STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF NOBLES **FIFTH JUDICIAL DISTRICT**
CASE TYPE: OTHER CIVIL

Case No.: _____
Judge: _____

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

Plaintiffs,

v.

Nobles County; Nobles County Sheriff Kent Wilkening; All individuals being sued in their individual and official capacity,

Defendants.

CLASS ACTION COMPLAINT AND REQUEST FOR INJUNCTIVE AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1. This suit challenges Nobles County Sheriff Kent Wilkening's unwritten policy and practice of unlawfully exceeding his authority under Minnesota law by depriving persons of their liberty for suspected civil violations of federal immigration law.

2. The Nobles County Sheriff's policy and practice of detaining individuals, including Plaintiffs and other class members, and preventing their release based solely on requests made by immigration officials with no judicial warrant or independent finding of probable cause that the person has committed a crime, is unlawful.

3. Minnesota sheriffs' powers are limited to those expressly granted by the Minnesota Constitution and Minnesota statutes. Requests made by immigration officials do not provide state or local law enforcement officers with any authority to arrest or detain individuals for immigration violations. The Nobles County Sheriff's policy and practice of placing an "immigration hold" based on immigration requests (sometimes referred to as "ICE Holds" because the requests are

made by the U.S. Immigration and Customs Enforcement agency ("ICE"), a division of the Department of Homeland Security) has resulted in Plaintiffs remaining in jail despite no longer being held for state custody.

4. Being in the United States in violation of the federal immigration laws is a civil matter, not a crime. Nevertheless, at the request of federal immigration authorities, Sheriff Wilkening is regularly imprisoning individuals—like the named Plaintiffs —solely because they are suspected of being removable from the United States.

5. Sheriff Wilkening holds people in custody for days, weeks, and even months after state law requires their release. He carries out these lawless deprivations of liberty in the absence of a judicial warrant, without probable cause that a crime has been committed, and without any other valid legal authority.

6. Sheriff Wilkening knows that his actions violate the Fourth Amendment to the United States Constitution and consequently Article 1 Section 10 of the Minnesota Constitution, since he and the county were recently sued on exactly the same issue. In that case the Federal District Court found that holding a state detainee who would have been released but for an "ICE Hold" violated that Plaintiff's rights under the Fourth Amendment to the United States Constitution. *See Orellana v. Nobles County*, 230 F. Supp. 3d 934 (D. Minn. 2017).

7. As part of the settlement in *Orellana*, Sheriff Wilkening agreed to modify his immigration detainer policy, which now reads:

> No individual should be held based on a federal immigration detainer under 8 CFR 287.7 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. Any administratively signed warrant must be supported by sufficient probable cause of both the aliens suspected removability as well as his/her likelihood to flee. Notification to the federal authority issuing the detainer should be made prior to release.

(Attached as Exhibit G).

8. Sheriff Wilkening routinely ignores this policy and instead has his staff detain anyone for whom ICE issues an ICE Hold.

9. On behalf of themselves and a class of similarly situated persons, Plaintiffs seek temporary and permanent injunctive relief, as well as a declaratory judgment determining that the policies and practices challenged here exceed Sheriff Wilkening's authority under Minnesota law, and are unlawful.

10. Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco further ask for damages for the false imprisonment they endured as a result of Sheriff Wilkening's unlawful practices.

JURISDICTION

11. This Court has jurisdiction to grant declaratory and injunctive relief under the Uniform Declaratory Judgments Act,[1] Minn. Stat. § 555.01, and Minnesota Rules of Civil Procedure 57 and 65; jurisdiction to grant mandamus relief under Minn. Stat. § 586, and jurisdiction over Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco's tort claim under Minn. Stat. § 3.736.

12. Venue is proper in Nobles County, pursuant to Minn. Stat. § 542.

EXHAUSTION

13. Plaintiffs have exhausted their administrative remedies to the extent required by law, and judicial action is their only remaining remedy.

[1] The UDJA is remedial in nature and is to be liberally construed and administered to "settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Minn. Stat. § 555.12 (2006).

14. No statutory exhaustion requirement applies to Plaintiffs claim of unlawful detention.

PARTIES

15. Plaintiff Rodrigo Esparza resides in Worthington, MN. He is a lawful permanent resident of the United States, and is the holder of what is commonly referred to as a "green card." He has lived in the United States for nearly thirty years.

16. Plaintiff Maria de Jesus de Pineda, resides in Worthington, MN. She has lived in the United States for more than seven years.

17. Plaintiff Timoteo Martin Morales has lived in Worthington, MN for about two years.

18. Plaintiff Oscar Basavez Conseco lives in Worthington, MN. He moved to Worthington in April 2018 to search for work.

19. Defendants are all, upon information and belief, Minnesota municipal entities and/or individual members of law enforcement agencies, in an appointed or elected capacity.

20. Nobles County is a political subdivision of the State of Minnesota that can sue and be sued in its own name. Defendant Nobles County includes, operates and is responsible for the Nobles County Jail.

21. Nobles County Sheriff Kent Wilkening was, at all relevant times the Sheriff of Nobles County. He is sued here in both his personal, individual and official capacities pursuant to Minn. Stat. § 466.01 et seq. and other applicable laws.

STATEMENT OF CLAIMS

22. Plaintiffs bring this action on behalf of themselves and all others similarly situated for temporary and permanent injunctive relief, as well as a declaratory judgment holding that the policies and practices challenged here exceed Sheriff Wilkening's authority under Minnesota law.

23. Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco also bring an independent tort claim against Defendants for false imprisonment. Plaintiff Esparza was unlawfully jailed after Nobles County Jail staff told his family that they would not release him even if his bond was paid. Plaintiff de Pineda was unlawfully jailed after her sister paid her bond. Plaintiff Martin Morales was unlawfully jailed after his case was dismissed by Judge Moore. And Plaintiff Basavez Conseco was unlawfully jailed after he was told that accepting an order of release on recognizance would not free him.

24. Plaintiffs also seek reasonable attorney's fees and costs, as permitted by Minn. R. Civil Pro. § 119.

THE CHALLENGED PRACTICES[2]

25. Despite that Minnesota law requires the release of people who have posted bond, paid bail, been released on their own recognizance, completed their sentence, or otherwise resolved their criminal cases, Sheriff Wilkening refuses to release individuals if federal immigration authorities have requested their continued detention.

[2] State courts across the country have ruled against sheriffs who employ similar practices. See *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017) *Cisneros v. Elder*, 18-CV-30549, (El Paso County, Colorado 2018) https://aclu-co.org/judge-rules-el-paso-county-sheriff-must-stop-illegally-holding-prisoners-for-ice, *Parada v. Anoka County*, 18-cv-795 (D. Minn. 2018)(holding that the continued detention of a noncitizen after she was cleared of state custody must be supported by new probable cause). (Attached as Exhibit A).

26. Sheriff Wilkening dissuades people from paying bail or even accepting an order of release on recognizance by informing them that the Nobles County Jail will not release people with ICE holds.

27. Requests for continued detention come from immigration enforcement officers employed by U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS).

28. The requests are oftentimes formalized by documents that ICE officers send to the Nobles County Sheriff's Office (NCSO) regarding particular people held in the jail. On information and belief, these documents are often sent after the individual should have been released from the jail.

29. The documents that ICE sends to sheriffs' offices are standardized ICE forms. They usually include an immigration detainer, ICE Form I-247A; an administrative warrant, ICE Form I-200; and sometimes an I-203 Form. None of these forms is reviewed, approved, or signed by a judicial officer.

30. On information and belief, many of the I-247, I-200, and I-203 forms received by the Nobles County Jail are incomplete or improperly filled out. Further, the forms often lack appropriate signatures or indications of the date and time the documents were finalized.

Federal Immigration Authorities Cannot Require Minnesota Sheriffs To Detain Individuals Based on Violations of Civil Laws

The Immigration Detainer, ICE Form I-247, is not a warrant and does not provide a Minnesota Sheriff with the probable cause necessary to hold an individual in jail.

31. An immigration detainer, ICE Form I-247A, identifies a person being held in a local jail. It asserts that ICE believes that the person may be removable from the United States. It asks the jail to continue to detain that person for an additional 48 hours after he or she would

otherwise be released, to allow time for ICE to take the person into federal custody. Courts and law enforcement officers often refer to a Form I-247 detainer as an "ICE Hold."

32. An ICE Hold is not reviewed, approved, or signed by a judge or judicial officer. Instead, ICE Hold's are issued by ICE enforcement officers themselves.

33. For years many state and local law enforcement authorities believed that compliance with Form I-247's request for continued custody was a command from the federal government that they had a legal obligation to obey. Indeed the wording of Form I-247 suggested that compliance with the federal request was mandatory when that was not the case. The wording of the form has now been changed to avoid such confusion. It is now clear, and federal officials and multiple court decisions confirm, that ICE Holds are a request, not a command, from the federal government. Rather, ICE Holds impose no mandatory obligations.

The Administrative Warrant, ICE Form I-200, is also not a judicially-issued warrant and does not give a Minnesota Sheriff probable cause to hold an individual in jail

34. In a further effort to enlist the assistance of local law enforcement, ICE began sending sheriffs Form I-200, an administrative warrant, to accompany the I-247 detainer request. An administrative warrant identifies by name a particular person in the custody of a local jail and asserts that ICE has grounds to believe that the subject is removable from the United States. Of course, as described above, being removable from the United States is a civil, not a criminal, offense and does not provide a Minnesota Sheriff with any authority to hold someone in jail.

35. Like Form I-247, ICE administrative warrants are issued by ICE enforcement officers. They are not reviewed, approved, or signed by a judge or a judicial officer. Federal law states that ICE administrative warrants may be served or executed only by certain immigration officers who have received specialized training in immigration law.

36. Minnesota sheriffs have no authority to execute ICE administrative warrants.

The Jail's Notation: "ICE Notified"

37. When a person is booked into the Nobles County Jail, their fingerprints are sent to the Federal Bureau of Investigation and to ICE. In addition, in some cases, jail officials initiate contact with ICE directly when they believe that ICE may be interested in a particular person.

38. When ICE believes that a person in the jail may be present in the United States without authorization, ICE sends a detainer, ICE Form I-247A, as well as an administrative warrant, ICE Form I-200. At this point, on information and belief, the Nobles County Jail enters the notation "ICE Notified" in its computer.

39. "ICE Notified" is not a legal term. There is no legal significance to the notation "ICE Notified" in the NCSO computer. Pursuant to Sheriff Wilkening's policies and practices, however, the notation "ICE Notified" unjustifiably leads to the continued imprisonment of detainees whose release is required by Minnesota law.

Nobles County Earns Money for Detaining Individuals Pursuant To an Intergovernmental Services Agreement

40. The Department of Justice has signed a contract with Nobles County whereby Nobles County actually earns money—approximately *$20,000 per month*— for every immigration detainee held in the Nobles County Jail. See Exhibit C. Contracts like the one signed by the Nobles County Jail are called Intergovernmental Service Agreements ("IGSA"). See Exhibit D.

41. An IGSA is a contract between DOJ and a state or local government for the purpose of arranging housing for federal detainees. The contract calls for the federal government to pay a daily rate for each detainee housed in the local jail. Plainly, local jails with an IGSA have a significant economic incentive to ensure they get, and keep, as many immigration

detainees as possible. The obvious conflict of interest is part of what creates the issues that have arisen in this lawsuit.

42. The IGSA with Noble County (Nobles County IGSA) was signed in 2001 and has not been updated to include terms such as ICE or DHS, both of which were formed after 2001.

43. The Nobles County IGSA between DOJ and Nobles County states that its purpose is "for the detention and care of persons detained under the authority of the Immigration and Nationality Act . . . ."

44. The IGSA contemplates that ICE will bring certain detainees to the Nobles County Jail for temporary housing, at ICE's expense. That is, it applies to persons who are *already* in the custody of ICE officers at the time that they arrive at the Nobles County Jail. It does not purport to grant or delegate any authority to Sheriff Wilkening to initiate a seizure for the purpose of enforcing federal immigration law.

ICE Uses Form I-203 To Track Immigration Detainees Through Different Facilities

45. To track detainees housed at its various contract detention facilities, ICE uses Form I-203, an internal administrative form signed by a deportation officer. This form accompanies ICE detainees when ICE officers place them in, or remove them from, a particular detention facility. Form I-203 must accompany every detainee who is brought into an ICE detention facility. Regarding releases, the ICE Detention Standards state that "a detainee's out-processing begins when release processing staff receive the Form I-203."

46. In conjunction with an IGSA, Form I-203 functions as documentation for billing purposes, so that NCSO can seek compensation from ICE at the daily rate for housing ICE detainees.

47. Although the I-203 Form bears the title "Order to Detain or Release Alien," it is not an order that is reviewed, authorized, approved, or signed by a judge or a judicial officer. It confers no authority on a Minnesota Sheriff to initiate custody of an individual who is not already in federal custody.

48. Pursuant to the practices challenged in this case, Sheriff Wilkening classifies people as ICE Holds when state-law authority to hold the person has ended and ICE has sent Form I-203 with or without the addition of an administrative warrant (Form I-200) and/or an immigration detainer (Form I-247A).

49. Further, Sheriff Wilkening attempts to dissuade individuals for whom he has received any of the above forms from paying bail or accepting an order of recognizance, telling such individuals that they will not be released even if they pay bail.

50. Neither Form I-247, Form I-200, nor Form I-203, nor any combination thereof, justifies Sheriff Wilkening's refusal to release people when the state-law authority for their detention has ended.

51. It is the NCSO's policy to refuse to release people who have posted bond, been released on recognizance, completed their sentence, or resolved their criminal case whenever ICE has requested an ICE hold. It is also their policy to dissuade people from paying bail or taking orders of recognizance whenever ICE has requested an ICE hold. Instead of releasing them, NCSO continues to imprison them, illegally.

BACKGROUND
CLASS REPRESENTATIVES

Rodrigo Esparza

52. On April 5, 2018, Plaintiff Rodrigo Esparza was arrested for receiving stolen property.

53. Bond was set at $10,000 but he was told an immigration hold had been placed on him.

54. As detailed more fully below, jail staff dissuaded Esparza and his family from posting bond by telling them they paid the bail they would not release him but rather would hand him over to ICE.

55. On April 9, 2018, ICE sent Forms I-247 and I-200 to the NSCO.

56. At approximately the beginning of August Esparza plead guilty to a gross misdemeanor and was sentenced to time served.

57. However, Sheriff Wilkening did not release Esparza but continued to hold him for ICE.

58. Esparza worries that he will be detained without probable cause by Sheriff Wilkening in the future since he lives in Worthington and, despite possessing a greencard, be subjected to an ICE hold.

Maria de Jesus de Pineda

59. Plaintiff de Pineda was arrested for identity theft on February 13, 2018. A state court judge set her bond at $10,000

60. Her family posted the bond on February 17, 2018.

61. Instead of releasing her, NCSO held her because she had an ICE hold. On February 20, 2018, the immigration documents I-247 and I-200 were sent to NCSO.

62. Since she had paid her bond but was not released, Maria missed her next scheduled state court appearance on February 27, 2018, leading to a bench warrant and forfeiting her bond.

63. Fortunately, the judge stayed his ruling for 90 days.

64. Maria was released from ICE custody on March 6, 2018 upon posting a $6,000 immigration bond but taken back into state custody pursuant to the bench warrant.

65. She was released from state custody on March 9, 2018.

66. Maria fears that she could be detained by the Defendants in the future as she tries to navigate her criminal and civil cases.

Timoteo Martin Morales

67. Plaintiff Martin Morales was arrested for two counts of criminal sexual conduct.

68. Originally, Plaintiff's family attempted to pay his $10,000 bail.

69. On or about March 26, 2018, the family got a bail bondman, Jason Mau, to post the bond for Martin Morales. The bondsman waited for about four hours until he was told that there was an ICE hold on Martin Morales and that he would not be released from jail.

70. Martin Morales remained in custody, fighting his criminal case.

71. On July 24, 2018, the state dismissed the charges against him.

72. However, Martin Morales was still not released by NCSO. They held him due to his ICE hold. The Form I-247 and Form I-200 paperwork was delivered on July 25, 2018 and served on Martin Morales.

73. His state case was refiled on July 26, 2018 and Martin Morales is still fighting those charges.

74. His family is willing to pay his bail if he would be released from the jail.

Oscar Basavez Conseco

75. Plaintiff Basavez Conseco was arrested for several low-level drug charges.

76. In jail, he was told by jail staff that he had an ICE hold and they wouldn't let him out if he paid bail, but rather, he would be taken into custody by ICE.

77. Yet because of the low severity of his crimes, the prosecutor was willing to let Basavez Conseco go on an order of release on recognizance.

78. Because of the ICE hold, Basavez Conseco asked his public defender to set a small bail amount instead.

SPECIFIC EXAMPLES OF THE CHALLENGED PRACTICES

Criminal Case Resolved: Plaintiff Timoteo Martin Morales

79. On July 24, 2018, Timoteo Martin Morales' case was dismissed by Judge Gordon Moore. Instead of releasing him, the NCSO continued to hold him for ICE. On July 25, 2018, ICE sent the Form I-247 and Form I-200 identifying Mr. Martin Morales to the NCSO. Those documents are dated July 25, 2018.

Released on Recognizance: Alexander Castillo

80. Alexander Castillo was held by NCSO after he was released on his own recognizance by Judge Terry Vajgrt on August 1, 2017. See Exhibit B.

Discouraging Posting of Bonds: Plaintiff Rodrigo Narvaes Esparza, Plaintiff Oscar Basavez Conseco, Leonel Jose Gonzalez Palacios, Jose Balbuena-Perez, Ezequiel Lopez Lopez and Hector Garcia

81. Jail employees often instruct family and friends to not pay bail or post bond because an inmate has an ICE hold and they would be wasting their money.

82. Rodrigo Narvaes Esparza, a lawful permanent resident of the United States, was arrested and booked into the Nobles County Jail on April 5, 2018. A bond of $10,000 was set in order him to be released.

83. Mr. Esparza's step-father, Robert, tried to pay the bail but was not able to because Mr. Esparza was under an "ICE Hold." Mr. Esparza's father was told by jail staff that they wouldn't let Mr. Esparza out even if he paid the bail because he had an immigration hold.

84. Oscar Basavez Conseco had a bail of$1,500 set by a judge. Jail administrators told Mr. Conseco that they would not release him even if he paid bail because he was the subject of an ICE Hold. See Exhibit B.

85. Leonel Jose Gonzalez Palacios was arrested on December 1, 2017. A bond of $1,500 was set by the judge. However, jail staff instructed Mr. Palacios and his family not to pay any bond because they would not release him due to an ICE Hold. See Exhibit B.

86. Jose Balbuena-Perez has decided not to pay the amount set for his bail because he has been told that he would not be released but rather, they would hold him for ICE. See Exhibit B.

87. Hector Garcia was arrested for a DWI on November 29, 2017. His bail was set at $1,500. However he was told not to pay it by jail staff because he was the subject of an ICE Hold and would not be released.

88. Ezequiel Lopez Lopez was arrested in June 2018. His public defender was able to get his bail reduced to $10,000 but when his brother went to post bond, he was told by jail staff they wouldn't release Ezequiel because he was the subject of an ICE Hold. See Exhibit B.

Bond Posted but Not Released: Carlos Daniel Chilel Bartolan, Plaintiff Maria de Jesus de Pineda, Juan Gutierrez-Larios and Huiwen Chen

89. When jail employees do not succeed in discouraging the posting of a bond, they will accept the bond money, but the jail will not release the person. For example, on August 28, 2017 bail was paid for on behalf of Carlos Daniel Chilel Bartolan by his friend Jose Miranda. Jail staff accepted the $1500. See Exhibit B.

90. Pursuant to the policies and practices challenged in this case, however, the jail refused to release Mr. Chilel Bartolan. Although Minnesota law required that it release Mr. Chilel Bartolan after bond was posted, the jail continued to imprison him illegally.

91. Plaintiff Maria de Jesus de Pineda asked her sister to post her bond on February 17, 2018. But instead of releasing Ms. Jesus de Pineda after her bond was posted, NCSO continued to hold her for immigration authorities.

92. Juan Gutierrez-Larios is a 19 year old man who was arrested in March 2018. In April 2018, his public defender managed to get his bail lowered so that his family could afford the $5,000 necessary to bail him out. His father talked to jail staff and was told there was no ICE Hold, and that if the bond was paid Mr. Gutierrez-Larios would be released. Mr. Gutierrez-Larios's father paid the full amount of the bond. But Mr. Gutierrez-Lario's father was then told, for the first time, that Juan would *not* be released because he *was* the subject of an ICE Hold. Juan was deported on April 17th. His family is still trying to get their bail money back. See Exhibit B.

93. A similar incident happened to Huiwen Chen. Mr. Chen's family asked if she was the subject of an ICE Hold and was told that Ms. Chen was not. Her family then paid $1,500 cash to the court for her release. It was only then that the jail told Ms. Chen's family that they would not release her because she was the subject of an ICE Hold. See Exhibit B.

Bond Processing Delayed For Plaintiff Timoteo Martin-Morales

94. Mr. Timoteo Martin-Morales was charged with violations of two Minnesota laws and represented by a private lawyer. His lawyer, Virginia Barron, called the jail to confirm that there was no ICE Hold on Mr. Martin-Morales and was informed that no ICE Hold has been issued for Mr. Martin-Morales.

95. The family then arranged for a bail bondsman to pay Mr. Martin-Morales's bond at the jail, which the bondsman did on or about March 26, 2018.

96. Processing of a bond usually takes about 30 minutes. But instead of releasing Mr. Martin-Morales, NCSO slowed his paperwork for over four hours and then told him he had an ICE Hold and would not be released.

97. On information and belief, NCSO slowed the processing until paperwork from ICE could be sent to them. *See* Exhibit B.

CLASS ACTION ALLEGATIONS

98. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Minnesota Rule of Civil Procedure 23.

99. Each of the Plaintiffs seeks to represent a class defined as:

> All past, current and future detainees in the Nobles County Jail who were, are, or will be, the subjects of immigration detainers (ICE Form I-247A) and/or administrative warrants (ICE Form I-200) sent to the Nobles County Jail by officers or representatives of United States Immigration and Customs Enforcement.

100. Pursuant to Sheriff Wilkening and the NCSO's policies, individuals requested to be detained by ICE are identified in the NCSO's records as being on an ICE Hold or that the individual should be "h[e]ld for ICE" which distinction, once applied, is used by Sheriff Wilkening to justify unlawfully detaining individuals beyond the time permitted by the Minnesota Constitution and relevant laws. *See* Exhibit E.

101. The proposed class is so numerous and so fluid that joinder of all members is impracticable.

102. A review of data held by the Transactional Records Access Clearinghouse (TRAC) shows that the NCSO received 73 ICE detainers in 2017, up from 35 in 2016. In April 2018, NCSO received 11 such requests.[3]

[3] http://trac.syr.edu/phptools/immigration/detain/

103. Upon information and belief, NCSO consistently honors ICE detainers and detains individuals even after Sheriff Wilkening no longer has a basis under Minnesota law to do so.

104. In response to a Minnesota Government Data Practices Act request, Sheriff Wilkening stated that he had received 269 requests for ICE Holds between January 1, 2018 and March 31, 2018. *See* Exhibit F.

105. There are questions of law and fact common to members of the plaintiff class. These questions include, but are not limited to, the following:

- Whether Sheriff Wilkening has the authority under Minnesota law to hold people suspected of civil violations of federal immigration law after Minnesota law otherwise requires their release.
- Whether Sheriff Wilkening has authority under Minnesota law to rely on the receipt of Form I-247A as grounds to hold people in the Nobles County Jail after Minnesota law otherwise requires their release.
- Whether Sheriff Wilkening has authority under Minnesota law to rely on the receipt of Form I-200 as grounds to hold people after Minnesota law otherwise requires their release.
- Whether Sheriff Wilkening has authority under Minnesota law to rely on the receipt of Form I-203 as grounds to hold people in the Nobles County Jail after Minnesota law otherwise requires their release.
- Whether Sheriff Wilkening has authority under Minnesota law to rely on the receipt of any combination of the above ICE Forms as grounds to hold people in the Nobles County jail after Minnesota law otherwise requires their release.
- Whether Sheriff Wilkening has authority under Minnesota law to rely on the receipt of any combination of the above ICE Forms as grounds to dissuade people in the Nobles County Jail from posting bond, after which Minnesota law would require their release.
- Whether Plaintiffs have a clear legal right to release when Sheriff Wilkening's state-law authority to confine them has ended, and whether Sheriff Wilkening has a clear and mandatory legal duty to release the Plaintiffs when the state-law authority for their confinement has ended.
- Whether Sheriff Wilkening's policy and practice of holding people at the request of ICE after they have posted bond, completed their sentence, been released on recognizance or otherwise resolved their state criminal charge constitutes an unreasonable seizure, in violation of Article I, Section 10 of the Minnesota Constitution.
- Whether Sheriff Wilkening's policy and practice of holding people at the request of ICE after they have posted bond, completed their sentence, been released on recognizance or otherwise resolved their state criminal charge

deprives them of procedural due process, in in violation of Article I, Section 7 of the Minnesota Constitution.

106. The claims of the representative parties, the named plaintiffs, are typical of the claims of the members of the class.

107. The representative parties will fairly and adequately protect the interests of the class.

108. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

CLAIMS FOR RELIEF

First Claim for Relief

(Ultra Vires Actions - Minn R. Civ. P 57 and 65, Declaratory and Injunctive Relief)
(Asserted on Behalf of Plaintiffs and the Class)

109. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

110. The limited authority of a Minnesota sheriff to make an arrest or otherwise deprive a person of liberty derives from, and is limited by, the Minnesota Constitution and the statutes enacted by the legislature.

111. Neither the Minnesota Constitution, nor any Minnesota statutes, provide a Minnesota sheriff with authority to enforce federal immigration law.

112. A sheriff's decision to hold a person who would otherwise be released is the equivalent of a new arrest that must comply with the statutory and constitutional requirements for depriving persons of liberty.

113. A peace officer may arrest a person when he has a warrant commanding the person's arrest. A warrant must be issued by a judge.

114. The forms sent by ICE to Sheriff Wilkening that purport to justify the arrest or detention of the Plaintiffs do not include a warrant signed by a judge. None of Forms I-247A, I-200, or I-203 are reviewed or signed by a judge or a judicial officer. Therefore all arrests made by a state law enforcement officer pursuant to such Forms are warrantless arrests and must meet the requirements of a warrantless arrest.

115. A peace officer may make a warrantless arrest only when the officer has probable cause to believe a crime was committed and probable cause to believe that the suspect committed it. Even when ICE asserts that it has probable cause to believe a person is removable from the country, removability is a civil matter, not a crime. Something Sheriff Wilkening knows full well given his involvement in prior litigation where a Federal District Court found that "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States." *Orellana v. Nobles County*, 230 F.Supp.3d 934, 945 (D. Minn. 2017) (*quoting Arizona v. United States*, 567 U.S. 387, 407 (2012).

116. As is clear, no statute authorizes Sheriff Wilkening Sheriff Wilkening to deprive persons of liberty on the ground that they are suspected of civil violations of federal immigration law.

117. An actual and immediate controversy exists between Plaintiffs and Sheriff Wilkening. Sheriff Wilkening asserts that he has the legal authority to continue the policies and practices challenged in this action. Sheriff Wilkening believes that he has the legal authority to dissuade people from posting bond and to refuse to release the Plaintiffs when they have posted bond, completed their sentence, been released on their own recognizance or otherwise resolved their pending criminal cases. On the contrary, Sheriff Wilkening has no such authority.

118. Sheriff Wilkening has threatened and continues to threaten Plaintiffs and Plaintiff class with arrest and detention that is not authorized by any valid legal authority.

119. Sheriff Wilkening has acted and is threatening to continue acting under color of law, but in excess of his legal authority, to deprive Plaintiffs and the Plaintiff class of their liberty.

120. Plaintiffs face a real and immediate threat of irreparable injury as a result of the actions and threatened actions of the Defendant and the existence, operation, and threat of unjustified deprivation of liberty posed by the policies and practices challenged in this action.

121. Wherefore, Plaintiffs request a declaratory judgment; temporary and permanent injunctive relief, and any additional relief the Court deems just.

Second Claim for Relief
(Relief in the nature of mandamus, Minn. Stat. Chapter 586 and §484.03)
(Asserted on Behalf of Plaintiffs and the Class)

122. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

123. When Sheriff Wilkening's state-law authority to confine Plaintiffs has ended, Plaintiffs have a clear legal right to release from the Nobles County Jail.

124. Sheriff Wilkening has a clear and mandatory legal duty to release the Plaintiffs when the state-law authority for their confinement has ended.

125. Plaintiffs have no adequate legal remedy to secure their release.

126. Wherefore, Plaintiffs request interim injunctive relief and relief in the nature of mandamus, and any additional relief the Court deems just and proper.

Third Claim for Relief
(Unreasonable seizure, Minnesota Constitution, Article I, Section 10; Rules 57 and 65, Declaratory and Injunctive relief)
(Asserted on Behalf of Plaintiffs and the Class)

127. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

128. An arrest without legal authority is an unreasonable seizure, in violation of Article I, Section 10 of the Minnesota Constitution.

129. Sheriff Wilkening has acted and is threatening to continue acting under color of law but without legal authority, to carry out unreasonable seizures of the Plaintiffs and members of the Plaintiff class.

130. Wherefore, Plaintiffs request a declaratory judgment; temporary and permanent injunctive relief, and any additional relief the Court deems just.

Fourth Claim for Relief
(Due process, Minnesota Constitution, Article I, Section 7; Rules 57 and 65 - Declaratory and Injunctive Relief)
(Asserted on behalf of Plaintiffs and the Class)

131. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

132. Sheriff Wilkening's policies do not provide Plaintiffs with meaningful notice and opportunity to be heard to contest the unreasonable detentions challenged in this lawsuit.

133. For example, NCSO deputies do not provide detainees in the jail with notice that ICE has sent Form I-247A to the Nobles County Jail. Nor do they accurately and consistently tell detained individuals' family members if an ICE Hold has been applied to their loved one.

134. Deprivations of liberty carried out without notice and opportunity to be heard deprive Plaintiffs of procedural due process, in violation of Article I, Section 7 of the Minnesota Constitution.

135. Deprivations of liberty carried out without lawful authority constitute deprivations of substantive due process, in violation of Article I, Section 7of the Minnesota Constitution.

136. Sheriff Wilkening has acted and is threatening to continue acting under color of law but without legal authority, to deprive the Plaintiffs and members of the Plaintiff class of their right to procedural and substantive due process of law.

137. Wherefore, Plaintiffs request a declaratory judgment; temporary and permanent injunctive relief, and any additional relief the Court deems just.

Fifth Claim for Relief
(Right to Bail, Minnesota Constitution, Article I, Sections 5 and 7; Rules 57 and Rule 65; Rule Crim. P. 6.02 Prospective Relief)
(Asserted on behalf of Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco)

138. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

139. With regard to pretrial detainees such as Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco, the challenged policies violate the Plaintiffs' right to pretrial release on bail, in violation of Article I, Sections 5 and 7 of the Minnesota Constitution.

140. Sheriff Wilkening has acted and is threatening to continue acting under color of law but without legal authority, to deprive the Plaintiffs and members of the Plaintiff class of their right to release on bond.

141. Wherefore, Plaintiffs request a declaratory judgment; temporary and permanent injunctive relief, and any additional relief the Court deems just.

Sixth Claim for Relief
(False Imprisonment)

(Asserted by Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco)

142. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

143. Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco were (and in some cases, still are) pre-trial detainees in Defendant's custody.

144. For example, in April 2018, Esparza's family attempted to pay his bail but were told by NCSO employees that Esparza would not be released even if they paid it.

145. As a result of Sheriff Wilkening's unlawful policies, Esparza was not released. He remains imprisoned at the Nobles County jail.

146. Similarly, bail of $10,000 was set for Maria de Jesus de Pineda after she was arrested and charged with identity theft. On February 17, 2018, de Pineda's sister paid the bail at the Nobles County Jail.

147. As a result of Sheriff Wilkening's unlawful policies, de Pineda was not released.

148. On or about March 26, 2018, Martin Morales' family attempted to pay his bail but were told that he would not be released after they paid it.

149. On July 24, 2018, his case was dismissed but the jail again refused to release him from custody.

150. As a result of Sheriff Wilkening's unlawful policies, Martin Morales was not released. He remains imprisoned at the Nobles County jail.

151. Basavez Conseco was forced to reject an offer of release on his recognizance because the jail would not release him if he took it.

152. As a result of Sheriff Wilkening's unlawful policies, Basavez Conseco was not released. He remains imprisoned at the Nobles County jail.

153. Sheriff Wilkening knowingly and intentionally restricted Plaintiffs freedom of movement. All were aware that their freedom of movement was restricted.

154. Sheriff Wilkening restricted freedom of movement of each named Plaintiff without legal justification.

155. Sheriff Wilkening is liable to Esparza, de Pineda, Martin Morales and Basavez Conseco for false imprisonment.

156. At the time of the false imprisonment, Plaintiffs were not incarcerated pursuant to a conviction for a crime and they were not awaiting sentencing.

157. Wherefore, Plaintiff is entitled to damages for false imprisonment, and any additional relief the Court deems just.

PRAYER FOR RELIEF

158. Wherefore, Plaintiffs request that the Court:

A. Certify this matter as a class action under Minnesota Rules of Civil Procedure Rule 23.03

B. Define the certified class as "All past, current and future detainees in the Nobles County Jail who were, are, or will be, the subjects of immigration detainers (ICE Form I-247A) and/or administrative warrants (ICE Form I-200) sent to the Nobles County Jail by officers or representatives of United States Immigration and Customs Enforcement."

C. Issue a judgment declaring that Defendant Sheriff Wilkening exceeds his authority under Minnesota law when he relies on ICE detainers or ICE administrative warrants or I-203 Forms, or any combination thereof, as grounds for refusing to release people who post bond, complete their sentence, released on recognizance or otherwise resolve their state criminal case;

D. Issue a judgment declaring that Sheriff Wilkening violates the right enshrined in the Minnesota Constitution to be free of unreasonable seizures when he relies on ICE detainers or ICE administrative warrants or Form I-203, or any combination thereof, as grounds for refusing to release people who post bond,

complete their sentence, are released on their own recognizance or otherwise resolve their state criminal case;

E. Issue a judgment declaring that Sheriff Wilkening violates the right to due process of law enshrined in the Minnesota Constitution when he relies on ICE detainers, ICE administrative warrants or Form I-203, or any combination thereof, as grounds for refusing to release people who post bond, complete their sentence, released on recognizance or otherwise resolve their state criminal case;

F. Issue a judgment declaring that Sheriff Wilkening violates the right to bail enshrined in the Minnesota Constitution when he relies on ICE detainers or ICE administrative warrants as grounds for refusing to release pretrial detainees who post bond;

G. Appoint Ian Bratlie, Teresa Nelson, Norman H. Pentelovitch, and Brooke D. Anthony, as class counsel pursuant to Minnesota Rule of Civil Procedure 23.07;

H. Award interim and permanent injunctive relief, and relief in the nature of mandamus;

I. Schedule a jury trial on Plaintiffs Esparza, de Pineda, Martin Morales and Basavez Conseco's claims of false imprisonment;

J. Award costs and prejudgment interest to Plaintiffs; and

K. Provide any additional relief the Court deems just and proper.

JURY DEMAND

Plaintiffs request a jury trial for all matters so triable by a jury.

ANTHONY OSTLUND BAER & LOUWAGIE P.A.

Dated: August 16, 2018

By: *s/ Norman H. Pentelovitch*

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the parties against whom the allegations in the Summons and Complaint are asserted.

By: *s/ Norman H. Pentelovitch*
Norman H. Pentelovitch

EXHIBIT A

477 Mass. 517
Supreme Judicial Court of Massachusetts,
Suffolk..

Sreynuon LUNN
v.
COMMONWEALTH& another.[1]
SJC-12276
|
Argued April 4, 2017.
|
Decided July 24, 2017.

Synopsis
Background: Detainee petitioned single justice of the Supreme Judicial Court for an order of release, arising out of detainee being held by trial court officers pursuant to a federal civil immigration detainer after the state criminal charges against detainee had been dismissed. A single justice of the Supreme Judicial Court, Suffolk County, Lenk, J., considered the matter moot, as detainee had been taken into federal custody, but reported matter to the full Court.

Holdings: The Supreme Judicial Court held that:

[1] detainee was arrested upon being held on civil immigration detainer;

[2] state common law does not authorize officers to make arrests for federal civil immigration matters;

[3] no state law authorizes an officer to arrest or detain an individual based on a civil immigration detainer; and

[4] officers do not have inherent or implicit authority to carry out detention requests made in civil immigration detainers.

Remanded with instructions.

West Headnotes (20)

[1] **Aliens, Immigration, and Citizenship**
Unlawful entry or presence

Being present in the country illegally is not by itself a crime; illegal presence without more is only a civil violation that subjects the individual to possible removal. Immigration and Nationality Act § 237, 8 U.S.C.A. § 1227(a)(1)(B).

Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship**
Civil proceedings in general

The administrative proceedings brought by federal immigration authorities to remove individuals from the country are civil proceedings, not criminal prosecutions, even where the alleged basis for removal is the commission of a criminal offense.

Cases that cite this headnote

[3] **Aliens, Immigration, and Citizenship**
Detention in general

Federal immigration detainers are simply requests; they are not commands, and they impose no mandatory obligations on the State authorities to which they are directed. 8 C.F.R. § 287.7(d).

Cases that cite this headnote

[4] **States**
Federal laws invading state powers

The Tenth Amendment to the United States Constitution prohibits the federal government from compelling states to employ their resources to administer and enforce federal programs. U.S. Const. Amend. 10.

Cases that cite this headnote

[5] **Aliens, Immigration, and Citizenship**
Arrest
Aliens, Immigration, and Citizenship
Detention in general

What the Department of Homeland Security is asking for, when it requests in a civil immigration detainer that a state custodian hold a person for up to two days after he or she would otherwise be entitled to release from state custody, constitutes an arrest as a matter of state law.

Cases that cite this headnote

[6] **Arrest**
What Is an Arrest

An arrest occurs, with or without a warrant, when there is (1) an actual or constructive detention or seizure, (2) performed with the intention to effect an arrest, and (3) so understood by the person detained.

Cases that cite this headnote

[7] **Arrest**
What Is an Arrest

The subjective understanding of the officer or of the defendant does not control whether an arrest has occurred.

Cases that cite this headnote

[8] **Arrest**
Reasonableness; reason or founded suspicion, etc

It is permissible in certain limited circumstances for a police officer, on making an otherwise lawful stop, to briefly detain an individual for investigatory purposes, even though the individual's liberty is thereby temporarily restrained and he or she is not free to leave.

Cases that cite this headnote

[9] **Aliens, Immigration, and Citizenship**
Arrest
Aliens, Immigration, and Citizenship
Detention in general

Detainee was arrested upon being held on civil immigration detainer, following dismissal of state criminal charges; detainee was physically detained in holding cell, against his will, for several hours before federal authorities came, and detainee was otherwise entitled to be free, as no criminal charges were then pending against him and there was no other basis under state law to hold him.

Cases that cite this headnote

[10] **Arrest**
Who may arrest

Court officers, while on court house premises, have the same power to arrest as police officers. Mass. Gen. Laws Ann. ch. 221, § 70A.

Cases that cite this headnote

[11] **Arrest**
Officers and Assistants, Arrest Without Warrant

The authority to arrest is generally controlled by state common law and statutes, which confer the power and also define the limits of that power.

Cases that cite this headnote

[12] **States**
Operation Within States of Constitution and Laws of United States

State law may authorize state officers to enforce federal statutes and make arrests for federal offenses, unless preempted by federal law, but it need not do so.

Cases that cite this headnote

[13] **Arrest**
Authority to arrest without warrant in general

In the absence of a federal statute granting state officers the power to arrest for a federal offense, their authority to do so is a question of state law.

Cases that cite this headnote

[14] **Arrest**
Grounds for warrantless arrest in general

Under the common law, police officers have the authority to make warrantless arrests, but only for criminal offenses, and only when an officer has probable cause to believe the person has committed a felony, or when the person commits a misdemeanor, provided the misdemeanor involves an actual or imminent breach of the peace, is committed in the officer's presence, and is ongoing at the time of the arrest or only interrupted by the arrest.

Cases that cite this headnote

[15] **Arrest**
Nature of offense; felony or misdemeanor

"Breach of the peace," as required to allow a warrantless arrest of a person who commits a misdemeanor, generally means an act that causes a public disturbance or endangers public safety in some way.

Cases that cite this headnote

[16] **Aliens, Immigration, and Citizenship**
Arrest
Arrest
Nature and purpose of remedy

State common law does not authorize police officers to make arrests generally for civil matters, or specifically for federal civil immigration matters, regardless of whether the civil immigration detainers are accompanied by federal administrative warrants.

2 Cases that cite this headnote

[17] **Aliens, Immigration, and Citizenship**
Arrest

No state law authorizes a state police officer or court officer, directly or indirectly, to arrest or detain an individual based on a federal civil immigration detainer.

1 Cases that cite this headnote

[18] **Aliens, Immigration, and Citizenship**
Detention in general
States
Inferior ministerial officers or agents

State police and court officers do not have inherent or implicit authority to carry out the detention requests made in federal civil immigration detainers.

2 Cases that cite this headnote

[19] **Arrest**
Presentation to magistrate, etc.; arraignment
Bail
Right to Release on Bail

An individual arrested without a warrant has a statutory right to be considered for bail and, if not admitted to bail, a constitutional right to a prompt determination of probable cause to arrest, made by a neutral magistrate, generally within twenty-four hours of arrest.

Cases that cite this headnote

[20] **Aliens, Immigration, and Citizenship**
Arrest

Statute allowing state and local authorities to cooperate with federal immigration officers in immigration enforcement does not affirmatively grant authority to all state and local officers to make arrests that are not otherwise authorized by state law. Immigration and Nationality Act § 287, 8 U.S.C.A. § 1357(g)(10).

4 Cases that cite this headnote

****1145** Alien. Arrest.
CIVIL ACTION commenced in the Supreme Judicial Court for the county of Suffolk on February 7, 2017.
The case was reported by Lenk, J.

Attorneys and Law Firms

Emma C. Winger (Mark Fleming, of New York, & Alyssa Hackett, Committee for Public Counsel Services, also present) for the petitioner.

Joshua S. Press, of the District of Columbia, for the United States.

Jessica V. Barnett, Assistant Attorney General (Allen H. Forbes, Special Assistant Attorney General, & Sara A. Colb, Assistant Attorney General, also present) for the Commonwealth & another.

The following submitted briefs for amici curiae:

****1146** Sabrineh Ardalan, of New York,Philip L. Torrey, Mark C. Fleming, & Laila Ameri, Boston, for Immigration and Refugee Clinical Program at Harvard Law School.

Christopher N. Lasch, of Colorado, for David C. Baluarte & others.

Karen Pita Loor for Criminal Defense Clinic at Boston University School of Law.

Omar C. Jadwat, of New York, Spencer E. Amdur, of Pennsylvania, Cody H. Wofsy, of California, Matthew R. Segal, Jessie J. Rossman, Laura Rótolo, Carlton E. Williams, Kirsten V. Mayer, Boston, Kim B. Nemirow, & Laura Murray-Tjan for Bristol County Bar Advocates, Inc., & others.

Present: Gants, C.J., Lenk, Hines, Gaziano, Lowy, Budd, & Cypher, JJ.

Opinion

***518** BY THE COURT. After the sole pending criminal charge against him was dismissed, the petitioner, Sreynuon Lunn, was held by Massachusetts court officers in a holding cell at the Boston Municipal Court at the request of a Federal immigration officer, pursuant to a Federal civil immigration detainer. Civil immigration detainers are documents issued by Federal immigration officers when they wish to arrest a person who is in State custody for the purpose of removing the person from the country. By issuing a civil detainer, the Federal officer asks the State custodian voluntarily to hold the person for up to two days after he or she would otherwise be entitled to be released from State custody, in order to allow Federal authorities time to arrive and take the person into Federal custody for removal purposes.

The United States Supreme Court has explained that, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," Arizona v. United States, 567 U.S. 387, 407, 132 S.Ct. 2492, 183 L.Ed.2d 351 (2012), and that the Federal administrative process for removing someone from the country "is a civil, not criminal, matter." Id. at 396, 132 S.Ct. 2492. Immigration detainers like the one used in this case, for the purpose of

that process, are therefore strictly civil in nature. The removal process is not a criminal prosecution. The detainers are not criminal detainers or criminal arrest warrants. They do not charge anyone with a crime, indicate that anyone has been charged with a crime, or ask that anyone be detained in order that he or she can be prosecuted for a crime. Detainers like this are used to detain individuals because the Federal authorities believe that they are civilly removable from the country.

It is undisputed in this case that holding someone in circumstances like this, against his or her will, constitutes an arrest under Massachusetts law. The question before us, therefore, is whether Massachusetts court officers have the authority to arrest someone ***519** at the request of Federal immigration authorities, pursuant to a civil immigration detainer, solely because the Federal authorities believe the person is subject to civil removal. There is no Federal statute that confers on State officers the power to make this kind of an arrest. The question we must answer is whether the State law of Massachusetts authorizes such an arrest. To answer the question, we must look to the long-standing common law of the Commonwealth and to the statutes enacted by our Legislature. Having done so, we conclude that nothing in the statutes or common law of Massachusetts authorizes court officers to make a civil arrest in these circumstances.[2,3]

****1147** Background. Lunn was arraigned in the Boston Municipal Court on October 24, 2016, on a single count of unarmed robbery. The day before the arraignment, the United States Department of Homeland Security (department) issued a civil immigration detainer against him. The detainer document was a standard form document then in use by the department. It requested, among other things, that the Massachusetts authorities continue to hold Lunn in State custody for up to two days after he would otherwise be released, in order to give officers of the department time to arrive and take him into Federal custody.[4]

Bail was set at the arraignment in the amount of $1,500. Lunn did not post bail and, according to the trial court docket, was committed to the custody of the sheriff of Suffolk County (sheriff) ***520** at the Suffolk County jail in lieu of bail.[5]

Lunn was brought back to court for trial on February 6, 2017.[6] He was transported from the jail to the court house by personnel from the office of the sheriff, and was delivered into the custody of the trial court's court officers. Because the Commonwealth was not ready for trial at that time, the judge dismissed the case for lack ****1148** of prosecution.[7] At that point there were no longer any criminal charges pending against Lunn in Massachusetts. Lunn's counsel informed the judge of the outstanding detainer and asked that Lunn be released from custody notwithstanding the detainer, the criminal case having been dismissed. The judge declined to act on that request.[8] Lunn remained in the custody of the court officers; it appears that he was kept in a holding cell in the court house. Several hours later—the record before us does not specify exactly how long—department officials arrived at the ***521** court house and took Lunn into Federal custody.

The following morning, February 7, 2017, Lunn's counsel filed a petition in the county court on his behalf, pursuant to G.L.c. 211, § 3, asking a single justice of this court to order the Boston Municipal Court to release him.[9] The petition alleged, among other things, that the trial court and its court officers had no authority to hold Lunn on the Federal civil detainer after the criminal case against him had been dismissed, and that his continued detention based solely on the detainer violated the Fourth and Fourteenth Amendments to the United States Constitution and arts. 12 and 14 of the Massachusetts Declaration of Rights. By that time, however, Lunn had already been taken into Federal custody. The single justice therefore considered the matter moot but, recognizing that the petition raised important, recurring, and time-sensitive legal issues that would likely evade review in future cases, reserved and reported the case to the full court.

Discussion. 1. Civil versus criminal immigration enforcement. The principal statute governing immigration in the United States is the Immigration and Nationality Act (act), 8 U.S.C. §§ 1101 et seq. It sets forth in elaborate detail the terms, conditions, and procedures for admitting individuals into the United States who are not citizens or nationals of this country (referred to in the act as "aliens," 8 U.S.C. § 1101[a][3]), as well as the terms, conditions, and procedures for removing those individuals from the country. Some violations of the act are criminal offenses. It is a crime, for example—punishable as a misdemeanor for the first offense—for an alien to enter the country illegally. 8 U.S.C. § 1325(a).[10] Immigration crimes are ****1149** prosecuted in the Federal District Courts, like any other Federal crimes.

[1]Many violations of the act are not criminal offenses. Being ***522** present in the country illegally, for example, is not by itself a crime. Illegal presence without more is only a civil violation of the act that subjects the individual to possible removal. 8 U.S.C. § 1227(a)(1)(B). See Arizona, 567 U.S. at 407, 132 S.Ct. 2492; Melendres v. Arpaio, 695 F.3d 990, 1000-1001 (9th Cir. 2012)

("[U]nlike illegal entry, mere unauthorized presence in the United States is not a crime").[11]

[2]Significantly, the administrative proceedings brought by Federal immigration authorities to remove individuals from the country are civil proceedings, not criminal prosecutions. See Arizona, 567 U.S. at 396, 132 S.Ct. 2492. See also 6 C. Gordon, S. Mailman, S. Yale-Loehr, & R.Y. Wada, Immigration Law and Procedure § 71.01[4][a] (Matthew Bender, rev. ed. 2016) (acknowledging "the uniform judicial view, reiterated in numerous Supreme Court and lower court holdings, ... that [removal] is a civil consequence and is not regarded as criminal punishment"). This is true even where the alleged basis for removal is the commission of a criminal offense. Aliens are subject to removal from the country for a variety of reasons. For example, an individual is subject to removal if he or she was inadmissible at the time of entry into the country or has violated the terms and conditions of his or her admission, 8 U.S.C. § 1227(a)(1)(A)-(D); has committed certain crimes while in the country, id. at § 1227(a)(2); is or at any time after admission into the country has been a drug abuser or addict, id. at § 1227(a)(2)(B)(ii); presents certain security or foreign policy risks, id. at § 1227(a)(4); ***523** has become a public charge, id. at § 1227(a)(5); or has voted illegally, id. at § 1227(a)(6). Removal proceedings are heard and decided by executive branch immigration judges appointed by the United States Attorney General, who operate within the Department of Justice's Executive Office for Immigration Review. Id. at § 1101(b)(4).

2. Use of civil immigration detainers. The type of immigration detainer issued by the department in this case was Form I-247D, entitled "Immigration Detainer–Request for Voluntary Action." It was one of three different types of forms then being used by the department to notify State authorities that they had in their custody a person believed by the department to be a ****1150** removable alien, and to indicate what action the department was asking the State authorities to take with respect to that person.[12]

Form I-247D was to be completed and signed by a Federal immigration officer. In part 1.A of the form, the officer was asked to indicate, by checking one or more of six boxes, a basis on which the department had determined that the person in custody was "an immigration enforcement priority."[13] The officer in this case checked the box stating that Lunn "has been convicted of a 'significant misdemeanor' as defined under [department] policy." There was no indication on the form what that misdemeanor was, whether it was a Federal or State offense, when it occurred, or when he was convicted.

Part 1.B of the form stated that the department had determined that there was probable cause to believe that the person in custody was a removable alien, and required the officer completing the form to indicate, by checking one or more of four boxes, the basis for that determination. In this case the officer checked two boxes: the first stated that there was "a final order of removal against the [petitioner]"; and the second stated that there was "biometric confirmation of the [petitioner's] identity and a records check of ***524** federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the [petitioner] either lacks immigration status or notwithstanding such status is removable under [United States] immigration law." The detainer did not provide any specific details as to the order of removal.[14]

The detainer form stated that the department "requested" the custodian of the subject of the detainer to do three things: (1) "[s]erve a copy of this form on the subject and maintain custody of him/her for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow [the department] to assume custody";[15] (2) notify the department at a given telephone number "[a]s early as possible prior to the time you otherwise would release the subject"; and ****1151** (3) "[n]otify this office in the event of the subject's death, hospitalization or transfer to another institution."[16]

In short, this was a civil immigration detainer. It alleged that Lunn was subject to, and was being sought by the Federal authorities for the purpose of, the civil process of removal. It was not a criminal detainer or a criminal arrest warrant. It did not allege that the Federal authorities were seeking Lunn for a criminal immigration offense or any other Federal crime, for purposes of a criminal prosecution.[17]

In Massachusetts, an immigration detainer form of this type ***525** will typically travel with its subject as he or she is transferred between custodians. In this case, for example, the detainer, originally issued by the department to the Boston police, would have been given by the police to the court officers at the time Lunn was brought into court for arraignment; by the court officers to the sheriff following the arraignment, when Lunn was committed to the sheriff's custody in lieu of bail; and by the sheriff back to the court officers when the defendant was brought into court for trial.

The parties stipulate that it is common in Massachusetts,

as apparently happened ****1152** here, that the courts and law enforcement ***526** agencies do not actually serve the subject with a copy of the detainer, as the form requests. The parties further stipulate that "[i]ndividual law enforcement agencies in the Commonwealth may or may not have policies on the subject of [immigration] detainers," and that "[p]olicies and practices vary from one Commonwealth law enforcement agency to another as to whether, or under which circumstances, to honor [such] detainers."

[3]3. Voluntariness of detainers. Federal immigration detainers like Form I-247D, and now Form I-247A, by their express terms are simply requests. They are not commands, and they impose no mandatory obligations on the State authorities to which they are directed. The Federal government, through the detainer, "requests" that it be notified when a person in State custody, whom the Federal government believes to be a removable alien, is scheduled to be released, and it "requests" that the State authorities voluntarily keep the person in custody for up to two additional days, so that the department can arrive and assume custody of the person.

[4]The United States, in its brief as amicus curiae, concedes that compliance by State authorities with immigration detainers is voluntary, not mandatory. The government's concession is well founded for at least two reasons. First, the act nowhere purports to authorize Federal authorities to require State or local officials to detain anyone. See Galarza v. Szalczyk, 745 F.3d 634, 641 (3d Cir. 2014) ("The [a]ct does not authorize [F]ederal officials to command [S]tate or local officials to detain suspected aliens subject to removal").[18] Second, the Tenth Amendment to the United States Constitution prohibits the Federal government from compelling States to employ their resources to administer and ***527** enforce Federal programs. See id. at 643-644, citing Printz v. United States, 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997), and New York v. United States, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992) (analyzing constitutional concerns associated with interpreting detainers to be mandatory; "a conclusion that a detainer issued by a [F]ederal agency is an order that [S]tate and local agencies are compelled to follow ... is inconsistent with the anti-commandeering principle of the Tenth Amendment"). In other words, even if the Federal government wanted to make State compliance with immigration detainers mandatory, the Tenth Amendment likely would prevent it from doing so. The Federal government has also made the same concession in litigation elsewhere, and in various policy statements and correspondence, that State compliance with its detainers is voluntary. See Galarza, supra at 639 n.3, 641-642 (summarizing cases and ****1153** statements; "In short, the position of [F]ederal immigration agencies has remained constant: detainers are not mandatory").

[5] [6] [7]4. The requested detention constitutes an arrest. What the department is asking for, when it requests in a civil immigration detainer that a Massachusetts custodian hold a person for up to two days after he or she would otherwise be entitled to release from State custody, constitutes an arrest as a matter of Massachusetts law. An arrest occurs in Massachusetts, with or without a warrant, when "there is (1) an actual or constructive detention or seizure, (2) performed with the intention to effect an arrest, and (3) so understood by the person detained. See Commonwealth v. Powell, 459 Mass. 572, 580, 946 N.E.2d 114 (2011)[, cert. denied, 565 U.S. 1262, 132 S.Ct. 1739, 182 L.Ed.2d 534 (2012)]; Commonwealth v. Limone, 460 Mass. 834, 839, 957 N.E.2d 225 (2011). The subjective understanding of the officer or of the defendant does not control. Commonwealth v. Avery, 365 Mass. 59, 309 N.E.2d 497 (1974); Commonwealth v. Johnson, 413 Mass. 598, 602 N.E.2d 555 (1992)." J.A. Grasso, Jr., & C.M. McEvoy, Suppression Matters Under Massachusetts Law § 6-1 (2017). The United States acknowledged at oral argument in this case that a detention like this, based strictly on a Federal immigration detainer, constitutes an arrest. The government has made similar concessions in other cases as well. See, e.g., Moreno v. Napolitano, 213 F.Supp.3d 999, 1005 (N.D. Ill. 2016) (stating that Federal defendants "concede that being detained pursuant to an ... immigration detainer constitutes a warrantless arrest"). Cf. Morales v. Chadbourne, 793 F.3d 208, 217 (1st Cir. 2015) ("[W]hile a detainer is distinct from an arrest, it nevertheless results in the detention of an individual.... ***528** 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").

[8]To be sure, it is permissible in certain limited circumstances for a police officer, on making an otherwise lawful stop, to briefly detain an individual for investigatory purposes, even though the individual's liberty is thereby temporarily restrained and he or she is not free to leave. See, e.g., Commonwealth v. Sinforoso, 434 Mass. 320, 325, 749 N.E.2d 128 (2001); Commonwealth v. Willis, 415 Mass. 814, 819-820, 616 N.E.2d 62 (1993); Commonwealth v. Sanderson, 398 Mass. 761, 765-767, 500 N.E.2d 1337 (1986). See generally Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). But that is not what happens with a Federal immigration detainer. When a Massachusetts custodian holds an individual solely on the basis of a civil

detainer, the custodian has no investigatory purpose. Indeed, by its very nature, the detainer comes into play only if and when there is no other basis for the State authorities to continue to hold the individual (e.g., after he or she has posted bail or been ordered released on personal recognizance; or after he or she has completed serving the committed time on a criminal sentence; or, as in this case, after pending charges have been dismissed). The sole purpose of the detention is to maintain physical custody of the individual, so that he or she remains on the premises until the Federal immigration authorities arrive and take him or her into Federal custody to face possible removal. Moreover, the requested detention is not necessarily brief. The department, by its detainer, asks for a detention of up to two full days.

[9]What happened in this case, therefore, was plainly an arrest within the meaning of Massachusetts law. Lunn was ****1154** physically detained in a holding cell, against his will, for several hours. He was otherwise entitled to be free, as no criminal charges were then pending against him and there was no other basis under Massachusetts law to hold him. The sole basis for holding him was the civil immigration detainer. The question, then, is whether the court officers who held him had the authority to arrest him on the basis of a civil detainer.

[10] [11] [12] [13]5. Authority of court officers to arrest. Court officers in Massachusetts, while on court house premises, have the same power ***529** to arrest as Massachusetts police officers. G.L.c. 221, § 70A.[19] The authority to arrest is generally controlled by Massachusetts common law and statutes, which confer the power and also define the limits of that power. Our State law may authorize Massachusetts officers to enforce Federal statutes and make arrests for Federal offenses (unless preempted by Federal law), but it need not do so. Commonwealth v. Craan, 469 Mass. 24, 33, 13 N.E.3d 569 (2014), and cases cited. In the absence of a Federal statute granting State officers the power to arrest for a Federal offense, their authority to do so is a question of State law. Id. See United States v. Di Re, 332 U.S. 581, 589-590, 68 S.Ct. 222, 92 L.Ed. 210 (1948) (authority of State officers to make arrests for Federal crimes is, absent Federal statutory instruction, matter of State law); Gonzales v. Peoria, 722 F.2d 468, 475-476 (9th Cir. 1983), overruled on other grounds, Hodgers-Durgin v. De La Vina, 199 F.3d 1037, 1040 n.1 (9th Cir. 1999) (concluding that Arizona officers had authority as matter of State law to enforce criminal provisions of Federal immigration law). We must therefore carefully examine Massachusetts common law, Massachusetts statutory law, and any Federal statutory law that may possibly give Massachusetts officers the power to arrest in these circumstances.

[14]a. Massachusetts common law. Under the common law of Massachusetts, police officers have the authority to make warrantless arrests, but only for criminal offenses, and then only in limited circumstances. First, an officer has authority to arrest without a warrant any person whom he or she has probable cause to believe has committed a felony. See Commonwealth v. Gernrich, 476 Mass. 249, 253, 67 N.E.3d 1196 (2017); Commonwealth v. Hason, 387 Mass. 169, 173, 439 N.E.2d 251 (1982). Second, an officer has authority to arrest without a warrant any person who commits a misdemeanor, provided the misdemeanor involves an actual or imminent breach of the peace, is committed in the officer's presence, and is ongoing at the time of the arrest or only interrupted by the arrest. See Commonwealth v. Jewett, 471 Mass. 624, 629-630, 31 N.E.3d 1079 (2015); Commonwealth v. Howe, 405 Mass. 332, 334, 540 N.E.2d 677 (1989); Muniz v. Mehlman, 327 Mass. 353, 357, 99 N.E.2d 37 (1951); Commonwealth v. Gorman, 288 Mass. 294, 297-299, 192 N.E. 618 (1934), and numerous authorities cited.

[15] ***530** "Breach of the peace" in this context generally means an act that causes a public disturbance or endangers public safety in some way. See, e.g., Jewett, 471 Mass. at 629-630, 31 N.E.3d 1079 (reckless operation of motor vehicle, including erratic driving on public streets, near-collision with parked vehicle, failure to stop, and ****1155** chase through residential area, involved breach of peace); Howe, 405 Mass. at 334, 540 N.E.2d 677 (operating motor vehicle while under influence of alcohol); Commonwealth v. Mullins, 31 Mass.App.Ct. 954, 954-955, 582 N.E.2d 562 (1991) (blaring loud music "turned up to full blast" and shouting obscenities from apartment window, thereby disturbing neighbors and resulting in gathering of neighbors outside). See also Black's Law Dictionary at 189 (6th ed. 1990) (defining "[b]reach of the peace" as "violations of public peace or order and acts tending to a disturbance thereof ... disorderly, dangerous conduct disrupting of public peace"); 4 C.E. Torcia, Wharton's Criminal Law § 503 (15th ed. 1996).[20]

[16]That is the sum and substance of the power of police officers to make warrantless arrests under Massachusetts common law. Conspicuously absent from our common law is any authority (in the ***531** absence of a statute) for police officers to arrest generally for civil matters, let alone authority to arrest specifically for Federal civil immigration matters.[21,22]

[17] ****1156** b. Massachusetts statutory law. Apart from the

common law, the parties and the amici have directed us to numerous and varied Massachusetts statutes that authorize arrests by police officers and other officials, both with and without warrants. See, e.g., G.L.c. 12, § 11J (constitutional and civil rights violations); G.L.c. 41, § 98 (public disturbances and disorder); G.L.c. 90, § 21 (certain motor vehicle offenses); G.L.c. 91, § 58 (misdemeanors committed in or upon certain Massachusetts waterways); G.L.c. 94C, § 41 (controlled substance offenses); G.L.c. 209A, § 6 (7) (domestic violence offenses); G.L.c. 269, § 10 (h) (unlicensed firearm offenses); G.L.c. 276, § 28 (various misdemeanors); ***532** G.L.c. 279, § 3 (probation violations). However, no party or amicus has identified a single Massachusetts statute that authorizes a Massachusetts police officer or court officer, directly or indirectly, to arrest in the circumstances here, based on a Federal civil immigration detainer. Simply put, there is no such statute in Massachusetts.

The parties and amici have also identified several Massachusetts statutes that authorize the noncriminal detention of individuals in certain circumstances. See, e.g., G.L.c. 111B, § 8 (protective custody for incapacitated and intoxicated persons); G.L.c. 123, § 12 (emergency hospitalization due to mental illness); G.L.c. 123, § 35 (involuntary commitment of persons with alcohol and substance abuse disorders); G.L.c. 123A (sexually dangerous persons); G.L.c. 215, §§ 34, 34A (civil contempt for noncompliance with spousal or child support order); G.L.c. 276, §§ 45-49 (material witnesses in criminal proceedings). Again, however, none of these statutes either directly or indirectly authorizes the detention of individuals based solely on a Federal civil immigration detainer.

c. Argument of the United States. The United States, as amicus curiae, asks us to hold that officers in Massachusetts have "inherent authority" to carry out the detention requests made in Federal civil immigration detainers—essentially, to make arrests for Federal civil immigration matters as a form of cooperation with the Federal authorities. See, e.g., United States v. Santana-Garcia, 264 F.3d 1188, 1193-1194 (10th Cir. 2001) (State and local police officers have "implicit authority" to investigate and arrest for violations of Federal immigration law, presumably both civil and criminal, absent State or local law to contrary).[23] But see ****1157** Gonzales, 722 F.2d at 475 (State law must affirmatively grant ***533** authority to State and local officers to enforce Federal immigration law before arrest can be made on that basis).

[18]"The assertion that [S]tate and local officials have inherent civil enforcement authority has been strongly contested in the academy, in police departments, and in the courts" (footnotes omitted). Armacost, "Sanctuary" Laws: The New Immigration Federalism, 2016 Mich. L. Rev. 1197, 1211 (Armacost). Moreover, it is questionable whether a theory of "inherent" or "implicit" State authority continues to be viable in the immigration context after the United States Supreme Court's decision in Arizona, supra, which severely curtailed, on Federal preemption grounds, the power of State and local police to act in Federal immigration matters. See I.J. Kurzban, Immigration Law Sourcebook 425 (15th ed. 2016) ("The notion of 'inherent authority' to arrest and detain undocumented persons ... has been seriously undermined" by Supreme Court's holding); Armacost, supra at 1211-1215 (arguing that inherent authority theory has been foreclosed by Supreme Court's decision). Assuming that the theory remains viable, and has not been foreclosed by the Supreme Court's decision in Arizona, a point of Federal law that we need not decide, we nevertheless decline to adopt it as a matter of Massachusetts law as a basis for authorizing civil immigration arrests.

[19]As we have said, the common law and the statutes of this Commonwealth are what establish and limit the power of Massachusetts officers to arrest. There is no history of "implicit" or "inherent" arrest authority having been recognized in Massachusetts that is greater than what is recognized by our common law and the enactments of our Legislature. Where neither our common law nor any of our statutes recognizes the power to arrest for Federal civil immigration offenses, we should be chary about reading our law's silence as a basis for affirmatively recognizing a new power to arrest—without the protections afforded to other arrestees under Massachusetts law[24]—under the amorphous rubric of "implicit" or "inherent" authority. Recognizing a new common-law power to effect a Federal civil immigration arrest would also create an anomaly in our common law: a State or local ***534** police officer in Massachusetts (or, as in this case, a court officer) would be able to effect a warrantless arrest for a criminal misdemeanor only if it involves a breach of the peace (see part 5.a, supra), but would be able to arrest for a Federal civil matter without any such limitation; in other words, the officer would have greater authority to arrest for a Federal civil matter than for a State criminal offense. See generally Bach, ****1158** State Law to the Contrary? Examining Potential Limits on the Authority of State and Local Law Enforcement to Enforce Federal Immigration Law, 22 Temp. Pol. & Civ. Rts. L. Rev. 67 (2012).

The prudent course is not for this court to create, and

attempt to define, some new authority for court officers to arrest that heretofore has been unrecognized and undefined. The better course is for us to defer to the Legislature to establish and carefully define that authority if the Legislature wishes that to be the law of this Commonwealth.[25]

The United States, as amicus, also points to 8 U.S.C. § 1357(g)(10) for the proposition that State officers may cooperate with Federal immigration authorities by detaining and arresting pursuant to an immigration warrant. To understand what § 1357(g)(10) accomplishes, it is necessary to consider § 1357(g) as a whole.

Section 1357(g) generally concerns situations in which State and local officers can perform functions of a Federal immigration officer. Section 1357(g)(1) provides specifically that States and their political subdivisions may enter into written agreements with the Federal government that allow State or local officers to perform functions of an immigration officer "at the expense of the State or political subdivision and to the extent consistent with State and local law." Such agreements are commonly referred to as "287(g) agreements," referring to the section of the act that authorizes them, § 287(g), which is codified in 8 U.S.C. § 1357(g). Among other things, State and local officers performing Federal functions under such agreements must be trained in the enforcement of Federal immigration laws, must adhere to the Federal laws, may use Federal property and facilities to carry out their functions, and are subject to the supervision and direction of the United States Attorney General. 8 U.S.C. § 1357(g)(2)-(5). No State or political subdivision is required to enter into such an agreement. See ***535** 8 U.S.C. § 1357(g)(9).[26]

The specific language relied on by the United States in this case is the final paragraph of § 1357(g), which provides:

> "(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State ... (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States."

Significantly, the United States does not contend that § 1357(g)(10) affirmatively confers authority on State and local officers to make arrests pursuant to civil immigration detainers, where none otherwise exists. See Craan, 469 Mass. at 33, 13 N.E.3d 569 (recognizing that Federal statute may confer authority on State officers to arrest for Federal offenses). See also Di Re, 332 U.S. at 589-590, 68 S.Ct. 222. In other words, it does not claim that § 1357(g)(10) is an independent source of authority for State or local officers to make such an arrest. Rather, it cites § 1357(g)(10) as a part of its argument ****1159** that State and local officers have inherent authority to make these kinds of arrests; specifically, it relies on this provision for the proposition that such arrests, when performed at the request of the Federal government, are a permissible form of State participation in the Federal immigration arena that would not be preempted by Federal law. We have already rejected the argument that Massachusetts officers have an inherent authority to arrest that exceeds what is conferred on them by our common law and statutes.

[20]Further, it is not reasonable to interpret § 1357(g)(10) as affirmatively granting authority to all State and local officers to make arrests that are not otherwise authorized by State law. Section 1357(g)(10), read in the context of § 1357(g) as a whole, simply makes clear that State and local authorities, even without a 287(g) agreement that would allow their officers to perform the functions ***536** of immigration officers, may continue to cooperate with Federal immigration officers in immigration enforcement to the extent they are authorized to do so by their State law and choose to do so.[27]

In those limited instances where the act affirmatively grants authority to State and local officers to arrest, it does so in more explicit terms than those in § 1357(g)(10). See, e.g., 8 U.S.C. § 1103(a)(10) (permitting Attorney General to authorize State and local officers, with consent of their department or agency, to perform all powers and duties of immigration officers in emergency cases of "actual or imminent mass influx of aliens off the coast of the United States, or near a land border"); id. at § 1252c ***537** (authorizing State and local officers, "to the extent permitted by State and ****1160** local law," to arrest and detain convicted felons who have been previously deported but are presently in country illegally); id. at § 1324(c) (authorizing arrest, by designated immigration officers "and all other officers whose duty it is to enforce criminal laws," of persons who commit criminal offense

of illegally bringing in, transporting, or harboring aliens); id. at § 1357(g)(1)-(9) (authorizing State and local officers trained pursuant to written agreements with Federal government to perform duties of immigration officers).

Conclusion. The case is remanded to the county court for entry of a judgment stating that Lunn's case is dismissed as moot, and declaring that Massachusetts law provides no authority for Massachusetts court officers to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody.

So ordered.

All Citations

477 Mass. 517, 78 N.E.3d 1143

Footnotes

1 Sheriff of Suffolk County (sheriff), intervener.

2 Given this conclusion, we do not address whether such an arrest, if authorized, would be permissible under the United States Constitution or the Massachusetts Declaration of Rights.

3 We acknowledge the amicus briefs submitted by the Immigration and Refugee Clinical Program at Harvard Law School; the Criminal Defense Clinic at Boston University School of Law; Bristol County Bar Advocates, Inc., Massachusetts Association of Criminal Defense Lawyers, Pilgrim Advocates, Inc., and Suffolk Lawyers for Justice, Inc.; and thirty academics in the field of immigration law.
We also acknowledge the brief filed by the United States as amicus curiae. In addition, we allowed the motion of the United States to participate in the oral argument of the case. Mass. R.A.P. 17, as amended, 426 Mass. 1602 (1998).

4 The detainer was addressed to the Boston police department and any other Massachusetts authorities that subsequently assumed custody of Lunn. The detainer form states, "This request takes effect only if you serve a copy of this form on the subject ...," and provides space for "the law enforcement agency currently holding the subject of the notice" to indicate when and how it was served. Lunn does not appear to have been served with a copy of the detainer by the police, the sheriff, or the court, although he acknowledges that he was told of it by his counsel.

5 An entry was made on the trial court docket stating that the petitioner was "held on ... [the] detainer." This entry, to the extent it suggests that the petitioner was actually being held in custody pursuant to the Federal immigration detainer, is misleading. At no point before trial was he actually held pursuant to the detainer. He was held in lieu of bail while awaiting trial in the present case and, for a brief period, on a criminal sentence in a separate case (see note 6, infra). The detainer by its own terms requested that he be detained only if and when he was to be released from State custody.

6 Several additional events occurred between the time of arraignment and the time of trial that, although not essential to our decision, are worth noting. First, Lunn was transferred at some point to the custody of the sheriff of Norfolk County to serve a sentence (at the Norfolk County house of correction) in a separate criminal case from Norfolk County. When that sentence was completed, on or about January 13, 2017, he was returned to the custody of the sheriff of Suffolk County and held in lieu of bail awaiting trial in this case.
Second, on November 21, 2016, the trial court allowed the Commonwealth's motion to amend the criminal complaint in the case, with Lunn's consent, by reducing the charged offense from unarmed robbery (G.L.c. 265, § 19 [b]) to larceny from a person (G.L.c. 266, § 25 [b]).
Third, on January 20, 2017, a judge in the Superior Court, acting on a request for bail review, G.L.c. 276, § 58, reduced the amount of Lunn's bail to $750. Although Lunn was financially able to post that amount, he declined to do so on the belief that he would then be held anyway on the outstanding detainer.

7 This was the second scheduled trial date. The Commonwealth had not been ready for trial on the first date, so the case was continued to February 6, 2017.

8 The docket entry in this respect originally stated that Lunn's request to be released had been "heard and denied." The entry was later changed (after the case was entered in this court) to state that "[n]o action" was taken on the request. The parties agree that the amended entry accurately reflects the judge's statement, made in response to Lunn's

request, that he "decline[d] to take any action on the detainer."

9 Previously, two other Supreme Judicial Court single justices, acting on similar petitions pursuant to G.L.c. 211, § 3, had ruled that Massachusetts trial courts have no authority to hold a defendant, or otherwise order him or her to be held, on a Federal civil immigration detainer. Nelson Maysonet vs. Commonwealth, Supreme Judicial Court, No. SJ-2016-346 (Aug. 12, 2016). Santos Moscoso vs. A Justice of the E. Boston Div. of the Boston Mun. Ct., Supreme Judicial Court, No. SJ-2016-168 (May 26, 2016).

10 Other immigration crimes include failing to carry a registration card, 8 U.S.C. § 1304(e); wilfully failing to register, making fraudulent statements in connection with registration, or counterfeiting registration documents, id. at § 1306; knowingly bringing in, transporting, or harboring an alien, id. at § 1324; engaging in a pattern or practice of illegally hiring aliens, id. at § 1324a(f); operating a commercial enterprise for the purpose of evading immigration laws, id. at § 1325(d); and illegally reentering the country after having previously been removed, id. at § 1326. There is no indication in the record before us that Lunn entered the country illegally or committed any immigration crime.

11 Other civil immigration violations include engaging in unauthorized work, 8 U.S.C. § 1227(a)(1)(C)(i); failing to remove alien stowaways from vessels and aircraft, id. at § 1253(c)(1); and wilfully failing or refusing to depart from the country after a final order of removal, id. at § 1324d(a). The latter potentially has both civil and criminal consequences. See id. at §§ 1253(a), 1324d(a).
Although there was a final order of removal outstanding against Lunn, issued in 2008, there is no indication in the record before us that he wilfully failed or refused to depart pursuant to that order. The United States represents in its brief that the reason Lunn was not actually removed pursuant to the 2008 order is that "his country of origin declined to provide travel documents." He was instead released from Federal detention in 2008 on supervision. See 8 U.S.C. § 1231(a). We note that he was again released from Federal detention, for the same reason, in May, 2017, approximately three and one-half months after he was taken into Federal custody in this case. Boston Globe, Immigrant Who Can't Be Deported to Cambodia Released from Detention, May, 2017, https://www.bostonglobe.com/metro/2017/05/24/immigrant-who-can-deported-cambodia-challenges-his-detention/JZ6PUrPNYK125ZbdKbaM0N/story.html [https://perma.cc/3S8E-SXJB].

12 The other two forms were Form I-247N, entitled "Immigration Detainer–Request for Voluntary Notification of Release of Suspected Priority Alien," and Form I-247X, entitled "Request for Voluntary Transfer." Neither of those forms was used in this case. The Federal government has since rescinded all three forms and replaced them with a single new form, described in note 17, infra.

13 The "enforcement priority" language referred to certain prioritized bases for removal that were set forth in a "priority enforcement program" that was then in effect. The program is no longer in effect. It has been terminated pursuant to an executive order of the President of the United States. See Exec. Order No. 13768, Enhancing Public Safety in the Interior of the United States, 82 Fed. Reg. 8799, 8801, at § 10(a) (Jan. 25, 2017).

14 The final order of removal was issued in 2008. Despite the order, the Federal authorities were unsuccessful in actually removing Lunn. See note 11, supra. There is no indication in the record that they did not know how to find him in 2016 when they issued the detainer in this case, that he presented a flight risk, or that the reason they were unable to remove him previously had subsided.

15 As stated in note 4, supra, there is no indication in the record before us that a copy of the form was ever served on Lunn by any of his Massachusetts custodians—the police, the sheriff, or the trial court. The parties stipulate that he was not served by the sheriff or by the court. The United States claims in its brief that it appears that he was served, citing the page of the trial court docket that states he was "held on ... [the] detainer" (see note 5, supra), although the docket makes no mention of the detainer having been served. The only copy of the detainer in the record is blank in the spaces provided for date and manner of service.

16 This case involves only the first request in the detainer, i.e., that a custodian continue to hold an individual after he or she is entitled to be released. The other two requests are not at issue in this case, and we therefore need not and do not address them.

17 On March 24, 2017, the Federal government, effective April 2, 2017, rescinded Forms I-247D, I-247N, and I-247X, and replaced them with a single new form, Form I-247A, entitled "Immigration Detainer–Notice of Action." Like Form I-247D, it states that the Department of Homeland Security (department) has determined that probable cause exists to believe that the subject is a removable alien, and requires the immigration officer completing the form to indicate, by checking one or more boxes, the basis on which that determination was made. It also states that "[t]he alien must be served with a copy of this form for the detainer to take effect," and it provides blank spaces, to be filled in by the

custodian, indicating the date and manner of service. Significantly, like Form I-247D, it "request [s]" that the custodian "[n]otify [the department] as early as possible (at least 48 hours, if possible) before the alien is released from [the custodian's] custody," and "[m]aintain custody of the alien for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from [the custodian's] custody to allow [the department] to assume custody."

Pursuant to a written policy dated March 24, 2017, of United States Immigration and Customs Enforcement, the agency within the department responsible for identifying and apprehending removable aliens, new Form I-247A must be accompanied by one of two other forms: Form I-200, entitled "Warrant for Arrest of Alien," or Form I-205, entitled "Warrant of Removal/Detention." The latter applies when the individual named in the detainer is subject to a final order of removal, and may be signed by any of the thirty-two types of immigration officials designated in 8 C.F.R. § 241.2(a)(1); the former applies when the named individual is a removable alien not yet subject to a final order of removal, and may be signed by any of the fifty-three types of immigration officials designated in 8 C.F.R. § 287.5(e)(2). These are civil administrative warrants approved by, and directed to, Federal immigration officials. Neither form requires the authorization of a judge. Neither form is a criminal arrest warrant or a criminal detainer.

Unlike old Form I-247D, new Form I-247A does not contain a statement indicating that the individual named in the detainer is an "enforcement priority," or any specific basis for such a determination. See note 13, supra. Without this information, the State custodian will not know, from the new form, the reason alleged for seeking removal, e.g., whether the individual is believed to be a threat to national security or has just briefly overstayed a lawfully issued visa. In cases where Form I-205 is used, i.e., when there has been a final order of removal, the immigration officer completing that form must indicate the provisions of the Immigration and Nationality Act (act) on which the order was based; this may provide the State custodian with some information on the claimed basis for removal.

18 One of the regulations promulgated pursuant to the act states in part: "(d) Temporary detention at [d]epartment request. Upon a determination by the [d]epartment to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed [forty-eight] hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the [d]epartment" (emphasis added). 8 C.F.R. § 287.7(d). As the United States Court of Appeals for the Third Circuit explained, the regulation's use of the word "shall," correctly understood in the context of the entire statutory and regulatory scheme, does not change the voluntary nature of the detainer. Galarza v. Szalczyk, 745 F.3d 634, 640 (3d Cir. 2014) ("it is hard to read the use of the word 'shall' in the timing section to change the nature of the entire regulation"). The United States concedes in its amicus brief that this paragraph of the regulation only "defines the maximum length of time that an alien with an immigration detainer may be held. It does not require local law enforcement agencies to hold anyone."

19 "Court officers and those authorized to act as court officers within the judicial branch may perform police duties and have police powers in or about the areas of the court to which they have been assigned when so designated by the chief justice of the trial court, the chief justice of the supreme judicial court or the chief justice of the appeals court, as appropriate." G.L.c. 221, § 70A.

20 The breach of the peace requirement for a misdemeanor arrest has its roots in English common law, see Regina v. Tooley, 2 Ld. Raym. 1296, 1301, 92 Eng. Rep. 349, 352-353 (K.B. 1710), quoted with approval in Commonwealth v. Gorman, 288 Mass. 294, 297, 192 N.E. 618 (1934), and has become firmly embedded in the common law of Massachusetts. "Arrest without a warrant for a misdemeanor not amounting to a breach of the peace was impermissible at common law." Commonwealth v. Conway, 2 Mass.App.Ct. 547, 550, 316 N.E.2d 757 (1974). Not only have our cases cited the breach of the peace requirement repeatedly as a correct statement of our common law, but we have also consistently enforced the requirement, when necessary, by holding warrantless misdemeanor arrests that were not authorized by statute and that did not involve any breach of the peace to be unlawful. See, e.g., Commonwealth v. Mekalian, 346 Mass. 496, 497-498, 194 N.E.2d 390 (1963) (misdemeanor offense of registering bets without license did not involve breach of peace; arrest without warrant or statutory authorization was unlawful, resulting in suppression of evidence seized incident to arrest); Commonwealth v. Wright, 158 Mass. 149, 158-159, 33 N.E. 82 (1893) (misdemeanor offense of possessing "short lobsters" with intent to sell did not involve breach of peace; arrest without warrant or statutory authorization was unlawful); Commonwealth v. O'Connor, 89 Mass. 583, 7 Allen 583, 584-585 (1863) (arrest for drunkenness in private that did not create breach of public peace was unlawful); Commonwealth v. Ubilez, 88 Mass.App.Ct. 814, 820-821, 43 N.E.3d 327 (2016) (misdemeanor offense of operating motor vehicle with revoked or suspended registration, absent evidence of erratic or negligent operation or other danger to public, did not involve breach of peace; arrest without warrant or statutory authorization unlawful). Contrast Atwater v. Lago Vista, 532 U.S. 318, 327-355, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001) (surveying common law; holding that Fourth Amendment to United States Constitution does not require breach of peace for warrantless misdemeanor arrest).

21 The parties and the United States, as amicus curiae, have brought to our attention a change in the standard immigration detainer form that occurred shortly before the oral argument in this case, and the fact that immigration

detainers are now accompanied by either Form I-200 or Form I-205. See note 17, supra. The latter forms are Federal administrative warrants issued by Federal immigration officials to other Federal immigration officials. They appear to have no bearing on the question whether Massachusetts officers have authority under Massachusetts law to make civil immigration arrests. They do not transform the removal process into a criminal process, nor do they change the fact that Massachusetts officers, absent a statute, have no common-law authority to make civil arrests. Simply stated, the fact that a Federal officer may have the authority under Federal law to take custody of an individual pursuant to one of these forms for removal purposes does not mean that Massachusetts officers have the authority under Massachusetts law to do so.

We note that the Federal government's stated reason for now issuing administrative warrants with civil immigration detainers is to counteract a recent ruling by a Federal District Court judge that, in the absence of a showing of risk of flight, invalidated arrests made by Federal officers pursuant to detainers as impermissible warrantless arrests under the act. See Moreno v. Napolitano, 213 F.Supp.3d 999, 1005-1009 & n.2 (N.D. Ill. 2016), quoting 8 U.S.C. § 1357(a)(2) (authorizing Federal immigration officers to arrest without warrant only if, among other things, they have "reason to believe that the alien so arrested ... is likely to escape before a warrant can be obtained for his arrest"). See also United States Immigration and Customs Enforcement, Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers § 2.4, at 2 n.2 (Mar. 24, 2017).

22 As we have said, this case concerns detention based solely on a civil immigration detainer. This was not a situation where a detainer provided an officer with probable cause that a Federal criminal offense had been committed. We therefore do not address the authority or obligations of Massachusetts officers who, by a detainer or otherwise, acquire information of a Federal criminal offense.

23 We do not see any meaningful difference between "inherent authority" (the term used by the United States in its brief) and "implicit authority" (the term used by the United States Court of Appeals for the Tenth Circuit). The term "inherent authority" likely derives from a memorandum of the Department of Justice's Office of Legal Counsel, dated April 3, 2002, which espoused the theory in that way. The 2002 memorandum essentially reversed course from a 1996 opinion of the Office of Legal Counsel, which had reflected the Department of Justice's historical view that, absent express authorization, State and local police lack authority to arrest or detain aliens solely for purposes of civil immigration proceedings. See Armacost, "Sanctuary" Laws: The New Immigration Federalism, 2016 Mich. L. Rev. 1197, 1210-1211; Lewis, Gass, von Briesen, Master, & Wishnie, Authority of State and Local Officers to Arrest Aliens Suspected of Civil Infractions of Federal Immigration Law, 7 Bender's Immigr. Bull. 944, 944-945 (Aug. 1, 2002).

24 Among other things, an individual arrested without a warrant in Massachusetts has a statutory right to be considered for bail and, if not admitted to bail, a constitutional right to a prompt determination of probable cause to arrest, made by a neutral magistrate, generally within twenty-four hours of arrest. See Jenkins v. Chief Justice of the Dist. Court Dep't, 416 Mass. 221, 238-245, 619 N.E.2d 324 (1993).

25 We express no view on the constitutionality of any such statute, or whether such a statute would be preempted by Federal law. It would be premature for us to rule on those questions unless and until a specific statute is enacted.

26 This case does not involve such a written agreement. We therefore express no view whether the detention of an individual pursuant to a Federal civil immigration detainer by a Massachusetts officer who is operating under such an agreement would be lawful.

27 Nothing in the legislative history of 8 U.S.C. § 1357(g) or the department's very thorough "Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters" (accessible at https://dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigration-enforcement.pdf [https://perma.cc/S7UA-6S4E]), suggests that § 1357(g)(10) constitutes an affirmative grant of immigration arrest authority to States.

The United States cites three cases that mention § 1357(g)(10), but none of them resolves the exact question presented here, which is whether the statute confers authority on State officers to arrest on a Federal civil immigration detainer even where State law does not authorize such an arrest. Those cases principally addressed whether the actions of State officers were done in cooperation with Federal officers, or unilaterally such that they would be preempted by Federal law. Those courts were not asked to decide whether State officers are independently authorized by § 1357(g)(10) to do acts, in the name of "cooperation," that they are not authorized to do under State law. See United States v. Ovando-Garzo, 752 F.3d 1161, 1163-1164 (8th Cir. 2014) (holding that North Dakota highway patrol trooper who detained suspect at request of United States Border Patrol agent acted cooperatively pursuant to § 1357[g][10], not unilaterally, and thus did not exceed scope of authority so as to trigger preemption; no issue whether officer's actions were authorized by North Dakota law); Santos v. Frederick County Bd. of Comm'rs, 725 F.3d 451, 465-466 (4th Cir. 2013), cert. denied, —— U.S. ——, 134 S.Ct. 1541, 188 L.Ed.2d 557 (2014) (holding that detention by State deputy sheriffs before confirmation that immigration warrant was active was not cooperation for purposes of

1357[g][10], thereby triggering preemption, because arrest was not made pursuant to Federal direction; no issue whether detention was authorized by Maryland law); United States v. Quintana, 623 F.3d 1237 (8th Cir. 2010) (noting in single sentence that North Dakota highway patrol trooper who stopped defendant for traffic violation was authorized by § 1357[g][10] to assist Federal agent in arresting detainee; no issue whether detention was authorized under State law).

We have also considered other cases that mention § 1357(g)(10). None of them addresses the specific question we have here, i.e., whether the statute independently and affirmatively confers authority on State officers to arrest on immigration detainers where such an arrest is not authorized by State law.

DATE FILED: March 19, 2018 11:58 PM
CASE NUMBER: 2018CV30549

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, Colorado 80901	
Plaintiffs: Saul Cisneros, Rut Noemi Chavez Rodriguez, On behalf of themselves and all others similarly situated, v. Bill Elder, in his official capacity as Sheriff of El Paso County, Colorado	▲COURT USE ONLY▲
	Case Number: 18CV30549 Div.: 8 Courtroom: W550

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, filed February 27, 2018. In addition to the Motion, the Court has reviewed Sheriff Elder's Response, filed March 9, 2018; Plaintiffs' Reply, filed March 14, 2018; the parties' Joint Submission, filed March 16, 2018; and the Statement of Interest of the United States, filed today. The parties elected to forego an evidentiary hearing and to submit the Motion upon the documentary record, including the stipulations set forth in the parties' Joint Submission. The Court held extensive oral argument today, March 19th. Being fully advised in

the premises and finding good cause, the Court now GRANTS Plaintiffs' Motion and enters a preliminary injunction.

FACTUAL BACKGROUND

The Motion was tried upon the affidavits, documents, and stipulations submitted by the parties, as set forth in the Joint Submission. The facts, as set forth therein, are undisputed (for purposes of the Motion alone). The issues for the Court are purely issues of law.

The Plaintiffs, Saul Cisneros and Rut Noemi Chavez Rodriguez, are pretrial detainees in the custody of the El Paso County Sheriff's Office ("EPSO" or "Sheriff's Office"). Bond for Plaintiff Cisneros has been set at $2,000, and bond for Plaintiff Chavez Rodriguez has been set at $1,000. Both Plaintiffs attempted to post bond, but were informed by Sheriff's Office personnel that they would not be released because federal immigration authorities had imposed an "ICE hold."

On March 15, 2018, after the parties filed their briefs, the Sheriff's Office issued Directive Number 18-02, titled "Change in Ice Procedures." This directive changed existing EPSO policy by requiring a U.S. Immigration and Customs Enforcement (ICE) official to appear in person to serve ICE forms on detainees before they could be transferred to federal custody. Under this new directive, local inmates become federal detainees after ICE has faxed two forms to EPSO (an "immigration detainer" (ICE Form I-247A) and an "administrative warrant" (ICE Form I-200 or I-205) *and* an ICE agent has appeared in person – within 48 hours after conclusion of state-law authority – to serve the inmate with federal papers and take the inmate into federal custody. As ICE detainees, these individuals will then be housed in the El Paso County jail for an indefinite period pursuant to El Paso County's housing agreement with ICE (the

Intergovernmental Services Agreement, or "IGSA"),[1] pending the completion of federal deportation proceedings.

Under the new directive, if Plaintiffs Cisneros and Chavez-Rodriguez post bond, EPSO will refuse to release them for up to 48 hours, to provide ICE an opportunity to take them into ICE custody. In light of the change in EPSO policy, the issue before the Court is whether Sheriff Elder has authority under Colorado law – based on receipt and service of the above-described ICE documents – to hold Plaintiffs for up to 48 hours after they have posted bond, completed their sentence, or otherwise resolved their criminal cases.

ANALYSIS

A court of equity has the power to restrain unlawful actions of executive officials. *See County of Denver v. Pitcher*, 129 P. 1015, 1023 (Colo. 1913) (holding that equity courts may enjoin illegal acts in excess of authority). In order to issue a preliminary injunction, this Court must find that Plaintiffs meet all six requirements for interim relief: (1) they have a reasonable probability of success on the merits; (2) there is a danger of real, immediate and irreparable injury that may be prevented by injunctive relief; (3) there is no plain, speedy, and adequate remedy at law; (4) the granting of a temporary injunction will not disserve the public interest; (5) the balance of equities favors the injunction; and (6) the injunction will preserve the status quo pending trial on the merits. *See Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982). As described below, the Court finds the Plaintiffs have satisfied these requirements.

[1] The Parties have stipulated that Plaintiffs are not being held pursuant to the IGSA, and Sheriff Elder is no longer relying on the IGSA for authority to hold Plaintiffs for the 48-hour period.

I. PLAINTIFFS HAVE A SUBSTANTIAL PROBABILITY OF SUCCESS ON THE MERITS.

Colorado sheriffs are limited to the express powers granted them by the Legislature and the implied powers "reasonably necessary to execute those express powers." *People v. Buckallew*, 848 P.2d 904, 908 (Colo. 1993). Powers will be implied only when the sheriff cannot "fully perform his functions without the implied power." *Id.; see also Douglass v. Kelton*, 610 P.2d 1067, 1069 (Colo. 1980) (holding that sheriff and other public officials "have only such power and authority as are clearly conferred by law").

Sheriff Elder (and the United States, in its Statement of Interest) contend that two Colorado statutes, a federal statute, and his inherent authority provide him with the authority to detain the Plaintiffs beyond the date they would otherwise be released – C.R.S. § 16-3-102(1)(c), C.R.S. § 17-26-123, and 8 U.S.C. § 1357(g)(10).

A. C.R.S. § 16-3-102(1)(c).

As Sheriff Elder acknowledged through counsel at oral argument, the ICE forms at issue constitute requests from ICE, not commands, and the Sheriff is making a choice when he decides to honor them. Sheriff Elder also conceded at oral argument that a decision to keep prisoners in custody, who would otherwise be released, constitutes a new arrest. *See, e.g., 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."); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1249-50 (E.D. Wash. 2017) (same).

Sheriff Elder also conceded that, while an ICE administrative warrant (ICE Form I-200 or I-205) serves as a warrant for purposes of federal immigration enforcement, neither that

document nor an ICE detainer (ICE Form 247A) constitutes a warrant under Colorado law because neither form is reviewed or signed by a judge. (They are signed instead by federal immigration officers.) Thus, continued detention of a local inmate at the request of federal immigration authorities, beyond when he or she would otherwise be released, constitutes a warrantless arrest, which is governed by C.R.S. § 16-3-102(1)(c). Under this statute, a peace officer may make a warrantless arrest only when he has "probable cause to believe an offense was committed" and probable cause to believe that the suspect committed it. C.R.S. § 16-3-102(1)(c).

Sheriff Elder contends this statute provides authority for his policy of detaining inmates for 48 hours beyond when they would otherwise be released. Both ICE forms (detainer and warrant) request detention of the individual in question on the basis of a finding of probable cause, made by a federal immigration officer, that the individual is removable from the United States. Thus, Elder contends, the ICE forms provide him with "probable cause to believe an offense was committed," and thereby with authority to make the warrantless arrest.

Plaintiffs respond that the term "offense," as used in the warrantless-arrest statute, means a crime, and that the warrantless-arrest statute does not provide authority to detain someone for a civil enforcement proceeding, such as a deportation proceeding. Both sides acknowledge that, with limited exceptions, this statute spells out the scope of peace officers' authority in Colorado to detain individuals without a warrant.

The Colorado criminal code and code of civil procedure make clear that the word "offense," as used in those portions of the Colorado statutes, means a crime. *See* C.R.S. § 18-1-104(1) ("The terms 'offense' and 'crime' are synonymous"); *see also* C.R.S. 16-1-105(2) (stating

that definitions in C.R.S. Title 18 (the criminal code) apply to C.R.S. Title 16 (the code of criminal procedure)).

The parties agree that deportation proceedings are civil, not criminal proceedings. *See Arizona v. United States*, 567 U.S. 387, 396, 407 (2012) ("As a general rule, it is not a crime for a removable alien to remain present in the United States"; the federal administrative process for removing someone from the United States "is a civil, not criminal matter"). *See also Lunn*, 78 N.E. 3d at 1146 ("The removal process is *not* a criminal prosecution. The detainers are not criminal detainers or criminal arrest warrants. They do not charge anyone with a crime, indicate that anyone has been charged with a crime, or ask that anyone be detained in order that he or she can be prosecuted for a crime").

Accordingly, the ICE forms at issue, at best, provide the Sheriff with probable cause to believe an individual is subject to a civil deportation proceeding, but not with "probable cause to believe an offense was committed." Thus, a federal officer's finding that an individual may be removable from the United States does not authorize the Sheriff, under the warrantless-arrest statute, to deprive that individual of liberty.

The ICE forms also raise the issue of whether Sheriff Elder may rely on a federal immigration officer's finding of probable cause, which is set forth on the form simply by checking a box, without providing meaningful specifics as to the basis for the finding. The Sheriff contends he may rely on that finding pursuant to the "fellow officer rule," or "collective knowledge doctrine," which generally allows a law enforcement officer to rely on information known to another officer. *See People v. Washington*, 865 P.2d 145 (Colo. 1994). Plaintiffs disagree. The Court notes that courts in other jurisdictions have differed on whether that

doctrine is applicable under these circumstances, and, for purposes of the Motion, this is not an issue the Court needs to resolve. For present purposes, it is enough to note that, even if this Court were to find the "fellow officer rule" applicable, it would not by itself resolve the issue in the Sheriff's favor. Even if the Sheriff personally had information that amounted to probable cause to believe that an individual is removable, he would still lack authority to make a warrantless arrest, since he would still lack probable cause that a *crime* had been committed.

B. C.R.S. § 17-26-123.

C.R.S. § 17-26-123 provides, in material part:

> It is the duty of the keeper of each county jail to receive into the jail every person duly committed thereto for any offense against the United States, by any court or officer of the United States, and to confine every such person in the jail until he is duly discharged…

Sheriff Elder contends that this statute, in addition to expressly granting him the power to detain federal prisoners, also implicitly authorizes him to temporarily detain individuals whom federal immigration authorities seek to detain. The Court disagrees. By its plain language, this statute grants counties the authority to receive federal prisoners into their jails. It concerns the housing of federal prisoners; it says nothing, either expressly or implicitly, about the power at issue here, the power to arrest.

C. 8 U.S.C. § 1357(g)(10) / "Inherent Authority".

Sheriff Elder (and, more strongly, the United States, in its Statement of Interest) also contends that 8 U.S.C. § 1357(g)(10), and/or a theory of "inherent authority," provides a lawful basis for the 48-hour ICE holds.

This statutory provision recognizes that local officials may communicate and "cooperate" with ICE:

> (10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—
>
> > (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
> >
> > (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

8 U.S.C. § 1357(g)(10).

To the Court's understanding, this provision does not, on its face, grant any authority to local officials; it is simply a reserve clause, making clear that the statute does not prevent local officials from communicating or cooperating with federal immigration authorities. *See, e.g.*, *Lunn*, 78 N.E.3d at 1159.

However, the courts universally acknowledge that it is legitimate for state and local officials to communicate and cooperate with immigration authorities. Courts have disagreed about the scope of such permissible "cooperation." The Supreme Court, in its *Arizona* decision, recognized that the outer limits of such "cooperation" may be ambiguous. Some courts have suggested that local law enforcement officers, working under the direction of federal immigration authorities, may carry out arrests as part of such cooperation; other courts have flatly rejected that proposition. *Compare City of El Cenizo v. Texas*, 2018 U.S. App. LEXIS 6245 (5th Cir. March 13, 2018) with *Lunn.* Sheriff Elder and the United States urge this Court to find that the Sheriff has the inherent authority, when working under the direction and oversight of federal authorities, to cooperate in the federal mission and thus to carry out the limited, 48-hour holds requested by ICE.

I find this to be Sheriff Elder's strongest argument. Nonetheless, I ultimately conclude the argument falls short, for several reasons. First, the theory of "inherent" or "implicit" state authority in the immigration context has been sharply eroded by the Supreme Court's decision in *Arizona*; pre-*Arizona* decisions, on which the Sheriff and the United States heavily rely, may no longer be good law. Second, as noted above, Colorado sheriffs are limited to the express powers granted them by the Legislature, along with the implied powers "reasonably necessary to execute those express powers." Colorado courts have been reluctant to imply sheriff powers not expressly granted. *See Douglass v. Kelton*, 610 P.2d 1067, 1069 (Colo. 1980). Third, and perhaps most importantly, the power to make warrantless arrests is strictly proscribed by statute, as described above. In addition to the warrantless-arrest statute, the legislature has expressly recognized certain other limited circumstances in which the power to detain is appropriate. In each case, a statute spells out the scope and limits of that power. That is appropriate, in light of the fact that there is no greater deprivation of freedom than the taking of a person into confinement. I am reluctant (as was the Massachusetts Supreme Court in the *Lunn* case, 78 N.E.3d at 1157) to interpret silence in the law as the basis for a heretofore-unrecognized power of arrest.

Finally, I reviewed carefully the Fifth Circuit's recent decision in *City of El Cenizo v. Texas*, 2018 U.S. App. LEXIS 6245 (5th Cir. March 13, 2018). While that case demonstrates the extent to which courts differ on these issues, I do not find it contrary to this ruling. That court upheld a Texas statute that required local law enforcement agencies to honor ICE detainers. The Fifth Circuit concluded that the "cooperation" referenced in 1357(g)(10) includes honoring ICE detainers, and accordingly it found the Texas statute did not offend principles of preemption.

The key distinction from the facts of this case was that the very Texas statute that was challenged provided the state-law authority to honor the ICE detainers that is missing from this case.

If Colorado were to pass a statute either requiring or authorizing law-enforcement agencies to cooperate with ICE detainers – or if the Sheriff were to enter into a formal written agreement with ICE pursuant to section 1357(g)(1) (a so-called "287(g) agreement") – either of those circumstances would provide the authority to arrest that is missing from this case. Significantly, both have existed in the past. The Sheriff's Office entered into a 287(g) agreement with ICE in 2013, which it terminated in 2015. And in 2006, Colorado enacted SB-90, which required local law enforcement to report individuals to ICE when there was probable cause to believe they were present in violation of federal immigration law. *See* C.R.S. § 29-29-101-103 (repealed). In 2013, the Legislature repealed that statute entirely, declaring that "the requirement that public safety agencies play a role in enforcing federal immigration laws can undermine public trust." Colo. HB 13-1258. This legislative action underscores the kind of statutory authority that would authorize Sheriff Elder's policy, but that is missing at this point in time.

I note, finally, that Sheriff Elder, through counsel, acknowledged at oral argument that El Paso County is one of only two counties in Colorado that currently honor ICE detainer requests. (The other is apparently Adams County.) The fact that El Paso County is willing to take this stand means that ultimately all counties in Colorado will reap the benefit of having the Colorado courts address this issue.

I conclude that Plaintiffs have demonstrated a likelihood of success on the merits of their claim that Sheriff Elder does not have authority under Colorado law to refuse to release the Plaintiffs when they post bond or otherwise resolve their criminal cases. Similarly, I conclude

that Plaintiffs have demonstrated a likelihood of success on their claims that (a) any such arrest without legal authority is an unreasonable seizure, in violation of Article II, section 7 of the Colorado Constitution; and (b) by refusing to release pretrial detainees after they post bond, Sheriff Elder violates Article II, section 19.

I find that, whether through mandamus under Rule 106(a)(2) or this Court's authority to issue injunctive relief for violations of the Colorado Constitution, this Court has the authority to issue the requested relief. Under Rule 106(a)(2), Plaintiffs have a clear right to the relief sought; Sheriff Elder has a clear duty to release them when his state authority to hold them ceases; and, as explained below, there is no other adequate legal remedy. *Gramiger v. Crowley*, 660 P.2d 1279, 1281 (Colo. 1983). In addition, the Colorado Supreme Court has repeatedly affirmed the availability of declaratory and injunctive relief in cases alleging violations of the Colorado Constitution. *See, e.g.*, *Bock v. Westminster Mall*, 819 P.2d 55 (Colo. 1991) (Article II, § 10); *Conrad v. City & Cnty. of Denver*, 656 P.2d 662 (Colo. 1982) (Art. II, § 4); *Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist*. 351 P.3d 461 (Colo. 2015) (Art. IX, § 7), *vacated on other grounds*,137 S. Ct. 2327 (2017).

II. PLAINTIFFS SATISFY THE ADDITIONAL REQUIREMENTS FOR A PRELIMINARY INJUNCTION.

"A preliminary injunction is designed to preserve the status quo or protect rights pending the final determination of a cause." *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). Here, an injunction will both preserve the status quo and protect Plaintiffs' rights.

Plaintiffs have satisfied the remaining *Rathke* factors. First, they are suffering real, immediate and irreparable injury that may be prevented by injunctive relief. *See Ochoa*, 266 F. Supp. 3d at 1260-61 (granting TRO on behalf of pretrial detainee wishing to post bond and

forbidding sheriff to deny release on basis of "ICE hold"). Few injuries are more real, immediate, or irreparable than being deprived of one's personal liberty.

Second, Plaintiffs have no plain, speedy, or adequate remedy at law. Monetary damages would be difficult to ascertain and could not compensate adequately for the ongoing violations and threatened violations of Plaintiffs' right to liberty and freedom from unauthorized and unjustified imprisonment.

Third, protection of Plaintiffs' constitutional rights advances the public interest. *See, e.g.*, *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012) ("It is always in the public interest to prevent the violation of a party's constitutional rights").

Fourth, the balance of equities favors Plaintiffs. Under Colorado law, Plaintiffs have a right to release when they post the bond set by the state court. Their relatively low bonds ($1,000 and $2,000) demonstrate that the judges did not regard them as flight risks or dangers to public safety. Sheriff Elder will not be harmed in any comparable way by releasing Plaintiffs on bond.

Finally, interim injunctive relief will preserve the status quo pending trial. The status quo is "the last uncontested status between the parties which preceded the controversy." *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001). While I acknowledge that the meaning of "last uncontested status" is subject to debate, it is reasonable to interpret it to mean the status between the parties after bond had been set but before ICE had sent the jail the ICE detainers and administrative warrants. In the case of both Plaintiffs, each had been booked into the jail and the state courts had set bond before the ICE holds were imposed. Were I to interpret "last uncontested status" the way the Sheriff urges – namely, to preserve his

longstanding policy of honoring ICE holds – then it is hard to imagine how any plaintiff in this context could obtain relief. Such a ruling would not be consistent with fundamental equity.

CONCLUSION

Accordingly, it is hereby ORDERED:

A. Plaintiffs' request for a preliminary injunction is GRANTED. Defendant is ENJOINED from relying on ICE immigration detainers or ICE administrative warrants as grounds for refusing to release the Plaintiffs from custody when they post bond, complete their sentences, or otherwise resolve their criminal cases. If Plaintiffs post bond, Defendant is ordered to release them pending resolution of their criminal matters.

B. Sheriff Elder has not requested an injunction bond, nor has he made a record that he will suffer any specific damages in the event this injunction is ultimately found to have been wrongly granted. Accordingly, the requirement for Plaintiffs to post a security bond under Rule 65(c) is WAIVED.

DONE and ORDERED March 19, 2018.

BY THE COURT

Eric Bentley
DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

MYRIAM PARADA

Plaintiff,

v.

ANOKA COUNTY; JAMES STUART, *Anoka County Sheriff*; NICOLAS OMAN, *Coon Rapids Police Officer*; COON RAPIDS POLICE DEPARTMENT; JOHN DOE, *unknown/unnamed defendant*; and JANE DOE, *unknown/unnamed defendant*

Defendants.

Civil No. 18-795 (JRT/TNL)

MEMORANDUM OPINION AND ORDER

Alain M. Baudry and Amanda R. Cefalu, **KUTACK ROCK LLP**, 60 South Sixth Street, Suite 3400, Minneapolis, MN 55402; Ian Bratlie, **ACLU OF MINNESOTA**, 709 South Front Street, Suite 1B, Mankato, MN 56001; and Teresa J. Nelson, **ACLU OF MINNESOTA**, P.O. Box 14720, Minneapolis, MN 55414, for plaintiff.

Ryan M. Zipf, **LEAGUE OF MINNESOTA CITIES**, 145 University Avenue West, St. Paul, MN 55103, for Defendants Nicolas Oman and the City of Coon Rapids.

A substantial number of Latinos – both U.S. citizens and foreign-born residents – are less likely to contact the police or report crimes, even when they are victims, because they fear that police will inquire about their immigration status.[1] While the U.S. immigrant

[1] *See* Nik Theodore, Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement 5-6 (2013); Mai Thi Nguyen & Hannah Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, 53 Urban Studies 14-

population is extremely vulnerable to crime,[2] police mistrust is common within immigrant communities.[3] In Minnesota, law-enforcement agencies fear that the immigrant community's distrust of police results in increased crime against immigrants and decreased reporting of such crimes.[4]

The law-enforcement conduct alleged in this case is precisely the type of conduct that further sows the Minnesota immigrant community's distrust of law-enforcement agencies. Plaintiff Myriam Parada resides in Ramsey, Minnesota. In July 2017, Parada was the victim of an automotive accident. Coon Rapids Police Officer Nicolas Oman arrested Parada for driving without a license. While detained at the Anoka County jail, Defendants contacted Immigration & Customs Enforcement ("ICE") and transferred Parada into ICE custody. Parada is now in removal proceedings.

Parada alleges that she was unlawfully arrested and detained by Defendants because of her race, nationality, and immigration status. She brings this § 1983 action against

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16 (Feb. 2016); Jill T. Messing, et al., *Latinas' Perception of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 J. of Women & Soc. 328, 330 (2015).

[2] *See* Int'l Ass'n of Chiefs of Police, Police Chiefs Guide to Immigration Issues 28 (2007).

[3] Leslye E. Orloff, et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43, 67-69 (2003) (demonstrating low reporting rates of domestic abuse among immigrant women); Sam Torres & Ronald E. Vogel, *Pre and Post-Test Differences Between Vietnamese and Latino Residents Involved in a Community Policing Experiment*, 24 Policing: Int'l J. Police Strat. & Mgmt. 40, 53 (2001) (suggesting that both Vietnamese and Latino immigrant populations are "distrustful of the police and less likely than the general population to report crime").

[4] *See* Minn. Advisory Committee to U.S. Commission on Civil Rights, *Civil Rights and Policing Practices in Minnesota* 22-24 (2018).

Anoka County, Anoka County Sheriff James Stewart, the City of Coon Rapids,[5] Oman, and two unknown defendants for violations of her Fourth and Fourteenth Amendment rights. Parada also brings state-law claims for violations of the Minnesota Constitution and false imprisonment.

Coon Rapids and Oman (collectively, "Coon Rapids Defendants") move to dismiss Parada's claims pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court will deny the Coon Rapids Defendants' motion with respect to Parada's Fourth Amendment claims, equal-protection claim, Minnesota Constitution claims, and false-imprisonment claim. However, the Court will grant the Coon Rapids Defendants' motion with respect to Parada's due-process claims, because it will conclude that they are duplicative of her Fourth Amendment claims.

BACKGROUND

Parada alleges the following facts. (Compl., March 22, 2018, Docket No. 1.)

Parada – a Mexican citizen – resides in Ramsey, Minnesota.[6] (*Id.* ¶ 13, 34-35.) On July 25, 2017, Parada was driving her siblings and cousins home from her younger sister's

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[5] The case caption of the Complaint erroneously lists "Coon Rapids Police Department" as the defendant. (Compl. at 1, Mar. 22, 2018, Docket No. 1.) The Complaint later identifies "City of Coon Rapids" as the intended defendant. (*Id.* ¶ 16.) The Court will grant Parada leave to both amend the substantive content of the Complaint and correct the case caption. Fed. R. Civ. P. 15(a)(2).

[6] The Complaint does not actually allege that Parada is a Mexican citizen. However, Parada's alleges that she was discriminated against based on her perceived nationality. Moreover, she alleges that she presented her Mexican birth certificate to obtain her Matrícular Card. Pursuant to Constitution of Mexico, individuals "born in the territory of [Mexico], regardless of the nationality of their parents," are Mexican citizens. *See* Constitución Política de los Estados Unidos

birthday party. (*Id.* ¶ 23.) Around 6:40 p.m., a Caucasian driver rear-ended Parada. (*Id.* ¶ 26.) The other driver called the police, and Oman arrived at the scene around 6:46 p.m. (*Id.* ¶¶ 28-29.) Parada called her parents, who came to the scene. (*Id.* ¶ 27.)

Oman asked Parada for her driver's license, which she did not have. (*Id.* ¶¶ 33-34.) Parada gave Oman her proof of insurance and her Matrícula Card – an official identification card issued by the Mexican Consulate. (*Id.* ¶¶ 34-35.) The Matrícula Card lists Parada's full name, date of birth, and U.S. address. (*Id.* ¶ 35.) It also has a recent photo of Parada and security features to ensure its authenticity. (*Id.*) Parada confirmed that all the information on her card was true and accurate, as did her step-father. (*Id.* ¶¶ 37-38.) Her step-father told Oman that he was the registered owner of the car and gave Oman his name, which Oman ran through his database. (*Id.* ¶¶ 37-38.)

Oman went to his vehicle and spoke with Anoka County staff on his personal phone for several minutes. (*Id.* ¶ 39.) When Oman returned, he told Parada that his supervisor told him that he needed to "bring her in to get her prints." (*Id.* ¶¶ 40-41.) In the police report, Oman wrote that he "transported Parada to jail since I was also unable to positively identify her." (*Id.* ¶ 44.)

Oman brought Parada to the Anoka County Jail around 7:20 p.m. (*Id.* ¶ 48.) Officers handcuffed Parada, patted her down, took her mugshot, and placed her in a cell.

Mexicanos, CP, art. 30, Diario Oficial de la Federación 05-02-1917 (Mex.). The Court has no reason to suspect that Parada has renounced her Mexican citizenship and, therefore, will assume for purposes of this motion that Parada is a Mexican citizen. Parada will have an opportunity to clarify her citizenship status when amending the Complaint.

(*Id.* ¶¶ 49-52.) According to the jail records, Parada was free to leave on that same day, July 25. (*Id.* ¶¶ 54, 57.)

However, Defendants did not release Parada that day. (*Id.* ¶ 59.) At approximately 11:00 p.m. on July 25, the Anoka County Sheriff's Office brought Parada to one of the unknown defendants, who questioned her for several minutes. (*Id.* ¶ 60.) At approximately 11:30 p.m., Parada was again brought to the unknown defendant to speak with ICE officers. (*Id.* ¶ 61.) Defendants did not advise Parada that she could refuse to speak with the ICE officers. (*Id.* ¶ 84.) The ICE officers questioned Parada about her immigration status. (*Id.* ¶ 62-63.) Parada asked the unknown defendant whether she needed an attorney, and he told her to ask ICE. When Parada asked ICE the same question, an ICE officer replied that "it goes faster without a lawyer." (*Id.* ¶¶ 64-66.) Parada answered the ICE officers' questions about how she entered the United States. (*Id.* ¶ 67.) Parada was then taken back to her cell. (*Id.* ¶ 68.) An hour later, they took her fingerprints. (*Id.* ¶ 68.)

The next day, July 26, ICE sent Anoka County an I-200 Warrant for Arrest of an Alien ("ICE Warrant") and an I-247 ICE Detainer. (*Id.* ¶¶ 69-70.) The ICE Warrant was unsigned and the ICE Detainer was stamped with "Draft Not Complete" on every page. (*Id.* ¶¶ 70, 87.) Neither ICE nor Defendants served Parada with copies of these documents. (*Id.* ¶ 97.)

At approximately 2:00 a.m. on July 26, Defendants brought Parada out of her cell, handed her a citation for driving without a license, and handed her over to two ICE agents. (*Id.* ¶¶ 74-75.) The ICE agents took her to Sherburne County Jail. (*Id.* ¶¶ 75-76.) An

hour after transferring custody of Parada to ICE, Anoka County Defendants notified her family. (*Id.* ¶ 79.) Parada is currently in removal proceedings. (*Id.* ¶¶ 79-80.)

Parada alleges that Coon Rapids and the Anoka County Sheriff's Office have policies and customs which require officers to detain foreign-born persons while awaiting transfer to immigration authorities. (*Id.* ¶¶ 112, 123, 137, 143, 145, 147, 149, 158, 163, 170.) She also alleges that Coon Rapids and the Anoka County Sheriff's Office have failed to train their employees on the Fourth Amendment and the rights of immigrants (*Id.*)

DISCUSSION

I. STANDARD OF REVIEW

In reviewing a Rule 12(b)(6) motion, the Court views the complaint in "the light most favorable to the nonmoving party." *Lonaker v. Bos. Sci. Corp.*,872 F. Supp. 2d 816, 819 (D. Minn. 2012). The Court considers all facts alleged in the complaint as true to determine whether the complaint states "a claim to relief that is plausible on its face." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility,'" and therefore must be dismissed. *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 557 (2007)). Although the Court accepts the complaint's factual allegations as true, it is "not bound to accept as true a legal conclusion

couched as a factual allegation." *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Therefore, to survive a motion to dismiss, a complaint must provide more than "'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Both parties have submitted evidence outside the pleadings in support of their arguments. "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). Because discovery has not yet begun, the Court concludes that summary judgment is premature. The Court will exclude the submitted evidence and will consider the motion under Rule 12(b)(6).

A. 42 U.S.C. § 1983

As to each of Parada's claims against Oman, the Court must decide whether Parada states a claim under § 1983 claim and whether Oman is entitled to qualified immunity for claims brought against him in his individual capacity. As to the claims against Coon Rapids, the Court must decide whether Parada can maintain each of her § 1983 claims against the municipality pursuant to *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978).

Under § 1983,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution

> and laws, shall be liable to the party injured in an action at law, suit in equity, or proper proceeding for redress.

42 U.S.C. § 1983.

B. Qualified Immunity

"Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity only shields individuals sued in their individual capacity and is not a defense for individuals sued in their official capacity. *Kentucky v. Graham*, 473 U.S. 159, 166-67 (1985). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *White v. Pauly*, 137 S. Ct. 548, 661 (2017) (quoting *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015)).

"The determination of whether an officer is entitled to qualified immunity requires consideration of the 'objective legal reasonableness' of the officer's conduct in light of the information he possessed at the time of the alleged violation." *Winters v. Adams*, 254 F.3d 758, 766 (8th Cir. 2001) (quoting *Harlow*, 457 U.S. at 819). The Court must assess (1) whether the facts alleged by plaintiff constitute a violation of a constitutional or statutory right, and (2) whether that right was clearly established at the time of the defendant's alleged misconduct. *Mitchell v. Shearrer*, 729 F.3d 1070, 1074 (8th Cir. 2013). In order for a right to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate." *White*, 137 S. Ct. at 551 (cleaned up). While the

clearly established law must be "particularized to the facts of the case," the Court need not locate a case directly on point in order to conclude that the statutory or constitutional question is beyond debate. *Id.* at 552.

C. Application of § 1983 to Municipalities

A municipality is a "person" for purposes of § 1983. *Monell*, 436 U.S. at 690. "Section 1983 liability for a constitutional violation may attach to a municipality if the violation resulted from (1) an official municipal policy, (2) an unofficial custom, or (3) a deliberately indifferent failure to train or supervise." *Atkinson v. City of Mountain View, Mo.*, 709 F.3d 1201, 1214 (8th Cir. 2013) (cleaned up). A municipality may be liable under *Monell* even if the employee is not found liable in his or her individual capacity. *Webb v. City of Maplewood*, 889 F.3d 483, 486 (8th Cir. 2018).

II. COUNT I: FOURTH AMENDMENT

As to Parada's Fourth Amendment claim, the Court must decide (1) whether Parada states a claim under § 1983, (2) whether Oman is entitled to qualified immunity, and (3) whether Parada can maintain a *Monell* claim against Coon Rapids. Parada alleges two separate and distinct violations of her Fourth Amendment rights. First, Parada alleges that Oman lacked the legal authority to initially arrest her. (Compl. ¶ 126.) Second, Parada alleges that the Defendants' continued detention of Parada after she was cleared for release constituted a new arrest that was unsupported by probable cause. (Compl. ¶¶ 129-30.) The Court will deny the Motion to Dismiss with respect to both Fourth Amendment claims.

The Fourth Amendment protects "against unreasonable searches and seizures" of the person. U.S. Const. amend. IV. "A warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence." *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018). To determine whether an officer had probable cause, the Court "examine[s] the events leading up to the arrest and then decide[s] whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *Id.* (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)) (cleaned up). Probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 243-44 (1983)). Whether state law prohibits an arrest is irrelevant to the Fourth Amendment analysis so long as the arrest is supported by probable cause. *Virginia v. Moore*, 553 U.S. 164, 171-72 (2008). An officer is entitled to qualified immunity when there is at least "arguable probable cause." *Gilmore v. City of Minneapolis*, 837 F.3d 827, 832 (8th Cir. 2016).

However, "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (citing *United States v. Jacobsen*, 466 U.S. 109, 124 (1985)). For example, "[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Id.* When an individual is kept in custody for a new purpose after he or she is entitled to release, he or she is subjected to a new

seizure that must be supported by a new probable-cause justification. *Morales v. Chadborne*, 793 F.3d 208, 217 (1st Cir. 2015).

A. Initial Arrest

The Court must decide whether Parada states a § 1983 claim for the violation of her Fourth Amendment rights arising from her initial arrest. Parada argues three theories for why her initial arrest was unlawful: (1) Oman was not present while Parada was driving without a license, (2) the arrest violated Minnesota Rule of Criminal Procedure 6.01, and (3) Oman extended the stop beyond what was reasonably required to issue a citation for driving without a license. The Court considers each argument in turn.[7]

First, Parada argues that misdemeanor arrests require a warrant unless the crime is committed in the presence of the arresting officer. At common law, "[a] warrant was required [for misdemeanor arrests] except when a breach of peace occurred in the presence of the arresting officer." Wayne R. LaFave, 3 Search and Seizure: A Treatise on the Fourth Amendment § 5.1(b) (5th ed. 2017). Neither the Supreme Court nor the Eighth Circuit has expressly decided whether the Fourth Amendment "permits a warrantless arrest for a misdemeanor when the alleged offense did not occur in the presence of the arresting

[7] The Coon Rapids Defendants argue that Parada's Fourth Amendment claim is barred by the *Heck* doctrine because she pleaded guilty to the cited offense. In *Heck v. Humphrey*, the Supreme Court held that a plaintiff cannot maintain a § 1983 claim for violations of the Fourth Amendment where "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." 512 U.S. 477, 487 (1994). Parada does not challenge the validity of her conviction for driving without a license. Parada's claims stem from the unreasonable length of her initial arrest and her continued detention without probable cause. If proven, neither theory would invalidate Parada's conviction.

officer." *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1258 (8th Cir. 2010); *see also Atwater v. City of Lago Vista*, 532 U.S. 318, 340 n.11 (2001). Although the Eighth Circuit has not decided the issue, it has held that, "[b]ecause the law regarding warrantless misdemeanor arrests for offenses committed outside the presence of the arresting officer is not clearly established under the Fourth Amendment," arresting officers are entitled to qualified immunity. *Gilmore*, 837 F.3d at 834. Because the law was not clear at the time of the arrest, the Court concludes that Oman is entitled to qualified immunity for any argument based on his lack of presence during Parada's commission of the crime.

Second, Parada argues that Oman "lacked the legal authority to take [her] into custody" because the arrest violated Minnesota Rule of Criminal Procedure 6.01. (Compl. ¶ 126.) Rule 6.01 requires officers, in misdemeanor cases, to issue a citation and release the defendant unless it reasonably appears that "(1) the person must be detained to prevent bodily injury to that person or another; (2) further criminal conduct will occur; or (3) a substantial likelihood exists that the person will not respond to a citation." Minn. R. Crim. P. 6.01(a). Taking Parada's allegations as true, Oman violated Rule 6.01. But while States may regulate arrests however they wish, "state restrictions do not alter the Fourth Amendment's protections." *Moore*, 553 U.S. at 166. The Court's only concern is whether Oman had probable cause to arrest Parada; whether Oman violated Rule 6.01 does not affect the Fourth Amendment analysis. Accordingly, the Court concludes that Parada fails to state a claim for a Fourth Amendment violation based exclusively on a violation of Rule 6.01.

Third and finally, Parada argues that the stop and arrest extended beyond the time reasonably required to identify Parada and issue her a citation for driving without a license. "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' – to address the traffic violation that warranted the stop." *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015). Parada provided Oman with her Matrícula Card and her proof of insurance for identification. Nevertheless, Oman told Parada that he needed to take her to the jail in order to identify her. However, Parada alleges that Defendants never doubted Parada's identity. (*Id.* ¶¶ 53-56.) This allegation is supported by the fact that Oman said he needed to "get her prints," (*id.* ¶ 40), but no one took Parada's fingerprints upon booking. Indeed, her prints were not taken until almost five hours after she arrived at the jail and until after she had spoken to ICE officers. Even assuming Oman had probable cause to arrest Parada for driving without a driver's license, Parada states a claim that the stop and arrest extended beyond the time required to identify Parada and issue a citation for driving without a license. The Court concludes that Parada states a claim for a Fourth Amendment violation arising from the initial arrest.

The Court must decide whether it was clearly established at the time of the arrest that unreasonably prolonging a traffic stop and subsequently arresting someone under these circumstances violates the Fourth Amendment. *Caballes* and *Rodriguez* clearly establish that a seizure cannot extend beyond the time necessary to issue a traffic ticket. *Caballes*, 543 U.S. at 407; *Rodriguez*, 135 S. Ct. at 1615. And while Parada cannot use Rule 6.01 to establish a Fourth Amendment violation, the Rule is evidence that Oman should know that a full custodial arrest is not necessary – and indeed not even allowed in Minnesota – to

issue a citation for driving without a license. The Court concludes that Oman has not shown that he is entitled to qualified immunity with respect to Parada's Fourth Amendment claim stemming from the initial arrest. The Court notes that this is the only Fourth Amendment theory that Parada can assert against Oman in his individual capacity.

The Court must also decide whether Parada can maintain a *Monell* claim against Coon Rapids based on (1) Oman's prolonging of the traffic stop and (2) the fact that Oman was not present when Parada was driving without a license.[8] Parada alleges that Coon Rapids has a policy or custom of arresting Hispanic drivers for misdemeanor traffic offenses and that its policy of refusing to accept the Matrícular Card is pretext for arresting aliens to detain them for immigration authorities. (Compl. ¶¶ 145, 147.) Parada alleges that Oman arrested her pursuant to this policy, even though Oman did not witness her driving without a license. (*Id.* ¶ 145.) Indeed, Oman told Parada that his "supervisor told him to bring her in to get her prints" to identify her, which suggests that both Oman and his supervisor were acting pursuant to a policy to (1) disregard the Matrícular Card and (2) arrest Hispanic individuals to detain them for immigration authorities. (*Id.* ¶ 40.) This

[8] Even though the law is not clearly established, Coon Rapids is not entitled to any form of immunity on this issue. *See Webb*, 889 F.3d at 485.

The Court will be required to decide whether the Fourth Amendment permits a warrantless arrest for a misdemeanor not witnessed by the arresting officer. But the Court declines to conduct that analysis at this stage because Parada's Fourth Amendment claim will nevertheless go forward on an alternative theory. The Court concludes that discovery and subsequent argument are necessary for the Court to make a reasoned decision on the state of the law and whether the Court is required to reach this issue.

inference is supported by allegations that the Defendants waited to take her prints until after they had spoken with ICE agents. The alleged policy caused Oman to overstep the boundaries of Minnesota law and, possibly, the protections of the Fourth Amendment. The Court concludes that Parada states a *Monell* claim against Coon Rapids based on (1) the prolonging of the traffic stop and (2) Oman's absence during the commission of the crime.

Accordingly, the Court will deny the Coon Rapids Defendants' Motion to Dismiss with respect to the Fourth Amendment claims arising from Parada's initial arrest.

B. Continued Detention

The Court must decide whether Parada states a § 1983 claim for the violation of her Fourth Amendment rights arising from her continued detention.[9]

Parada was cleared for release from the county jail on July 25. Nevertheless, Defendants held her after she was cleared for release. Accordingly, Parada's continued detention must be supported by a new probable-cause justification. *Morales*, 793 F.3d at 217.

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[9] As a threshold issue, it is not entirely clear to the Court whether Parada is alleging that the Coon Rapids Defendants participated in Parada's continued detention. However, certain allegations suggest that Parada intends to make such claims. Parada alleges that the Coon Rapids Defendants treated her as an immigration detainee, Oman spoke with Anoka County officials on his personal phone before arresting Parada, and Coon Rapids officers regularly arrest Hispanic individuals for immigration purposes. (*Id.* ¶¶ 39, 53, 145.) These allegations support a conclusion that the Coon Rapids Defendants cooperated with the Anoka County Defendants in detaining Parada for immigration purposes.

The Court expects Parada to amend the Complaint if it becomes clear during discovery that the Coon Rapids Defendants did not participate in Parada's continued detention.

The Court must decide whether the Defendants had probable cause to detain Parada after she was cleared for release. "As a general rule, it is not a crime for a removable alien to remain present in the United States. If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent." *Arizona v. United States*, 567 U.S. 387, 407 (2012). "Detaining individuals solely to verify their immigration status would raise constitutional concerns." *Id.* at 413. Even when an official has the authority to detain an individual based on his or her immigration status, the individual's "apparent Mexican ancestry" alone does not justify arrest. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975).

In *Orellana v. Nobles County*, another court in this District held that a plaintiff's continued detention to satisfy an ICE detainer violated his Fourth Amendment rights. 230 F. Supp. 3d 934, 946 (D. Minn. 2017). In *Orellana*, the plaintiff disclosed to officers at a jail that he was not a lawful resident of the United States. *Id.* at 937. The officers notified ICE, which issued a detainer. *Id.* The next day, a state-court judge set bail. *Id.* Sometime later, the plaintiff's spouse sought to bail him out, but the jail refused to accept bail money because of the ICE Detainer. *Id.* at 937-38. Ultimately, the plaintiff pleaded guilty to driving under the influence, received a stayed sentence, and was released. *Id.* at 938. The court concluded that the ICE Detainer did not provide probable cause to detain the plaintiff and that the warrantless detention of the plaintiff violated the Fourth Amendment. *Id.* at 944-46.

Parada's allegations are more egregious than *Orellana*. After July 25, Defendants were not detaining Parada on the suspicion of criminal activity but for a perceived civil

violation of U.S. immigration laws. The misdemeanor citation for driving without a license could not constitute the suspected criminal activity because Parada was cleared for release on that offense. Parada alleges that "Defendants treated [her] as an immigration detainee from the outset." (Compl. ¶ 53.) The Coon Rapids Defendants fail to offer an adequate explanation as to what suspected criminal activity supported Parada's continued detention.

Defendants should have released Parada after clearing her for release. They did not. Oman cannot establish at this stage that he had probable cause to believe that Parada committed a crime warranting her continued detention.

Having established that Parada states a sufficient claim that her Fourth Amendment rights were violated, the Court must decide whether it was clearly established at the time of the arrest that law enforcement cannot detain an alien on suspicion of removability without probable cause to believe that a crime has been committed. It is clearly established that a warrantless arrest must be supported by probable cause of criminal activity, that unlawful presence is not a crime, and that an immigrant's possible removability is insufficient to give rise to probable cause. *See Arizona*, 567 U.S. at 407; *Orellana*, 230 F. Supp. 3d at 944-46. It is also clearly established that an ICE Detainer alone cannot support local law enforcement's continued detention of an alien. *Orellana*, 230 F. Supp. 3d at 945-46. Oman cannot establish at this stage that he is entitled to qualified immunity.

The Court must decide whether Parada can maintain a *Monell* claim against Coon Rapids based on her Fourth Amendment claim. As discussed above, Parada alleges that Coon Rapids has an unwritten policy of "arresting Hispanic motorists for pre-textual reasons to place them in immigration custody" and has deliberately failed to train its

officers on individuals' Fourth Amendment rights. (Compl. ¶¶ 130, 137, 145.) This policy of arresting and detaining Hispanic individuals solely for immigration purposes led to Parada's continued detention. Because Coon Rapids has a policy of detaining Hispanic individuals based on their perceived immigration status, the Court concludes that Parada states a *Monell* claim against Coon Rapids.

Accordingly, the Court will deny the Coon Rapids Defendants' Motion to Dismiss with respect to the Fourth Amendment claims arising from Parada's continued detention.

III. COUNTS II AND III: DUE-PROCESS CLAIMS

The Court must decide whether Parada states § 1983 claims under the Due Process Clause of the Fourteenth Amendment. "Where a particular amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for the analysis of these claims." *Albright v. Oliver*, 510 U.S. 266, 273 (1994). Due-process claims based on allegations of an arrest must be analyzed under the Fourth Amendment. *Greenman v. Jessen*, 787 F.3d 882, 890-91 (8th Cir. 2015); *see also Mendoza v. U.S. Immigration & Customs Enf't*, 849 F.3d 408, 421 (8th Cir. 2017) (affirming dismissal of due-process claims in case of an immigrant arrest). Parada's due-process claims are based on the legality of her initial arrest and continued detention. The Court will grant the Coon Rapids Defendants' Motion to Dismiss with respect to the Fourteenth Amendment due-process claims alleged against them and dismiss Counts II and III against them without prejudice.

IV. COUNT IV: EQUALPROTECTION CLAIM

As to Parada's equal protection claim, the Court must decide (1) whether she states a claim under § 1983, (2) whether Oman is entitled to qualified immunity, and (3) whether she can maintain a *Monell* claim against Coon Rapids.

First, the Court must decide whether Parada states a § 1983 claim for the violation of her equal-protection rights based on selective enforcement of Minnesota's traffic laws. Immigrants – even if unlawfully present – are protected by the Equal Protection Clause. *Plyler v. Doe*, 457 U.S. 202, 210 (1982). "[T]he Constitution prohibits selective enforcement of the law based on considerations such as race." *Whren v. United States*, 517 U.S. 806, 813 (1996). A selective-enforcement claim does not require proof that the plaintiff was arrested without probable cause or reasonable suspicion to believe that the plaintiff committed a criminal offense. *Johnson v. Crooks*, 326 F.3d 995, 999-1000 (8th Cir. 2003). Rather, the plaintiff must prove that the officer exercised his or her discretion to enforce the laws on account of the plaintiff's race, nationality, or other characteristics. *See id.* at 1000. "When the claim is selective enforcement of the traffic laws or a racially-motived arrest, the plaintiff must normally prove that similarly situated individuals were not stopped or arrested in order to show the requisite discriminatory effect and purpose." *Id.*

Parada alleges that Oman acted "pursuant to an unwritten, policy, custom or pattern of practice to engage in racial and ethnic profiling and arrest[] Hispanic motorists for pretextual reasons to place them in immigration custody." (*Id.* ¶ 145.) The facts alleged in the Complaint demonstrate this practice. Parada was arrested for a misdemeanor driving

offense. (*Id.* ¶ 74.) She alleges that Oman "had issued six (6) citations in the previous year for failure to possess a Minnesota driver's license[] and never arrested anyone." (*Id.* ¶ 46.) If Oman's reason for arresting Parada was not pretextual, the Court would expect that Oman would have arrested these other individuals in order to properly identify the drivers. (*Id.* ¶ 41.) Furthermore, Parada alleges that Defendants continued to detain her, even after she was cleared or release, based on her nationality and suspected immigration status. (*Id.* ¶ 59.)

Parada sufficiently alleges that (1) she was arrested on account of her race, nationality, and perceived immigration status, (2) Oman acted pursuant to an unwritten policy to engage in racial profiling, and (3) other drivers who were similarly situated were not arrested. *Johnson*, 326 F.3d at 999-1000. The Court concludes that Parada states an equal-protection claim.

The Court must decide whether it was clearly established at the time of the arrest that selective enforcement of traffic laws based on race and nationality violates the Equal Protection Clause. The law on selective enforcement based on race and alienage is clearly established. *See Whren*, 517 U.S. at 813. Oman argues that the law is not clearly established that officers must accept a Matrícula Card as a form of identification. Oman stretches this theory too thin. The law clearly prohibits selective enforcement based on race and nationality. Parada has alleged sufficient facts at this stage to suggest that Oman's refusal to accept the Matrícula Card was pretext for selective enforcement, which constitutes discrimination under the Equal Protection Clause. The Court concludes that Oman has not shown that he is entitled to qualified immunity.

The Court must decide whether Parada states a *Monell* claim against Coon Rapids based on the violations of her equal-protection rights. Parada alleges that Coon Rapids has a custom or policy of selectively enforcing traffic laws against Hispanic individuals. (*See id.* ¶ 145.) As described above, Parada's allegations surrounding Oman's conduct support a reasonable inference that Coon Rapids officers – as a matter of policy – refuse to accept the Martrícular Card to arrest and detain Hispanic individuals for immigration authorities. Because Parada states an equal-protection claim arising from selective enforcement, the Court concludes that Parada states a *Monell* claim against Coon Rapids.

Accordingly, the Court will deny the Coon Rapids Defendants' Motion to Dismiss with respect to Parada's equal-protection claim.

V. MINNESOTA CONSTITUTION CLAIMS

The Court must decide whether Parada states claims under the Minnesota Constitution for violations of Article I, Sections 7 (Due Process) and 10 (Search and Seizure). A plaintiff may not maintain a claim for damages under the Minnesota Constitution unless the Minnesota Supreme Court has recognized the cause of action. *Riehm v. Engelking*, 538 F.3d 952, 969 (8th Cir. 2008). However, Parada only seeks declaratory and injunctive relief for her Minnesota Constitution claims. (Opp'n. at 27-28, May 8, 2018, Docket No. 21.) The Minnesota Supreme Court has entertained declaratory and injunctive claims brought under Article I, Sections 7 and 10. *See, e.g.*, *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 335, 340 (Minn. 2011); *Doe v. Gomez*, 542 N.W.2d 17, 21, 26 (Minn. 1995). Because Parada only seeks equitable relief, the Court will deny

the Coon Rapids Defendants' Motion to Dismiss with respect to Parada's Minnesota Constitution claims.

VI. FALSE IMRPISONMENT

The Court must decide whether Parada has stated a common-law false imprisonment claim against the Coon Rapids Defendants and whether the Coon Rapids Defendants are entitled to official immunity. As with her Fourth Amendment Claim, Parada alleges two theories of false imprisonment: (1) the initial arrest and (2) the continued detention.

To establish a false-imprisonment claim against law enforcement, the plaintiff must prove that defendants performed an arrest and that the arrest was unlawful. *Lundeen v. Renteria*, 224 N.W. 2d 132, 135 (Minn. 1974). The test for "lawfulness of the plaintiff's arrest is whether it was made with 'probable cause.'" *Id.* at 136.

Minnesota applies the "official immunity doctrine." *Elwood v. Rice Cty.*, 423 N.W.2d 671, 677 (Minn. 1988). Under the official-immunity doctrine, "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." *Id.* (quoting *Sulsa v. State*, 246 N.W.2d 907, 912 (Minn. 1976). An official is entitled to official immunity when an officer has arguable probable cause to arrest the plaintiff. *White v. Stenglein*, No. 16-2573, 2016 WL 4707986, at *6 (D. Minn. Sept. 8, 2016).

The Court incorporates its previous Fourth Amendment analysis here. With respect to the initial arrest, Parada alleges that (1) she was arrested by Oman and (2) Oman was

not present while Parada was driving without a license and unreasonably extended the arrest beyond what was necessary. She alleges that her arrest was willful or malicious, (Compl. ¶ 169), and she supports that claim with allegations that the Coon Rapids Defendants deliberately engaged in racial profiling, (*id*. ¶ 170). Parada states a false-imprisonment claim stemming from her initial arrest.

With respect to her continued detention, Parada alleges that (1) she was unlawfully detained by the Defendants after she was cleared for release and (2) Defendants lacked probable cause to detain her on account of her immigration status. Parada alleges that her continued detention was willful or malicious, (Compl. ¶ 169), and she supports that claim with allegations that Coon Rapids has an unofficial policy or custom of arresting Hispanic motorists simply to place them in immigration custody, (*id.* ¶ 145).

The Court will deny the Coon Rapids Defendants' Motion to Dismiss Parada's false-imprisonment claim.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The City of Coon Rapids' and Oman's Motion to Dismiss [Docket No. 8] is **GRANTED in part and DENIED in part**.

2. Counts II and III of the Complaint [Docket No. 1] against Nicolas Oman and the City of Coon Rapids are **DISMISSED without prejudice.**

3. Myriam Parada is **GRANTED** leave to amend the Complaint.

DATED: July 30, 2018
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court

EXHIBIT B

DECLARATION OF CARLOS BARTOLON

I, Carlos Bartolon, declare and state as follows:

My name is Carlos Bartolon.

I was arrested on August 21, 2017 in Worthington, MN and held at the Nobles County Jail.

On August 22, 2017, Judge Moore gave me bail of $1,500 with conditions or $6,000 without conditions.

On August 28, 2017, my mother arranged to have bail paid. She paid $1,500.

After bail was paid, the NCSO refused to release me from custody. They said I had an ICE hold.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 6, 2017

Carlos D. Chilel Bartolon

Carlos Bartolon

DECLARATION OF ALEXANDER DOMINQUEZ CASTILLO

I, Alexander Dominquez Castillo, declare and state as follows:

My name is Alexander Dominquez Castillo.

I was arrested on July 30, 2017 in Worthington, MN and held at the Nobles County Jail.

On August 1, 2017 my girlfriend paid $500 for a bond in Rock County and I was released on own recognizance order by Judge Vajgrt from NCSO.

However, NCSO refused to release me from custody. They said I had an ICE hold.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 6, 2017

Alexander Dominquez Castillo

DECLARATION OF LEONEL JOSE GONZALEZ TALACIOS

I, Leonel Jose Gonzalez Talacios, declare and state as follows:

My name is Leonel Jose Gonzalez Talacios.

I was arrested on December 1, 2017 in Worthington, MN for DWI and held at the Nobles County Jail under the name Hector Reyes Garcia.

I received a bail of $1,500 from the state court judge.

However, jail staff told me not to pay the bail because ICE had placed a hold on me and they wouldn't release me. Because of this, I told my sister not to pay my bail.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 6, 2017

Leonel Jose Gonzalez Talacios

STATE OF MINNESOTA
COUNTY OF NOBLES

DISTRICT COURT
FIFTH JUDICIAL DISTRICT
Case Type: Civil

Rodrigo Esparza, Maria de Jesus de Pineda, Timoteo Martin Morales, Oscar Basavez Conseco; On behalf of themselves and all others similarly situated vs. Nobles County; Nobles County Sheriff Kent Wilkening; All individuals being sued in their individual and official capacity.	Case file _____ **DECLARATION OF AMANDA DELANEY**

Pursuant to Minn. Stat. § 358.116 and Minn. Gen. R. Prac. 14.04, I, Amanda Delaney, state as follows:

1. My name is Amanda Delaney.
2. I am a public defender in Nobles County, MN. As part of my job, I represent individuals who are from other countries and have been arrested and held at the Nobles County jail.
3. I have noticed that many people suspected of immigration violations have not been allowed to pay bond or were told that if they paid bail, the jail would not release them.
4. I have seen individuals who were not released when they should have been after their state custody period had ended.
5. This list is not meant to be all encompassing but here are some of the individuals who I have seen affected by Sheriff Wilkening refusing to release them.
6. Jose Balbuena-Perez is a 41 year old male who is accused of DWI-Test Refusal-Gross Misdemeanor, DWI-Misdemeanor and Driving without a valid license. He is not bailing out on his case because of an ICE hold. He believes that if he bails out ICE will deport him before we know the outcome of his criminal case.
7. Juan Gutierrez-Larios is a 19 year old male accused of criminal sexual conduct in the 4th degree. I got his bail reduced at a hearing on March 28 to an amount his family could pay. His family went to the jail with 5,000 cash bail. His father talked to jail staff and asked if there was an immigration hold on him. He was told no. His dad asked if they posted the bail if Juan would be released that same day and he was told yes. The family posted 5,000 cash and then they were told that Juan would not be released because he had an immigration hold. He was removed from the country on April 17. I attempted to assist his family with getting the cash bail back. To date I do not believe that money has been returned to his family.
8. Ezequiel Lopez Lopez, was arrested in June 2018. His public defender reduced his bail requirements to $10,000. His brother went to post bond, but was told by jail staff that they wouldn't release Ezequiel because of the ICE hold.

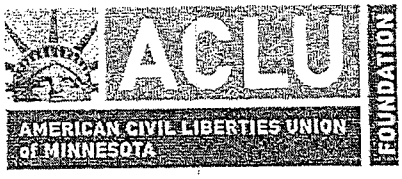
9. Oscar Basavez Conseco was given a $1,500 bail condition. Jail administrators told him that they would not release him if he paid the bail due to an ICE hold. Mr. Basavez Conseco contacted immigration and was told he did not have a hold. He was released from state custody on his own recognizance. Nobles County Jail is now holding him for immigration.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 16, 2018

Amanda Delaney

EXHIBIT C



Kent Wilkening Sheriff
1530 Airport Road Suite 100
Worthington, MN 56187

Dear Sheriff Wilkening,

Pursuant to the Government Data Practices Act, Minn. Stat. Chapter 13, the American Civil Liberties Union of Minnesota (ACLU-MN) requests copies of all data[1] constituting, describing, or relating to each of the following:

- All invoices and other charges that Nobles County, the Nobles County Sheriff, and/or the Nobles County Jail has billed to, or requested to be paid by, ICE or CBP, whether under any Intergovernmental Services Agreement (IGSA) or otherwise since January 1, 2017.

AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA
Greater Minnesota Racial Justice Project
709 Front Street
Suite 1B
Mankato, MN 56001
T/507.995-6566
T/507.995.6575
WWW.ACLU-MN.ORG

The ACLU-MN will pay for the cost of providing the data described above. If the cost exceeds $25.00, please contact me for approval prior to completing the request. (Note: copy costs are limited to $0.25 per page for document requests that do not exceed 100 pages.)

For the data described above that your office does not provide for any reason, please provide the statutory and factual basis for your failure to provide. We will work with you to establish a process for fulfilling this request in the most efficient and economical way possible. If you have questions regarding this request please contact me.

Please send responsive data by email or first class mail. The ACLU-MN expects a written acknowledgement of this request within ten working days, otherwise we will conclude that the request has been denied.

Thank you.

Sincerely,

Ian Bratlie
Greater Minnesota Racial Justice Project Attorney
709 South Front Street
Mankato, MN 56001
507-995-6575
ibratlie@aclu-mn.org

[1] Data means "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." MGDPA § 13.02 subd. 7.

	Department of Homeland Security Immigration & Customs Enforcement / DRO 2901 Metro Drive Bloomington, MN 55425 Attn: Cynthia Howell	Nobles County Sheriff's Office 1530 Airport Road Suite 100 Worthington, MN 56187 Phone: 1-507-295-5400 Fax: 1-507-372-5977	Invoice Period January 2017	

File #	Name	DOB	Start Date	Release Date	Days Billed	Per Diem	Total
		12/25/1959	12/09/2016		31	$89.69	$2,780.39
		09/26/1992	12/09/2016		31	$89.69	$2,780.39
		01/01/1971	12/09/2016	01/10/2017	9	$89.69	$807.21
		06/17/1980	01/24/2017	01/27/2017	3	$89.69	$269.07
		04/12/1979	01/05/2017	01/06/2017	1	$89.69	$89.69
		03/05/1982	01/26/2017		6	$89.69	$538.14
		06/04/1987	01/09/2017	01/13/2017	4	$89.69	$358.76
		02/02/1992	12/09/2016		31	$89.69	$2,780.39
		02/28/1976	12/09/2016		31	$89.69	$2,780.39
		08/21/1983	01/24/2017	01/27/2017	3	$89.69	$269.07
		08/05/1979	01/27/2017		5	$89.69	$448.45
		10/03/1991	01/03/2017	01/06/2017	3	$89.69	$269.07
		10/09/1987	01/30/2017		2	$89.69	$179.38
		07/10/1982	01/31/2017		1	$89.69	$89.69
		08/26/1973	12/09/2016		31	$89.69	$2,780.39
		11/27/1996	01/26/2017	01/27/2017	1	$89.69	$89.69
		07/11/1993	01/31/2017		1	$89.69	$89.69
		08/12/1983	01/10/2017	01/13/2017	3	$89.69	$269.07
		07/04/1996	01/10/2017	01/13/2017	3	$89.69	$269.07
		09/20/1990	01/19/2017	01/20/2017	1	$89.69	$89.69
		02/01/1992	12/09/2016		31	$89.69	$2,780.39
		02/13/1982	01/10/2017	01/13/2017	3	$89.69	$269.07
			GRAND TOTALS		235		$21,077.15

U.S. Department of Honeland Secuity Immigration & Customs Enforcement / ERO 1 Federal Drive, Suite 1640 Fort Snelling, MN 55111 Attn: Shahna Volta	Nobles County Sheriff's Office 1530 Airport Road Suite 100 Worthington, MN 56187 Phone: 1-507-295-5400 Fax: 1-507-372-5977	Invoice Period February 2017

File #	Name	DOB	Start Date	Release Date	Days Billed	Per Diem	Total
		12/25/1959	12/09/2016		28	$89.69	$2,511.32
		09/26/1992	12/09/2016	02/17/2017	16	$89.69	$1,435.04
		02/26/1975	02/16/2017	02/17/2017	1	$89.69	$89.69
		03/05/1982	01/26/2017	02/03/2017	2	$89.69	$179.38
		02/02/1992	12/09/2016		28	$89.69	$2,511.32
		02/28/1976	12/09/2016		28	$89.69	$2,511.32
		08/05/1979	01/27/2017	02/03/2017	2	$89.69	$179.38
		04/12/1993	02/01/2017	02/03/2017	2	$89.69	$179.38
		04/12/1993	02/08/2017	02/10/2017	2	$89.69	$179.38
		10/09/1987	01/30/2017	02/03/2017	2	$89.69	$179.38
		07/10/1982	01/31/2017	02/03/2017	2	$89.69	$179.38
		08/26/1973	12/09/2016		28	$89.69	$2,511.32
		07/11/1993	01/31/2017	02/03/2017	2	$89.69	$179.38
		02/01/1992	12/09/2016		28	$89.69	$2,511.32
			GRAND TOTALS		171		$15,336.99

	U.S. Department of Honeland Secuity U.S. Immigration & Customs Enforcement 1 Federal Drive, Suite 1640 Fort Snelling, MN 55111 Attn: Shahna Volta	Nobles County Sheriff's Office 1530 Airport Road Suite 100 Worthington, MN 56187 Phone: 1-507-295-5400 Fax: 1-507-372-5977	Invoice Period March 2017

File #	Name	DOB	Start Date	Release Date	Days Billed	Per Diem	Total
		12/25/1959	12/09/2016		31	$89.69	$2,780.39
		05/13/1979	03/02/2017	03/03/2017	1	$89.69	$89.69
		11/30/1972	03/13/2017	03/14/2017	1	$89.69	$89.69
		10/25/1970	03/17/2017	03/24/2017	7	$89.69	$627.83
		09/01/1984	03/02/2017	03/03/2017	1	$89.69	$89.69
		02/02/1992	12/09/2016	03/10/2017	9	$89.69	$807.21
		02/28/1976	12/09/2016		31	$89.69	$2,780.39
		05/02/1988	02/26/2017	03/03/2017	2	$89.69	$179.38
		03/31/1982	03/02/2017	03/03/2017	1	$89.69	$89.69
		01/27/1991	03/08/2017	03/10/2017	2	$89.69	$179.38
		09/15/1996	03/02/2017	03/03/2017	1	$89.69	$89.69
		08/26/1973	12/09/2016		31	$89.69	$2,780.39
		08/15/1980	03/26/2017	03/31/2017	5	$89.69	$448.45
		02/01/1971	02/17/2017	03/03/2017	2	$89.69	$179.38
		02/01/1992	12/09/2016		31	$89.69	$2,780.39
		12/24/1978	03/02/2017	03/03/2017	1	$89.69	$89.69
			GRAND TOTALS		157		$14,081.33

	U.S. Department of Homeland Security U.S. Immigration & Customs Enforcement 1 Federal Drive, Suite 1640 Fort Snelling, MN 55111 Attn: Shahna Volta	Nobles County Sheriff's Office 1530 Airport Road Suite 100 Worthington, MN 56187 Phone: 1-507-295-5400 Fax: 1-507-372-5977	Invoice Period April 2017	

File #	Name	DOB	Start Date	Release Date	Days Billed	Per Diem	Total
		12/25/1959	12/09/2016		30	$89.69	$2,690.70
		09/26/1981	04/20/2017	04/21/2017	1	$89.69	$89.69
		02/01/1993	04/21/2017	04/28/2017	7	$89.69	$627.83
		04/03/1989	04/20/2017	04/21/2017	1	$89.69	$89.69
		12/31/1968	04/20/2017		11	$89.69	$986.59
		09/14/1982	04/02/2017	04/07/2017	5	$89.69	$448.45
		01/03/1990	04/03/2017	04/07/2017	4	$89.69	$358.76
		10/23/1982	04/20/2017	04/21/2017	1	$89.69	$89.69
		12/23/1974	04/21/2017	04/25/2017	4	$89.69	$358.76
		02/10/1996	04/25/2017	04/28/2017	3	$89.69	$269.07
		09/14/1989	04/17/2017	04/21/2017	4	$89.69	$358.76
		02/28/1976	12/09/2016		30	$89.69	$2,690.70
		04/25/1958	04/17/2017	04/21/2017	4	$89.69	$358.76
		08/15/1995	04/20/2017	04/28/2017	8	$89.69	$717.52
		01/23/1977	04/26/2017	04/28/2017	2	$89.69	$179.38
		11/04/1984	04/26/2017	04/28/2017	2	$89.69	$179.38
		03/19/1993	04/20/2017	04/21/2017	1	$89.69	$89.69
		12/08/1979	04/27/2017	04/28/2017	1	$89.69	$89.69
		04/09/1991	04/13/2017	04/14/2017	1	$89.69	$89.69
		09/14/1985	04/19/2017	04/212017	2	$89.69	$179.38
		08/26/1973	12/09/2016		30	$89.69	$2,690.70
		01/01/1988	04/20/2017		11	$89.69	$986.59
		12/31/1976	04/20/2017		11	$89.69	$986.59
		08/28/1980	04/20/2017	04/21/2017	1	$89.69	$89.69
		05/27/1998	04/02/2017	04/07/2017	5	$89.69	$448.45
		06/08/1973	04/20/2017	04/21/2017	1	$89.69	$89.69
		11/21/1982	04/05/2017	04/07/2017	2	$89.69	$179.38
		02/01/1992	12/09/2016		30	$89.69	$2,690.70
		08/13/1971	04/20/2017	04/21/2017	1	$89.69	$89.69
			GRAND TOTALS		214		$19,193.66

EXHIBIT D

United States Department of Justice
Immigration & Naturalization Service

Intergovernmental Service Agreement for Housing Federal Detainees

1. Agreement Number	2. Effective as of date in block 11	3. Requisition Number (If applicable)
ACD-2-H-1004		CRDDP-02-39

4. Issuing INS Office Address:	5. City/County/State Government:
U.S. Immigration & Naturalization Service 7701 N. Stemmons Freeway Dallas, TX 75247	County of Nobles 318 Ninth Street Worthington, MN 56187
Contact Person: Arthur S. Cooper, III Phone: 214 905- 5533	Contact Person: Sheriff Kent Wilkening Phone: (507) 372-2136
6. Services Covered by this Agreement: Housing, security, subsistence, clothing and medical care of persons detained by the U.S. Immigration & Naturalization Service in accordance with the terms and conditions set forth herein.	7. Detainee Day Rate: $89.69 8. Estimated detainee days _____ per year

9. Type of Detainee: Y Adult Male Y Adult Female

10. City/County or State Government Certification:

To the best of my (our) knowledge and belief, data submitted in support of this agreement is true and correct; this agreement has been duly authorized by the governing body of the city/county or state government identified in block 5 above. The city/county or state government identified shall comply with all provisions set forth herein.

(Signature)	(Date)	(Name & Title typed or printed)
David Benson	11-20-01	
Mel Simons	11-20-01	
[signature]	11-21-01	Kent Wilkening Sheriff
(Signature)	(Date)	(Name & Title typed or printed)

(For additional signatures, please attach another page.)

11. This agreement is hereby approved and accepted for THE UNITED STATES OF AMERICA, by direction of the COMMISSIONER OF THE IMMIGRATION & NATURALIZATION SERVICE.

(Contracting Officer Signature)	(Date)	(Name typed or printed)
Cheryl A. Aldridge	3/11/02	for Arthur S. Cooper, III

Department of Justice
Immigration and Naturalization Service
Intergovernmental Service Agreement for Housing Federal Detainees Between the Immigration and Naturalization Service and the County of Nobles, Minnesota

Article I. Purpose

A. Purpose. The purpose of this Intergovernmental Service Agreement (IGSA) is to establish an agreement between the Immigration and Naturalization Service (INS), a component of the Department of Justice, and the coutny of Nobles, Minnesota (Service Provider) a local government agency for the detention and care of persons detained under the authority of the Immigration and Nationality Act, as amended. The term "Parties" is used in this Agreement to refer jointly to INS and the Service Provider.

B. Responsibilities. This Agreement sets forth the responsibilities of INS and the Service Provider. The Agreement states the services the Service Provider shall perform satisfactorily to receive payment from INS at the prescribed rate.

C. Guidance. The Parties will determine the detainee day rate in accordance with OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (Attachment A) and the INS Cost Statement (Attachment B).

Article II. General

A. Funding. The obligation of INS to make payments to the Service Provider is contingent upon the availability of Federal funds. The INS will, however, neither present detainees to the Service Provider nor direct performance of any other services until the INS has the appropriate funding.

B. Subcontractors. The Service Provider shall notify and obtain approval from the INS if it intends to house INS detainees in a facility other than that specified on the cover page of this document. If either that facility, or any future one, is operated by an entity other than the Service Provider, INS shall treat that entity as a subcontractor to the Service Provider. The Service Provider shall ensure that any subcontract includes all provisions of this Agreement, and shall provide INS with copies of all subcontracts in existence during any part of the term of this Agreement. The INS will not either accept invoices from, or make payments to, a subcontractor.

C. Consistent with law. Any provision of this Agreement contrary to applicable statutes, regulation, policies, or judicial mandates is null and void, but shall not necessarily affect the balance of the Agreement.

Article III. Covered Services

A. Bed space. The Service Provider shall provide up to _____male and _____female beds on a space available basis. The Service Provider shall house all detainees as determined within the classification system. The INS will be financially liable only for the actual detainee days as defined in Paragraph C. of this Article.

B. Basic needs. The Service Provider shall provide adult INS detainees (gender as specified in Paragraph A. of this Article) with safekeeping, housing, subsistence, medical and other services in accordance with this Agreement. In providing these services, the Service Provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies, and procedures. If the Service Provider determines that INS has delivered a person for custody who is under the age of 18, the Service Provider shall not house that person with adult detainees, and shall notify the INS immediately. The types and levels of services shall be those the Service Provider routinely affords to other inmates.

C. Unit of service and financial liability. The unit of service will be a "detainee day" (one person per day). The detainee day begins on the date of arrival. The Service Provider may bill INS for the date of arrival but not the date of departure. For example: If a detainee is brought in at 1900 Sunday and is released at 0700 on Monday, the Service Provider may bill for 1 detainee day. If a detainee is brought in at 0100, Sunday and is released at 2359 Monday, the Service Provider may bill for only 1 detainee day. The INS shall be responsible to pay for only those beds actually occupied.

D. Interpretive services. The Service Provider shall make special provisions for non-English speaking, handicapped or illiterate detainees. The Service Provider shall provide all instructions verbally (in English or the detainee's native language as appropriate) to detainees who cannot read. The Service Provider shall not use detainees for translation services, except in emergency situations. If the Service Provider uses a detainee for translation service, it shall notify INS within 24 hours. The cost is these services is included in the normal man day rate.

Article IV. Receiving and Discharging Detainees

A. Required activity. The Service Provider shall receive and discharge detainees only from and to either properly identified INS personnel or other properly identified Federal law enforcement officials with prior authorization from INS. Presentation of U.S. Government identification shall constitute proper identification. The Service Provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days a week. The INS shall furnish the Service Provider with reasonable notice of receiving or discharging detainee(s). The Service Provider shall ensure positive identification and recording of detainees and INS officers. The Service Provider shall not permit medical or emergency discharges except through coordination with on-duty INS officers.

B. Restricted release of detainees. The Service Provider shall not release INS detainees from its physical custody to any persons other than those described in Paragraph A of this Article for any reason, except for either medical, other emergent situations, or in response to a federal writ of *habeas corpus*. If an INS detainee is sought for federal, state or local court proceedings, only INS may authorize release of the detainee for such purposes. The Service Provider shall contact INS immediately regarding any such requests.

C. Service Provider right of refusal. The Service Provider retains final and absolute right either to refuse acceptance, or request removal, of any detainee exhibiting violent or disruptive behavior, or of any detainee found to have a medical condition that requires medical care beyond the scope of the Service Provider's health provider. In the case of a detainee already in custody, the Service Provider shall notify the INS and request such removals, and shall allow the INS reasonable time to make alternative arrangements for the detainee.

D. Emergency evacuation. In the event of an emergency requiring evacuation of the Facility, the Service Provider shall evacuate INS detainees in the same manner, and with the same safeguards, as it employs for persons detained under the Service Provider's authority. The Service Provider shall notify INS within two hours of such evacuation.

Article V. Minimum Service Standards

The Service Provider shall:

A. house INS detainees in a facility that complies with all applicable fire and safety codes as well as ensure continued compliance with those codes throughout the duration of the Agreement.

B. provide guard personnel to ensure that there is a 24 hour visual supervision of detainees when housed in a dormitory type setting. The Service Provider shall visually and physically check detainees in individual cells at least hourly.

C. segregate detainees in custody by gender and by risk of violence to other detainees.

D. provide a mattress, with a mattress cover, and when appropriate, a blanket to each detainee held overnight.

E. provide a minimum of three nutritionally balanced meals in each 24 hour period for each detainee. These meals shall provide a total of at least 2,400 calories per 24 hours. There will be no more than 14 hours or fewer than 4 hours between meals. The Service Provider will provide a minimum of two hot meals in this 24 hour period.

F. provide medical services as described in Article VI below.

G. provide a mechanism for confidential communication between INS detainees and INS officials regarding their case status and custody issues. The mechanism may be through electronic, telephonic, or written means, and shall ensure the confidentiality of the issue and the individual detainee.

H. afford INS detainees, indigent or not, reasonable access to public telephones for contact with attorneys, the courts, foreign consular personnel, family members and representatives of *pro bono* organizations.

I. permit INS detainees reasonable access to presentations by legal rights groups and groups recognized by INS consistent with good security and order.

J. afford each INS detainee with reasonable access to legal materials for his or her case. The INS will provide the required materials. The Service Provider will provide space to accommodate legal materials at no additional cost to INS. (Note: The INS may waive this requirement where the average length of detention is 30 days or less.)

K. afford INS detainees reasonable visitation with legal counsel, foreign consular officers, family members, and representatives of *pro bono* organizations.

L. provide INS detainees with access to recreational programs and activities as described in the INS Recreation Standards to the extent possible, under appropriate conditions of security and supervision to protect their safety and welfare.

Department of Justice
Immigration and Naturalization Service
Intergovernmental Service Agreement for Housing Federal Detainees Between the Immigration and Naturalization Service and the County of Nobles, Minnesota

Article VI. Medical Services

A. Auspices of Health Authority. The Service Provider shall provide INS detainees with onsite health care services under the control of a local government designated Health Authority. The Service Provider shall ensure equipment, supplies, and materials, as required by the Health Authority, are furnished to deliver health care on site.

B. Level of Professionalism. The Service Provider shall ensure that all health care service providers utilized for INS detainees hold current licenses, certifications, and/or registrations with the State and/or City where they are practicing. The Service Provider shall retain a registered nurse to provide health care and sick call coverage unless expressly stated otherwise in this Agreement. In the absence of a healthcare professional, non-health care personnel may refer detainees to health care resources based upon protocols developed by the United States Public Health Service (USPHS) Division of Immigration Health Service (DIHS). Healthcare or health trained personnel may perform screenings.

C. Access to health care. The Service Provider shall ensure that on-site medical and health care coverage as defined below is available for all INS detainees at the facility for at least eight hours per day, seven days per week. The Service Provider shall ensure that its employees solicit each detainee for health complaints and deliver the complaints in writing to the medical and health care staff. The Service Provider shall furnish the detainees instructions in his or her native language for gaining access to health care services as prescribed in Article III, Paragraph D.

D. On-site healthcare. The Service Provider shall furnish on-site health care under this Agreement. The Service Provider shall not charge any INS detainee an additional fee or co-payment for medical services or treatment provided at the Service Provider's facility. The Service Provider shall ensure that INS detainees receive no lower level of on-site medical care and services than those it provides to local inmates. On-site health care services shall include arrival screening within 24 hours of arrival at the Facility, sick call coverage, provision of over-the counter medications, treatment of minor injuries (e.g., lacerations, sprains, contusions), treatment of special needs and mental health assessments. Detainees with chronic conditions shall receive prescribed treatment and follow-up care.

E. Arrival screening. Arrival screening shall include at a minimum, TB symptom screening, planting of the Tuberculin Skin Test (PPD), recording the history of past and present illnesses (mental and physical).

F. Unacceptable medical conditions. If the Service Provider determines that an INS detainee has a medical condition which renders that person unacceptable for detention under this Agreement, (for example, contagious disease, condition needing life support, uncontrollable violence), the Service Provider shall notify INS. Upon such notification the Service Provider shall allow INS reasonable time to make the proper arrangements for further disposition of that detainee.

G. Pre-approval for non-emergent off site care. The DIHS acts though the agent the final health authority for INS on all off-site detainee medical and health related matters. The relationship of the DIHS to the detainee equals that of physician to patient. The Service Provider shall release any and all medical information for INS detainees to the DIHS representatives upon request. The Service Provider shall solicit DIHS approval before proceeding with non-emergency, off-site medical care (e.g. off site lab testing, eyeglasses, cosmetic dental prosthetics, dental care for cosmetic purposes). The Service Provider shall submit supporting documentation for non-routine, off-site medical/health services to DIHS (See Attachment D). For medical care provided outside the facility, the DIHS may determine that an alternative medical provider or institution is more cost-effective or more aptly meets the needs of INS and the detainee. The INS may refuse to reimburse the Service Provider for non-emergency medical costs incurred that were not pre-approved by the DIHS. The Service Provider shall send all requests for pre-approval for non-emergent off-site care to:

Lt. Gary M. Cole
Managed Care Coordinator
c/o USINS
9747 N. Conant Ave.,
Kansas City, MO., 64153
Telephone: 1-816-891-6728
Fax: 816-880-4670

The Service Provider is to notify all medical providers approved to furnish off-site health care of detainees to submit their bills in accordance with instructions provided to:

UP & UP Health Services
DIHS Claims
P.O. Box 10250
Gaithersburg, MD, 20898-0250
Telephone (888) 383-3922
Fax: (888) 383-3957

H. Emergency medical care. The Service Provider shall furnish 24-hour emergency medical care and emergency evacuation procedures. In an emergency, the Service Provider shall obtain the medical treatment required to preserve the detainee's health. The Service Provider shall have access to an off site emergency medical provider at all times. The Health Authority of the Service Provider shall notify the DIHS Managed Care Coordinator by calling the telephone number listed in paragraph G above as soon as possible, and in no case more than 72 hours after detainee receipt of such care. The Health Authority will obtain pre-authorization from the DIHS Managed Care Coordinator for service(s) beyond the initial emergency situation.

I. Off site guards. The Service Provider shall, without any additional charge to INS, provide guards during the initial eight hours detainees are admitted to an outside medical facility. If negotiated with INS, the Service Provider shall provide guards beyond the initial eight-hour period, at the regular hourly rate of those guards. Absent such an arrangement, INS will be responsible for providing the guards at the end of the initial eight-hour period. The Service Provider shall not, however, remove its guards until INS personnel relieve them. The Service Provider shall submit a separate invoice for guard services beyond the initial eight hours with its regular monthly billing.

J. DIHS visits. The Service Provider shall allow DIHS Managed Care Coordinators reasonable access to its facility for the purpose of liaison activities with the Health Authority and associated Service Provider departments.

Article VII. No Employment of Unauthorized Aliens

Subject to existing laws, regulations, Executive Orders, and addenda to this Agreement, the Service Provider shall not employ aliens unauthorized to work in the United States. Except for maintaining personal living areas, persons detained for INS shall not be required to perform manual labor.

Article VIII. Period of Performance

This Agreement shall remain in effect indefinitely, or until terminated by either Party upon 60 days written notice, unless an emergency situation requires the immediate relocation of detainees, or the Parties agree to a shorter period under the procedures prescribed in Article X.

Article IX. Inspection and Access to Records

A. Jail Agreement Inspection Report. The Service Provider shall allow INS to conduct inspections of the facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as determined by the INS. No notice to the Service Provider is required prior to an inspection. The INS will conduct such inspections in accordance with the Jail Agreement Inspection Report a copy of which is included as Attachment E to this Agreement. The Jail Inspection Report stipulates minimum requirements for fire/safety code compliance, supervision, segregation, sleeping utensils, meals, medical care, confidential communication, telephone access, legal counsel, legal library, visitation, and recreation. The INS will share findings of the inspection with the Service Provider's facility administrator to promote improvements to facility operation, conditions of confinement, and level of service.

B. Possible termination. If the Service Provider fails to remedy deficient service INS identifies through inspection, INS may terminate this Agreement without regard to the provisions of Articles VIII and X.

C. Share findings. The Service Provider shall provide INS copies of facility inspections, reviews, examinations, and surveys performed by accreditation sources.

D. Access to Detainee Records. The Service Provider shall, upon request, grant INS access to any record in its possession (regardless of whether the Service Provider created the record) concerning any alien whom it has detained pursuant to this Agreement. This right of access shall include, but not be limited to, incident reports, records relating to suicide attempts, and behavioral assessments and other records relating to the alien's behavior while in Service custody. Furthermore, the Service Provider shall retain all records where this right of access applies. The retention period will be at least two years from the date of the detainee's discharge from the Service Provider's custody.

Article X. Modifications and Disputes

A. Modifications. Actions other than those designated in this Agreement will not bind or incur liability on behalf of either party. Either party may request a modification to this agreement by submitting a written request to the other. A modification will become part of this Agreement only after the INS Regional Contracting Officer and the authorized signatory of the Service Provider have approved it in writing.

B. Disputes. The INS Regional Contracting Officer and the authorized signatory of the Service Provider are the parties to settle disputes, questions, and concerns arising from this Agreement. Settlement of disputes shall be memorialized in a written modification between the INS Regional Contracting Officer and authorized signatory of the Service Provider.

Article XI. Adjusting the Detainee Day Rate

The INS shall reimburse the Service Provider at the detainee day rate shown on the cover page of this document. The Parties may adjust that rate 12 months after the date of signing, and every 12 months thereafter. The Parties shall base the rate and adjustments on the principles set forth in OMB Circular A-87. Such adjustments shall be effective on the first day of the month following execution of the modification.

Article XII. Enrollment, Invoicing, and Payment

A. Enrollment in electronic funds transfer. The Service Provider shall provide the INS office with the information needed to make payment by electronic funds transfer (EFT). As of January 1, 1999, INS will make all payments only by EFT. The Service Provider shall identify their financial institution and related information on Standard Form 3881, Automated ClearingHouse (ACH) Vendor/Miscellaneous Payment Enrollment Form, (Attachment F). The Service Provider shall submit a completed SF 3881 to the INS payment office prior to submitting its initial request for payment under this Agreement. If the EFT data changes, the Service Provider shall be responsible for providing updated information to the INS payment office.

B. Invoicing. The Service Provider shall submit an original itemized invoice containing the following information: the name and address of the facility; the name of each INS detainee, his or her A-number, and his or her specific dates of detention; the total number of detainee days; the daily rate; the total detainee days multiplied by the daily rate; an itemized listing of all other charges; and the name, title, address, and phone number of the local official responsible for invoice preparation. The Service Provider shall submit monthly invoices within the first ten working days of the month following the calendar month when it provided the services, to:

The U.S. Immigration & Naturalization Service
2901 Metro Drive Suite #100
Bloomington, MN 55425
ATTN: Deportation Unit Clareesa Threatt
Phone: (612) 313-9060 #261
Fax: (612) 313-9064

C. Payment. The INS will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the United States, or the Federal Reserve Wire Transfer System. The Prompt Payment *Act* applies to this Agreement. The Act requires INS to make payments under this Agreement the 30th calendar day after the Deportation office receives a complete invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, shall constitute the payment date. The Act requires INS to pay interest on overdue payments to the Service Provider. The INS will determine any interest due in accordance with the Act.

Article XIII. Government Furnished Property

A. Federal Property Furnished to the Service Provider. The INS may furnish federal property and equipment to the Service Provider. Accountable property remains titled to INS and shall be returned to the custody of INS upon termination of the agreement. The suspension of use of bed space made available to INS is agreed to be grounds for the recall and return of any or all government furnished property.

B. Service Provider Responsibility. The Service Provider shall not remove INS property from the facility without the prior written approval of INS. The Service Provider shall report any loss or destruction of such property immediately to INS.

Article XIV. Hold Harmless and Indemnification Provisions

A. Service Provider held harmless. The INS shall, subject to the availability of funds, save and hold the Service Provider harmless and indemnify the Service Provider against any and all liability claims and costs of whatever kind and nature, for injury to or death of any person(s), or loss or damage to any property, which occurs in connection with or incident to performance of work under the terms of this Agreement, and which results from negligent acts or omissions of INS officers or employees, to the extent that INS would be liable for such negligent acts or omissions under the Federal Tort Claims Act, 28 USC 2691 *et seq*.

B. Federal Government held harmless. The Service Provider shall save and hold harmless and indemnify federal government agencies to the extent allowed by law against any and all liability claims and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the terms of this Agreement, resulting from the negligent acts or omissions of the Service Provider, or any employee, or agent of the Service Provider. In so agreeing, the Service Provider does not waive any defenses, immunities or limits of liability available to it under state or federal law.

C. Defense of suit. In the event a detainee files suit against the Service Provider contesting the legality of the detainee's incarceration and/or immigration/citizenship status, INS shall request that the U.S. Attorney's Office, as appropriate, move either to have the Service Provider dismissed from such suit, to have INS substituted as the proper party defendant, or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, INS shall request that the U.S. Attorney's Office be responsible for the defense of any suit on these grounds.

D. INS recovery right. The Service Provider shall do nothing to prejudice INS' right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request of the Contracting Officer, the Service Provider shall, at the INS' expense, furnish to INS all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments of assignment in favor of INS in obtaining recovery.

Article XV. Financial Records

A. Retention of records. All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this Agreement shall be retained by the Service Provider for at least three years for purposes of federal examinations and audit. The 3-year retention period begins at the end of the first year of completion of service under the Agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three year period, whichever is later.

B. Access to records. The INS and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Service Provider or its sub-recipients. Which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.

C. Delinquent debt collection. The INS will hold the Service Provider accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the Federal Government. The INS shall apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal Government by the Service provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

Article XVI. Provision of Space to INS and EOIR

A. Service Provider responsibilities. The Service Provider shall provide suitable support, office and administrative space, for use by INS. As necessary, the Service Provider will provide sufficient safe and secure storage space for all INS detainee baggage. In addition, the Service Provider agrees, if required, to furnish acceptable office and administrative space to the Executive Office of Immigration Review (EOIR). The Service Provider shall bear all costs associated with the use of jail and office space by INS and EOIR (e.g. those for preparing, operating and maintaining such facilities for INS and EOIR, and incurred for temporarily relocating the Service Provider's employees).
The Service Provider shall equip the office and administrative space furnished to INS and EOIR with a telephone system compatible with the federal telephone network. The Service Provider shall furnish the security and janitorial services for this space. The Service Provider shall include all costs associated with providing space or services under this Paragraph in the calculation of the detainee rate day rate. (Note: the Service Provider shall have no obligation under this Paragraph unless the Parties negotiate specific terms for such space or services.)

B. Federal Government responsibilities. The INS will incur the costs of installing computer cabling, telephone lines and any additional telephone trunk lines and telephone switch equipment that may be required. The INS will be responsible for payment of INS long-distance telephone bills for INS staff.

End of document

Attachments:
A. INS Cost Statement Form
B. DIHS Pre-authorization Form
C. Jail Agreement Inspection Report
D. SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form

EXHIBIT E

Monette Berkevich

From: Monette Berkevich <mberkevich@co.nobles.mn.us>
Sent: Tuesday, April 18, 2017 7:24 AM
To: Jail
Subject: FW: Changing ICE Hold Reason

Good Morning, Thanks Michelle for taking action on this. Everyone should save this email so that you remember what you have to do, it's easy to forget. Thanks again Michelle for taking the time to write down these steps.

From: Jail Pod
Sent: Monday, April 17, 2017 6:31 PM
To: Jail
Subject: FW: Changing ICE Hold Reason

FYI,
As a reminder, when an inmate has posted bond and now belongs to ICE these are the following steps that need to be done to an inmates booking sheet:

1. Each charge has to be resolved individually by clicking on the "Edit" button and change the "Resolved" reason from "No" to "Yes" and enter in a "Resolved Reason."
2. Add a New "Hold Reason" under the Hold Reason section and select "Holding for Another Agency" and "Held For" to ICE – U.S. Immigration and Customs Enforcement II (South Dakota).
3. Under you Hold Information, select "Log" next to your "Bill To" and "Held For" information and change that to "U.S. Immigration and Customs Enforcement II (South Dakota).

Just changing the billing does not take an inmates information off our website. We need to make sure we are properly performing all these steps. This was discussed at our February 28th meeting and included in the meeting notes. Thanks!

Michelle L. Lowe
Nobles County Jail

Monette Berkevich

From: Adam Bohrer <abohrer@co.nobles.mn.us>
Sent: Wednesday, May 24, 2017 3:15 PM
To: Jail; JailSergeants; Jail Pod
Subject: Ice Hold = Ice Notified

During the booking process we have a box to check if there is an ICE hold. It now reads Ice Notified. Please use this in helping to track when Ice has been notified.

Thanks,
Adam

EXHIBIT F

Nobles County Sheriff's Office

1530 Airport Rd, Suite 100
Worthington MN 56187
(507) 295-5400
(507) 372-5977 FAX

Kent Wilkening, Sheriff
Chris Dybevick, Chief Deputy

May 2, 2018

Ian Bratlie
Greater Minnesota Racial Justice Project attorney
709 South Front Street
Mankato, MN 56001

Re: Your letter dated May 1, 2018

Dear Ian

I am acknowledging your request for Data from the Nobles County Sheriff's office for information for the period of January1-March 31, 2018 as it relates to the following.

- Documentation on the number of ICE holds received by NCSO
- Number of people held by NCSO
- Number of people held by NCSO with ICE holds
- Number of days individuals were held for ICE

I will have my jail administrator gather the information you are requesting and will send it as soon as it ready.

If you have any questions please feel free to contact me.

Kent Wilkening
Nobles County Sheriff
1530 Airport road Suite 100
Worthington MN 56187

Nobles County Sheriff's Office

1530 Airport Rd, Suite 100
Worthington MN 56187
(507) 295-5400
(507) 372-5977 FAX

Kent Wilkening, Sheriff
Chris Dybevick, Chief Deputy

May 8, 2018

Ian Bratlie
Greater Minnesota Racial Justice Project attorney
709 South Front Street
Mankato, MN 56001

Re: Your letters dated May 1st and May 2nd 2018

Dear Ian

Here is the information you requested in your letter dated May 1st 2018.

. Documentation on the number of ICE holds received by the NCSO- 269
. Number of people held by NCSO -1471
. Number of people held by NCSO with ICE holds-269
. Number of days individuals were held for ICE Custody (2017) 6197 (2018) 1539

Also enclosed is the information you requested in your letter dated May 2nd 2018 on bail policies.

If you have any questions please feel free to contact me.

Kent Wilkening
Nobles County Sheriff
1530 Airport road Suite 100
Worthington MN 56187

EXHIBIT G

Inmate Reception

502.1 PURPOSE AND SCOPE

The Nobles County Sheriff's Office has a legal and methodical process for the reception of arrestees into this facility. This policy establishes guidelines for security needs, the classification process, identification of medical/mental health issues and the seizure and storage of personal property.

502.2 POLICY

This office shall use the following standardized policies when receiving arrestees to be booked into this facility. This is to ensure security within the facility and that arrestees are properly booked and afforded their applicable rights (Minn. R. 2911.2525).

502.3 PRE-BOOKING SCREENING

All arrestees shall be screened prior to booking to ensure the arrestee is medically acceptable for admission and that all arrest or commitment paperwork is present to qualify the arrestee for booking. Required paperwork may include the following:

(a) Arrest reports

(b) Probable cause declarations

(c) Warrants or court orders

(d) Victim notification information

(e) Special needs related to religious practices, such as diet, clothing and appearance (see Religious Programs Policy)

(f) Accommodation requests related to disability (see the arrestees with disabilities Policy)

(g) Information regarding suicidal statements or actions

Any discrepancies or missing paperwork should be resolved before accepting the arrestee for booking from the arresting or transporting corrections officer (Minn. R. 2911.2525

When a prisoner is in the pat down area of the Nobles County Jail, the prisoner is still in the custody of the arresting officer. The Correctional Officer may require the arresting officer to take the prisoner to the hospital for medical clearance before accepting custody. When a prisoner is in need of immediate medical attention as determined by the accept/not accept assessment completed by the booking officer at the time the officer presents the individual for admission, the Correctional Officer shall not accept the prisoner, until the arresting officer has the prisoner examined and a doctor signs off on the bottom half of the accept/not accept form deeming the arrestee acceptable for the jail setting.

Prior to accepting custody of an arrestee who claims to have been arrested due to a mistake of the arrestee's true identity or an arrestee who claims that identity theft led to the issuance of a

warrant in the arrestee's name, staff shall make reasonable efforts to investigate the arrestee's claim of identity fraud or mistake. Staff shall notify a supervisor when an arrestee makes a claim of mistaken identity or identity fraud.

502.3.1 GUIDE FOR ACCEPTING PRISONERS ON PROBABLE CAUSE (WARRANT-LESS ARREST)

When an officer presents an inmate for incarceration jail staff has the obligation to make certain the detention is legally permitted. You cannot hold someone on a petty misdemeanor.

Officers may hold individuals on misdemeanors if the criteria out lined on the detention report is met. It is the arresting officer's responsibility to determine what criteria exists when completing the detention report.

All probable cause arrests require a 48 hour probable cause determination be made within 48 hours of the arrest excluding NOTHING. It is the arresting officer's responsibility to provide this documentation to the jail before the 48 hours is exhausted. It is the jails responsibility to get a copy of this determination to the inmate within the 48 hours or he/she MUST be released.

*Receipt of a formal complaint is probable cause determination and no further paperwork is required.

To make certain that everyone is aware of the time line the following process will be followed:

(a) When the booking sheet of a person who is being held on probable cause is taken to the POD the date and time the 48 hours expires shall be written in the upper right hand corner.

(b) Pod Control officers shall check all booking sheets upon taking control of Pod noting how long is left on the 48hrs at the time Pod Control is assumed by logging the information at the beginning of each shift.

(c) The day shift Pod Control Officer shall notify the arresting agency when less than 24 hours remains to remind them of the time limits.

(d) If the charge is a person crime a second reminder within 12 hours should be made to the supervisor of the arresting agency and to the Jail Administrator.

(e) If the probable cause determination has not been received within one hour of the expiration the arresting agency shall be notified by pod control that the person is going to be released. Victim notification shall be made as usual.

502.3.2 IMMIGRATION DETAINERS

No individual should be held based on a federal immigration detainer under 8CFR287.7 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. Any administratively signed warrant must be supported by sufficient probable cause of both the aliens suspected removability as well as his/her likelihood to flee. Notification to the federal authority issuing the detainer should be made prior to release.

502.3.3 IMMIGRATION NOTIFICATION ON COMMITMENT
Staff shall inquire into the nationality of all persons committed to this facility who were convicted of a felony or found to be mentally ill. If it reasonably appears the person is an alien, staff shall notify the U.S. Immigration and Customs Enforcement (ICE) of the following, if known (Minn. Stat. § 631.50):

(a) The date of and the reason for the commitment

(b) The length of time for which the inmate is committed

(c) The country of which the inmate is a citizen

(d) The date on, and the port at, which the inmate last entered the United States

502.4 SEARCHES BEFORE ADMISSION

All arrestees and their property shall be searched for contraband by the booking corrections officer before being accepted for booking. All contraband items will be handled according to facility policy. Items of possible evidentiary value may be turned over to the arresting or transporting corrections officer for processing or processed according to the facility's rules for handling evidence. Approved personal property and clothing will be accepted. Items not approved will be returned to the arresting or transporting corrections officer prior to the arrestee being accepted for booking. A description of the items returned to the arresting or transporting corrections officer shall be documented on the arrestee's booking record.

Strip searches shall be conducted in accordance with the Searches Policy. Deviation from the Searches Policy shall be only with prior written approval of a supervisor and as the result of reasonable suspicion (Minn. R. 2911.5300, Subp. 2).

502.5 ADMISSION PROCESS

A unique booking number shall be obtained specific to the current admission. Photographs and fingerprints shall be taken.

The admission process should also include an attempt to gather a comprehensive record of each arrestee, including the following (Minn. R. 2911.2525; Minn. Stat. § 299C.10, Subd. 1):

- Identifying information (including name and any known aliases or monikers/street names)
- Current or last known address and telephone number
- Date and time of arrest
- Date and time of admission
- Name, rank, agency and signature of the arresting corrections officer and transporting corrections officer, if different
- Health insurance information

- Legal authority for confinement, including specific charges, arrest warrant information and court of jurisdiction
- Gender
- Age
- Date of birth
- Race
- Height and weight
- Occupation and current or most recent employment
- Preferred emergency contact including name, address, telephone number and relationship to inmate
- Driver license number and state where issued, state identification number or passport number
- Social Security number
- Additional information concerning special custody requirements or special needs
- Local, state and federal criminal history records
- Photographs, fingerprints and notation of any marks or physical characteristics unique to the inmate, such as scars, birthmarks, deformities or tattoos
- Medical, dental and mental health screening records, including suicide risk
- Inventory of all personal property including clothing, jewelry and money
- A record of personal telephone calls made at the time of booking or the time the opportunity to was provided to place calls if the calls were not made

Within 24 hours of taking the fingerprints and data, the fingerprint records and other identification data must be electronically entered into a Bureau of Criminal Apprehension-managed searchable database in the manner prescribed (Minn. Stat. § 299C.10, Subd. 1(7)(b)).

Items of rare or unusual value should be brought to the attention of a supervisor. The inmate's signature should be obtained on the booking record and on any forms used to record money and property.

502.5.1 LEGAL BASIS FOR DETENTION

Arrestees admitted to the facility shall be notified of the official charge for their detention or legal basis of confinement in a language they understand (Minn. R. 2911.2700, Subp. 3).

502.6 TRANSITION FROM RECEPTION TO GENERAL POPULATION

The Shift Supervisor is responsible to ensure only arrestees who qualify are placed into general population cells or housing. Those who will not be placed into general population include: