The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Wilson RODRIGUEZ MACARENO,

Plaintiff,

v.

Joel THOMAS, in his official and individual capacities; Craig GARDNER, in his official and individual capacities; Peter TIEMANN, in his official and individual capacities; Arthur STEPHENSON, in his official and individual capacities; and CITY OF TUKWILA,

Defendants.

No. 2:18-cv-00421-RAJ

DEFENDANT CITY OF TUKWILA'S MOTION FOR SUMMARY JUDGMENT DISMISSAL OF PLAINTIFF'S CLAIMS

Noted for:
February 1, 2019

I. INTRODUCTION

As argued thoroughly in Defendants' summary judgment briefing on qualified immunity (*Dkts. 25 and 49*), Defendants deny they unlawfully detained Plaintiff Rodriguez-Macareno on February 8, 2018. Further, there is no evidence any such violation was caused by any policies or practices of the Tukwila Police Department ("TPD"). TPD has two policies that set out general guidelines for addressing immigration issues. They do not attempt to mandate how officers must act in each possible set of circumstances they might encounter in the field – nor are police policies intended to do so. The Defendant officers have all testified they relied on their training regarding warrants and arrests in this situation – not the immigration policies Plaintiff argues are "confusing." Further, this is not a "failure to train" situation as the evidence is clear this was the first incident of its kind at the

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TPD. There is nothing that would have put TPD on actual or constructive notice of any potential deficiency in their training. The constitutionality of the permissible interaction between Immigration and Customs Enforcement (ICE) and local law enforcement agencies is still unclear even within the Ninth Circuit. As a result, additional training would serve no purpose where the law is not settled and was not settled at the time of the incident. The City respectfully requests the Court grant this Motion for Summary Judgment regarding *Monell* liability.[1]

II. STATEMENT OF FACTS

Defendants have set forth extensively the specific details of the interaction on February 8, 2018 between Plaintiff and TPD Officers Gardner, Thomas, Tiemann, and Stephenson, including citations to body camera video already in the record. *Dkt. 25*, at pp. 2-7. Because of the body camera footage, there is little factual dispute about what occurred during those early morning hours. Therefore, Defendants incorporate by reference the statement of facts set forth in *Dkt. 25.*

TPD contracts with the national corporation Lexipol to develop its policies and train officers on them. *Linton Dep.*, 9:18-25; 24:25-25:4. Lexipol was founded by Gordon Graham and Bruce Praet, attorneys and former law enforcement officers with extensive experience in risk management. https://www.lexipol.com/about/. Lexipol offers state specific law enforcement policy manuals, and continuously monitors changes to federal and state laws, providing policy updates to its agencies as needed. *Id*. Lexipol has been operating for over 15 years and is utilized by agencies in at least 35 states. *Id*. The two TPD policies that address immigration issues are current Lexipol policies, and Lexipol has not indicated that any updates or changes are needed based on changes in the law. Policy 409 primarily addresses issues with foreign nationals where they may be entitled to immunity from criminal charges, or to have their consulate or embassy contacted if they are

[1] Plaintiff has agreed to dismiss claims against the Defendant Officers in their official capacities. *Dkt. 42*, at p. 1.

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detained by local law enforcement. *Linton dep*, 83:12-84:10. Policy 411 addresses immigration violations, and is the policy primarily at issue in this case. *Ragonesi Decl, Ex. B.* Some of the relevant provisions provide:

> **TPD Policy 411.1 PURPOSE AND SCOPE:** The immigration status of individuals alone is generally not a matter for police action. It is incumbent upon all employees of this department to equally enforce the law and provide equal service to the public regardless of immigration status.
>
> **TPD Policy 411.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE:** … Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws.

TPD officers are required to learn the entire policy manual when they begin working for the agency. *Linton Dep.*, 20:9-22. When there is a change to a policy, the officers are required to review the change and acknowledge they have done so. *Id.*; 24:25-25:7.

After the incident involving Mr. Rodriguez, Chief of Police Bruce Linton decided to issue a directive to all TPD officers that TPD, "will not collaborate with ICE on detaining and transporting individuals to ICE custody merely on a detainer/administrative warrant while constitutional questions regarding PC associated with detainers is being debated." *Exh. A to Linton Decl.* This was disseminated to all Department members. The Chief's directives are specific guidance that he issues to make a change in how the Department conducts its business. *Linton Dep*, 26:2-5.

Chief Linton explained to the Department that the officers involved in Plaintiff's incident learned of his immigration status through a routine identification check of all parties related to a call of a potential crime. *Exh. A to Linton Decl.* The officers then followed normal procedure when encountering an arrest warrant in the National Crime Information Center ("NCIC") database, which was to call the agency and have it confirmed. *Id.* Chief Linton further clarified that the warrant appeared to be criminal in nature, as administrative detainers by the federal government that appear as NCIC hits are usually

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prefaced with a 'Warning' or other language indicating there is no probable cause ("PC") to arrest for a crime. *Id.* This hit contained no such warning language.

Chief Linton and the officers involved testified in their depositions they had not encountered this kind of warrant before. *Linton/30(b)(6) Dep.*, 43:9-44:1, 76:18-19 ("This is the first time in 25 years that this has happened."); *Gardner Dep.*, 34:5-7; *Thomas Dep.*, 47:10-11. As a result of this new and uncertain territory, the Chief testified he issued the directive to allow him to make the final decision if this situation arises again. *Linton Dep.*, 76:3-10.[2] This directive currently supersedes elements of TPD Policy 409 and/or 411 when engaging with anyone where status is unclear due to the unsettled state of the law on these issues. *Id*, 84:25-85:15. The reality is that Plaintiff's case is the first and last time this issue has arisen for TPD.

III. EVIDENCE RELIED UPON

- Declaration of Shannon Ragonesi and attached exhibits;
- Declaration of Bruce Linton and attached exhibit;
- Pleadings and documents already in the court record.

IV. ARGUMENT AND ANALYSIS

A. Standard for Municipal Constitutional Liability.

"Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d 611 (1978). There are three ways a municipality can be liable under *Monell*:

> First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity. Second, the plaintiff may establish that the individual who committed the constitutional tort was an

[2] "So based on my directive, okay, I have that decision at my level. … And so I'm going to take some additional steps, and that might be engaging with legal, before I make a decision whether to -- because the -- the legal landscape is not very clear and it makes it very confusing for officers. And so the intent of this directive is to allow that decision to be made at my level."

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> official with final policy-making authority and that the challenged action itself thus constituted an act of official governmental policy. Whether a particular official has final policy-making authority is a question of state law. Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it.

Gillette v. Delmore, 979 F.2d 1342, 1346–47 (9th Cir.1992) (citations and internal quotations omitted), *cert. denied,* 510 U.S. 932, 114 S.Ct. 345, 126 L.Ed.2d 310 (1993); *Engley Diversified, Inc. v. City of Port Orchard*, 178 F. Supp. 3d 1063, 1068 (W.D. Wash. 2016).

Plaintiff cannot establish municipal liability under any of the three avenues. First, Plaintiff cannot point to a specific formal policy that was the driving force behind the alleged constitutional violation, and none of the responding officers relied on an immigration policy provision to decide what action to take. In addition, this is the first time TPD has encountered this situation, and TPD does not have a longstanding practice or custom of encountering immigration warrants in the NCIC database or detaining individuals on that basis.

Second, the patrol officers who detained and eventually arrested Plaintiff at the request of ICE agents do not have final policy-making authority. Only the Chief of Police has policy-making authority for TPD. *Linton dep*, 14:19-23.

Third, no individual with policy-making authority ratified the unconstitutional decision or action. Chief Linton issued a directive following the incident with Plaintiff stating TPD officers will not detain or transport individuals to ICE custody merely on a detainer/administrative warrant at this time. Therefore, Plaintiff cannot prove a ratification theory either.

"After proving that one of the three circumstances existed, a plaintiff must also show that the circumstance was (1) the cause in fact and (2) the proximate cause of the constitutional deprivation." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996), holding

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modified by *Navarro v. Block*, 250 F.3d 729 (9th Cir. 2001). For the reasons listed above and set out more fully below, Plaintiff cannot show either.

B. Plaintiff Has Not Identified a Policy that Caused His Alleged Constitutional Injury.

Plaintiff asserts the Defendant Officers' conduct resulted from alleged "conflicting policies" regarding civil immigration violations. *Dkt. 1*, at ¶ 82. In discovery responses, Plaintiff identified two policies (Sections 409 and 411 *Exhs. A and B to Ragonesi Decl.*) of the TPD policy manual he believes are in conflict. *Exh. C to Ragonesi Decl.*, at pp. 4-8. Plaintiff identified the same policies as the driving force behind the Defendant Officers conduct on the night of the incident. *Id.*, at p. 9-16. However, Plaintiff's theory is not supported by the actual evidence or testimony in the case.

1. Plaintiff Has Not Identified Any Policy Provisions That Caused His Alleged Unlawful Detention and Arrest.

In support of this claim, Plaintiff identified a number of TPD policy sections that he believes "confused" the responding officers and led to his detention and arrest. Plaintiff identifies seven sections of TPD policies 409 and 411 that he believes prohibit or discourage officers from the conduct Plaintiff asserts caused the constitutional violation, and three sections he believes allow the conduct – but do not require it. *Id.*, at pp. 10-12. However, the sections identified by Plaintiff do not establish that the policies were the driving force behind the alleged constitutional violation.

The seven sections of TPD policy Plaintiff argues prohibit or discourage the actions that were taken by Defendants Thomas, Gardner, Tiemman and Stephenson on the night in question cannot logically be the moving or driving force behind a constitutional violation. If these policy sections *prohibited* the Defendant officers' actions, then they could not be the driving force that *caused* their actions.

Therefore, at issue are the three sections of policy Plaintiff asserts *allowed* conduct that lead to his detention and arrest:

- Section 409.7 provides, "After a lawful detention or criminal arrest,

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officers may detain foreign nationals solely for alleged undocumented presence in the U.S. if the U.S. Immigration and Customs Enforcement (ICE) is contacted and can respond to take custody within a reasonable time."

- Section 411.2 authorizes TPD to assist in enforcing federal immigration laws "[w]hen assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of Title 8, U.S.C., §§ 1304, 1324, 1325 and 1326."

- Section 411.3.3 similarly authorizes TPD to assist ICE "as part of any detention team . . . in direct response to a request for assistance on a temporary basis or for officer safety.

Exh. C to Ragonesi Decl., at p. 12.

a. There Is No Evidence the Defendant Officers Acted Pursuant to Either Policy 409 or 411.

In *Carmona v. City of Costa Mesa*, 102 F. App'x 74, 76 (9th Cir. 2004), the Ninth Circuit affirmed dismissal of a plaintiff's *Monell* claims where he "failed to raise a genuine issue of fact as to whether the police officers who conducted the field identification were acting pursuant to an official policy or custom." In this case, none of the Defendant officers testified they made decisions or took any action during Plaintiff's incident in reliance on the above identified (or any) provisions of the TPD policies. Further – even though he had the opportunity – Plaintiff did not ask any of the officers if they were "confused" about any of the policy provisions during their depositions. None of them testified to any confusion or misunderstanding about Policy 409 or 411.

Simply put, Plaintiff had a *valid warrant* in NCIC that was confirmed by the issuing agency, and the officers all testified they treated this like a normal warrant arrest.[3]

Q: Why did you advise Officer Thomas to confirm an immigration warrant?

A: We confirm all warrants through this process. We do or dispatch does.

[3] The information from the National Crime Information Center ("NCIC") stated Plaintiff was an, "ALIEN UNLAWFULLY PRESENT DUE TO ORDER OF REMOVAL OR EXCLUSION FROM THE USA", "OUTSTANDING WARRANT OF DEPORTATION – FAILURE TO APPEAR CONTACT THE ICE LAW ENFORCEMENT SUPPORT CENTER 1-877-999-5372[.]" *Dkt. 39*, at p. 10.

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Q: And so any time you're at a scene where a warrant comes up --

A: It has to be confirmed.

Gardner Dep., 45:14-20. See also *Thomas Dep.* 26:12-14 ("I remember Valley Comm giving a sign of a warrant, I go to my car, I read this information, and I call the phone number."); 43:5-7 ("I had a warrant. I don't know what -- we arrested him based off of the warrant."); 58:7-59:1:

> I remember getting a Valley Comm, which is our dispatch company, Valley Comm, it's our code word for a warrant. When they say "Valley Comm," as opposed to saying over the air, over the radio this person has a warrant, because we're standing right there with them, they will say "Valley Comm."
>
> I got confirmation from Valley Comm that there was a warrant. I went back to my car and I asked Valley Comm could they confirm this warrant and how do I execute it. They said call the number. I called the number, spoke with Patricia Shannon, who give me more further instructions saying that, yes, this is a valid warrant, they wanted Mr. Macareno. And she gave me Officer Bailey's phone number and I contacted him. After I contacted Officer Bailey. They said that he wanted him, and we transferred him.
>
> As far as the details of what they wanted him for, no. As far as the law on immigration and things like that, that is not something that a patrol officer is going to look into.

Valley Comm did not relay anything about this being an administrative warrant when informing the officers over the air of the warrant hit. Officers Tiemann and Stephenson, who didn't physically arrest Plaintiff but were on-scene, agreed that to their knowledge this was treated like any other warrant. *Tiemann Dep.*, 26:6-8 ("And to my knowledge, this was just a warrant and so it was treated as such."); *Stephenson Dep.*, 28:8-9 ("[Plaintiff's warrant] was a warrant signed by a judge, person taken into custody if they wanted him."), 31:20-32:2:

> I don't know how [ICE's] warrants are issued. All I know is when a warrant -- when we are advised a person has a warrant, dispatch confirms it with whatever agency. I don't go through the warrant and say, Okay [*sic*] is it just an administrative warrant or not. If dispatch tells me it's a criminal warrant and they confirm that it's a good warrant, take the person into custody."

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As instructed, Officer Thomas called the ICE Support number to have the agency confirm the warrant as he would with any other warrant. ICE confirmed they wanted Plaintiff and asked Defendants to detain him until they could take custody of him. Defendant officers took Plaintiff the short distance from his house to the ICE detention facility instead of detaining him in his neighborhood to wait for ICE to pick him up, where all of his family and neighbors would see. During their depositions, no officer identified any part of Tukwila Policy 409 or 411 as the basis for his actions that morning.

b. Policy Sections 409.7, 411.2, and 411.3.3 Are Permissive and Do Not Command Any Certain Conduct or Action.

In *Carmona*, the court stated the policy must "affirmatively command that [the conduct] occur." 102 F. App'x at 76. All three sections of the policy cited by Plaintiff are permissive (for example, "officers *may* detain foreign nationals" in Section 409.7.) Even assuming there was evidence the officers considered Policy 409 or 411 during Plaintiff's detention, none of the policies *caused* or *commanded* the conduct. At best, the policies permitted the conduct with certain conditions. Since the officers have testified these policies did not cause their actions, Plaintiff cannot prove the causal requirements (cause in fact and proximate cause) for his constitutional claim against the City. T*revino*, 99 F.3d at 918; see also *Beard v. Mighty Lift, Inc.*, 224 F. Supp. 3d 1131, 1136 (W.D. Wash. 2016) ("Cause in fact concerns the "but for" consequences of an act or the physical connection between the act and the injury.")

c. Policy Sections 409.7, 411.2, and 411.3.3 Do Not Apply to the Facts of This Case.

On their face, these policies do not provide specific guidance that would result in a constitutional violation. In addition, they do not cause violations when applied to the fact-specific scenario the officers faced here. Policy 409.7 applies to situations where there has been an independent lawful detention or arrest, and officers have additional reasonable suspicion of alleged undocumented entry. The provision does not address how officers should treat a warrant of deportation placed in NCIC for failure to appear. The officers

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followed standard protocol when confirming warrants by other agencies, and deferred to the federal ICE officers authority to enforce federal law. Therefore, Plaintiff was not held simply for "alleged undocumented presence in the U.S."

Similarly, Policy 411.2 allows TPD officers to assist ICE officers in the enforcement of federal immigration laws at their specific request. The policy section does not command officers to perform any action when they are alerted to a warrant which is later confirmed by the issuing agency. While ICE did specifically request TPD officers detain Plaintiff while they came to pick him up, this was not a situation where TPD officers either engaged in sweeps or joined federal officers in *enforcing* federal law. Rather, the Defendant Officers temporarily detained Plaintiff under ICE's authority and at the request of a federal agent.

Finally, Policy 411.3.3 pertains to situations where ICE requests TPD officers act as members of a detention team. Again, that was not the scenario the officers faced in this case, and there is no evidence this policy drove the Defendant Officers' actions. The Defendant Officers contacted ICE after being alerted to an arrest warrant in NCIC.

2. Plaintiff Cannot Prove Deliberate Indifference as Required for a Failure to Train Claim Under § 1983.

Plaintiff also alleges the City of Tukwila failed to train police officers regarding "civil immigration violations" resulting in Plaintiff's allegedly unconstitutional seizure. *Dkt. 1*, at § 87. Plaintiff cannot meet the highly elevated standard required for failure to train claims under § 1983.

"[T]he inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Flores v. Cty. of Los Angeles*, 758 F.3d 1154, 1158 (9th Cir. 2014) (citing *City of Canton, Ohio v. Harris*, 489 U.S. 378, 379, 109 S. Ct. 1197, 1199, 103 L. Ed. 2d 412 (1989)). Deliberate indifference requires "proof that a municipal actor disregarded a known or obvious consequence of his action." *Connick v. Thompson*,

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563 U.S. 51, 61, 131 S. Ct. 1350, 1360 (2011). "Accordingly, the City's policymakers must have been 'on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights.' " *Rabinovitz v. City of Los Angeles*, 287 F. Supp. 3d 933, 966 (C.D. Cal. 2018) (citing *Connick*, 563 U.S. at 61.) To allow otherwise would essentially institute "*de facto respondeat superior* liability." *Id.*

To show actual or constructive notice, Plaintiff "must either present a 'pattern of similar constitutional violations by untrained employees' *or* they must show that the municipality 'has failed to train its employees to handle recurring situations presenting an obvious potential for' constitutional violations." *Id.* (citing *Connick*, 563 U.S. at 107, n. 24; *Board of Cty. Com'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 409, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997)).

It is undisputed this was the first time the City of Tukwila Police Department encountered this type of immigration warrant. *Linton/30(b)(6) Dep.*, 43:9-44:1, 76:18-19. This warrant was placed in the national criminal database, NCIC, and dispatch alerted the officers with the designation "Valley Comm[,]" which means the subject has an outstanding warrant that requires an arrest if the originating agency confirms the warrant. The City had no "actual or constructive knowledge" that this was a problem as there was no pattern of similar arrests or detentions of undocumented immigrants. There is also no evidence other Tukwila Police Department officers had encountered this type of immigration warrant in NCIC prior to this incident. Similarly, there is no evidence of recurring situations where Tukwila Police Department officers encountered undocumented immigrants with outstanding warrants for "failure to appear" during lawful encounters or detentions. As further evidence of the rarity of these situations, the Washington Criminal Justice Training Commission, which is the Washington State police academy, does not even train on civil immigration warrants at the Basic Law Enforcement Academy or Lateral Academy, which all officers in the State of Washington are required to complete. See *Thomas Dep.*, 51:8-52:18; *Stephenson Dep.*, 25:24-27:15; *Tiemann Dep.*, 24:21-25:23.

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3. The Alleged Failure to Train Was Not So "Obvious" That a Single Violation Would Suffice to Find Municipal Liability.

In extremely rare situations, a failure to train can be so "obvious" that a single constitutional violation is sufficient to support a *Monell* claim. *Rabinovitz*, 287 F. Supp. 3d 933, 966 (C.D. Cal. 2018); *Flores*, 758 F.3d at 1159. Under this single-incident theory, " 'the unconstitutional consequences of failing to train' must be 'patently obvious' before a municipality can be liable under § 1983 without proof of a pre-existing pattern of violations. And a violation of a protected right must be a 'highly predictable consequence' of a decision not to train." *Wereb v. Maui Cty.*, 830 F. Supp. 2d 1026, 1032 (D. Haw. 2011) (citing *Connick*, 563 U.S. at 63-4.)

Citing *Connick*, the *Wereb* court acknowledged *Connick*'s clarification of the *City of Canton* hypothetical, where the Court found a *complete* failure to train police officers on constitutional levels of force used on fleeing felons could be enough to satisfy the "single-incident" theory. *Id.*, at 1032-33.

> The *Canton* hypothetical assumes that the armed police officers have no knowledge at all of the constitutional limits on the use of deadly force. But it is undisputed here that the prosecutors in Connick's office were familiar with the general *Brady* rule. Thompson's complaint therefore cannot rely on the utter lack of an ability to cope with constitutional situations that underlies the *Canton* hypothetical, but rather must assert that prosecutors were not trained about particular *Brady* evidence or the specific scenario related to the violation in his case. That sort of nuance simply cannot support an inference of deliberate indifference here.

Connick, 563 U.S. at 67; see also *Williams v. Cty. of Alameda*, 26 F. Supp. 3d 925, 947 (N.D. Cal. 2014) ("These 'circumstances' generally involve incidents arising from a total lack of training, not simply an assertion that a municipal employee was not trained about 'the specific scenario related to the violation.' ") The *Connick* court acknowledged that "[i]n virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city could have done to prevent the unfortunate incident." *Id.* (Internal quotations omitted.) To hold cities

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liable for such specific criticisms would give "plaintiffs or courts *carte blanche* to micromanage local governments[.]" *Id.* at 68.

The *Wereb* court used the *Connick* clarification to analyze two "failure to train theories" against Maui County for Public Safety Aids (PSAs) conduct in the jail medical care context: (1) the Monitoring Theory and (2) the Alcohol Withdrawal theory. *Wereb*, 830 F.Supp.2d at 1034. The court denied summary judgment on the Monitoring Theory (that the County failed to train its employees on how to monitor detainees to determine if they need medical care) because there was evidence the PSAs had "*no knowledge or familiarity with their relevant constitutional duties.*" *Id.* at 1035 (emphasis added.) Under that theory, the PSAs had "*no* training on how to monitor detainees, and *no* training on how to monitor for deprivation of 'serious medical needs.' " *Id.*

However, the court granted summary judgment on the Alcohol Withdrawal theory, holding it was "too specialized and narrow" because it "would raise the potential of requiring municipalities to train and screen for virtually any medical situation that might arise – diabetes, drug withdrawal … (this list might not end) – **and face potential liability for any gap in training on medical conditions with no prior notice of a constitutional problem.**" *Id.*, at 1035-6 (emphasis added.) The court noted the fact that no prior prisoners at the Lahaina Police Station had suffered injury from alcohol withdrawal between 1993 and the date of the incident as evidence that "an unconstitutional result was not 'obvious.' " *Id.*, at 1035. Finally, the court emphasized that to allow such "micromanagement" would lead to an "endless exercise of second-guessing municipal employee-training programs[.]" *Id.* at 1036.

Plaintiff's objection to TPD officers training on civil immigrations violations is similarly "too specialized and narrow." The fact is that TPD had not encountered one of these immigration warrants in the NCIC system before (or since), and there is no evidence that running witness or victim identification during a criminal investigation had previously resulted in an undocumented immigrant being taken to ICE. The Chief testified as a

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30(b)(6) witnesses that TPD has "not had any trends associated with issues surrounding immigration issues. And so that has not been determined as an area that we needed to focus on." *Linton Dep.*, at p. 36:5-7. Immigration warrant training was not intentionally ignored – rather, it simply hadn't been an issue in Tukwila. TPD officers train on detentions, arrests, and warrants. However, the training is focused on the kinds of warrants they are likely to see on a frequent basis – not necessarily on every type of new warrant ICE or other agencies are going to put into NCIC. TPD officers train on how to respond to "Valley Comm" returns from dispatch and followed those procedures here. See *id.*, 35:20-25. ("When I focus any training, I look at training where there is a high probability of occurrences. Right? So if we have specific issues occurring quite a bit, we look at trends, and we may decide, you know, we're dealing with this repeatedly, so we need to provide specific training.")

Plaintiff's lawsuit openly seeks – arguably as its primary relief – policy change through a declaration that the "City of Tukwila's policies permitting its officers to enforce civil immigration laws … violate the Fourth Amendment[.]" *Dkt. 1*, at p. 15, ¶ e. This is precisely the type of micromanaging of the City's policies that *Connick* and *Wereb* held to be unacceptable court intervention in municipal training programs. Under this theory, assisting any agency, including Department of Corrections warrants for example, could essentially result in *de facto* municipal liability for assisting certain agencies in exercising their undoubtedly proper arrest powers. In part, the *Weber* court found such implications could "implicate serious questions of federalism." *Weber*, 830 F.Supp.2d at 1036. Those same concerns are magnified in this scenario as courts would be exerting their authority over both local agencies and arguably agencies under the executive branch.

On a practical level, the fact that courts within the Ninth Circuit are still unsure about local law enforcements' ability to facilitate ICE's authority, means the potential constitutional violation is not "obvious" or a "highly predictable" consequence of the City's alleged failure to train.

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> The Court also has a general concern about the parties' arguments. Plaintiff argues that continuing to hold an individual on the basis of an immigration detainer after the state-law justification has expired constitutes a new arrest, and proceeds to address Defendants' actions entirely in the context of arrests. While the Court does not necessarily disagree with Plaintiff's premise – that continued detention is tantamount to an arrest – **the Court sees at least some meaningful difference between a unilateral arrest by a sheriff's officer and continued detention on the basis of a federal warrant. In the former, the officer is acting entirely on his own authority and on the basis of his own judgment and investigation. In the latter, the officer is acting on the probable cause determination of a federal officer empowered and trained to make such determinations.**

Tenorio-Serrano v. Driscoll, 324 F. Supp. 3d 1053, 1064–65 (D. Ariz. 2018) (emphasis added.) There cannot be an obvious failure to train where it would be unclear as to whether or not the training proposed was completely in accordance with the law.

V. CONCLUSION

Plaintiff cannot establish the Defendant Officers' conduct was in any way driven by any allegedly confusing or deficient policies identified in their Complaint or discovery responses. Therefore, they must adopt a "failure to train" theory. However, courts have repeatedly refused to "micromanage" municipal training plans by over-focusing on specific and rare issues. The City did not have actual or constructive knowledge of any deficiencies in their training, and the courts continue to debate constitutionally acceptable levels of local law enforcement involvement in federal immigration enforcement. Instead of training on uncertain law, the Chief has implemented a directive that eliminates Plaintiff's concerns until the legal landscape is resolved. Defendants' respectfully request the Court dismiss Plaintiff's constitutional liability claims against the City.

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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