STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF BLUE EARTH FIFTH JUDICIAL DISTRICT
FILE #53-CV-18-751

Rodrigo Esparza, Maria de Jesus de Pineda,
Timoteo Martin Morales, and
Oscar Basavez Conseco; On behalf of themselves
and all other similarly situated,
Plaintiffs,

-vs- **ORDER**

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

The above-entitled matter came before the Honorable Gregory J. Anderson, Judge of District Court, on November 13, 2019 for Summary Judgment hearing. The Plaintiffs were represented by Attorneys Norman Peltelovitch, Ian Bratlie and Teresa Nelson. The Defendants were represented by attorney Stephanie Angolkar.

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

ORDER

1. Plaintiffs' motion for Partial Summary Judgment, Declaratory Judgment and Mandamus relief is GRANTED;

2. The Court will hold a trial on only the issue of damages with regard to the False Imprisonment claim;

3. Plaintiffs' motion for permanent injunctive relief is GRANTED. The Temporary Restraining Order conditions shall be permanent;

4. Defendants' motion for Summary Judgment is DENIED; and

5. The attached memorandum is incorporated herein.

Anderson, Gregory (Judge)
Jan 30 2020 9:56 AM

Gregory Anderson
Judge of District Court

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MEMORANDUM

Rodrigo Esparza, Maria de Jesus de Pineda, Timoteo Martin Morales, and Oscar Basavez Conseco; On behalf of themselves and all other similarly situated
-vs-
Nobles County; Nobles County Sheriff Kent Wilkening, in his individual and official capacity
Court File No.: 07-CV-18-751

FACTS

For purposes of analysis, the Court adopts the previous facts as stated in its Order dated October 19, 2018 (hereinafter "TRO"). Additional relevant procedural and factual history is set out below.

Defendants appealed the decision granting the temporary restraining order. On September 23, 2019 the Minnesota Court of Appeals issued its decision affirming the granting of the temporary restraining order. *Esparza, et al. v. Nobles County, et al.*, A18-2011, 2019 WL 4594512 (Minn. Ct. App. Sept. 23, 2019). The parties submitted excerpts from various depositions and documents. Defendants have amended their jail policy, apparently in response to the TRO.

Both sides seek summary judgment. Plaintiffs seek partial summary judgment on their claims other than damages, a permanent injunction, mandamus relief, and declaratory judgment. Defendants seek summary judgment and dismissal of all claims as well as cancelation of the TRO. Defendants also assert their actions are subject to discretionary and statutory immunity.

ANALYSIS

The Court adopts its legal analysis as set out in the TRO Memorandum of October 19, 2018. The Court of Appeals affirmed the Order and conducted its own analysis. As set out below, this Court considers the legal arguments of the parties and further considers the arguments of counsel and applicable case law as it relates to a permanent injunction and summary judgment.

Summary Judgment

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows there is no issue of material fact and the moving party is entitled to judgment as a matter of law. *Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746 (Minn. 2005). A genuine issue of material fact exists which precludes summary judgment when the nonmoving party presents evidence that creates a doubt as to a factual issue that is probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions. *Guercio v. Production Automation Corp.*, 664 N.W.2d 379 (Minn. App. 2003). The moving party has the burden of proof. *Avery v. Solargizer Intern., Inc.*, 427 N.W.2d 675, 679 (Minn. App. 1988) (citation omitted). However, a party opposing summary judgment must present specific facts showing there is a genuine issue for trial and cannot rely upon mere unsupported allegations of fact. Minn. R. Civ. P. 56.05; see *Lundgren v. Eustermann*, 370 N.W.2d 877, 881 (Minn. 1985). The Minnesota Supreme Court has held a defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim. See *DLH, Inc. v. Russ,* 566 N.W.2d 60, 71 (Minn. 1997). The court may not weigh the evidence when determining if summary judgment is appropriate. *Wagner v. Schwegmann's Southside Liquor*, 485 N.W.2d 730 (Minn. App. 1992).

Summary judgment should be denied if reasonable persons might draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) *citing Illinois Farmers Ins. Co.,* 273 N.W.2d 630, 634 (Minn. 1978). "The district court's function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist." *Id.*

Material Facts

The material facts in this case are not in dispute. There is some question as to the exact length of time individual plaintiffs were detained after they were entitled to release; however, there is no question that Defendants held Plaintiffs for some period of time after their state cases were resolved or bail or bond was posted, and they would otherwise have been released from custody but for the ICE holds.

Declaratory Judgment

Declaratory Judgment is governed by Minnesota Rule of Civil Procedure 57. The District Court, in a declaratory action, may grant summary judgment based on its

review of the record, memoranda, and transcripts. *Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988).

The Court of Appeals decision noted the only *Dahlberg* factor at issue was the third one: likelihood of success on the merits. *Esparza, 2019 WL 4594512, at *3.* In its opinion, the Court of Appeals determined that the transfer of a person from State to ICE custody constitutes a new seizure, requiring probable cause for the seizure and compliance with the requirements of Minnesota law. *Id.* at *4. Citing *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017), as well as several other cases, the Court of Appeals rejected Defendants' argument that the housing contract with ICE has already established custody, and Plaintiffs were simply "rolled over" into ICE custody. *Id.* at *5. The Court of Appeals considered cases cited by Defendants including *U.S. v. Laville*, 480 F. 3d 187 (3rd. Cir. 2007) and the recent case of *Abriq v. Metropolitan Government of Nashville*, 333 F. Supp. 3d 783 (M.D. Tenn. 2018), which was decided a few days before the September 2018 hearing on the TRO. *Id.* This Court has also again reviewed the case law cited by Defendants, and it is not persuasive. The Court of Appeals decision and the applicable case law, including that cited by Defendants, either clearly supports Plaintiffs' interpretation of the law or is distinguishable to the point of having little if any relevance.

Defendants cite *Abel v. United States*, 362 U.S. 217 (1960), *Lopez Lopez v. County of Allegan*, 321 F. Supp. 3d 794 (W.D. Mich. 2018), and *Abriq v. Metropolitan Government of Nashville*, 333 F. Supp. 3d 783 (M.D. Tenn. 2018). *Abel* recognized a "deportation arrest warrant is not a judicial warrant" under the Fourth Amendment but that Congress "gave authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an administrative warrant." *Abel*, 362 U.S. at 232-236. However, as noted in the Court of Appeals decision, *Abel* did not address the disputed issue in this case: the authority claimed by Defendants to seize persons in absence of authorization under state or federal law. *Esparza,* 2019 WL 4594512, at *5-6.

Defendants have cited *Lopez-Lopez v. County of Allegan*, 321 F.Supp. 3d 794 (W.D. Mich. 2018). In that case the plaintiff was detained after his family posted bail. Lopez-Lopez was held overnight in response to ICE delivering an I-247 detainer and an I-200 administrative warrant. Based on this factual similarity, Defendants argued this was a proper exercise of its authority pursuant its powers under 8 U.S.C. Sect. 1357 (g)(10)(A)-(B). Although *Lopez-Lopez* reached a different conclusion than *Lunn* and other cases weighing in Plaintiffs' favor, the Minnesota Court of Appeals noted:

> [I]t did not consider the argument that a broad reading of section 1357(g)(10) renders 287(g) agreements superfluous. *Lopez-Lopez* also did not consider whether state statutes authorized state and local officers to detain immigrants under ICE detainers and warrants. Even 287(g) agreements must be consistent with state law. *See* 8 U.S.C. § 1357(g)(1) (providing that DHS can enter into a formal written agreement with a state or political subdivision allowing state and local officers to perform the function of an immigration officer "*to the extent consistent with State and local law*" (emphasis added)). If we were to conclude that section 1357(g)(10) authorizes state and local officers to seize and detain removable aliens *irrespective of state law*, then we would render meaningless the federal requirement that 287(g) agreements be consistent with state and local law. In short, *Lopez-Lopez* is not persuasive.

Id. at *10 (emphasis in original).

The Minnesota Court of Appeals also stated in a footnote:

> We observe that the parties do not cite to, and the court has not found, any federal circuit court or U.S. Supreme Court decision establishing that section 1357(g)(10), in the absence of authorizing state laws, permits state officers to seize individuals under an ICE detainer and warrant. Appellants rely on *El Cenizo*, which held that section 1357(g)(10) expressly authorized Texas to enact a law that, in part, required local entities and police departments in Texas to provide "enforcement assistance" to ICE for detainer requests. 890 F.3d at 177-78, 185. But, in *El Cenizo*, Texas law authorized—and required—state officers to assist in the enforcement of ICE detainers and warrants. Id. at 185. There is no Minnesota law analogous to the Texas law upheld in *El Cenizo*.

Id. at n. 7.

Abriq v. Metropolitan Government of Nashville 333 F. Supp. 3d 783 (M.D. Tenn. 2018), contains a useful discussion of the issue, cites relevant case law, and is clearly distinguishable from this situation. *Abriq* involved an individual who was arrested

by ICE and placed in ICE custody pending civil removal proceedings. *Abriq* was placed in custody in the Davidson County, Tennessee jail, which had no "housing agreement" with ICE but provided housing services for approximately six days. *Id.* at 785. There was no independent state basis for the detention and that the detention was based solely on the ICE detention order. *Id.* The District Court ultimately dismissed the lawsuit for false imprisonment and other claims against Nashville, and considered the remaining Fourth Amendment claim. *Id.* at 785, 789.

Significantly, *Abriq* states:

> Plaintiff was not in state custody. There was no request for Metro to continue to hold Plaintiff, because it was not holding him. The cases involving continued detention, pursuant to detainers and/or administrative warrants, of aliens already in state custody, are therefore distinguishable upon their different facts, even if they do offer correct statements of general immigration law. Here, local or state officers neither arrested an alien for an immigration violation nor held an alien based solely on an immigration detainer.
> . . .
>
> Metro held Plaintiff based upon a specific request from ICE agents. That request (I-203 Form) was issued and presented to Metro after ICE found probable cause, after Plaintiff was "seized," and after Plaintiff was in ICE custody. Metro did not unilaterally take any action with regard to Plaintiff - it did not investigate, apprehend or arrest him. ICE made the underlying removability determination. If Metro chooses to cooperate with ICE as it did in this case, it has no discretion at all; it merely follows the direction of ICE agents. Metro cooperated with a request from ICE to house Plaintiff pending ICE's transfer to another facility.
>
> Because it did not "seize" Plaintiff, Metro did not need probable cause. Even so, Metro did not provide housing for Plaintiff without probable cause. **Plaintiff does not dispute that ICE had probable cause to detain him. Plaintiff was in ICE custody pursuant to a warrant for which ICE had to**

> **have probable cause.** There is no requirement for Metro to find additional probable cause that Plaintiff had committed a crime, as Plaintiff argues. Civil removal proceedings necessarily contemplate detention absent proof of criminality.

333 F.Supp.3d at 787-88 (emphasis added)(internal citations omitted).

Thus, the situation in *Abriq* involved one where someone was already in ICE custody and the local municipality chose to provide housing services. The situation in this case is different and, as the *Abriq* court noted, continued detention, pursuant to detainers and/or administrative warrants, of aliens already in state custody, are distinguishable on the facts. *Id.* at 787.

As explicitly noted in the TRO Memorandum, nothing in this case, any known federal or Minnesota statute, or any known case law cited by either party or found by this Court, precludes local law enforcement entities from cooperating, formally and informally, with the enforcement of immigration laws. *Abriq* confirms that. However, cooperation must be allowed by state law. As noted by the Court of Appeals in the footnote, no case law can be found which supports Defendants' actions in the absence of an authorizing state law, or valid warrant or detainer from ICE, allowing such detention.

Based upon the above analysis and the Court's independent review of relevant statutes, case law, and rules, Plaintiffs prevail as a matter of law.

Summary judgment is also requested by Plaintiffs on the claim of false imprisonment. The elements of the tort of false imprisonment are (1) words or acts by defendant intended to confine plaintiff, (2) actual confinement, and (3) awareness by plaintiff that she is being confined. *Blaz v. Molin Concrete Products Co.,* 244 N.W.2d 277, 385 (Minn. 1976). Any imprisonment "which is not legally justifiable" is false imprisonment. *Kleidon v. Glascock*, 10 N.W.2d 394, 425 (Minn. 1943). "[I]t is not a defense to false imprisonment that the defendants may have acted with good motives. Malice toward the person confined is not an element of false imprisonment." *Eilers v. Coy*, 582 F.Supp. 1093, 1096 (D. Minn. 1984).

There is no dispute in the present case that the actions of Defendants were intended to, and did, confine Plaintiffs. There is no dispute that Plaintiffs were actually confined although there is some dispute as to the exact length of the confinement

which would be relevant only to damages. There is also no dispute that the Plaintiffs were aware of their confinement.

The Court next considers whether there are any valid defenses which would preclude summary judgement. Defendant argues they are entitled to statutory (or discretionary) immunity, official immunity, and the case is moot as the jail manual has been modified.

- Statutory Immunity

The burden is on the party asserting an immunity defense to demonstrate that it is entitled to immunity. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn.1997).

"Statutory immunity exists to prevent the courts from conducting an after-the-fact review which second-guesses "certain policy-making activities that are legislative or executive in nature." *Nusbaum v. Blue Earth County*, 422 N.W.2d 713, 718 (Minn. 1988). If a governmental decision involves the type of political, social and economic considerations that lie at the center of discretionary action, including consideration of safety issues, financial burdens, and possible legal consequences, it is not the role of the courts to second-guess such policy decisions. *Steinke v. City of Andover*, 525 N.W.2d 173, 176 (Minn. 1994). In determining what constitutes a discretionary function, the Minnesota Supreme Court has drawn a distinction between "planning level" conduct, which is protected by immunity, and "operational level" conduct, which is not protected. *Nusbaum*, 422 N.W.2d at 719. Planning level conduct has included: decisions regarding deployment of police forces, *Silver v. City of Minneapolis*, 170 N.W.2d 206, 209 (Minn. 1969); a decision to release a mentally retarded youth from a state institution for a holiday home visit, *Cairl v. State*, 323 N.W.2d 20, 24 (Minn.1982); and a decision to place certain warning signs only on county roads and recognized rights-of-way, *Steinke*, 525 N.W.2d at 176. "The crucial question, as always, is whether the conduct involves the balancing of public policy considerations in the formulation of policy." *Holmquist v. State*, 425 N.W.2d 230, 234. "[P]lanning level decisions are those involving questions of public policy, that is, the evaluation of factors such as the financial, political, economic, and social effects of a given plan or policy." *Watson by Hanson v. Metropolitan Transit Commission*, 553 N.W.2d 406, 412-413 (Minn. 1996), *quoting Holmquist*, 425 N.W.2d at 234.

Defendants argue that the first step in analyzing a statutory immunity claim is to "identify the conduct at issue. Here, the conduct at issue is Nobles County's former policy of honoring ICE arrest warrants with detainers by continuing to briefly detain an individual for ICE to take custody. Correctional officers did so consistent with the

County's official policy. Thus, the challenged conduct is in essence the former policy." (Defs.' Mem. Supp. Summ. J., 22).

The Court does not accept this premise. The conduct is not the formation of or amendment of the policy but the arrest and detention of Plaintiffs. No cause of action arose from the creation of the policy. The cause of action arose from the continued detention of persons required to be released.

Defendants next argue that immunity applies because the conduct involves a "balancing of policy considerations." The choice of a local governments to cooperate with ICE involves "numerous social, political, and economic considerations, particularly when the local government provides housing for ICE detainees. Plaintiffs cannot deny the political considerations involved in these decisions. The record establishes the Sheriff's awareness of Hennepin County choosing to no longer cooperate and his consideration of continuing to cooperate based on Nobles County being a housing county. The policy in place was issued after considering the documents ICE would be required to provide to support continued detention. The County's decision to cooperate with ICE obviously involved the evaluation and weighing of social and political considerations." (Defs.' Mem. Supp. Summ. J. at 22-23).

The fact that Nobles County provides housing for ICE detainees is irrelevant to this case. Again, nothing this Court or the Court of Appeals, or any other cited case provided by either party, precludes such cooperation. "Consideration of continuing to cooperate based on Nobles County being a housing county" is simply not a valid reason to engage in the continued detention of Plaintiffs and others in their position, and is not a legitimate argument in favor of Defendants' position. The two issues are entirely separate.[1] As determined by this Court and affirmed by the Court of Appeals, the "rolling over" of persons from state custody to ICE custody is a new arrest.

As argued by Defendant Wilkening, he "chose to cooperate with ICE regarding aliens in custody of the jail based on the policy consideration of the impact of illegal activities

[1] It is documented that Nobles County receives a considerable amount of income from the rental of jail cells by ICE. It is logically possible that there has been some loss of income that occurs when an inmate in State custody is required to be released but is facing immigration action and was being held pursuant to the administrative detainers which are not permitted. However, that possible harm, which logically possible, has not been documented and therefore was not considered by the Court. Even if it were, it would not be weighed very heavily in balancing the harm to individuals deprived of liberty against the loss of income to the county.

by aliens in the community. In doing so, he enacted a policy addressing continued detention after release from state custody, pursuant to an ICE warrant. This is exactly the type of situation statutory immunity is designed to protect." (Defs.' Mem. Opp. Summ. J. 27).

There are at least three problems with this position. The first is that the ICE "warrants" at issue do not comply with Minnesota law to permit further detention.

Second, the same kind of "policy consideration" relied on by Defendant Wilkening could be applied to any type of inmate. The record does not establish whether there is a greater risk of illegal activities by illegal aliens in the community as opposed to US citizens or aliens here legally. Even assuming such evidence exists and Defendant Wilkening's concern was supported by such evidence, the same policy considerations could be applied to any type of inmate: charged or convicted drunk drivers, child molesters, burglars, cancelled IPS drivers, etc. However, all such inmates, as well as Plaintiffs and those in their position, are entitled to release from custody once the legal basis for continued custody has ended.

It cannot be seriously argued that the subjective decision by the sheriff to detain one type of inmate after the legal basis for their detention has ended due to the assessment of the inmate's relative risk to the community permits statutory immunity. There is no basis to detain any person, regardless of their immigration status or even those charged with or convicted of a heinous offense, after he or she is entitled to be released at the completion of the sentence or payment of bail or bond. The perceived, or even actual, public safety concerns after they are required to be released under the law are simply not a basis to detain and does not provide the Defendants with statutory immunity.

The third problem is that the detention of persons who are otherwise entitled to release are not the kinds of decisions, actions, and policies to which statutory immunity applies. Cases cited by Defendants include *Norton v. County of Le Seuer*, 565 N.W.2d 447 (Minn. Ct. App. 1997) and *Johnson v. State*, 553 N.W.2d 40 (Minn. 1996). Reliance on these cases is misplaced. *Norton* involved jail staff relying on a mental health professional who, after evaluating Norton following concerns of suicidal ideation, did not determine he was at risk for suicide and the jail then had him in general population without suicide precautions. *Norton*, 565 N.W.2d at 449. The inmate thereafter committed suicide. *Id. Johnson* involved an inmate released from prison on parole who did not immediately report to a halfway house and then committed a heinous rape and murder before it was discovered a few days later that he had not reported to the halfway house. *Johnson*, 553 N.W.2d at 44-45.

As noted in *Johnson*, statutory immunity protects decisions made at the planning level, while conduct at the operational level is generally unprotected. *Id.* at 46, *citing Nusbaum*, 422 N.W.2d at 719. Official immunity protects public officials.

> The doctrine of official immunity establishes that 'a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong. The discretion involved in official immunity differs from the policymaking type of discretion involved in statutory immunity. Official immunity involves the kind of discretion which is exercised on an operational rather than a policymaking level, and it requires something more than the performance of merely "ministerial" duties. This court has defined a ministerial duty as "absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.

Johnson, 553 N.W.2d at 46 (internal citations omitted).

The conduct at issue in this case, the continued detention of persons who are entitled to be released from custody, simply does not involve the exercise of discretion or judgment by a government entity or its agents. Rather, the "decision" involved is to release from custody someone who is entitled to be released from custody. No discretion is involved or allowed. As it relates to public officials, the release of an inmate required to be released, no matter the initial legitimate reason for the incarceration, is merely a ministerial duty. It must occur. There is no operational planning that could allow a public official or employee to not release a person entitled to release. It is "absolute, certain, and imperative" and requires the "execution of a specific duty" (release) arising from a "fixed and designated fact" (the completing of a fixed jail term or the satisfying of specific conditions, e.g. bail, to secure release). Statutory immunity does not apply.

- Official Immunity

Official immunity is defined and limited in *Gleason v. Metropolitan Council Transit Operations*:

> Official immunity is a common law doctrine intended "to protect public officials 'from the fear of personal liability that might deter independent action.' " *Janklow v.*

> *Minnesota Bd. of Exam'rs,* 552 N.W.2d 711, 715 (Minn.1996) (quoting *Elwood v. Rice County,* 423 N.W.2d 671, 678 (Minn.1988)). When a public official is charged by law to perform duties that require the exercise of discretion or judgment he or she may be immune from personal liability for injuries resulting from performance of those duties. See *Susla v. State*, 311 Minn. 166, 175, 247 N.W.2d 907, 912 (1976). Official immunity protects all decisions made by a public official when those decisions call for the exercise of discretion. *Watson by Hanson v. Metropolitan Transit Comm'n*, 553 N.W.2d 406, 414 (Minn.1996). Stated differently, official immunity covers all but the "ministerial duties" of a public official, that is, duties that are "absolute, certain and imperative." *Id.*
>
> But there are limits to the operation of official immunity. When an official willfully exercises his or her discretion in a manner that violates a known right, the protection of official immunity evaporates. See *Rico v. State*, 472 N.W.2d 100, 107 (Minn.1991). This limitation, often referred to as the "malice" exception, is defined by an "objective inquiry into the legal reasonableness of an official's actions." *State by Beaulieu v. City of Mounds View,* 518 N.W.2d 567, 571 (Minn.1994).

563 N.W.2d 309, 314-15 (Minn. Ct. App. 1997).

Rico v. State defines the requirements necessary before official immunity applies:

> The doctrine of official immunity protects from personal liability a public official charged by law with duties that call for the exercise of judgment or discretion unless the official is guilty of a willful or malicious wrong. *Elwood v. County of Rice*, 423 N.W.2d 671, 677 (Minn.1988). Although the discretionary function exception to the Tort Claims Act and the official immunity doctrine both protect discretionary acts, the discretionary acts protected by each are not identical. Governmental immunity under the discretionary function exception and official immunity serve different purposes: governmental immunity "is designed to preserve the separation of powers," whereas official immunity primarily is "intended to insure that the threat of potential liability does not unduly inhibit the exercise of discretion required of public officers in the discharge of their duties." *Holmquist v. State*, 425 N.W.2d

> 230, 233 n. 1 (Minn.1988). Thus, discretion has a broader meaning in the context of official immunity. *Elwood,* 423 N.W.2d at 678.
>
> In defining the scope of official immunity, we have distinguished between the performance of discretionary duties—which is immunized, and ministerial duties—for which officers remain liable. The court has described an official's duty as ministerial "when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts." *Cook v. Trovatten*, 200 Minn. 221, 224, 274 N.W. 165, 167 (1937) (citations omitted)."

472 N.W.2d 100, 106-107 (Minn. 1991). Thus, official immunity does not apply because of the ministerial nature of the action. An official does not enjoy greater protection in the performance of ministerial acts simply because of their status as an official.

The second reason official immunity does not apply is because an objective inquiry into the legal reasonableness of an official's actions establishes that Defendant Wilkening's actions as a willful or malicious wrong and therefore not subject to immunity.

The record contains information that various entities, including the Minnesota Sheriff's association and the ACLU, have warned local law enforcement for years of the legal problems of relying on ICE detainers of the type in this case. It is true these communications are not binding on an official but they are instructive, and show information was provided questioning the use of the ICE documents to continue detention. This information was provided to Plaintiffs and did not require any independent research. Some of the cases relied on by Defendants were not decided at the time of the policy, and *Rios* (discussed *infra*) wasn't decided until after the Court of Appeals had taken this case under advisement. It is true there was no appellate case in Minnesota until the instant case, but there was plenty of information that reliance on ICE detainers of the type relied on in this case was, at best, risky. Defendants have offered no information to the contrary that was available pre-litigation, and indeed argue the policy was based on Defendant Wilkening's decision regarding protecting the community and not whether it was advised. However, acting with good motives is not a defense to false imprisonment. *Eilers,* 582 F.Supp. at 1096.

Defendants argue that the policy of honoring the ICE requests for detention is an open question subject to different interpretations by different courts. Defendants cite *Rios v. Jenkins*, 390 F. Supp. 3d 714 (W.D. Vir. 2019), decided July 15, 2019, as citing cases reaching different conclusions. Some of these cases (*El-Cenizo, Lopez-Lopez*) were considered and distinguished by the Minnesota Court of Appeals. It is not clear what Virginia law requires regarding detainers under their state law. The *Rios* court dismissed the federal claims under 1983 and the 4th and 14th amendments with prejudice, but did not dismiss with prejudice the false imprisonment claim in violation of Virginia law. 390 F.Supp. 3d at 728.

Perhaps the most significant problem with Defendants' argument is that similar conduct and many of the same issues were the subject of a federal lawsuit involving the same Defendants. *Orellana v. Nobles County*, 230 F. Supp.3d 941 (D. Minn. 2017). As part of the settlement in *Orellana*, there was an agreement to modify the jail's detainer policy as follows:

> THE COURT: Okay. And that there will be a stipulation and dismissal of any and all claims. The last element of the settlement agreement is that the Nobles County Jail Policy 504.3.2 will be revised to read as follows: No individual should be held based solely on a federal immigration detainer under 8 C.F.R.287.7, unless the person has been charged with a federal crime and the detainer is accompanied by either a warrant, affidavit of probable cause or removal order. Any administratively signed warrant must be supported by sufficient probable cause of both the alien's suspected removability as well as his likelihood to flee. Notification to the federal authority issuing the detainer shall not delay the inmate's release.
> Have I accurately recited the terms of the settlement agreement as the plaintiffs understand it?
>
> MR. PARTRIDGE: You have, Your Honor.
>
> THE COURT: Thank you.

(Bratlie Aff. Of Sept. 18, 2018, Ex. 1 at p. 4-5).[2] Defendant Wilkening later acknowledged his agreement with the stipulation and that Nobles County would be bound by it. (Bratlie Aff. Of Sept. 18, 2018, Ex. 1 at p. 6-7).

Assuming arguendo that ignoring advice from other entities regarding the validity of the ICE detainers was reasonable, and that independent inquiry into the legality of such detainers was not unreasonable, and there is enough arguably conflicting case law to perhaps support Defendants' position, the fact is that Defendants agreed to change the policy. Assuming arguendo that there is a good faith basis to believe that the detainers are in fact valid and provide a legal basis for continued detention, the fact that a person is not charged with a federal crime makes it unnecessary to reach that analysis. Defendants agreed that a person could only be held if charged with a federal crime and the detainer is accompanied by either a warrant, affidavit of probable cause or removal order. None of the named Plaintiffs were charged with a federal crime. However, the policy was not modified as agreed to in the settlement, and Defendants continued the previous practice.

Permanent Injunctive relief

A party seeking a permanent injunction "must show that legal remedies are inadequate and that the injunction is necessary to prevent great and irreparable harm." *River Towers Ass'n v. McCarthy*, 482 N.W.2d 800, 805 (Minn. Ct. App. 1992), *citing Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 91 (Minn. 1979). A court has discretion to grant a permanent injunction; however, the court has no discretion to deny a permanent injunction where the facts proved require such relief. *Theros v. Phillips*, 256 N.W.2d 852, 859 (Minn. 1977), *citing Currie v. Silvernale*, 171 N.W. 782 (Minn. 1919).

Plaintiffs argue for permanent injunctive relief as they have no adequate remedy at law and will be irreparably injured without permanent injunctive relief. Defendants argue it is moot as they have amended the jail policy and there have been no problems or allegations of wrongdoing while the TRO has been in effect.

[2] The policy actually printed in the manual did not follow this language. Instead, the language was amended to state, in relevant part, that "unless the person has been charged with a federal crime ***or*** the detainer is accompanied by a warrant, affidavit of probable cause, or removal order. . . Notification to the federal authority issuing the detainer should be made prior to release." (Pentelovitch Aff. Oct. 16, 2019, Ex. 3)(emphasis added).

"Before a court may grant a permanent injunction, the plaintiff must satisfy a four-factor test, demonstrating: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Monsanto Co. et al. v. Geertson Seed Farms et al.*, 561 U.S. 139, 156-57 (2010) *quoting eBay Inc. v. MercExchange*, L.L.C. 547 U.S. 388, 391 (2006).

As noted above, the only *Dahlberg* factor appealed and presently at issue is the third one: likelihood of success on the merits. As set forth above, Plaintiffs are entitled to summary judgment as the facts are not in dispute and they are entitled to judgement as a matter of law.

Loss of liberty is irreparable injury. Although monetary damages may be available, they are inadequate to adequately compensate someone for time spent in custody in violation of their loss of freedom and the attendant enjoyment of life that accompanies liberty.

> The party seeking an injunction must establish that legal remedies are inadequate and that an injunction must issue to prevent great and irreparable injury. *Cherne*, 278 N.W.2d at 92. The lack of a showing of irreparable injury may be a sufficient ground for determining that the district court abused its discretion in granting a temporary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 730 (Minn.App.1990) (finding insufficient showing of irreparable harm where injury suffered by plaintiff discharged from employment was primarily economic), review denied (Minn. Sept. 28, 1990). Irreparable harm, however, is not always susceptible of precise proof. *Thermorama, Inc. v. Buckwold*, 267 Minn. 551, 552, 125 N.W.2d 844, 845 (1964) (inferring irreparable harm from former employees potential solicitation of customers in violation of contract).

Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership, 638 N.W.2d 214 (Minn. 2002).

In this case, while some forms of injury as a result of illegal incarceration could be adequately compensated by monetary damages (loss of wages for lost work, added child care expenses while incarcerated) and monetary damages can be awarded for false imprisonment, the amount of damages are difficult to determine and in some ways are not capable of being compensated. The loss of freedom due to incarceration is more irreparable than, for example, patent infringement or solicitation.

Generally, the injury must be of such a nature that money damages alone would not provide adequate relief. *Morse v. City of Waterville*, 458 N.W.2d 728, 729–30 (Minn. Ct. App. 1990), *rev. denied* (Minn. Sept. 28, 1990). "The temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury." *Miller,* 317 N.W.2d at 713, *quoting Sampson v. Murray*, 415 U.S. 61, 90, (1974). Further, insufficiency of savings or difficulty in obtaining other employment generally will not support a finding of irreparable injury. *Id.* A lack of irreparable injury may be a sufficient ground for showing that a district court abused its discretion in granting a temporary injunction. *Twins,* 638 N.W.2d at 222. However, irreparable injury is not always susceptible of precise proof. *Id.*

Defendants will not suffer any hardship if the injunction remains. Defendants will simply be required to do what the law requires and which they have been doing for as long as the temporary injunction has been in place. Defendants are not precluded from continuing cooperation with ICE or providing housing services as provided under the contract.

This situation does not exist in a vacuum. Rather, this is the second lawsuit involving either identical or very similar issues. *Orellana* resulted in a settlement and an agreement which should have resulted in modifying the jail policy to preclude holds "unless the person has been charged with a federal crimes and the detainer is accompanied by either a warrant, affidavit of probable cause or removal order . . . Notification to the federal authority issuing the detainer shall not delay the inmate's release." Instead, it provided that "unless the person has been charged with a federal crime ***or*** the detainer is accompanied by a warrant, affidavit of probable cause, or removal order . . . Notification to the federal authority issuing the detainer should be made prior to release." (Emphasis added). The parties differ as to who should be responsible for making sure the language conforms to the settlement agreement, but ultimately it wasn't done, and the practice continued.

The temporary order is quite clear and has passed appellate review. There is little, if any, administrative burden to enforcing the Order, and the remedy at law is

inadequate to protect Plaintiffs' interests. It appears that permanent injunctive relief is appropriate and the Court so orders.

Mandamus Relief

"Mandamus relief is an extraordinary remedy that courts issue only when the petitioner shows that there is a 'clear and present official duty to perform a certain act.'" *Kramer v. Otter Tail County Bd. Of Comm'rs*, 647 N.W.2d 23, 26 (Minn. Ct. App. 2002), *quoting McIntosh v. Davis*, 441 N.W.2d 115, 118 (Minn. 1989). "To be entitled to mandamus relief the petitioner must show three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate remedy." *Id.*, *citing Demolition Landfill Servs., L.L.C. v. City of Duluth*, 609 N.W.2d 278, 280 (Minn. Ct. App. 2000), *rev. denied*, (Minn. July 25, 2000).

As explained above, Defendants failed to perform an official duty clearly imposed by law when they continued to detain the Plaintiffs without lawful authority for some period of time when Plaintiffs otherwise should have been released. The failure to release the Plaintiffs and others similarly situated was injurious to the Plaintiffs and Class. Finally, there is no other adequate remedy at law, as explained above in the section on injunctive relief. For these reasons, it is appropriate for the Court to grant the Petitioners' requested mandamus relief.

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G.J.A.