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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTONIO SANCHEZ OCHOA,

Plaintiff,

vs.

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

Defendants.

No. 1:17-CV-03124-SMJ

PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT

September 6, 2018
With Oral Argument: 10:30 a.m.
Richland, WA

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I. INTRODUCTION

Defendants Yakima County, Campbell, and Himes (collectively, "Yakima County" or "the County") unlawfully seized Plaintiff Antonio Sanchez Ochoa by placing an immigration hold on him upon receiving an Immigration and Customs Enforcement (ICE) warrant in his name. The County did so pursuant to a policy it had in place since May 2014 of continuing to detain persons with ICE warrants in their files after they posted bail or completed their charges by re-designating them as being "turned over" to ICE custody.

In its motion for summary judgment, *see* ECF No. 59, the County alleges this administrative transfer was performed pursuant to an intergovernmental agreement (IGA) with the federal government, but the IGA does not permit administrative transfers of custody. Indeed, the County previously admitted this, arguing a temporary restraining order (TRO) was unnecessary because the IGA did not authorize it to simply re-designate Mr. Sanchez's custody if he posted bail. Yet just days after Mr. Sanchez filed his motion seeking a TRO, the County refused to release two individuals who posted bail, instead purporting to transfer their custody and unlawfully holding them until ICE appeared over two days later. The County only ceased this policy and practice after this Court granted Mr. Sanchez's request for a TRO the following week. ECF No. 32.

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The County's policy and practice of placing immigration holds pursuant to ICE warrants and depriving detainees of their right to pretrial release indisputably violates the Fourth Amendment to the U.S. Constitution. Mr. Sanchez thus moves for partial summary judgment on Yakima County's liability under 42 U.S.C. § 1983 for detaining him in violation of his civil rights.

I. FACTUAL BACKGROUND

At all relevant times, Yakima County was the local government entity responsible for the Yakima County Department of Corrections (DOC) and running of the Yakima County Jail. ECF No. 77, Pl.'s Statement of Material Facts ¶1. Defendant Campbell, as the Director of the Yakima County DOC, had final policymaking authority for all DOC policies. *Id.* ¶2. Defendant Himes, as Chief of the Yakima County DOC, was responsible for establishing, implementing, and supervising DOC policies. *Id.* ¶3.

On May 4, 2017, Mr. Sanchez was arrested and booked into Yakima County Jail on charges of violating offenses under state law. That day, an ICE officer interviewed him at Yakima County Jail, issued a Form I-200 Administrative Warrant ("I-200" or "ICE/immigration warrant"), and delivered a copy of the I-200 to Yakima County. Upon receiving the I-200, the County recorded an immigration hold on its publicly-available jail roster. *See* ECF No. 60 ¶¶11-16; ECF No. 77 ¶¶4-9. Although the Yakima County Superior Court set bail for Mr. Sanchez, he

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was unable to secure the services of bail bonds agencies because they understood Mr. Sanchez could not be released due to the County's immigration hold. *See* ECF No. 77 ¶¶10-11.

It is now undisputed that Yakima County's "immigration hold" policy and practice, which was in place from May 2014 until July 31, 2017, consisted of "transferring" County detainees with an I-200 in their files into ICE custody as soon as they were entitled to be released from County custody. *See* ECF No. 77 ¶¶26-29; *see also* ECF No. 62 ¶3 (Defendant Himes declaring that people "formerly incarcerated on state law charges [are] *administratively transferred to federal custody* under the IGA upon being released on their local charges") (emphasis added). This transfer, also referred to as a "turnover," was an administrative procedure, as the individual was never physically released from Yakima County custody. *See* ECF No. 77 ¶¶30, 34.

Yakima County unilaterally conducted this transfer procedure. A federal immigration official was not required to be present in order to effectuate the transfer from local custody to ICE custody. *See id.* ¶¶35, 37. To the contrary, Defendant Himes testified, as the County's Rule 30(b)(6) deponent, that ICE officers are generally not present when the re-designation or "turnover" occurs. *See* ECF No. 78, Second Maltese Dec., Ex. Q, Himes Dep. at 44:4-9 (stating ICE was not required to present, and that he was "not aware of any time they have"); *see*

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1 *also* ECF No. 77 ¶36. The County's policy did not even require any contact with
2 an immigration official at the time of this purported transfer to federal custody. It
3 was the County's policy and custom to notify ICE of the turnover *after* the
4 individual had allegedly been placed into ICE's custody. *See* ECF No. 77 ¶37.
5
6 The IGA does not authorize Yakima County to conduct such administrative
7 transfers. *See id.* ¶¶56-60. In fact, the federal government has expressly disavowed
8 that an IGA allows local authorities to unilaterally transfer a detainee in state
9 custody into federal custody. *See* ECF No. 67-3 at 3-4 ("Until an immigration
10 officer—or a state or local officer who has been delegated immigration officer
11 authority under a 287(g) [8 U.S.C. § 1357(g)] agreement—arrests the detainee, the
12 IGSA is not triggered, and the detainee *remains in state custody*.") (emphasis
13 added). There exists no formal agreement between Yakima County and the federal
14 government under 8 U.S.C. § 1357(g). ECF No. 77 ¶61. Yakima County officers,
15 therefore, are not authorized to arrest or detain individuals for civil immigration
16 violations.
17
18 It is undisputed that prior to July 31, 2017, the County noted the receipt of
19 an I-200 for an individual as an immigration hold in its electronic Jail Management
20 System, which populated a publicly-available online jail roster. ECF No. 41 ¶7;
21 ECF No. 64 ¶2. Moreover, there is no dispute that bail bonds agencies refused to
22 provide bail bonds services to individuals who were in the County's custody but
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had an "immigration hold" placed on them, as they knew such individuals would not actually be released from Yakima County Jail after posting bail. *See* ECF No. 66 ¶34. For the same reason, at least some of the County's employees customarily, and actively, discouraged individuals from posting bail. *See id.* ¶32.

II. ARGUMENT

A. Summary judgment on liability is appropriate.

Summary judgment is warranted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[F]acts must be viewed in the light most favorable to the non-moving party only if there is a genuine dispute as to those facts." *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (internal quotation marks and citation omitted). A non-moving party "must set forth specific facts showing that there is a genuine issue for trial." *Demarest v. City of Leavenworth*, 876 F. Supp. 2d 1186, 1189 (E.D. Wash. 2012) (internal quotation marks and citation omitted).

B. Yakima County's "immigration hold" policy violates the Fourth Amendment.

Mr. Sanchez satisfies all four prongs necessary to demonstrate his entitlement to relief under 42 U.S.C. § 1983: "(1) a violation of rights protected by the Constitution or created by a federal statute, (2) proximately caused (3) by a

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conduct of a 'person' (4) acting under color of state law." *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

1. Yakima County is a "person" acting under color of state law.

It is undisputed that Yakima County is a "person" subject to liability under § 1983, *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978), and that the County, in the course of its interaction with Mr. Sanchez, acted under color of state law, ECF No. 32 at 40.

2. Yakima County's immigration hold policy deprived Mr. Sanchez of his right to be free from unreasonable seizures.

Yakima County violated Mr. Sanchez's Fourth Amendment rights by placing an immigration hold on him, thus effecting a seizure independent of the local charges justifying its initial detention of him. The County's violations of Mr. Sanchez's constitutional rights were pursuant to its longstanding immigration hold policy, rendering it liable to Mr. Sanchez under § 1983. *See Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403-04 (1997) (holding that "a municipality is held liable [under § 1983] only for those deprivations resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality"). The inquiry into "fault and causation is straightforward" where "a particular municipal action *itself* violates federal law, or

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directs employees to do so." *Brown*, 520 U.S. at 404-405. In this case, Yakima County's policy violated the Constitution on its face.

a. The County had a policy of seizing individuals based on the receipt of I-200s.

It is undisputed that at all times relevant to this action, the County had a policy of detaining individuals at Yakima County Jail "past the time of their local charges" in reliance on I-200s. ECF No. 78, Ex. T, Himes email at YAK-I.D. 00015. "A policy is a deliberate choice to follow a course of action … made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1143 (9th Cir. 2012) (internal quotation marks and citations omitted).

The County admits that, since May 2014, it had a policy of "document[ing] the receipt of [I-200s] for the purpose of ensuring that when inmates are released from the County's custody, either by posting bail or upon the termination of their local charges, they are released to ICE." ECF No. 59 at 5. The record further establishes that the County "released" individuals to federal immigration custody by maintaining them in custody. Rather than actually releasing them, the County used a purely administrative procedure to unilaterally re-designate the individuals as being transferred from County custody to ICE custody, *without* even the

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1 presence of an ICE officer. *See* ECF No. 77 ¶¶33-37. Defendant Campbell, as final
2 policymaker for the County, admitted he approved the policy after Defendant
3 Himes "conferr[ed] with [Yakima County's] legal department" about it following
4 the *Miranda-Olivares v. Clackmas Cnty.*, No. 3:12-cv-02317-ST, 2014 WL
5 1414305 (D. Or. Apr. 11, 2014), decision. ECF No. 78, Ex. R, Campbell Dep. at
6
7 27:10-12; *see also* ECF No. 77 ¶27. Therefore, the County's immigration hold
8 policy reflects a deliberate choice by policymakers within the County.
9 In addition, as part of its immigration hold policy, the County also had a
10 custom of discouraging, and thereby preventing, individuals from posting bail.
11
12 ECF No. 77 ¶¶38-40. In Mr. Sanchez's case, as in the case of countless others, the
13 immigration hold prevented him from even accessing bail bonds services in the
14 first place, for bail bonds agencies refused to work with individuals with
15 immigration holds based on the understanding they would not actually be released
16 from Yakima County jail. ECF No. 77 ¶¶10-11, 41. That the County would not
17
18 have released Mr. Sanchez if he posted bail, absent the TRO issued by this Court,
19 demonstrates that the County's immigration hold deprived him of his right to
20 pretrial release and unlawfully prolonged his detention.
21 **b. An I-200 did not furnish the probable cause necessary for the County to place an immigration hold on Mr. Sanchez.**
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The Fourth Amendment protects against "unreasonable searches and seizures." U.S. CONST. amend. IV. Specifically, 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); *Manuel v. City of Joliet*, 137 S. Ct. 911, 917 (2017) (drawing from *Gerstein* to explain that "a pretrial restraint on liberty is unlawful unless a judge (or grand jury) first makes a reliable finding of probable cause"); *see also Coolidge v. New Hampshire*, 403 U.S. 443, 449-53 (1971) (finding a warrant issued by the Attorney General to be invalid because he was in charge of prosecution and not a neutral magistrate).

Even where an initial arrest was justified by probable cause, the Fourth Amendment requires a valid warrant to be issued by a neutral magistrate in order to continue detaining an individual. *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) ("While the seizures of the named plaintiffs based on traffic violations may have been supported by reasonable suspicion, any extension of their detention must be supported by additional suspicion of criminality."); *see also Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) ("Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification."). Thus, regardless of whether the County's

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initial seizure of Mr. Sanchez was supported by his state law charges, the County was not authorized to extend Mr. Sanchez's detention by placing an immigration hold, and thereby preventing his pretrial release, unless it had probable cause to do so.

What is more, the County publicly posted notice of its immigration hold on Mr. Sanchez, indicating to bail bonds agencies that the County would not release him even if bail were posted on his state law charges, and instead, that it would continue to detain him for a separate cause of confinement—the immigration hold. ECF No. 77 ¶¶8-9, 41. The difficulty Mr. Sanchez experienced in accessing bail bonds services was an intentional and expected result of the immigration hold. *Cf. Mendia v. Garcia*, 768 F.3d 1009, 1011 (9th Cir. 2014) (holding that the plaintiff sufficiently established injury by alleging that "but for the immigration detainer, he would have posted bail with the assistance of a bail bondsman"). The County's deliberate placement of the immigration hold on Mr. Sanchez thus constituted a legally cognizable seizure under the Fourth Amendment, as it is a "governmental termination of freedom of movement *through means intentionally applied.*" *Brower v. Cty. of Inyo*, 489 U.S. 593, 597 (1989); *see also, e.g.*, *Miranda-Olivares*, 2014 WL 1414305 at *9 (explaining that county's "continuation of [plaintiff's] detention based on the ICE detainer" was "a subsequent and new prolonged

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1 warrantless, post-arrest, pre-arraignment custody") (internal quotation marks and
2 citation omitted).

3 The County acknowledged the sole basis of its decision to place an
4 immigration hold on Mr. Sanchez was the I-200. As the record indisputably
5 establishes, the purpose of the hold was to ensure that when he posted bail or
6 completed his state charges he would not be released, but rather, re-designated as a
7 federal detainee. By placing an immigration hold, the County was prolonging his
8 detention even though he was otherwise entitled to pretrial release under bail.

9 The County cannot demonstrate that this prolonged detention was supported
10 by probable cause. Although the I-200 states that there is probable cause for a
11 designated immigration officer to detain a noncitizen, unlike a judicial warrant, it
12 was issued by an ICE officer without any review by a neutral judge or magistrate.
13 *See* ECF No. 62-2 at 16 (I-200 signed by DHS Supervisory Detention Deportation
14 Officer); 8 C.F.R. § 287.5(e)(2).[1] Yet, "probable cause for the issuance of an arrest
15 warrant must be determined by someone independent of police and prosecution."
16 *Gerstein*, 420 U.S. at 118. Like the Attorney General who oversaw the
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[1] The immigration officer simply checked prepopulated boxes without
22 providing *any* information specific to Mr. Sanchez. *See* ECF No. 62-2.
23

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1 investigation and prosecution in *Coolidge*, ICE officers are in charge of
2 investigating and prosecuting immigration violations and thus do not constitute
3 neutral finders of probable cause. *See Coolidge*, 403 U.S. at 453; *see also Gerstein*,
4 420 U.S. at 114 ("[T]he detached judgment of a neutral magistrate is essential if
5 the Fourth Amendment is to furnish meaningful protection from unfounded
6 interference with liberty."); *El Badrawi v. Dep't of Homeland Sec.*, 579 F. Supp.
7 2d 249, 275-76 (D. Conn. 2008) (treating as "warrantless" an arrest pursuant to an
8 administrative warrant signed by an ICE agent, who was not a "neutral magistrate
9 (or even a neutral executive official)").
10
11 Federal law does not otherwise authorize the County to take any
12 enforcement action based on the I-200. The I-200 is directed only to "immigration
13 officer[s]" authorized by statute to serve immigration warrants, and does not even
14 purport to direct or authorize state, county, or other local officials to place an
15 immigration hold or perform any other immigration enforcement activity. *See* ECF
16 No. 7-1. The statute and controlling regulations confirm that the County does not
17 have authority to take any enforcement action based on the I-200, as they provide
18 an enumerated list of individuals who are authorized to execute immigration arrest
19 warrants, limiting enforcement to a select group of federal immigration officers.
20 *See* 8 U.S.C. § 1357(a) ("Any officer or employee of the [DHS] authorized under
21 regulations prescribed by the [Secretary] shall have power . . ."); 8 C.F.R. §
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287.5(c)(1) (only "immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by [8 U.S.C. § 1357(a)(2)] . . . "); 8 C.F.R. § 287.5(e)(3) (enumerating the types of immigration officers who have completed training that are authorized "to execute warrants of arrest [Form I-200] for administrative immigration violations issued under [8 U.S.C. § 1226] . . ."); 8 C.F.R. § 236.1(b)(1) (cross-referencing §§ 287.5(e)(2) & (3) to specify the immigration officers who may issue and serve I-200s); 8 C.F.R. § 241.2(b) (cross-referencing § 287.5(e)(3) as the same trained immigration officer criteria for "execut[ing] a warrant of removal [Form I-205]"). The only exception is for state officials who undergo a special training and certification program under 8 U.S.C. § 1357(g). But the County had no such agreement with DHS. ECF No. 77 ¶61. Thus, the County had no authority to place a hold based on an I-200 in the first instance, as it conceded at the TRO hearing last July. *See* ECF No. 67-1 at 36:18-24.

c. Nor was the immigration hold authorized by the IGA.

In its motion for summary judgment filings, the County tellingly does not argue that the I-200 authorizes it to conduct an administrative transfer of detainees into federal custody, but rather, relies on its IGA with the federal government as the source of authority for its immigration hold policy. *See* ECF No. 60 ¶4. This position squarely contradicts the County's previous recognition that the IGA does

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not authorize it to "retain [Mr. Sanchez] in custody and simply switch his status" upon accepting bail. ECF No. 67-1 at 17:13-18:3 (specifying that the IGA "contemplates that [the County] release him to an appropriate official, such as, an ICE official or U.S. Marshal, and that person, then, can reenter them"). This dramatic change in position further underscores the unlawful nature of the County's actions.

The IGA does not authorize the County to arrest Mr. Sanchez, extend his detention, or place him under federal immigration custody. To the contrary, the IGA specifically requires the County "to accept federal detainees *only upon* presentation by a law enforcement of officer of the Federal Government." ECF No. 62-1 at 13 (emphasis added). The U.S. government, for its part, has disavowed that the IGA provides authority for anything beyond this. *See* ECF No. 67-3 at 7 (asserting that an IGA "authorizes local law enforcement to house [noncitizens] at the request of ICE, *after ICE takes physical custody* of those [noncitizens] and then decides to book those [noncitizens] into the local facility as ICE detainees") (emphasis added); ECF No. 67-3 at 3 n.3 (clarifying that "the "existence" of an IGA does not "deputize state law enforcement to unilaterally perform the functions of a federal immigration officer"); *see also* ECF 77 ¶¶59-62.

No provision of the IGA authorizes the County to prolong the detention of an individual in its custody solely in reliance on an I-200, or to unilaterally

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1 "transfer" them into federal immigration custody when the individual is otherwise
2 entitled to release from county custody. ECF No. 77 ¶58. If the IGA were to
3 authorize Yakima County to do so, it would violate the Immigration and
4 Nationality Act, implementing regulations, and controlling caselaw, all of which
5 make clear that absent an agreement under 8 U.S.C. § 1357(g), County officers are
6 not authorized to enforce administrative warrants.
7
8 **d. The County's immigration hold was also not authorized by**
9 **Washington law.**

10 Nor can the County find a source of authority for its immigration hold policy
11 under state law, as there is no basis in Washington State law for the County to
12 perform immigration enforcement activities. No state laws provide authority for
13 state and county enforcement officers to investigate, let alone detain, persons based
14 on allegations of civil immigration violations. *See* WASH. CONST. art. 1, § 7 ("No
15 person shall be disturbed in his private affairs, or his home invaded, without
16 authority of law."); *see also Ramirez-Rangel v. Kitsap County*, No. 12-2-09594-4,
17 2013 WL 6361177, at *2 (Wash. Super. Ct. Aug. 16, 2013) (declaring that Article
18 1, § 7 of the Washington State Constitution "forbids local enforcement officers
19 from prolonging a detention to investigate or engage in questioning about an
20 individual's immigration status, citizenship status and/or national origin"); ECF
21 No. 78, Ex. U, Br. for the State of Washington as Amicus Curiae, *Sanchez Ochoa*
22
23

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v. Campbell, No. 17-35679, 2018 WL 1548228 (9th Cir. Mar. 30, 2018), ECF No. 21 AT §§ IV.A-B (arguing that law enforcement agencies in Washington are not generally authorized to enforce federal civil immigration laws and lack the authority to detain individuals solely for civil immigration enforcement). *Cf. Lunn v. Commonwealth*, 78 N.E. 3d 1143, 1156-58 (Mass. 2017) (finding that no Massachusetts state law authorizes officers to make arrests for federal civil immigration matters and that state officers do not have inherent authority to carry out detention requests made by DHS); *Cisneros v. Elder*, No. 2018-CV-30549, Order Granting Preliminary Injunction, at 5-7 (Colo. Dist. Ct. Mar. 19, 2018) (holding that I-200 did not authorize local sheriff to effect a seizure under Colorado's warrantless-arrest statute, which only authorized warrantless arrests for, inter alia, criminal offenses) (Attachment 1).

III. CONCLUSION

For all of the foregoing reasons, it is undisputed that Yakima County violated Mr. Sanchez's Fourth Amendment rights when it placed an immigration hold on him pursuant to its unlawful immigration hold policy. Mr. Sanchez is thus entitled to judgment as a matter of law, and he respectfully requests the Court to grant his motion for partial summary judgment.

DATED this 3rd day of August, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August 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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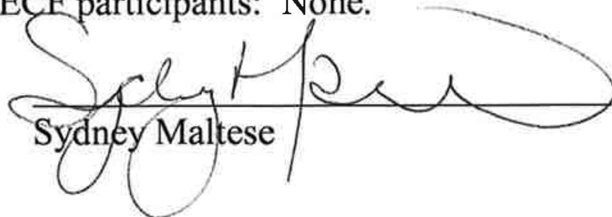
And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.



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