes the following:

ORDER

1. The Plaintiffs' Motion for Temporary Restraining Order and Injunction is GRANTED;
2. \$0 bond is required; and
3. The attached memorandum is incorporated herein.

Gregory Anderson
Judge of District Court

MEMORANDUM

***Rodrigo Esparza, Maria de Jesus de Pineda,
Timoteo Marin Morales, and Oscar Basavez Conseco,***
-vs-
Nobles County; Nobles County Sheriff
Court File No.: 53-CV-18-751

INTRODUCTION

Plaintiffs seek a temporary injunction and restraining order against Defendant Nobles County Sheriff’s Office (NCSO) and Sheriff Wilkening. Plaintiffs claim that Sheriff Wilkening improperly continued detention of Plaintiffs after they should have been released from Nobles County jail at the expiration of their sentence, dismissal of charges, or posting of bail or bond. The continued detention was based on holds placed on them pursuant to Immigration and Customs Enforcement (ICE) documents promulgated under ICE procedures. For the reasons set out below, the Court grants the relief sought by Plaintiffs in part and denies in part.

FACTS

For purposes of this decision the following recitation of facts constitutes the Court’s findings of fact:

Plaintiffs are all persons who were incarcerated in the Nobles County jail who later were detained pursuant to the request of ICE. ICE requested that they be held based on pending possible deportation action by ICE. The status of the individuals as to immigration status and reasons held in state custody differ and are summarized below:

- **Plaintiff Rodrigo Esparza**

Plaintiff Rodrigo Esparza is a lawful permanent resident of the United States, and is the holder of what is commonly referred to as a “green card.” On April 5, 2018, he was arrested for receiving stolen property. Bond was set at

\$10,000 and an immigration hold was placed on him. There is a disputed issue of fact regarding jail staff dissuading his family from posting bail on his behalf. On April 9, 2018, ICE sent Forms I-247 and I-200 to the NSCO while Esparza was in custody. On or about August 3, 2018 Esparza plead guilty to a gross misdemeanor and was sentenced to time served. He was released from custody for his state charge but remained in custody (“rolled over”) on the ICE hold.

- **Maria de Jesus de Pineda**

Plaintiff de Pineda was arrested for identity theft on February 13, 2018. Her bail was set at \$10,000. Her family posted the bond on February 17, 2018. NCSO held her because she had an ICE hold. On February 17, 2018, the immigration documents I-247 and I-200 were sent to NCSO and served on Ms. Pineda. Ms. Pineda has at least one alias; for purposed of this decision the Court finds “Brenda Cerda” and Ms. Pineda are the same person based on affidavit of Ms. Berkevich. Pineda was taken into ICE custody on February 20, 2018 and missed her next Nobles County court appearance. She was released from ICE custody upon posting a \$6,000 immigration bond but taken back into state custody pursuant to the bench warrant. She was released from state custody on March 9, 2018.

- **Timoteo Martin Morales**

Mr. Martin Morales has lived in Worthington, MN for about two years. He was arrested and charged with two counts of criminal sexual conduct. On March 26, 2018 he attempted to post bond but the bondsman was informed there was an ICE hold and he would not be released. On July 24, 2018 the criminal charges were dismissed. He remained in custody and on July 25, 2018 he was served with forms I-247 and I-200. His state case was refiled on July 26, 2018.

- **Oscar Basavez Conseco**

Plaintiff Basavez Conseco was arrested for drug charges. He was not required to post bail or bond due to the low level of his offenses; however, he would not be released due to the ICE hold. He therefore asked his attorney to request a modest bail amount.

- **Defendants Nobles County and Kent Wilkening**

Nobles County is a political subdivision of the State of Minnesota that operates and is responsible for the Nobles County jail. Defendant Kent Wilkening is the Sheriff of Nobles County. Monette Berkevich is the jail administrator.

Background of Relevant ICE Policies and Procedures:

Immigration and Customs Enforcement (ICE) is an agency of the Department of Homeland Security (DHS). It is responsible for enforcement of immigration laws.

Local political entities, such as Nobles County, may voluntarily cooperate with ICE and assist in the enforcement of immigration laws in three ways:

First, DHS may enter into cooperative agreements with states and localities (“287(g) agreements”), under which state and local officers may, under the supervision of the Secretary of Homeland Security, perform the functions of an immigration officer. Nobles County has no such agreement.

Second, DHS may enter into intergovernmental services agreements (“IGSA”) with local political entities, including Nobles County, to provide housing and other needs attendant to the care and custody of persons incarcerated while in the legal custody of ICE. Nobles County has such an agreement. A detainee cannot be held under an IGSA until an immigration officer arrests the detainee. When someone finishes their jail sentence, posts bond or bail, or is otherwise entitled to release on State criminal charges, but has an ICE hold, that person is “rolled over” to ICE custody, although they may

remain at Nobles County jail. Although an argument can be made that “rolling over” a detainee is not the same as an arrest by an immigration officer, the Court believes the “arrest” takes place through the use of forms and policy. Therefore, the IGSA agreement that Nobles County has with ICE (or any other entity contracting for incarceration services) is not affected by this Order assuming, of course, the initial arrest and “rolling over” of the subject is permissible under applicable law.

Third, states and localities may “communicate with the Secretary of Homeland Security regarding the immigration status of any individual” or “cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States” pursuant to 8 U.S.C. § 357(g)(10). This statute provides:

Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State--

- (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
- (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

The cooperation must be pursuant to a “request, approval, or other instruction from the Federal Government.” *Arizona v. United States*, 567 U.S. 387, 410 (2012).

This communication and cooperation between NCSO and ICE regarding identification and detention of persons who may face immigration action is largely accomplished through the use of forms transmitted to NCSO from ICE. The relevant content and use of the forms is summarized below:

- **Form I-247A**

Form I-247A is the Department of Homeland Security Immigration Detainer-Notice of Action. It notifies NCSO that the subject of the detainer is a removal alien, based on:

- (1) A final order of removal against the alien;
- (2) The pendency of ongoing removal proceedings against the alien;
- (3) Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- (4) Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. Immigration law.

Based on the information provided, NCSO is then requested and instructed to:

- (1) Notify DHS as early as practicable (at least 48 hours, if possible) before the alien is released from your custody, with phone numbers provided;
- (2) Maintain custody of the alien for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien must be served with a copy of this form for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.
- (3) Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- (4) Notify this office in the event of the alien's death, hospitalization or transfer to another Institution.

(emphasis in original). The form is signed by an immigration officer. There is a portion at the bottom of the first page for the local correctional officer or other person to complete information from the local authority and show proof of service on the subject.

- **Form I-200**

Form I-200, the United States Department of Homeland Security Warrant for Arrest of Alien, is a check box form which indicates why a subject may be subject to removal. It provides in relevant part:

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that [name of subject] is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(emphasis in original). The form provides a signature block for the “Authorized Immigration Officer” as well as a certificate of service for the local jail authority.

- **Form I-203**

Form I-203 is an Order to detain or release alien. It provides a directive to the Nobles County Jail, C/O sheriff, to either detain or release a named

alien. It provides no information other than the name, date of birth, and nationality of the alien.

ICE Detainers in Nobles County

In 2017 a lawsuit involving a person held in the Nobles County jail on the basis of an immigration detainer resulted in the Federal District Court decision *Orellana v. Nobles County*, 230 F. Supp 3d 934 (D. Minn. 2017). Subsequently, the parties entered into an agreement and a modest financial settlement. The agreement provided that Nobles County would amend its procedure on ICE holds. This cooperation is reflected in Policy 502 (Inmate Reception), which provides in relevant part:

502.3.2 IMMIGRATION DETAINERS

No individual should be held based on a federal immigration detainer under 80CFR287.7 unless the person has been charged with a federal crime or the detainer is accompanied by a warrant, affidavit of probable cause, or removal order. Any administratively signed warrant must be supported by sufficient probable cause of both the aliens suspected removability as well as his/her likelihood to flee. Notification to the federal authority issuing the detainer should be made prior to release.

502.3.3 IMMIGRATION NOTIFICATION ON COMMITMENT

Staff shall inquire into the nationality of all persons committed to this facility who were convicted of a felony or found to be mentally ill. If it reasonably appears the person is an alien. Staff shall notify the US Immigration and Customs Enforcement (ICE) of the following, if known (Minn. Stat § 631.50):

- (a) The date of and the reason for the commitment
- (b) The length of time for which the inmate is committed
- (c) The country of which the inmate is a citizen
- (d) The date on, and the port at, which the inmate last entered the United States.

The issue in the case before this court is whether the present detention of persons facing immigration action is permissible under Minnesota law. As noted at the hearing, the crux of the matter is if the detainers promulgated

under forms I-247A and I-200 may be used to justify continued detention of a subject of immigration removal proceedings.

ANALYSIS

Temporary injunctive relief is an extraordinary equitable remedy that is within a district court's broad discretion. *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership, et al.*, 638 N.W.2d 214, 220 (Minn. Ct. App. 2002), *rev. denied* Feb. 4, 2002, *citing Eakman v. Brutger*, 285 N.W.2d 95, 97 (Minn. 1979). In evaluating whether to grant a temporary restraining order, the Court must consider the five factors set out in *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965):

- (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
- (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
- (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
- (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
- (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Though each factor is considered by the Court, "the primary factor in determining whether to issue a temporary injunction is the proponent's probability of success in the underlying action." *Minneapolis Federation of Teachers, AFL-CIO, Local 59 v. Minneapolis Public Schools, Special School Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. Ct. App. 1994), *rev. denied* March 31, 1994.

1. *Dahlberg* Factor #1: The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.

The background and history of the parties in this case was described in the above factual recitation. The Court notes that there is an obvious power disparity between the plaintiffs and the defendants. The Defendants have arrested and detained the Plaintiffs for both alleged State crime and Federal ICE civil holds.

2. *Dahlberg* Factor #2: Harm suffered by Plaintiffs if the temporary restraint is denied compared to the harm inflicted on Defendant if the injunction issues pending trial.

Plaintiffs, and those similarly situated, suffer harm as their right against unreasonable seizure guaranteed by the Fourth Amendment to the United States Constitution and Article I, section 10 of the Minnesota State Constitution may be violated by the present practice of relying on ICE detainers to continue incarceration. There is little if any harm to Defendants if the practice is temporarily halted.

3. *Dahlberg* Factor #3: The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.

The likelihood of success on the merits is the most important consideration and requires the most analysis which is set out below. As noted at the hearing, the crux of the matter is whether the ICE forms are warrants or detainers which may justify the continued detention of jail inmates after they have served their sentence, secured release through bail or a release order, or had their charges dismissed. It appears that, based on the following analysis, there is a substantial likelihood that Plaintiffs will prevail on the merits.

Analysis of the present NCSO procedure begins with *Arizona v. United States*, 567 U.S. 387 (2012). In that case the State of Arizona created laws criminalizing the mere presence of undocumented persons in Arizona, as well

as other laws regarding undocumented status. The United States Supreme Court struck down portions of the law and set out the limits of State involvement in assisting the United States in the enforcement of immigration laws.

The United States Supreme Court first affirmed the role of the Federal Government in immigration law enforcement noting the United States has “broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona v. United States*, 587 U.S. 387 (2012). Removal is a civil, not criminal, matter. *Id.* at 392. “As a general rule, it is not a crime for a removable alien to remain present in the United States. If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.” *Id.* at 407 (internal citations omitted). “Congress has put in place a system in which state officers may not make warrantless arrests of aliens based on possible removability except in specific, limited circumstances.” *Id.* at 409.

Arrest by state officials for possible removal alone is not permissible except under the narrow circumstances permitted under a 287(g) agreement which, as noted above, is not at issue in this case. There are also provisions under 8 U.S.C. § 1357 (g) which allow for a written agreement between the Attorney General and local political subdivisions; however, there is no written agreement between NCSO and the Attorney General to provide such services.

In *Lunn v. Commonwealth of Massachusetts*, 78 N.E.3d 1143 (Mass. 2017), the Massachusetts Supreme Court considered the detention process in a case similar to the present case. The subject in that case was held after state criminal charges were dismissed. The Massachusetts Supreme Court determined that the use of Form I-247D¹ did not justify continued detention after criminal charges were dismissed. The Court noted it was not a criminal

¹ The *Lunn* decision discusses in detail Form I-247D, indicating it is now I-247A. *Lunn* 78 N.E. at 1152. Form I-247A is the form used in this case. It appears the forms are virtually identical in content, and in any event have no difference as it relates to their use to justify detention based on the forms.

detainer and it did not allege that the subject was sought in connection with a federal criminal offense. *Id.* at 1151.

The *Lunn* Court considered the argument of the United States that Section 1357(g)(10) confers authority to local political subdivisions to assist in the manner described in *Lunn* and argued as appropriate in this case. The Court noted:

Section 1357(g) generally concerns situations in which State and local officers can perform functions of a Federal immigration officer. Section 1357(g)(1) provides specifically that States and their political subdivisions may enter into written agreements with the Federal government that allow State or local officers to perform functions of an immigration officer “at the expense of the State or political subdivision and to the extent consistent with State and local law.” Such agreements are commonly referred to as “287(g) agreements,” referring to the section of the act that authorizes them, § 287(g), which is codified in 8 U.S.C. § 1357(g). Among other things, State and local officers performing Federal functions under such agreements must be trained in the enforcement of Federal immigration laws, must adhere to the Federal laws, may use Federal property and facilities to carry out their functions, and are subject to the supervision and direction of the United States Attorney General. 8 U.S.C. § 1357(g)(2)-(5). No State or political subdivision is required to enter into such an agreement. *See* 8 U.S.C. § 1357(g)(9).

The specific language relied on by the United States in this case is the final paragraph of § 1357(g), which provides:

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State ... (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

Significantly, the United States does not contend that § 1357(g)(10) affirmatively confers authority on State and local officers to make

arrests pursuant to civil immigration detainers, where none otherwise exists. *See Craan*, 13 N.W.3d 569 (recognizing that Federal statute may confer authority on State officers to arrest for Federal offenses). *See also Di Re*, 332 U.S. at 589-90. In other words, it does not claim that § 1357(g)(10) is an independent source of authority for State or local officers to make such an arrest. Rather, it cites § 1357(g)(10) as a part of its argument that State and local officers have inherent authority to make these kinds of arrests; specifically, it relies on this provision for the proposition that such arrests, when performed at the request of the Federal government, are a permissible form of State participation in the Federal immigration arena that would not be preempted by Federal law. We have already rejected the argument that Massachusetts officers have an inherent authority to arrest that exceeds what is conferred on them by our common law and statutes.

Lunn, 78 N.E.3d at 534-35.

Although the *Lunn* case involves arguments directly by the United States and the application of Massachusetts law, the same principles apply to this case. NCSO argues that there is authority for it to continued detention through its voluntary cooperation with ICE to communicate and cooperate with ICE in the enforcement of immigration law. For the reasons cited in *Lunn* and as set out below as applied to Minnesota law, it appears Plaintiffs are likely to prevail on the merits.

The requirements for a valid arrest are defined by the Minnesota Constitution, statutes, and case law. The Minnesota Constitution states:

Sec. 10. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

This is virtually identical to the Fourth Amendment of the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

An “arrest” is a taking, seizing, or detaining person of another, touching or putting hands upon him in execution of process, or any act indicating intent to arrest. *Rhodes v. Walsh*, 57 N.W. 212, 215 (Minn. 1983). The continued detention of a person after release from State custody or expiration of sentence is an arrest. Detention pursuant to ICE detainer is an arrest under the Fourth Amendment that must be supported by probable cause. *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) (Cited in *Orellana*, supra.)

The power of officers to arrest is defined by statute. Minn. Stat. § 629.30 states:

Subdivision 1. **Definition.** Arrest means taking a person into custody that the person may be held to answer for a public offense. “Arrest” includes actually restraining a person or taking into custody a person who submits.

Subd. 2. **Who may arrest.** An arrest may be made:

- (1) by a peace officer under a warrant;
- (2) by a peace officer without a warrant;
- (3) by an officer in the United States Customs and Border Protection or the United States Citizenship and Immigration Services without a warrant;
- (4) by a private person.

A private person shall aid a peace officer in executing a warrant when requested to do so by the officer.

A valid warrant would need to be issued after oath or affirmation of facts submitted to a judicial officer who is “neutral and detached” from law enforcement. Fourth Amendment protection “consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Johnson v. United States*, 333 U.S. 10, 14 (1948). A “warrant”

determining probable cause from a “government enforcement agent” does not comply with Fourth Amendment requirements without review by a magistrate. *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971).

The I-247 and I-200 detainers are not signed by a judge or magistrate. They are filled out and signed by an immigration official. There is no oath or affirmation. There is no showing of probable cause that a crime has been committed which resulted in the issuance of the warrant. Rather, they are requests to detain someone who faces a civil action for removal. It merely informs the local cooperating political subdivision that an immigration official has determined there is “probable cause” that the subject faces a civil proceeding for removal. The NCSO, or any other entity, is not justified in relying on them to detain a person in custody beyond the time they are required to serve after sentence or when they post bail or bond, or are otherwise eligible for release due to resolution of the underlying State criminal charge. Although I-200 is called a “warrant” and contains a command to arrest, those labels do not confer validity to the form. *See Coolidge*, at 403 U.S. at 449-50 (underlying document held to be invalid was labelled a “warrant”).

By analogy, to allow the use of the I-247 form to be the basis for continued detention would be similar to allowing a county child support enforcement worker to issue detainers or warrants for someone who may be in contempt of court for nonpayment of child support. Both are civil actions which could involve significant sanctions (removal under immigration law or jail for contempt of court in a child support matter). Under Minnesota law a warrant may be issued for contempt of court. However, that warrant could not be issued by the enforcement worker based on their determination of probable cause, only by a judge after the information and supporting documentation is appropriately provided.

The forms also do not support a warrantless arrest. Warrantless arrests are allowed only in limited circumstances. Minn. Stat. § 629.34 provides:

WHEN ARREST MAY BE MADE WITHOUT WARRANT.

Subdivision 1. **Peace officers.** (a) A peace officer, as defined in section 626.84, subdivision 1, paragraph (c), who is on or off duty within the jurisdiction of the appointing authority, or on duty outside the jurisdiction of the appointing authority pursuant to section 629.40, may arrest a person without a warrant as provided under paragraph (c).

(b) A part-time peace officer, as defined in section 626.84, subdivision 1, clause (d), who is on duty within the jurisdiction of the appointing authority, or on duty outside the jurisdiction of the appointing authority pursuant to section 629.40 may arrest a person without a warrant as provided under paragraph (c).

(c) A peace officer or part-time peace officer who is authorized under paragraph (a) or (b) to make an arrest without a warrant may do so under the following circumstances:

- (1) when a public offense has been committed or attempted in the officer's presence;
- (2) when the person arrested has committed a felony, although not in the officer's presence;
- (3) when a felony has in fact been committed, and the officer has reasonable cause for believing the person arrested to have committed it;
- (4) upon a charge based upon reasonable cause of the commission of a felony by the person arrested;
- (5) under the circumstances described in clause (2), (3), or (4), when the offense is a gross misdemeanor violation of section 609.52, 609.595, 609.631, 609.749, or 609.821;
- (6) under circumstances described in clause (2), (3), or (4), when the offense is a nonfelony violation of section 518B.01, subdivision 14; 609.748, subdivision 6; or 629.75, subdivision 2, or a nonfelony violation of any other restraining order or no contact order previously issued by a court;
- (7) under the circumstances described in clause (2), (3), or (4), when the offense is a gross misdemeanor violation of section 609.485 and the person arrested is a juvenile committed to the custody of the commissioner of corrections; or

(8) if the peace officer has probable cause to believe that within the preceding 72 hours, exclusive of the day probable cause was established, the person has committed nonfelony domestic abuse, as defined in section 518B.01, subdivision 2, even though the assault did not take place in the presence of the peace officer.

(d) To make an arrest authorized under this subdivision, the officer may break open an outer or inner door or window of a dwelling house if, after notice of office and purpose, the officer is refused admittance.

Subd. 2. **United States Customs and Border Protection, United States Citizenship and Immigration Services officer.** An officer in the United States Customs and Border Protection or the United States Citizenship and Immigration Services may arrest a person without a warrant under the circumstances specified in clauses (1) and (2):

(1) when the officer is on duty within the scope of assignment and one or more of the following situations exist:

(i) the person commits an assault in the fifth degree, as defined in section 609.224, against the officer;

(ii) the person commits an assault in the fifth degree, as defined in section 609.224, on any other person in the presence of the officer, or commits any felony;

(iii) the officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person committed it; or

(iv) the officer has received positive information by written, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest; or

(2) when the assistance of the officer has been requested by another Minnesota law enforcement agency.

ICE officers may arrest without a warrant under limited circumstances, most of which also apply to Minnesota peace officers. The exception in Subd. 2(2) contemplates assistance requested by the Minnesota law enforcement agency,

not the other way around, and in any event would require a valid underlying basis for the warrantless arrest.² There does not exist within Minnesota Statute the power for Minnesota peace officers to arrest a person for a federal civil offense at the request of ICE officers.

A warrantless arrest is only reasonable when supported by probable cause. *Bernini v. City of St. Paul*, 665 F.3d 997, 1003 (8th Cir. 2012). (Cited in *Orellana*, supra). As noted above, the use of forms as detainers or warrants does not provide probable cause.

NCSO argues that their involvement is permitted by the 1357 (g) (10) which states:

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State--

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

For the reasons set out above, it does not appear that this interpretation of communication and cooperation will likely prevail on the merits. The cooperation must comply with constitutional limits.

4. Dahlberg factor #4: The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.

The Court has considered the important aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the

² There does not appear to be any reason that information transmitted from the Minnesota law enforcement entity to ICE is limited, and nothing would prevent NCSO from providing release and court hearing information to ICE to allow for arrest by ICE upon release without any hold, as discussed below.

statutes, State and Federal. There is no question the federal government has “broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. at 392. Obviously enforcement of immigration laws is important and the voluntary communication and cooperation between local law enforcement entities and ICE is important.

5. *Dahlberg* factor #5: The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

The Court cannot contemplate an administrative burden for judicial supervision to ensure the Defendants are not housing individuals without valid arrest warrants or detainers. The NCSO simply must only accept individuals for housing when there has been a proper arrest by ICE authorities under the IGSA or after a valid warrant or detainer pursuant to Minnesota law.

Although this injunction precludes the continued detention of persons based solely on Forms I-247A and I-200, it does not preclude, and the Court cannot find any arguable reason to preclude, other forms of cooperation and communication. NCSO may continue to notify ICE regarding anyone in the jail, provide information as to release and court dates, and exchange other information between the two.

Bond

Minn. R. Civ. P. 65.03 requires a bond for the purposes of covering expenses that may arise from a wrongfully issued injunction. The intent of this rule is to protect the party whose actions are restrained against loss sustained by reason of the injunction. *Hubbard Broadcasting, Inc. v. Loescher*, 291 N.W.2d 216 (Minn. 1980). The Court cannot find that the NCSO will sustain loss by being required to have a valid arrest or valid warrant prior to detaining individuals for ICE.

Conclusion

Based upon the above analysis, the Court finds that it is appropriate is issue a temporary restraining order and injunction to prevent the NCSO from detaining individuals on behalf of ICE without an arrest by an immigration officer or a valid arrest warrant or detainer pursuant to Minnesota law and Fourth Amendment protections.

G.J.A.



Hon. Kathryn J. Nelson, Dept. 13
August 16, 2013, 10:30 a.m.



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

SAMUEL RAMIREZ-RANGEL, LETICIA
GONZALES-SANTIAGO, and JOSE SOLIS-
LEON,

Plaintiff,

-vs-

KITSAP COUNTY, JUSTIN T. CHILDS, in his
official capacity as a Kitsap County Sheriff's
Deputy, and SCOTT C. JENSEN, in his official
capacity as a Kitsap County Sheriff's Deputy,

Defendants.

NO. 12-2-09594-4

**COURT'S ORDER GRANTING
PLAINTIFFS' CROSS-
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANTS' CR 56
MOTION FOR ENTRY OF
FINAL JUDGMENT**

THIS MATTER having come before the undersigned Judge of the above-entitled Court for hearing on August 7, 2013 upon Defendants' CR 56 Motion for Entry of Final Judgment and Plaintiffs' Cross-Motion for Summary Judgment, the Court has read the files and records herein and is fully advised on the premises.

I. CR 56(h) DOCUMENTS AND EVIDENCE

1. Declaration of Defendant Justin T. Childs, dated January 20, 2013 and filed February 15, 2013;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Declaration of Defendant Scott C. Jensen, dated January 19, 2013 and filed February 15, 2013;
3. Declaration of Undersheriff Dennis Bonneville in Support of Defendants’ Motion for Summary Judgment, filed February 15, 2013;
4. Declaration of Paula Galivan, filed February 15, 2013;¹
5. Declaration of Cathy Barker, filed February 15, 2013;
6. Declaration of Skylee Robinson in Support of Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment, filed March 18, 2013;
7. Declaration of Jose Solis-Leon in Support of Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment, filed March 18, 2013;
8. Declaration of Samuel Ramirez in Support of Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment, filed March 18, 2013;
9. Declaration of Stephanie C. Browning, filed March 25, 2013;
10. Declaration of Karin D. Jones in Support of Plaintiffs’ Opposition to Defendants’ Motion for Entry of Final Judgment, filed May 29, 2013;
11. Plaintiffs’ Opposition to Defendants’ CR 56 Motion for Entry of Final Judgment and Plaintiffs’ Cross-Motion for Summary Judgment, filed June 14, 2013;
12. Defendants’ Response to Plaintiffs’ Cross-Motion for Summary Judgment, filed July 26, 2013;
13. Reply to Defendants’ Response to Plaintiffs’ Cross-Motion for Summary Judgment, filed August 2, 2013; and
14. Motion for Entry of Final Judgment filed May 16, 2013.

Paragraphs 3 through 13 are subject to the Court’s rulings on Defendants’ motion to strike.

///

///

¹ Replaced with Notice of Errata re Declaration of Paula Galivan, filed February 21, 2013.

II. FINDINGS AND CONCLUSIONS

The Court FINDS AND CONCLUDES that:

1. Based on the Declarations of Deputies Childs and Jensen, there are no genuine issues of material fact;
2. Plaintiffs' Complaint sufficiently gave Defendants notice that declaratory judgment was sought in this matter;
3. The Plaintiffs are entitled to declaratory judgment as a matter of law: Plaintiffs have standing to bring this action under the Uniform Declaratory Judgments Act, RCW Ch. 7.24. This case presents a justiciable controversy, and in addition, important public interests support this Court's consideration of Plaintiffs' claims, particularly as there is a likelihood that the underlying conduct could recur;
4. Defendants as local law enforcement officers, under the facts of this case, do not have the authority to enforce federal immigration law nor prolong a detention to question individuals about their immigration status, citizenship status and/or country of origin, even if the officers have a reasonable suspicion or probable cause to seize and/or detain individuals for violations of law that the officers are authorized to enforce and, having determined not to arrest the plaintiffs, they prolonged the detention solely to question Plaintiffs about their immigration status.; and
5. Defendants violated Plaintiffs' rights conferred by the Washington State Constitution, Article I, Section 7, when on February 2, 2010 they prolonged the detention to question the Plaintiffs about their immigration status, citizenship status and/or country of origin.

III. ORDER

Therefore, IT IS HEREBY ORDERED that:

1. Defendants' CR 56 Motion for Entry of Final Judgment is hereby DENIED;
2. Plaintiffs' Cross-Motion for Summary Judgment is hereby GRANTED; and

