Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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, Defendants.	No. 2:18-cv-00421 PLAINTIFF'S OPPOSITION TO INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT Noted for Consideration: November 2, 2018 ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

On February 8, 2018, Defendants Joel Thomas, Craig Gardner, Peter Tiemann, and Arthur Stephenson ("Defendants") violated Plaintiff Wilson Rodriguez Macareno's ("Mr. Rodriguez") Fourth Amendment rights when they seized him solely to enforce a civil immigration warrant. Defendants now move to avoid liability for these actions by asking this Court to grant partial summary judgment for them based on qualified immunity and to dismiss certain other claims.

For the reasons set forth below, this Court should deny Defendants' motion.[1] When Defendants seized Mr. Rodriguez, they acted on the basis of a brief notation in a law enforcement database that stated Mr. Rodriguez was subject to an *administrative* warrant from Immigration and Customs Enforcement ("ICE"). An arrest on that basis violates the Fourth Amendment, as the administrative warrant lacks the traditional safeguard of a neutral and detached magistrate, is directed to and may only be executed by designated federal officials, and no other facts gave Defendants reason to suspect that Mr. Rodriguez was wanted for criminal activity. Indeed, because of immigration law's complexity, Congress crafted a careful scheme that does not permit local law enforcement officers to enforce civil immigration violations absent limited exceptions that do not apply to this case. Defendants attempt to explain their violation of Mr. Rodriguez's rights by speculating that they might have had reason to suspect criminal activity, but Fourth Amendment case law clearly rejects such post hoc rationalization. Nor can Defendants resort to the collective knowledge doctrine to save their obvious lack of a Fourth Amendment basis to detain or arrest Mr. Rodriguez, as both case law and the Immigration and Nationality Act ("INA") make evident the doctrine does not apply in this context.

[1] Mr. Rodriguez does not oppose dismissal of the official capacity claims against the individual Defendants.

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Moreover, the law clearly established these principles at the time the Defendants seized Mr. Rodriguez. The INA, controlling Supreme Court and Ninth Circuit law, and Washington State law and guidance all clearly explained that local law enforcement officers could not engage in the sort of civil immigration enforcement that Defendants undertook here. Finally, Defendants' actions demonstrate their animus and provide a sufficient basis for punitive damages.

II. STATEMENT OF FACTS

A. Mr. Rodriguez Calls 911 to Report Suspicious Activity at His Home.

On the morning of February 8, 2018, Mr. Rodriguez dialed 911 to report a suspicious individual on his property.[2] Dkt. 28, Ex. A at 0:00-1:57. As Mr. Rodriguez would later explain to the reporting officers, a neighbor had recently seen someone prowling around Mr. Rodriguez's home. Dkt. 30, Ex. A at 0:45-2:25, 16:00-17:10. Mr. Rodriguez was also alarmed because a few years prior, a burglar had stolen valuable possessions from his home. *Id.* During Mr. Rodriguez's call, one of his co-workers arrived at his home and began talking to the trespasser. Dkt. 1 ¶ 28.

Defendants Peter Tiemann and Arthur Stephenson from the Tukwila Police Department (TPD) first responded to the scene, followed shortly thereafter by Defendants Joel Thomas and Craig Gardner. *See* Dkt. 30, Ex. A at 0:22-0:45; Dkt. 29, Ex. A at 0:00-0:50; Dkt. 39, Ex. C. Defendant Stephenson began questioning the suspect, who was still on Mr. Rodriguez's property, and soon permitted the suspect to leave after issuing a warning to not trespass near Mr. Rodriguez's house again. Dkt. 26 ¶ 3; Dkt. 26, Ex. A at 10:20-12:55.

[2] As the 911 call recording demonstrates, Mr. Rodriguez provided his true and correct surname ("Rodriguez") to the Valley Communications Center dispatcher, who misunderstood him. Dkt. 28, Ex. A at 6:25. In their Answer, Defendants incorrectly alleged that Mr. Rodriguez "provided a false name when he made his 911 call." Dkt. 9 ¶ 30. In their motion Defendants state that Mr. Rodriguez "provid[ed] what the 911 call taker *believed* was the name Wilson Ortega when he called." Dkt. 25 at 2 (emphasis added). Moreover, there is no dispute that Mr. Rodriguez presented a valid identity document to Defendants when asked to produce identification. *See* Dkt. 39, Ex. C at 2.

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B. Tukwila Police Officers Seize Mr. Rodriguez Based on Based on a NCIC Query.

Meanwhile, Defendant Thomas asked Mr. Rodriguez and his co-worker to produce identification. Dkt. 29, Ex. A at 2:00-2:20. Both individuals then produced valid Washington State driver's licenses. *Id.* at 2:20, 4:46; *see also* Declaration of Sydney Maltese ("Maltese Decl."), Ex. B (Response to Request for Admission No. 2). Despite the fact that they provided valid identifications and that Mr. Rodriguez was the one who sought the officers' assistance, Defendant Thomas called Valley Communications Center ("VCC") and requested that VCC query law enforcement databases using the names on these IDs. Dkt. 29, Ex. A at 4:46-6:15.

Around two minutes later, VCC reported back to Defendant Thomas over the radio that ICE wanted Mr. Rodriguez for being "unlawfully present due to order of removal or exclusion." *Id.* at 8:20-9:00. Defendant Gardner stood nearby and also heard this report. *Id.* Immediately thereafter, VCC informed Defendant Thomas—with Defendant Gardner standing by—that the database query for Mr. Rodriguez's co-worker was "clear." *Id.* at 9:00-9:07. After hearing from VCC, Defendants Gardner and Thomas asked Defendant Tiemann to watch Mr. Rodriguez. Dkt. 29, Ex. A at 9:25; Dkt. 39, Ex. C. Defendant Tiemann then walked over to Mr. Rodriguez, who was standing near the entrance to his house with Defendants Thomas and Gardner. Defendants Thomas and Gardner then left and proceeded to investigate the matter further in their patrol vehicle. *Id.* at 9:20-46:10. A few minutes later, Defendant Stephenson joined Defendant Tiemann in watching Mr. Rodriguez, standing near him while Defendants Thomas and Gardner reviewed information in the patrol car. Dkt. 30, Ex. A at 9:45-31:55; Dkt. 26, Ex. B at 0:00-8:23.

Defendants Thomas and Gardner first reviewed the information in the National Crime Information Center (NCIC) Database regarding Mr. Rodriguez. Dkt. 29 ¶¶ 5, 8; *id.* Ex. A at 11:05-12:50. The NCIC record for Mr. Rodriguez, transmitted to Defendant Thomas via the mobile computer in his patrol vehicle, stated that Mr. Rodriguez "ha[d] an outstanding

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administrative warrant of removal from the United States." *Id.* Ex. B (emphasis added); *see also id.* ¶ 7. The screen further explained that Mr. Rodriguez had an "immigration violation—failure to appear for removal," that he was "unlawfully present due to order of removal or exclusion from the USA," and ended by noting that the NCIC file was that of an "immigration violator." *Id.* Finally, the record provided a number for the Law Enforcement Support Center (LESC)—a call center administered by ICE—indicating that a law enforcement officer could call it for "immediate hit confirmation and availability of [ICE] detainer." Dkt. 29, Ex. B. *See also* U.S. Immigration and Customs Enforcement, Law Enforcement Support Center, https://www.ice.gov/lesc (last visited Oct. 27, 2018). The NCIC file showed neither any criminal history nor any criminal or judicial warrants for Mr. Rodriguez.

Defendants Thomas and Gardner then called the ICE number provided in the database. Dkt. 29, Ex. A at 12:44-40:12. Defendant Thomas first spoke to ICE Agent Shannon. *Id.*; *see also* Dkt. 39, Ex. C. That call lasted nearly half an hour. Dkt. 29, Ex. A at 12:44-40:12. In the meantime, Defendants Tiemann and Stephenson continued to watch Mr. Rodriguez as he responded to Defendant Tiemann's questions about his immigration situation and past crime at his residence. Dkt. 30, Ex. A at 13:15-24:15. Mr. Rodriguez shared about his fear of being handed over to federal immigration authorities. *Id.* at 13:25-16:08.

At some point during Defendant Thomas's call with ICE Agent Shannon, Defendant Gardner left the patrol vehicle and informed Mr. Rodriguez that he and Defendant Thomas "were calling [ICE] and seeing what they want to do," but that "we don't have you for charges." *Id.* at 26:55-27:35; *see also* Dkt. 38, Ex. A. Then, despite having just informed Mr. Rodriguez that there were no criminal charges against him, Defendants Gardner and Tiemann handcuffed and searched him. Dkt. 30, Ex. A at 27:55-29:40; *see also* Dkt. 39, Ex. C. This was *before*

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Defendants even received a final response from ICE as to what ICE wanted. Dkt. 38, Ex. A; Dkt. 39, Ex. C. Defendant Tiemann and Gardner then escorted Mr. Rodriguez to Defendant Thomas's patrol car. Dkt. 30, Ex. A at 31:20-31:50; Dkt. 29 Ex. A at 32:11.

Once Mr. Rodriguez was in the patrol car, Defendant Thomas continued his call with ICE Agent Shannon for several more minutes. Dkt. 29, Ex. A at 32:11-40:11. At some point during the call, "Agent Shannon then confirmed the warrant in NCIC." Dkt. 29 ¶ 9. Shortly after ending that call, Defendant Thomas also received a call from ICE Agent Bailey, who "confirmed that [ICE] wanted [Defendant Thomas] to take [Mr. Rodriguez] into custody on their behalf." Dkt. 39, Ex. C. Defendant Thomas also volunteered to transport Mr. Rodriguez to the ICE Field Office. Dkt. 29, Ex. A at 40:58-44:00; *see also* Dkt. 39, Ex. C at 3. Defendant Thomas then exited his vehicle, removed Mr. Rodriguez from it, and searched him once more and returned him to the vehicle, shortly before leaving for the ICE office. Dkt. 29, Ex. A at 46:30-48:15. After Defendant Thomas placed Mr. Rodriguez back into his patrol car, a shaken Mr. Rodriguez can then be heard asking someone on the phone to "take care of his babies" as Defendants Thomas and Gardner prepare to drive off to the ICE field office. *Id.* at 49:50.

Notably, at this point in the process ICE had not even issued a detainer much less presented a valid criminal warrant. *See, e.g.*, Dkt. 39, Ex. C at 3 (reporting that he received "a copy of the warrant" after transporting Mr. Rodriguez to the ICE facility); Maltese Decl. Ex. B (Response to Request for Admission No. 21). Nothing in the reports drafted by Defendants Thomas and Gardner following the incident indicated that Agent Bailey provided any reason to suspect that ICE wanted Mr. Rodriguez for a criminal immigration violation. *See* Dkt. 39, Ex. C at 2 (noting only "a warrant from the Department of Homeland Security"); Dkt. 27, Ex. A at 1

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(noting only "an outstanding unconfirmed warrant out of the Department Homeland Security/ICE").

C. Officers Thomas and Gardner Transport Mr. Rodriguez to the ICE Field Office, Request a Detainer, and Affirmatively Provided Identify Information for Mr. Rodriguez's Co-worker.

Defendants Gardner and Thomas then drove Mr. Rodriguez to the ICE field office in Tukwila, Washington. Dkt 29, Ex. A at 50:50-57:40. As they approached the ICE facility, Defendant Gardner explained to Defendant Thomas that "usually [ICE] want[s] us to go" to a certain location, and also explained where to park when going to the ICE office while "on call." *Id.* at 54:20-55:15. Defendant Gardner further explained that the ICE office was "down below" as he and Defendant Thomas tried to determine where to meet ICE Agent Bailey. *Id.* at 56:35. Defendants Gardner and Thomas then handed Mr. Rodriguez over to awaiting ICE agents, who then subjected him to a full body search and placed him in ICE custody. *Id.* at 59:00-1:02:54.

During the transfer, Defendant Gardner asked the ICE officers if they had a "copy of the detainer." *Id.* at 59:52-59:55. One ICE officer responded by stating that he had "nothing right now," while Agent Bailey stated that he could "hook [Defendants Gardner and Thomas] up" with a detainer. *Id.* at 59:55-1:00:07. After completing the transfer of custody, Agent Bailey brought Defendants Thomas and Gardner into another room. *Id.* at 1:02:52. There, Defendant Gardner called the TPD office to inquire whether a copy of a detainer had arrived via fax. *Id.* at 1:03:43-1:05:00. The TPD office responded that no fax had arrived. *See id.* Twice more, Defendant Gardner emphasized that it was important to obtain a detainer before leaving or to ensure that one was sent to the TPD office. *Id.* at 1:05:05, 1:07:55. Eventually, while in Defendant Thomas and Gardner's presence, Agent Bailey helped them obtain a detainer form. *Id.* at 1:08:20-1:12:30; *see* Dkt. 27, Ex. B.

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Finally, before leaving the ICE Office, Defendants Gardner and Thomas offered a photograph and identity information for Mr. Rodriguez's co-worker to Agent Bailey. Dkt. 29, Ex. A at 1:12:28-1:13:18. They did so even though the NCIC database contained *no* information whatsoever regarding the co-worker, and even though ICE had not initially asked for that information. *Id.* at 9:00-9:05, 1:13:12. After finding no negative information regarding the co-worker, Agent Bailey, based only on the picture Defendant Thomas provided, speculated that his ID may be fake, and the three lamented that Washington State issues driver's licenses to "illegals." *Id.* at 1:13:15-1:14:40.

D. Mr. Rodriguez's Relevant Immigration History

Mr. Rodriguez was ordered removed *in absentia* in 2005. The removal order states that Mr. Rodriguez was inadmissible under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)], Dkt. 28, Ex. B at 1, and that he was subject to removal for that reason, *id.* at 2. Nothing in the removal order—which Defendants did not have in their possession on the morning of February 8, 2018—indicates any ground of removability under 8 U.S.C. § 1227.[3]

III. ARGUMENT

A. Defendants Are Not Entitled to Qualified Immunity.

A party cannot benefit from qualified immunity where "(1) the facts alleged, taken in the light most favorable to the party asserting injury, show that the officer's conduct violated a constitutional right; and (2) the right at issue was clearly established at the time of the incident such that a reasonable officer would have understood his conduct to be unlawful in that

[3] Defendants misstate the nature of "voluntary departure" in their motion when they purport to provide "[b]ackground regarding applicable federal immigration law and procedures." Dkt. 25 at 9. Voluntary departure is not granted "in lieu of being taken into custody," *id.*, but rather, permits a noncitizen to "voluntarily to depart the United States at the [noncitizen's] own expense . . . in lieu of being subject to [removal proceedings]," 8 U.S.C. § 1229c(a)(1), or in lieu of being ordered removed, § 1229c(b). A noncitizen who has been granted voluntary departure would have no additional obligations to attend immigration court hearings. Voluntary departure is not in any way relevant to this case.

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situation." *Easley v. City of Riverside*, 890 F.3d 851, 856 (9th Cir. 2018). While Defendants' motion focuses only on the second prong, *see* Dkt. 25 at 8, this Court has discretion to "decid[e] 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." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). In addition, "[f]or purposes of reviewing a grant or denial of summary judgment, even in a qualified immunity case, the reviewing court must assume the nonmoving party's version of the facts to be correct." *Schwenk v. Hartford*, 204 F.3d 1187, 1193 n.3 (9th Cir. 2000).

The facts in this case demonstrate that Defendants violated Mr. Rodriguez's constitutional rights by seizing him without reasonable suspicion or probable cause. Furthermore, the law at the time of Mr. Rodriguez's seizure clearly established that an administrative warrant of removal did not provide reasonable suspicion or probable cause of criminal activity. Nor did federal or state law provide any other authority for Defendants to enforce administrative immigration warrants. Accordingly, the Court should deny Defendants' motion and conclude that they are not entitled to qualified immunity.

1. Defendants Violated Mr. Rodriguez's Fourth Amendment Rights.

The Fourth Amendment protects against "unreasonable searches and seizures." U.S. Const. amend. IV. At its core, the Fourth Amendment prohibits government officials from detaining an individual in the absence of a probable cause finding made "by a neutral and detached magistrate." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); *see also Coolidge v. New Hampshire*, 403 U.S. 443, 449-53 (1971) (finding a warrant issued by state Attorney General to be invalid because he was in charge of prosecution and therefore not a neutral magistrate), *overruled in part on other grounds by Horton v. California*, 496 U.S. 128 (1990). In some cases, officers confronted with criminal activity may seize an individual absent a judicial warrant. In such cases, the Fourth Amendment prohibits law enforcement officers from stopping an

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individual absent reasonable suspicion of criminal activity, *see Terry v. Ohio*, 392 U.S. 1, 30 (1968), or from arresting an individual absent probable cause, *see, e.g.*, *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007). However, where—as here—an officer relies on a warrant to make an arrest, review by a neutral magistrate is an essential requirement. *Coolidge*, 403 U.S. at 450-51; *see also Illinois v. Gates*, 462 U.S. 213, 239 (1983). In this case, Defendants lacked both a valid warrant for local law enforcement officials or information that justified Mr. Rodriguez's seizure, and thus violated his Fourth Amendment rights.

a. Defendants Seized Mr. Rodriguez Without a Proper Fourth Amendment Basis.

Defendants' seizure of Mr. Rodriguez was at no point supported by reasonable suspicion or probable cause of criminal activity. Defendants initially seized Mr. Rodriguez based radio dispatch information from VCC that there was an ICE warrant for Mr. Rodriguez based on an order of removal or exclusion. *See supra* pp. 3-4. Defendants then continued their seizure and eventually arrested Mr. Rodriguez solely on the basis of an "outstanding administrative warrant of removal from the United States," as noted by the NCIC database search indicating that Mr. Rodriguez was an "immigration violator." *See id.*; *see also* Dkt. 27, Ex. A at 1 ("I advised Macareno Rodriguez [sic] that he was under arrest *on his [ICE] warrant*" (emphasis added)). It is undisputed that there were no other charges or warrants for Mr. Rodriguez.

An administrative warrant of removal does not furnish probable cause for local law enforcement officers to detain a noncitizen. Unlike a judicial warrant, an administrative warrant of removal based on a prior order of deportation is issued by an immigration officer without any review by a neutral judge or magistrate. *See* 8 C.F.R. § 241.2 (enumerating immigration officials authorized to issue removal warrants "based on the final administrative removal order"); U.S. Dep't of Homeland Sec., *Warrant of Removal/Deportation*, https://tinyurl.com/yb98xpw6 (last

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visited Oct. 29, 2018); U.S. Dep't of Homeland Sec., Federal Law Enforcement Training Centers, *ICE Administrative Removal Warrants*, https://www.fletc.gov/audio/ice-administrative-removal-warrants-mp3 (last visited Oct. 29, 2018) ("[T]he removal warrant used by ICE is not a criminal warrant signed by a federal judge."). In other words, officers in the very agency that seeks to arrest noncitizens—ICE—are the ones that issue these warrants. Yet "probable cause for the issuance of an arrest warrant must be determined by someone independent of police and prosecution." *Gerstein*, 420 U.S. at 118. Like the state law enforcement officer who oversaw the investigation and prosecution in *Coolidge*, ICE officers are in charge of investigating and prosecuting immigration violations and thus do not constitute neutral finders of probable cause. *See Coolidge*, 403 U.S. at 453; *see also Gerstein*, 420 U.S. at 114 ("[T]he detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty."); *El Badrawi v. Dep't of Homeland Sec.*, 579 F. Supp. 2d 249, 275-76 (D. Conn. 2008) (treating as "warrantless" an arrest pursuant to an administrative warrant signed by an ICE agent, who was not a "neutral magistrate (or even a neutral executive official)").

Moreover, only designated authorities may enforce civil immigration warrants and engage in civil immigration enforcement actions. Defendants concede that "courts may as a very general principle find that local agencies cannot detain individuals simply for being in the United States illegally (often considered a civil matter)," Dkt. 25 at 12, but fail to concede that the instant case involves only a civil matter. As the Supreme Court explained in *Arizona v. United States*, "[t]he federal statutory structure instructs when it is appropriate to arrest [a noncitizen] during the removal process." 567 U.S. 387, 407 (2012). In providing that instruction, key differences exist between federal and local law enforcement. DHS may issue a warrant pending a

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decision of removability, or following an order of removal, but "*[i]n both instances*, the warrants are executed by federal officers who have received training in the enforcement of immigration law." *Id.* at 408 (emphasis added).

The situation is different for local law enforcement. With limited exceptions not applicable in this case, and as the Court described in *Arizona*, *see id.* at 407-09, the statute and implementing regulations confirm that state and local officers do not have authority to take any enforcement action based on an ICE warrant. Those sources provide an enumerated list of individuals who are authorized to execute immigration arrest warrants and thus limit enforcement to a select group of federal immigration officers.[4] *See* 8 C.F.R. § 241.2(b) (specifying that a warrant of removal based on a final removal order may be executed by any officer authorized by 8 C.F.R. § 287.5(e)(3)); 8 C.F.R. § 287.5(e)(3) (granting arrest authority to specific "immigration officers who have successfully completed basic immigration law enforcement training"); 8 C.F.R. § 287.8(c) ("Only designated immigration officers are authorized to make an arrest.").

Consistent with this federal law, the Washington State Supreme Court has advised:

> ICE has the authority to issue an administrative warrant for any noncitizen with an outstanding order of deportation or removal that has become final. Issued on Form I-205, this document authorizes ICE officers to take into custody and remove the designated noncitizen. It does not authorize state or local law enforcement officials to arrest the designated noncitizen.

Wash. State Supreme Court Gender & Justice Comm'n and Minority & Justice Comm'n, *Immigration Resource Guide for Judges* 2-8 (July 2013), https://tinyurl.com/yb3h6dw9 (internal

[4] The principle exception is for state officials who undergo a special training and certification program under 8 U.S.C. § 1357(g). As TPD has no such agreement with DHS, none of the Defendants were authorized to perform functions of a federal immigration officer. *See* U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, https://www.ice.gov/287g (last updated Aug. 10, 2018) (showing no § 1357(g) agreements in Washington State).

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footnotes omitted). Together, these sources make abundantly clear that local law enforcement may not rely on ICE administrative warrants to detain or arrest an individual.

Unable to contest this well-established law, Defendants resort to arguing they had reasonable suspicion to seize Mr. Rodriguez, speculating that his immigration offense "*might* have been criminal in nature," because he *may* have committed a violation under 8 U.S.C. § 1253(a). Dkt. 25 at 12 (emphasis added). This Court should reject Defendants' attempt to post-hoc rationalize Mr. Rodriguez's seizure. *See infra* p. 14 (noting that the lawfulness of a seizure turns on the facts the officer knew at the time of the seizure). Here, the *only* information Defendants possessed when they seized Mr. Rodriguez was regarding an administrative warrant of removal issued by ICE, which they had no authority to enforce, and for which they had no additional information. The NCIC database made no reference to 8 U.S.C. § 1253(a). And Defendants had no reason to speculate that Mr. Rodriguez committed any other immigration-related offense, or that he was "a member of any of the classes described in section 1227(a) of [Title 8]" as required to violate 8 U.S.C. § 1253. *See* 8 U.S.C. § 1253(a)(1). Thus, Defendants cannot claim that they had an adequate reason under the Fourth Amendment to seize Mr. Rodriguez—either now or at the time of his seizure.

Indeed, as Defendants point out, Dkt. 25 at 6-7, Mr. Rodriguez's removal order demonstrates that he was charged as being removable under 8 U.S.C. § 1182, which governs individuals who have not been admitted to the United States. By contrast, 8 U.S.C. § 1227(a), governs individuals who are "in *and admitted* to the United States." (emphasis added). Therefore, 8 U.S.C. § 1253(a) is irrelevant to Mr. Rodriguez, who clearly does not fall under any class described under § 1227(a). In short, Defendants' efforts to justify their actions by pointing

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to 8 U.S.C. § 1253 underscore why the INA grants arrest authority only to specifically trained immigration officers.

Moreover, while certain violations of the INA, such as § 1253, may be punishable with a criminal penalty, this alone does not authorize local law enforcement officers such as Defendants to seize a noncitizen absent a criminal warrant. For example, 8 U.S.C. § 1324, which imposes criminal penalties on offenses relating to "[b]ringing in and harboring certain [noncitizens]," expressly grants the authority to arrest to "all other officers whose duty it is to enforce criminal laws." 8 U.S.C. § 1324(c). By contrast, no provision of 8 U.S.C. § 1253—which Defendants rely upon to justify their conduct—provides such arrest authority. That omission further confirms that Congress did not intend for local law enforcement officers to enforce § 1253. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (alteration in original) (citation omitted)). Thus, Defendants' post hoc reliance on § 1253 as a potential basis for seizing Mr. Rodriguez is unavailing.

b. The ICE Detainer Defendants Obtained *After* Arresting and Delivering Mr. Rodriguez Did Not Remedy Their Unlawful Conduct.

Defendants also seek to justify their seizure of Mr. Rodriguez by inaccurately stating that he "was detained pursuant to an I-247A detainer" that contains a probable cause finding by DHS. Dkt. 25 at 10; *see also id.* at 13 (alleging "the situation here" is one dealing with a "detainer[] based on '[a] final order of removal against the [noncitizen]'" (second alteration in original)). But Defendants may not shield their actions by relying on the detainer, for three reasons.

First, Defendants' argument relies on an inaccurate version of the facts. Defendants did not detain or arrest him based upon a detainer, but rather, upon learning about an ICE

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administrative warrant. *See supra* pp. 3-4. Indeed, they did not receive a detainer from ICE until *after* they transported Mr. Rodriguez to ICE—that is, when their seizure of him had ended. *See supra* p. 5. In fact, it appears that no detainer existed *whatsoever* at the time Defendants seized Mr. Rodriguez. *See supra* pp. 5-6. Any information or documents that Defendants received *after* arresting Mr. Rodriguez provide no defense for their conduct, as "[w]hether probable causes exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at *the time of the arrest*." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (emphasis added); *see also, e.g.*, *Ornelas v. United States*, 517 U.S. 690, 700-01 (1996) (Scalia, J., dissenting) (explaining that courts should look to "all of the relevant historical facts known to the officer *at the time of the stop* . . . and whether . . . *those facts* would give rise to a reasonable suspicion justifying a stop" (emphases added)). Similarly, this Court has explained in the context of a § 1983 claim for unlawful arrest that "[a] court may not consider additional facts that became known only after the arrest was made." *Dunn v. Hyra*, 676 F. Supp. 2d 1172, 1186 (W.D. Wash. 2009). Accordingly, Defendants may not rely on the I-247A detainer they received to justify the seizure.

Second, the ICE detainer was invalid. ICE policy states that "an ICE immigration officer *shall not* issue an immigration detainer to an LEA [law enforcement agency] *unless* the LEA has arrested the alien for a criminal offense in an exercise of the LEA's independent arrest authority." *See* U.S. Immigration and Customs Enforcement, Policy No. 10074.2, *Issuance of Immigration Detainers by ICE Immigration Officers* 2 (Mar. 24, 2017), https://tinyurl.com/y8kc9cak (emphasis added). Here, Defendants had no independent reason to arrest Mr. Rodriguez, who was the victim of a crime and was not accused of any wrongdoing. As

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a result, Defendants did not seize him pursuant to their "independent arrest authority," making the detainer Defendants received invalid and insufficient to justify any detention.

For that reason, this case is distinguishable from both *United States v. Gomez-Robles*, No. CR-17-0730-TUC-CKJ, 2017 WL 6558595 (D. Ariz. Nov. 28, 2017), and *Roy v. County of Los Angeles*, No. CV 12–09012–AB, 2018 WL 914773 (C.D. Cal. Feb. 7, 2017). Defendants rely on these cases to assert that a detainer based on a final order of removal provides probable cause for local law enforcement agencies to detain an individual. *See* Dkt. 25 at 14-16. But neither *Gomez-Robles* nor *Roy* involve circumstances where, as here, local law enforcement officers' initial detention was based solely on discovering the existence of an ICE warrant. That difference matters, as the officers here acted only on the basis of a short NCIC notation and because ICE administrative warrants are not directed to local law enforcement officers. In both other cases, ICE issued detainers for individuals who had been initially seized by local law enforcement agencies for state or local charges. *See Gomez-Robles*, 2017 WL 6558595, at *1, *Roy*, 2018 WL 914773, at *6-7. Moreover, Defendants concede that the class in Roy does not include persons with a final civil order, and thus that decision provides no meaningful insight to the question presented in this case. *Id.* at *7.

Third, even if the detainer had been valid and had been issued to TPD before they seized Mr. Rodriguez, an ICE detainer does not furnish Defendants with the requisite probable cause of a crime. Such detainers, even when they specify that an individual has a prior order of removal, are "strictly civil in nature," for they "do not charge anyone with a crime, indicate that anyone has been charged with a crime, or ask that anyone be detained in order that he or she can be prosecuted for a crime." *Lunn v. Commonwealth*, 477 Mass. 517, 518 (Mass. 2017). "[They] . . . are used to detain individuals because the Federal authorities believe that they are civilly

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removable from the country." *Id.* In addition, they do not serve as a finding of probable cause by a neutral magistrate. *See Sanchez Ochoa v. Campbell*, 266 F.Supp.3d 1237, 1252-53 (E.D. Wash. 2017), *appeal dismissed as moot*, 716 F. App'x 741 (9th Cir. Mar. 30, 2018).

c. The Collective Knowledge Doctrine Cannot Justify Defendants' Seizure of Mr. Rodriguez.

Defendants also seek to rely on the collective knowledge doctrine, suggesting that a detainer constitutes the requisite "communication between the arresting officer and an officer who has knowledge of all the necessary facts." Dkt. 25 at 11 (quoting *City of El Cenizo v. Texas*, 890 F.3d 164, 187-88 (5th Cir. 2018)). But given that enforcement of civil immigration law is beyond the scope of TPD's authority, Defendants are unable to rely on this doctrine.

Courts have generally applied the collective knowledge doctrine only to cases wherein the cooperating agency that relied upon another agency's knowledge also had independent, inherent authority to perform the kind of seizure in question. *United States v. Ramirez*, 473 F.3d 1026, 1029 (9th Cir. 2007) (police making arrest for suspected *criminal* violation); *United States v. Hensley*, 469 U.S. 221, 234-35 (1985) (same). By contrast, TPD has no independent, inherent authority to enforce an administrative warrant of removal issued by ICE, or any other civil immigration violation. Fundamentally, the comprehensive scheme Congress enacted generally excludes state and local officers from enforcing warrants issued by ICE. *See supra* pp. 10-11. Congress avoided the complex problem of having local law enforcement enforce confusing, nuanced immigration law by creating a uniform system in which only an enumerated list of officers is permitted to exercise civil arrest powers in this context. *See* 8 C.F.R. §§ 241.2(b), 287.5(e)(3). Indeed, contrary to the concerns of dealing with a myriad of different state statutory definitions of what constitutes arrestable offenses—as was addressed in *Virginia v. Moore*, 553 U.S. 164, 170 (2008)—Congress created a "clear answer" reinforcing the uniformity of federal

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civil immigration law by providing an enumerated list of officers permitted to exercise civil arrest powers in this context, *see* 8 C.F.R. § 287.5(e)(3). Accordingly, the collective knowledge doctrine should not be used to upend Congress's careful scheme in the INA, its implementing regulations, or controlling caselaw, which all dictate that state and county officials do not have authority to execute administrative warrants of removal.

Defendants point to *City of El Cenizo*, where the Fifth Circuit applied the collective knowledge doctrine with respect to immigration enforcement. But Defendants fail to acknowledge a crucial distinction: in *City of El Cenizo*, the state of Texas had affirmatively required local law enforcement to hold individuals pursuant to an ICE detainer—"a written request to state or local officials"—and a signed ICE administrative warrant. *See* 890 F.3d at 174 (describing the "ICE-detainer mandate"); *id.* at 187-88. Thus, the local officers in *City of El Cenizo* had an independent source of authority to allow them to engage in enforcing civil immigration laws. By contrast, Mr. Rodriguez's seizure was based on an NCIC database notation in the *absence* of any affirmative state authority. To the contrary, Washington State law provides no basis for engaging in this civil enforcement actions. *See infra* p. 21.

Moreover, the collective knowledge doctrine does not apply where, as here, there was no explicit request from a DHS official to Defendants ordering or requesting them to investigate Mr. Rodriguez. *Ramirez*, 473 F.3d at 1037 ("Where one officer knows facts constituting reasonable suspicion or probable cause . . . and he communicates an appropriate order or request, another officer may conduct a warrantless stop, search, or arrest without violating the Fourth Amendment."). As noted, Defendants did not even receive an immigration detainer until *after* their seizure of Mr. Rodriguez had concluded. And ICE violated their own policy in issuing a detainer where the local law enforcement authority had not "arrested the [noncitizen] for a

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criminal offense in an exercise of the LEA's independent arrest authority." *See supra* p. 14 (citing ICE detainer policy).

2. The Law Was Clearly Established that Defendants Lacked Authority to Seize Mr. Rodriguez.

Clearly established law also demonstrates that the Defendants lacked authority to undertake their seizure of Mr. Rodriguez. At step two of the qualified immunity analysis, courts in this circuit must make "two separate determinations: (1) whether the law governing the conduct at issue was clearly established and (2) whether the facts as alleged could support a reasonable belief that the conduct in question conformed to the established law." *Green v. City of San Francisco*, 751 F.3d 1039, 1052 (9th Cir. 2014). Defendants claim that even if a constitutional violation occurred at step one, "this area of the law is clear as mud," Dkt. 25 at 13, and, as a result, Defendants should receive qualified immunity.

But Defendants' arguments belie any purported confusion. Defendants repeatedly attempt to argue that Mr. Rodriguez violated a criminal provision, clearly recognizing, as they conceded, that local agencies cannot detain individuals for civil immigration matters. Dkt. 25 at 12. Indeed, it is Defendants who attempt muddy the waters to rationalize their actions by citing to unrelated decisions and confusing the relevant immigration law. As demonstrated below, the law at the time of Mr. Rodriguez's seizure clearly established that (1) local law enforcement officers lack the authority to enforce federal civil immigration law,[5] and (2) no reasonable officer could conclude otherwise while "assum[ing] [Mr. Rodriguez's] version of the facts to be correct." *Schwenk*, 204 F.3d at 1193 n.3.

[5] Defendants do not contest that the law clearly established that they needed reasonable suspicion to justify Mr. Rodriguez's initial stop and probable cause to support his eventual arrest. Thus, the only relevant issue here is whether under these circumstances—where officers make a stop and arrest based only on information regarding a civil immigration warrant—the law regarding seizures was clearly established.

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Clearly established law is that which gives officers a "fair warning that their conduct violated the Constitution." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Binding in-circuit cases clearly establish the law, and state guidance provided to local law enforcement officials can also play a key role in determining whether the relevant law is clearly established. *See id.* at 741-45 (relying on binding court of appeals cases, a state regulation, and a DOJ study on certain practices to conclude the law was clearly established). Typically, a court should seek "to identify a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment," *White v. Pauly*, 137 S. Ct. 548, 552 (2017), but need not do so if the constitutional violation is "obvious," *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (per curiam). Supreme Court and Ninth Circuit cases clearly established the relevant law here, and the State Supreme Court's guidance further affirmed that the violation here an "obvious" one.

a. Clearly Established Law Demonstrated that the Defendants Lacked Another Source of Authority to Undertake Mr. Rodriguez's Seizure.

The law governing the constitutionality of Defendants' actions cannot come from a stronger source: both the Supreme Court and the Ninth Circuit (as well as other courts of appeals) have spoken directly to similar scenarios involving local law enforcement's decision to enforce federal immigration law and concluded that local officers lack authority to engage in enforcement. As a general rule, immigration law involves "significant complexities" that make enforcement of that law by untrained local law enforcement inappropriate. *Arizona*, 567 U.S. at 409. As a result, the INA allows local law enforcement officers to enforce civil immigration law in carefully circumscribed situations, pursuant to DOJ guidance, and after completing training. *See id.* More importantly, the INA does *not* permit—and indeed preempts—local law enforcement officers from unilaterally seizing an individual on the basis of an ICE warrant, or simply because the officers suspect that an individual is removable. *Id.* at 407-10.

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As a result, "if the Defendants are to enforce immigration-related laws, they must enforce only immigration-related laws that are criminal in nature." *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012). Local officers "may not detain individuals solely because of unlawful presence." Indeed, the Ninth Circuit has long held that unlawful presence amounts to "only a civil violation" and that "admission of illegal presence . . . does not, without more, provide probable cause of the criminal violation of illegal entry." *Gonzalez v. City of Peoria*, 722 F.2d 468, 476-77 (9th Cir. 1983), *overruled on other grounds by Hodges-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999). These holdings "always were, and remain, the law of the circuit, binding on law enforcement officers." *Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir. 2011). Critically, Defendants concede this very point in their motion, stating that "courts may as a very general principle find that local agencies cannot detain individuals simply for being in the United States illegally." Dkt. 25 at 12. That concession—and the unassailably clear law outlined above—defeat Defendants' motion.

Here, Defendants relied on an ICE warrant in the NCIC database to detain Mr. Rodriguez. *See supra* pp. 3-4. That notation provided Defendants only with sufficient notice to suspect a civil immigration violation, and the notation in turn relies on a document—the Form I-205—which is directed only to immigration officers and lacks any neutral magistrate review before issuance. *See supra* 10-11; *see also* U.S. Dep't of Homeland Sec., *Warrant of Removal/Deportation*, https://tinyurl.com/yb98xpw6. In light of *Arizona*, *Martinez-Medina*, and *Melendres* and these basic facts about the NICIC database, the reasonable officer would know that reasonable suspicion or probable cause was lacking to seize Mr. Rodriguez.

Moreover, this case differs in a fundamental respect from *Arizona* and *Melendres* that only further underscores Defendants' lack of authority to seize Mr. Rodriguez. In *Arizona* and

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Melendres, the Supreme Court and Ninth Circuit addressed local law enforcement authority to enforce federal law where state law explicitly authorized the defendants' actions. *Arizona*, 567 U.S. at 407-10; *Melendres*, 695 F.3d at 994. That authorization is absent here, leaving Defendants with no authority to justify their actions.

In fact, the opposite is true here. First, guidance from the Washington State Supreme Court has made clear long before the date of Mr. Rodriguez's arrest that law enforcement agencies in the state are not authorized to enforce ICE warrants that are based on a final order of removal. *See supra* p. 11. Similarly, the Washington State Attorney General's Office also issued a guidance for local agencies in April 2017, instructing that "Forms I-200 and I-205 entitled 'warrant for arrest' or 'warrant of removal/deportation[]' . . . are 'administrative warrants'" that can be enforced only by federal immigration officers. Wash. State Office of the Att'y Gen., Guidance Concerning Immigration Enforcement 15 (Apr. 2017), https://tinyurl.com/y7jnz3vm. Finally, even part of Defendants' *own policy* steers officers away from accidentally engaging in civil immigration enforcement by stating that officers should not assist federal immigration authorities to enforce certain parts of the INA—including some of its *criminal* sections. *See* Maltese Decl. Ex. A at 1.

As a result, Defendants are left with no source of authority to justify the arrest that took place here. Supreme Court and Ninth Circuit precedent and even guidelines from state officials clearly establish that the Defendants could not engage in civil immigration enforcement. They nonetheless did engage in such enforcement, and therefore do not enjoy qualified immunity.

b. The Detainer Cases Defendants Cite Are Not Applicable, as Defendants' Argument Relies on a Demonstrably Inaccurate Version of the Facts

Defendants attempt to obfuscate this clear law by citing to a series of district court decisions—most of them unpublished and outside the Western District of Washington—

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involving the holding of noncitizens pursuant to detainers in local jails. *See* Dkt. 25 at 14-16. According to Defendants, these district courts have "explicitly affirmed" that detaining "an individual [who] would otherwise have been released based on an I-1247A citing probable cause due to a final order of removal against . . . does not violate an individual's constitutional rights." Dkt. 25 at 14 (alteration and internal quotation marks omitted). The law governing Defendants' actions in this case remains clearly established, however, for those decisions are largely irrelevant to the facts of this case and are beside the point here.

First, it is misleading for Defendants to repeatedly point to case law on detainers when the video evidence in this case unequivocally establishes that Defendants did not acquire a detainer until they transferred custody of Mr. Rodriguez to ICE. *See* Maltese Decl. Ex. B (Response to Request for Admission No. 21). Defendants cannot retroactively justify Mr. Rodriguez's seizure by pointing to a form that they obtained long after the seizure was completed. *See Devenpeck*, 543 U.S. at 152 (Fourth Amendment analysis turns on "the facts known to the arresting officer at the time of the arrest"). All Defendants knew here was that the NCIC database had produced a hit for an ICE administrative warrant. *See supra* pp 3-4. That notation does not provide Defendants authority to seize Mr. Rodriguez. *See supra* pp 9-13. This Court should reject Defendants' attempt to rely on (1) a detainer that did not exist and (2) a rationale (that Mr. Rodriguez committed a criminal immigration violation) unsupported by the facts known to the officers—or any facts in the record.

Second, as noted *supra* p. 17, *City of El Cenizo* is readily distinguishable as the state of Texas affirmatively required that local law enforcement hold individuals pursuant to an ICE detainer accompanied by an ICE administrative warrant. *See* 890 F.3d at 174 (describing the "ICE-detainer mandate"); *id.* at 187-88. By contrast, the state of Washington provides no such

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mandate—or authority—for local law enforcement officials to engage in civil immigration enforcement actions.

B. Plaintiffs Provided a Sufficient Basis to Support Punitive Damages for their Clear Constitutional Violations and Eagerness to Assist ICE

Plaintiffs are able to demonstrate facts and allegations that support their claims for punitive damages. Ninth Circuit case law leaves little doubt that punitive damages are appropriate in this case. "It is well established that a jury may award punitive damages under section 1983 either when a defendant's conduct was driven by evil motive or intent, or when it involved a reckless or callous indifference to the constitutional rights of others." *Morgan v. Woessner*, 997 F.2d 1244, 1255 (9th Cir. 1993) (internal quotation marks and citation omitted). Defendants here exhibited just such indifference and disregard when they ignored Mr. Rodriguez's "clearly established" constitutional rights. *See supra* pp. 19-21. Indeed, Officer Gardner informed Mr. Rodriguez that "we don't have you for charges." Dkt. 26, Ex. A at 26:55-27:35. Despite not "hav[ing] [Mr. Rodriguez] for charges," *id.*, Defendants continued to detain him even though the law had long made clear that "the Defendants . . . must enforce only immigration-related laws that are criminal in nature," *Melendres*, 695 F.3d at 1001.

Moreover, Defendants went out of their way to engage in this civil enforcement action, even offering to transport Mr. Rodriguez to the ICE field office themselves. Dkt. No. 25 at 6. Defendants further demonstrated their "evil motive or intent" when they arrived at the ICE facility. Instead of simply turning over Mr. Rodriguez to ICE officials, they then affirmatively offered and provided ICE officers with identity information for his co-worker, despite the fact they had absolutely no basis to suspect him of any crime, and indeed, no reason to even suspect that he was unlawfully present in the United States. Dkt. 29, Ex. A at 9:00-9:05, 1:12:28-1:13:18. These actions are further evidence of Defendants' animus.

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Defendants attempt to escape the possibility of such damages by contending that they acted respectfully while in Mr. Rodriguez's presence. Dkt. 25 at 19-20. While Defendants may have been polite to Mr. Rodriguez, violating his well-established constitutional rights shows him no respect. Federal law and local law unequivocally prohibit Defendants' actions.

In addition, once Defendants were out of Mr. Rodriguez's sight, their "respect" for Mr. Rodriguez and his co-worker dissipated, suggesting they were, *at best*, callously indifferent to Mr. Rodriguez's rights, and, at worst, motivated by racial animus. While discussing the co-worker's driver's license, Officers Gardner and Thomas joined ICE Agent Bailey in lamenting the "illegals" with "fake IDs" in Washington State. Dkt. 29, Ex. A at 1:13:15-1:14:40. They then indicated their hope that "the courts" would "settle these issues during this four years." *Id.* at 1:14:29-1:14-35. They also suggested they would continue engaging in this sort of cooperation with ICE. *Id.* at 1:10:00-1:10:10 (Officer Gardner remarking that "that is a good card to have" after Agent Bailey handed him a business card). These facts, taken together, strongly suggest that Defendants racially profiled both Mr. Rodriguez and his co-worker, further supporting the claim for punitive damages in this case.

Finally, Defendants' citation to an early discussion between counsel after this case was first filed does not provide any support for their argument regarding punitive damages. Dkt. 25 at 20. Plaintiff's counsel did not state that Mr. Rodriguez had no evidence to support punitive damages, but rather, stated that he disagreed with respect to whether there was a basis for punitive damages. Aldana Madrid Decl. ¶ 6.

IV. CONCLUSION

For all of the foregoing reasons, the Court should deny Defendants' motion for partial summary judgment.

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Respectfully submitted this 29th day of October, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically 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: None.

DATED this 29th day of October, 2018.

s/ Leila Kang

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