

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

Sep 10, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTONIO SANCHEZ OCHOA,

No. 1:17-CV-03124-SMJ

Plaintiff,

**ORDER DENYING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT**

v.

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

Defendants.

Plaintiff Antonio Sanchez Ochoa alleges a 42 U.S.C. § 1983 claim against Ed W. Campbell, Director of the Yakima County Department of Corrections (“County DOC”), Scott Himes, Chief of the DOC, and Yakima County (collectively, “Defendants”) for violating his Fourth Amendment rights. ECF No. 1. Plaintiff seeks declaratory and injunctive relief, as well as compensatory damages. *Id.* at 10–11.

Before the Court is Defendants’ Motion for Summary Judgment, ECF No. 59. Defendants request the Court grant summary judgment in its favor on all of Plaintiff’s claims. Also before the Court is Plaintiff’s Cross-Motion for Partial

1 Summary Judgment, ECF No. 76. Plaintiff requests partial summary judgment
2 against Defendant Yakima County (the “County”) only.

3 The Court held a hearing on the motions on September 6, 2018. Having
4 reviewed the pleadings and the file in this matter, and having heard the parties’
5 arguments on the record, the Court is fully informed and, for the following reasons,
6 denies both motions.

7 I. LEGAL STANDARD

8 A party is entitled to summary judgment where the documentary evidence
9 produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby,*
10 *Inc.*, 477 U.S. 242, 250 (1986). Summary judgment is appropriate if the record
11 establishes “no genuine dispute as to any material fact and the movant is entitled to
12 judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A material issue of fact is one
13 that affects the outcome of the litigation and requires a trial to resolve the parties’
14 differing versions of the truth.” *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th
15 Cir. 1982).

16 The moving party has the initial burden of showing that no reasonable trier
17 of fact could find other than for the moving party. *Celotex Corp. v. Catrett*, 477
18 U.S. 317, 325 (1986). Once the moving party meets its burden, the nonmoving
19 party must point to specific facts establishing a genuine dispute of material fact for
20 trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87

1 (1986).

2 “[A] mere ‘scintilla’ of evidence will be insufficient to defeat a properly
3 supported motion for summary judgment; instead, the nonmoving party must
4 introduce some ‘significant probative evidence tending to support the complaint.’”
5 *Fazio v. City & Cty. of San Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997)
6 (quoting *Anderson*, 477 U.S. at 249, 252). If the non-moving party fails to make
7 such a showing for any of the elements essential to its case as to which it would
8 have the burden of proof at trial, the trial court should grant the summary judgment
9 motion. *Celotex*, 477 U.S. at 322.

10 The Court is to view the facts and draw inferences in the manner most
11 favorable to the nonmoving party. *Anderson*, 477 U.S. at 255; *Chaffin v. United*
12 *States*, 176 F.3d 1208, 1213 (9th Cir. 1999). And, the Court “must not grant
13 summary judgment based on [its] determination that one set of facts is more
14 believable than another.” *Nelson v. City of Davis*, 571 F.3d 924, 929 (9th Cir.
15 2009).

16 II. BACKGROUND¹

17 A. Factual Background

18 _____
19 ¹ In ruling on the summary judgment motions, the Court considered the facts and
20 all reasonable inferences therefrom as contained in the submitted affidavits,
declarations, exhibits, and depositions, in the light most favorable to the party
opposing the motion. See *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir.
1999).

1 On May 4, 2017, Plaintiff was arrested and booked into the Yakima County
2 Jail (the “County Jail”). ECF No. 88. He was formally charged with second degree
3 assault and malicious mischief. *Id.* His bail was initially set at \$75,000, and was
4 subsequently reduced to \$50,000. *Id.*

5 On or about May 4, 2017, a U.S. Immigration and Customs Enforcement
6 (“ICE”) officer interviewed Plaintiff at the County Jail, issued a Form I-200
7 Administrative Warrant (“immigration warrant”), and delivered a copy of the
8 immigration warrant to the County. *Id.* An ICE officer personally served the
9 immigration warrant on Plaintiff. *Id.* The immigration warrant stated that the
10 Supervisory Detention Deportation Officer Michael Gladish had found probable
11 cause to believe that Plaintiff was removable based on his voluntary statements. *Id.*
12 It also authorized immigration officers to “arrest and take [Plaintiff] into custody
13 for removal proceedings.” *Id.*

14 Upon receiving the immigration warrant, the County Jail booking staff
15 recorded the immigration warrant in its electronic Jail Management System. *Id.*
16 This populated the online, publicly-accessible jail register. *Id.* The jail register
17 identifies charges and warrants issued for an inmate. The County Jail’s notation of
18 the immigration warrant is similar to the manner in which the County Jail records
19 any notice of a warrant or criminal charges issued by another jurisdiction. ECF No.
20 88. Plaintiff’s jail register at the time of the lawsuit’s initiation indicated:

Inmate Name:	SANCHEZ-OCHOA ANTONIO				
Booking Number:	17J-04403				
Date In:	5/4/2017 12:42:00 AM				
Current Location:	YDOC-MJ Annex C				
ID Number:	81395				
Planned Release Date*:					
*Note(s):	Planned release date is subject to change. If a person is not sentenced on all charges the Planned Release Date will reflect the last release date known.				
Notification Signup Website:	If you wish to sign up to receive notifications regarding changes in ANTONIO SANCHEZ-OCHOA's custody status, click this link.				

Offense	Statute	Status	Court	Case Number	Bond Amount
IMMIGRATION HOLD	ICE	PPR	FED		\$0.00
ASSAULT 1	9A 36.011	NF	YSUP	1710084839	CHARGE NOT FILED
ASSAULT 2	9A 36.021	PPR	YSUP	1710084839	\$50,000.00
MAL MISCHIEF 2	9A 48.080	PPR	YSUP	1710084839	CONCURRENT

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Plaintiff unsuccessfully attempted to secure bail bond services, and was unable to post bail without such services. ECF No. 66 at 9. On July 5, 2017, Plaintiff's undersigned counsel wrote a letter to Defendant Campbell requesting that Defendants remove Plaintiff's immigration hold in time for the hearing for reconsideration of bail. *Id.*; ECF No. 61-1 at 5. On July 6, 2017, Defendant Campbell responded to the letter, saying he "confirmed that Plaintiff can bail on his ICE hold. Unfortunately, [the County Jail] do[es] not accept the bail [there] at Yakima County Jail. It must be processed through the Federal Courts." ECF No. 61-2.

On July 17, 2017, Plaintiff filed the present action against Defendants pursuant to 42 U.S.C § 1983, alleging that Defendants' actions violated the Fourth Amendment. ECF No. 1 at 10. Specifically, he asserts that Defendants' policy and practice of detaining individuals before they are released from DOC's custody based solely on an immigration hold issued pursuant to an administrative warrant

1 violates his Fourth Amendment right to be free from unreasonable seizures. *Id.* at
2 1–2, 10. Plaintiff alleges that such administrative warrants—issued by U.S.
3 Department of Homeland Security personnel without a judicial warrant or
4 independent finding of probable cause—do not provide state or local law
5 enforcement officers authority to arrest or detain individuals for immigration
6 violations. *Id.* at 2.

7 On July 25, 2017, the Court issued a Temporary Restraining Order (TRO) in
8 favor of Plaintiff. ECF No. 32. The TRO required that the County: (1) remove the
9 notation from its online jail roster indicating that Plaintiff was being detained
10 pursuant to an immigration hold; (2) physically release Plaintiff should he post
11 bond on his state charges; and (3) refrain from relying on an administrative warrant
12 to hold or otherwise communicate to third parties that Plaintiff was being held due
13 to his immigration status. *Id.*

14 On July 28, 2017, Plaintiff posted bail and was promptly released from
15 custody. ECF No. 88. Federal immigration authorities then almost immediately
16 apprehended Plaintiff and took him into custody. *Id.* Plaintiff was subsequently
17 removed, i.e., deported. ECF No. 51; *Sanchez Ochoa v. Campbell*, 716 F. App'x
18 741, 742 (9th Cir. 2018).

19 On July 31, 2017, Defendant Himes emailed the County DOC sergeants,
20 corporals, officers, and administrative and clerical staff, instructing: “[E]ffective

1 immediately we will no longer be accepting Immigration holds (I200) forms and
2 *holding inmates past the time of their local charges*. We will however still be
3 accepting inmates that ICE have arrested in other jurisdiction [sic] using (I203)
4 forms under the current (IGA) Inter Governmental Agreement.” ECF No. 78-4
5 (emphasis added).

6 Between 2014 and the present, the County accepted bail for thirty-eight
7 individuals situated similarly with Plaintiff. ECF No. 64-1; ECF No. 88. At oral
8 argument, Plaintiff’s counsel clarified that although the County accepted bail,
9 those individuals were not in fact released.

10 **B. Yakima County’s Immigration Hold Policy²**

11 In 2010, the County entered into an Intergovernmental Detention Services
12 Agreement (IGA) with the United States Marshals Service. ECF No. 88. Pursuant
13 to that agreement, federal law enforcement agencies, including ICE, detain
14 persons in federal custody at the County Jail. *Id.* The IGA authorizes the County
15 to accept federal detainees only upon presentation by a law enforcement officer
16 with proper federal government agency credentials. *Id.*

17 No portion of the IGA authorizes the County to administratively transfer
18 any detainee from county custody to federal immigration custody without

19 _____
20 ² Detailed explication of the cooperation between federal, state, and local officials
on immigration matters is set forth in the Court’s Order granting Temporary
Restraining Order, ECF No. 32 at 9–15.

1 presentation by a federal immigration officer. *Id.* In other words, unless and until a
2 federal immigration officer arrests a detainee, the detainee is not in immigration
3 custody under the IGA. At all times relevant to this action, no law enforcement
4 officer or entities in the County were certified under 8 U.S.C. § 1357(g) to enforce
5 federal civil immigration law. *Id.*

6 The County DOC maintains an internal Policy and Procedures Manual
7 (manual). ECF No. 67-6. Changes to the manual are communicated to staff via
8 email. *Id.* Pursuant to the manual, the County DOC had its own procedure—that
9 was not incorporated into the IGA—for effectuating an administrative transfer of
10 inmates from county custody to federal custody within Yakima County Jail. *Id.*;
11 ECF No. 88. The procedure consisted of four clerical steps culminating in a
12 transfer that was designated as such on paper. ECF No. 88. The County would
13 then fax a “notice of turn-over” to ICE. *Id.*

14 Throughout the transfer process, individuals were not actually released from
15 the County Jail: they remained in their cells. *Id.* Moreover, as a matter of practice,
16 federal immigration officers were not present when the County DOC performed
17 an administrative transfer. *Id.* Indeed, federal immigration officers were not
18 required to be physically present to effectuate the transfer. ECF No. 66 at 6.

1 **III. DISCUSSION**

2 **A. Plaintiff’s prayers for injunctive relief**

3 Defendants argue that Plaintiff’s prayers for injunctive relief should be
4 denied as moot. ECF No. 59 at 17. Plaintiff concedes that the Court “has already
5 granted Mr. Sanchez’s requested injunctive relief by issuing a TRO.” ECF No. 65
6 at 19. The Court agrees with the parties that Plaintiff’s prayers for injunctive relief
7 are moot. As such, injunctive relief is denied.

8 **B. Plaintiff’s prayers for declaratory relief**

9 In the Complaint, Plaintiff asks the Court to declare that the County DOC
10 policy and practice of placing immigration holds—and denying detainees the
11 opportunity to post bail if they have such holds—based solely on administrative
12 warrants violates the Fourth Amendment. ECF No. 1 at 10.

13 Defendants argue that Plaintiff’s prayers for declaratory relief should also be
14 denied as moot because Plaintiff has been removed and there is little chance that
15 “the policies and practices challenged by Mr. Ochoa may again be enforced against
16 him.” ECF No. 59 at 16. In opposition, Plaintiff argues that the Court may
17 nonetheless provide declaratory relief, which will serve as a predicate to a damages
18 award and serve the purpose of clarifying the legality of the County’s policy and
19 practice. ECF No. 65 at 20–21.

20 Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, there

1 must be a “case of actual controversy” before a federal court may assert
2 jurisdiction and provide declaratory relief. In other words, federal courts may only
3 resolve actual and concrete disputes. *See Genesis Healthcare Corp. v. Symczyk*,
4 569 U.S. 66, 71 (2013).

5 In this case, the mere possibility that Plaintiff could pursue nominal
6 damages to redress constitutional violations ensures that he retains a sufficiently
7 concrete interest in the outcome of the litigation. *See Yniguez v. Arizona*, 975 F.2d
8 646, 647 (9th Cir. 1992) (per curiam) (“A plaintiff’s pursuit of nominal damages
9 provides a sufficiently concrete interest in the outcome of the litigation to confer
10 standing to pursue declaratory relief and thereby prevents mootness.”). Moreover,
11 Plaintiff seeks to clarify the legality of Defendants’ policy and practice, which is
12 not affected by Plaintiff’s removal.

13 Accordingly, the Court rejects Defendants’ argument to deny Plaintiff
14 declaratory relief.³

15
16 **C. Plaintiff’s § 1983 claim for compensatory damages.**

17 ³ The Court rejects Plaintiff’s argument that the Court “must” issue declaratory
18 relief as a predicate to a damages award. ECF No. 65 at 21. It is well settled that §
19 2201 authorizes, rather than commands, a court to consider a claim for declaratory
20 relief. *Pub. Affairs Assocs., Inc. v. Rickover*, 369 U.S. 111, 112 (1962); *Gov’t*
Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1223 (9th Cir. 1998) (“The
[Declaratory Judgment] ‘Act gave the federal courts competence to make a
declaration of rights; it did not impose a duty to do so.’” (quoting *Rickover*, 369
U.S. at 112)).

1 A plaintiff seeking both injunctive relief and money damages may pursue a
2 case even after the request for an injunctive relief is rendered moot. *Havens Realty*
3 *Corp. v. Coleman*, 455 U.S. 363, 370–71 (1982) (case not moot because plaintiff
4 would be entitled to liquidated damages if defendants found liable). As such, the
5 Court inquires into the merits of Plaintiff’s claim for compensatory damages.

6 To establish liability under 42 U.S.C. § 1983, “a plaintiff must show both
7 (1) deprivation of a right secured by the Constitution and laws of the United States,
8 and (2) that the deprivation was committed by a person acting under color of state
9 law.” *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1149 (9th Cir. 2011).
10 Municipalities may be subject to damages liability under § 1983.⁴ *Monell v. Dep’t*
11 *of Soc. Servs.*, 436 U.S. 658 (1978). “A suit against a public official in his official
12 capacity is actually a suit against the entity for which the official is an agent.”
13 *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). As such, the Court needs to
14 engage in only one analysis for all three defendants: did the County violate
15 Plaintiff’s Fourth Amendment rights?

16 The Fourth Amendment protects against unreasonable searches and
17 seizures. U.S. CONST. amend. IV. Moreover, it only protects against governmental
18 action. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

19 _____
20 ⁴ Defendants assert in their Answer that Plaintiff has failed to establish municipal liability pursuant to *Monell*. ECF No. 21 at 9. But Defendants do not raise this argument in their summary judgment motion. *See* ECF No. 59.

1 Whenever an officer restrains the freedom of a person to walk away, he has
2 seized that person. *Brower v. Cty. of Inyo*, 489 U.S. 593, 595 (1989) (discussing
3 seizures in the context of a police roadblock). While a seizure may involve
4 “intentional acquisition of physical control,” it can also occur when “an
5 unintended person or thing is the object of the detention or taking” as long as the
6 detention or taking itself is willful. *Id.* at 596. In other words, a seizure occurs
7 “only when there is a governmental termination of freedom of movement *through*
8 *means intentionally applied.*” *Id.*; see also *Scott v. Harris*, 550 U.S. 372 (2007)
9 (reaffirming this intentionality requirement).

10 While the mention of “intent” may invite arguments as to governmental
11 motive, the “intent that counts under the Fourth Amendment is the intent that has
12 been conveyed to the person confronted, and the criterion of willful restriction on
13 freedom of movement is no invitation to look to subjective intent when
14 determining who is seized.” *Brendlin v. Cal.*, 551 U.S. 249, 261 (2007). In short,
15 subjective intentions play no role, and courts must focus on the objective
16 manifestations of governmental conduct.

17 In this case, the threshold issue is whether there was a Fourth Amendment
18 seizure—in this case, a “new” seizure subsequent to the initial arrest. If so, it must
19 be supported by probable cause. *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 918
20 (2017). Defendants argue that no seizure occurred by the mere “immigration hold”

1 notation on the jail register.⁵ ECF No. 59 at 5–10. Plaintiff argues that the
2 placement of the notation, which was to ensure that he would not be physically
3 released, is evidence of the seizure. ECF No. 65 at 6–18.

4 **1. Genuine disputes of material facts remain.**

5 The Court concludes that Defendants and Plaintiff have not met their
6 respective burdens to show that no reasonable trier of fact could find other than in
7 their favor. Specifically, they cannot unambiguously show that there was—or was
8 not—a seizure because genuine disputes of material facts remain. And so, they
9 cannot know that the County did or not did have a policy of detaining individuals
10 in reliance on the immigration warrants, and discouraging individuals from
11 posting bail. *See* ECF No. 76 at 8–9.

12 As the parties agree, in order to determine whether there was a new seizure,
13 Defendants must have detained Plaintiff through means intentionally applied. *See*
14 *Brower*, 489 U.S. at 596. To argue in the affirmative, Plaintiff must show that due
15 to the County’s policy, the notation itself was evidence of Defendants’ intention to

16
17 ⁵ While Defendants also argue in detail that Defendants Campbell and Himes are
18 protected by qualified immunity, the Court sees no need to entertain this argument
19 because they are being sued in their official capacities, not their individual
20 capacities. *See* ECF No. 1 at 3. It is well settled that qualified immunity is not
available to officers sued in their official capacities. *See e.g., Hallstrom v. City of*
Garden City, 991 F.2d 1473, 1482 (9th Cir. 1993) (“A municipality (and its
employees sued in their official capacities) may not assert a qualified immunity
defense to liability under Section 1983.” (citing *Owen v. City of Indep., Mo.*, 445
U.S. 622, 638 (1980))); *Eng v. Cooley*, 552 F.3d 1062, 1064 n.1 (9th Cir. 2009).

1 *automatically* continue his detention even if he posted bail.⁶ This would show that
2 Plaintiff's detention was a "willful" and intended consequence of the notation—
3 and a new seizure. A showing of anything less would make Plaintiff's claim
4 entirely speculative.

5 Indeed, Plaintiff asserts that even if he had posted bail, he would not have
6 been released because Defendants would have begun the administrative transfer
7 process to ICE. The record shows that on July 31, 2017, Defendant Himes emailed
8 staff indicating they would no longer be accepting I-200 immigration warrants and
9 "holding inmates past the time of their local charges." Construing the email in
10 Plaintiff's favor, this suggests that up until then, the County was accepting such
11 warrants to continue holding inmates even upon release from county custody.

12 However, construing the facts in Defendants' favor, it is "impossible" to

13 ⁶ While Plaintiff additionally argues that the notation prevented him from
14 accessing bail bond services, this argument is unpersuasive in the Fourth
15 Amendment context. Since the Court granted the TRO, no further evidence has
16 been introduced to show that Defendants' objective was to prevent access to bail
17 bond services. Defendants' objective manifestation was apparently to document
18 that Plaintiff would be released to ICE upon release from county custody, not to
19 obstruct bail bond services. ECF No. 59. Even if it were Defendants' *subjective*
20 motive to prevent Plaintiff from accessing bail bond services, the Fourth
Amendment seizure inquiry only looks to objective manifestations. *See Brendlin*,
551 U.S. at 261. While Plaintiff cites *Mendia v. Garcia*, 768 F.3d 1009 (9th Cir.
2014), as "controlling" during the TRO hearing and again in its opposition brief,
Mendia is of limited applicability with its standing analysis—Defendants do not
challenge Plaintiff's standing to bring this claim. More importantly, the *Mendia*
plaintiff never brought a Fourth Amendment challenge: instead, the inquiry
surrounded the *right to bail*. *See Mendia v. Garcia*, No. C 10-3910 MEJ, 2012
WL 948814, at *2 (N.D. Cal. Mar. 20, 2012) (emphasis added).

1 know because Plaintiff did not in fact post bail prior to the Court's TRO, and
2 because it is not uncommon for ICE to cancel I-200s. *See* ECF No. 93 at 3. This
3 creates a genuine dispute as to the consequences of the immigration hold notation.

4 Furthermore, a genuine dispute remains as to whether Defendants would
5 have even accepted bail, considering Defendant Campbell wrote Plaintiff's
6 counsel saying they do not accept bail there and federal courts had to get involved.
7 ECF No. 61-2. This would suggest that Defendant Campbell himself considered
8 Plaintiff to not be in county custody.

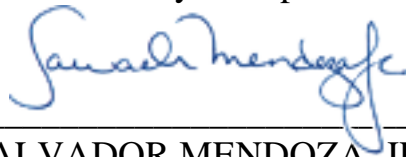
9 Because these disputes affect the outcome of the litigation, a trial is
10 necessary to resolve the matter. *See Seaboard*, 677 F.2d at 1306.

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 **1.** Defendants' Motion for Summary Judgment, **ECF No. 59**, and
13 Plaintiff's Cross-Motion for Partial Summary Judgment, **ECF No.**
14 **76**, are **DENIED**.
- 15 **2.** Plaintiff's prayers for injunctive relief are **DENIED**.

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
17 and provide copies to all counsel.

18 **DATED** this 10th day of September 2018.

19 

20 _____
SALVADOR MENDOZA, JR.
United States District Judge