

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Peter Sean Brown,

Plaintiff,

v.

Richard A. Ramsay, in his official capacity as
Sheriff of Monroe County,

Defendant.

Case No. 18-cv-10279

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT**

Holloman ex rel. Holloman v. Harland,
370 F.3d 1252 (11th Cir. 2004)13

J W ex rel. Tammy Williams v. Birmingham Bd. of Educ.,
904 F.3d 1248 (11th Cir. 2018)18

Johnson v. Barnes & Noble Booksellers, Inc.,
437 F.3d 1112 (11th Cir. 2006)16

Kingsland v. City of Miami,
382 F.3d 1220 (11th Cir. 2004)7, 10–12

Mathis v. Coats,
24 So. 3d 1284 (Fla. 2d DCA 2010)16

Matsushita Elec. Indus. Co. v. Zenith Radio Corp

Mathis v. Coats,

.....16

2Span 9.36 0 Td8002BDC 14.36

,

Statutes

28 U.S.C. § 2201.....17
F.S.A. § 322.08(c).....11
F.S.A. § 322.051(1)(a)(3)11

Rules

Fed. R. Civ. P. 56(a)5

Treatises

Wright & Miller, 10B Fed. Prac. & Proc. Civ. § 2736 (4th ed.).....5

Regulations

6 C.F.R. § 37.11(g)11

BACKGROUND

Plaintiff Peter Sean Brown is a United States citizen, born in Philadelphia, Pennsylvania, in 1968. Statement of Undisputed Facts (“SOF”) ¶¶ 1–2. On April 5, 2018, Mr. Brown was arrested by MCSO for an alleged probation violation. SOF ¶ 3. MCSO sent Mr. Brown’s fingerprints to the FBI for a background check; the prints were then checked against Department of Homeland Security (“DHS”) databases and generated a “possible match” to immigration records, which was sent to ICE’s Miami field office. SOF ¶¶ 4–5. That possible match indicated that Mr. Brown’s fingerprints were associated with a particular FBI number—941883MA2—and with DHS records. SOF ¶ 6.

That possible match triggered an investigation into whether the field office would issue a detainer. SOF ¶¶ 8–10. ICE personnel did not interview Mr. Brown, but the officer investigating the possible match did conduct searches of various databases. SOF ¶¶ 11, 13. Among other databases, ICE officers reviewed information in the “Enforce Alien Res[tr]0.T(t)NTie[Tn (t)-ATn Tw

FOR ASSISTANCE. WHICH HAS BEEN FUTILE AS OF YET . . . I REINTERATE I AM ILEGALLY BEING DETAINED FOR THIS ICE WARRENT [WHICH] IS TRULY INCORRECT AND UNJUSTIFIED.⁵

Moreover, MCSO’s own inmate records—which MCSO officers regularly accessed in April 2018—showed, in multiple places, that Mr. Brown was a U.S. Citizen born in Philadelphia and had a valid Florida identification card. SOF ¶¶ 50–53.

Despite all this information undermining any probable cause for MCSO’s re-arrest of Mr. Brown for ICE, MCSO did not investigate the validity of Mr. Brown’s detainer in any way. SOF ¶ 58; *see also* Ex. C (Requests for Admission (“RFA”)) Nos. 10–11; Ex. D (Answers to RFA) Nos. 10–11 (admitting that “MCSO did not contact ICE” nor “conduct its own investigation” “to determine whether Plaintiff was a U.S. citizen”). MCSO did not attempt to contact ICE or pass *any* of this information—including Mr. Brown’s highly specific explanation that a detainer had previously been erroneously lodged against him—along to ICE. SOF ¶ 62. It declined to do so even though MCSO was “in touch with ICE via phone, e-mail and fax” at the time, and could easily have raised concerns about particular detainees. SOF ¶¶ 59–60. It did not even review Mr. Brown’s MCSO file for the pertinent information, SOF ¶ 54, which was easily accessible to jail employees (including the employee who served the ICE detainer on Mr. Brown), SOF ¶¶ 55–56, and which listed information about inmates’ citizenship and birthplace (including Mr. Brown’s), SOF ¶¶ 49–51. And when Mr. Brown repeatedly offered to arrange for a copy of his U.S. birth certificate to be sent to MCSO, officers told him not to bother because it would not change their

¶ 49

SF ¶

ARGUMENT

I. Because MCSO Held Mr. Brown Without Probable Cause Pursuant to MCSO Policy, Mr. Brown Is Entitled to Summary Judgment on His Fourth Amendment Claim.

Mr. Brown is entitled to partial summary judgment as to liability regarding Count 1, which alleges a Fourth Amendment violation pursuant to 42 U.S.C. § 1983 and *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). “To demonstrate a *Monell* claim, the plaintiff must show: (1) the violation of a federal right occurred; (2) the existence of a municipal policy or custom; and (3) a causal connection between the violation and the municipal policy or custom.” *Creedle v. Miami-Dade Cty.*, 349 F. Supp. 3d 1276, 1301 (S.D. Fla. 2018) (internal quotation marks and alteration omitted).⁷

A. MCSO Violated Mr. Brown’s Fourth Amendment Rights by Seizing Him Without Probable Cause.

A detainer requests that a person who would otherwise be released from criminal custody instead be kept in jail to facilitate immigration enforcement. As the Eleventh Circuit has concluded—like every court across the country to consider the question—such “continued detention” is a new arrest for which the Fourth Amendment demands “independent probable cause.” *Alcocer v. Mills*, 906 F.3d 944, 954 (11th Cir. 2018) (citing *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015)); *see also, e.g., Hernandez v. United States*, 939 F.3d 191, 209 (2d Cir. 2019).

What *kind* of probable cause has been the subject of some debate. This Court has held that local law enforcement officers conducting

agent who issued the detainer and his supervisor had easy access to—and actually reviewed—ICE records conclusively establishing that Mr. Brown was not the removable non-citizen they were looking for. Specifically, one of ICE’s primary enforcement databases specifically said that *federal immigration agents previously made the exact same mistake* with regard to Mr. Brown. SOF ¶¶ 14–30. Yet ICE issued the erroneous detainer anyway, and MCSO then unquestioningly accepted and effectuated it. SOF ¶¶ 31, 35, 58.

After Mr. Brown was booked into custody at the Monroe County jail for his underlying probation violation charge, the Miami ICE field office received an alert indicating a “possible match” to a removable non-citizen. SOF ¶¶ 6–8. But as ICE’s designated witness explained, this potential database hit alone was not a sufficient basis to issue a detainer. SOF ¶ 9. Rather, an ICE officer was required to take further steps to investigate, including reviewing reports from multiple databases. SOF ¶¶ 8, 10, 12.

Critical among these databases, for purposes of this case, was EARM. *See* SOF ¶ 14. EARM—one of ICE’s primary enforcement databases—shows information and comments about individuals’ past encounters with federal immigration agents. SOF ¶¶ 14–17. ICE’s designated witness testified that agents “*always* access EARM in deciding whether to issue a detainer.” SOF ¶ 18 (emphasis added). Indeed, multiple ICE agents involved in the investigation of Mr. Brown and the issuance of the detainer on April 6, including the supervising officer who approved it, each accessed the EARM records associated with Plaintiff the day the detainer was issued. SOF ¶ 19. When they did, they saw case “comments”—notes entered into the system—

941883MA2 IS HIS NCIC RAP SHEET. PETER DAVIS BROWN, THE ICE FUGITIVE HAS FBI#401663HA6.” SOF ¶ 26. The comments further explained that in 2005 federal agents realized the error and released Plaintiff. SOF ¶ 24. ICE agents then memorialized the mistake in those extensive case comments entered into EARM. SOF ¶ 25. In other words, ICE’s own database told the officers who accessed it in 2018 that the federal government had previously erroneously issued a detainer for Mr. Brown. SOF ¶ 27.

Notably, moreover, the difference in middle names between the Plaintiff and the removable non-citizen, which the EARM comments emphasized, was apparent throughout the records the ICE officers examined.⁸ The initial possible match report included both an FBI number—Plaintiff’s number—and an “Alien Registration Number” or “A number.” SOF ¶¶ 6–7. The criminal history records ICE obtained using that FBI number included Plaintiff’s name, Peter *Sean* Brown. SOF ¶ 28. By contrast, immigration records associated with the A number used the name Peter *Davis* Brown. SOF ¶ 29. Likewise, the possible match report indicated a different birthdate than that listed in the immigration records ICE examined. SOF ¶ 30.

The ICE officers who investigated, issued, and approved Mr. Brown’s detainer did not just fail “to conduct an inquiry when a reasonable officer in the circumstances would have inquired.” *Hernandez*, 939 F.3d at 209. They ignored the explicit warnings and definitive evidence that ICE had already made the same mistake and had exonerated Mr. Brown. ICE thus clearly lacked probable cause to believe Mr. Brown was a removable non-citizen. In re-arresting Mr. Brown, MCSO relied exclusively on the erroneous ICE detainer for purported probable cause of removability. Under settled Fourth Amendment precedent, because ICE “lacked probable cause to issue the detainer,” MCSO violated Mr. Brown’s Fourth Amendment rights. *Hernandez*, 939 F.3d at 209.

2. Extensive Evidence of Mr. Brown’s U.S. Citizenship Dissipated Any Probable Cause.

Even if ICE had initially developed probable cause, and even if MCSO could ordinarily rely on ICE’s representation of probable cause in the context of a detainer, here, the facts known or easily available to MCSO vitiated that probable cause. The arrest was therefore unlawful as a matter of law. *Hernandez*, 939 F.3d at 201; *see also id.* at 208.

⁸ A “name discrepancy alone is arguably enough to vitiate probable cause” *Hernandez*, 939 F.3d at 208.

As noted above, officers are not “permitted to turn a blind eye to exculpatory information

After hearing that Mr. Brown was in jail, his friend and manager, Brooke Lynch, accessed MCSO's online inmate locator. SOF ¶ 63. She learned from the website that Mr. Brown had a "no bond" hold against him. SOF ¶ 64. She then called the jail to inquire about the hold and, when informed that he had an ICE detainer against him, she explained that Mr. Brown was a U.S. citizen. SOF ¶¶ 66–67. MCSO did not ask her for any more details, and did not say it would investigate. SOF ¶ 67.

Moreover, highly relevant information, including Mr. Brown's U.S. citizenship and birth place in Philadelphia, was reflected in MCSO's own records system, SOF ¶¶ 50–51—which was

Basic Ordering Agreements, and/or related ICE forms or agreements.” SOF ¶ 86.¹² The evidence

and detained those individuals pursuant to ICE requests and made no efforts whatsoever to investigate those individuals' citizenship. SOF ¶¶ 53, 94–95.

MCSO kept this categorical policy in place despite concrete evidence that the risk of detainers being issued against U.S. citizens was extremely serious. For example, in 2016, MCSO received an email from the Florida Sheriffs' Association attaching a report which noted that “[f]rom 2008 to 2012, ICE erroneously issued more than 800 detainers for U.S. citizens.” SOF ¶ 96. And in 2017, MCSO received a letter noting examples of lawsuits by U.S. citizens who were wrongfully held under immigration detainers, including a court's statement that such an “illegal detention revealed a dysfunction of constitutional proportion at both the state and federal levels and a unilateral refusal to take responsibility for the fact that a United States citizen lost her liberty to a baseless immigration detainer through no fault of her own.” SOF ¶ 97; Ex. M (Age 30(b)(6) Dep. Ex. 4) (quoting *Morales v. Chadbourne*, 235 F. Supp. 3d 388, 392 (D.R.I. 2017)). Additionally, MCSO received a Florida Sheriffs' Association 2016 Legal Alert which noted a case

have been released from MCSO custody and walked free on April 26, 2018. SOF ¶ 36. There is also, as explained, no dispute that MCSO policy directed its officers to comply with the request in the detainer—namely to continue to hold Mr. Brown for ICE. SOF ¶¶

against his will, the gist of which action is the unlawful detention of the plaintiff and the deprivation of his liberty.” *Creedle*, 349 F. Supp. 3d at 1312 (quoting *Johnson v. Barnes & Noble Booksellers, Inc.*, 437 F.3d 1112, 1116 (11th Cir. 2006)) (internal quotation marks omitted). The elements of Florida false imprisonment are “1) the unlawful detention and deprivation of liberty of a person 2) against that person’s will 3) without legal authority or ‘color of authority’ and 4) which is unreasonable and unwarranted under the circumstances.” *Id.* (quoting *Harder v. Edwards*, 174 So. 3d 524, 530 (Fla. 4th DCA 2015)).

On the first and third elements, as explained *supra*

or updates regarding individuals, *see id.*, increases the risk that ICE will wrongly issue another detainer for Mr. Brown should he be arrested by Defendant in the future.¹⁶

Third, the danger of being again held pursuant to an ICE detainer is made yet more likely because such holds are “authorized by or part of a government policy”—namely Defendant’s policy of unquestioningly honoring all detainers. *Creedle*, 349 F. Supp. 3d at 1287 (quoting *J W ex rel. Tammy Williams v. Birmingham Bd. of Educ.*

Spencer E. Amdur*
Cody H. Wofsy*
My Khanh Ngo**
American Civil Liberties Union Foundation
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-1198
samdur@aclu.org
cwofsy@aclu.org
mngo@aclu.org

Omar C. Jadwat*
Lee Gelernt*
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2500
ojadwat@aclu.org
lgelernt@aclu.org

Sarah M. Rich*
Southern Poverty Law Center
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30030
Telephone: (404) 521-6700
sarah.rich@splcenter.org

A.J. Hernandez Anderson (Fla. Bar No. 0018092)
Southern Poverty Law Center
P.O. Box 12463
Miami, FL 33101
Telephone: (786) 347-2056
aj.hernandez@splcenter.org

Heather L. Richardson*
Jonathan N. Soleimani*
Jenni

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiff's Motion for Partial Summary Judgment was served via the U.S. District Court for the Southern District of Florida's electronic filing system on February 18, 2020, on counsel for Defendant Richard A. Ramsay, Bruce Jolly and Harrison Joss. Service via the Court's electronic filing system is permitted under Federal Rule of Civil Procedure 5(b)(2)(E) and S.D. Fla. Local Rule 5.1(e).

Dated: February 18, 2020

/s/ Daniel Tilley
Daniel Tilley (Fla. Bar No. 102882)
ACLU Foundation of Florida, Inc.
4343 W. Flagler St., Suite 400
Miami, FL 33134
Telephone: (786) 363-2700
dtalley@aclufl.org