UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Wilson RODRIGUEZ MACARENO,

Plaintiff,

v.

Joel THOMAS, et al.,

Defendants.

Case No. 2:18-cv-00421

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Noted for Consideration: February 1, 2019

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Plaintiff Wilson Rodriguez Macareno (Mr. Rodriguez) called the police in the early hours of the morning seeking protection for himself and his family from an intruder in their yard. The Tukwila Police Department (TPD) responded, but after warning and releasing the intruder, they decided to detain and then arrest Mr. Rodriguez because they discovered Immigration and Customs Enforcement (ICE) had issued an administrative immigration warrant against him. However, the Immigration and Nationality Act (INA), implementing regulations, and controlling case law all make clear that state and local officers have no authority to enforce an administrative warrant—a warrant without judicial approval and one not based on a criminal offense—and further, have no authority to enforce federal, civil immigration laws. Defendants' unlawful actions resulted from an unlawful TPD policy and the TPD's failure to train its officers as to their interactions with ICE. But Defendant Officers went even further, volunteering to deliver Mr. Rodriguez to an ICE facility and thereafter offering ICE the identity information of a witness even though he had no administrative warrant. Mr. Rodriguez seeks redress for TPD's actions unlawfully depriving him of his liberty, and requests that this Court provide declaratory and injunctive relief to ensure that TPD does not again unlawfully seize him or others based on suspected immigration status.

STATEMENT OF FACTS

I. The February 8, 2018 incident

On the morning of February 8, 2018, Mr. Rodriguez dialed 911 to report a suspicious individual on his property. Maltese Decl. Ex. A, 911 Call Recording at 0:00-1:57.[1] Defendants

[1] All of the subsequent references to an exhibit in this motion are exhibits to the Maltese declaration unless otherwise specified.

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Peter Tiemann and Arthur Stephenson of the Tukwila Police Department (TPD) first responded to the scene, followed shortly thereafter by Defendants Joel Thomas and Craig Gardner. *See* Ex. B, Thomas Incident Report. Defendant Stephenson detained and questioned the prowler whom Mr. Rodriguez had reported, while Defendants Tiemann and Thomas questioned Mr. Rodriguez and another witness about the incident. *See id.* Mr. Rodriguez also informed the Officer Defendants that (1) a neighbor had recently reported seeing an unknown individual lurking on Mr. Rodriguez's property, (2) someone had recently stolen things from his car, and (3) a few years prior, he had reported a burglar who had stolen valuable possessions from his home. Ex. C, Tiemann Bodycam at 0:45-2:25, 16:04-17:07; Ex. D, Mr. Rodriguez's 2016 Police Report. He also explained that the witness—Mr. Rodriguez's co-worker—had seen the prowler moving around on his property. Ex. C, Tiemann Bodycam at 2:11-2:21.

While Defendant Tiemann questioned Mr. Rodriguez, Defendant Thomas approached Mr. Rodriguez and the witness and asked them to produce identification. Ex. B, Thomas Incident Report. Both individuals then provided valid Washington State driver's licenses, which Defendant Thomas concluded were authentic. *Id.*; *see also* Ex. E, Defs.' Response to Request for Admission No. 2; Ex. F, Thomas Dep. 17:14-18:16. Defendant Thomas then radioed Valley Communications Center (VCC) and requested that VCC query law enforcement databases using the names on these IDs. Ex. G, Thomas Bodycam at 4:46-6:15.

Around two minutes later, VCC reported back to Defendant Thomas—with Defendant Gardner standing nearby—that Mr. Rodriguez had a warrant from ICE for being "unlawfully present due to [an] order of removal or exclusion." *Id.* at 8:20-9:00; *see also* Ex H, Tiemann Dep. 17:13-18:21 (explaining that a dispatch response starting with "Valley Comm" signals a warrant hit); Ex. I, Gardner Incident Report. VCC informed Defendant Thomas that the database

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query for the witness was "clear." Ex. G, Thomas Bodycam at 9:00-9:07. Based on VCC's response that Mr. Rodriguez had an immigration warrant, Defendant Gardner asked Defendant Tiemann to watch Mr. Rodriguez—a request that resulted in Mr. Rodriguez's seizure. *Id.* at 9:25; Ex. F, Thomas Dep. 40:19-41:4, 43:5-7; Ex. J, Gardner Dep. 29:14-25, 43:6-11 (stating that Mr. Rodriguez would "not be allowed to leave" following Defendant Gardner's request to Defendant Tiemann). Defendants Thomas and Gardner then went to their patrol vehicle to further investigate the immigration warrant. Ex. G, Thomas Bodycam at 9:25-46:10. Meanwhile, Defendant Stephenson permitted the prowler suspect to leave after issuing a warning to not trespass near Mr. Rodriguez's house again. Ex. K, Stephenson Dep. 23:3-24:3.

In their vehicle, Defendants Thomas and Gardner first reviewed the National Crime Information Center (NCIC) query results for Mr. Rodriguez on Officer Thomas's mobile computer. Ex. L, NCIC Warrant Hit; Ex. J, Gardner Dep. 40:4-13; Ex. F, Thomas Dep. 24:18-25:21. Those results stated that Mr. Rodriguez "ha[d] an outstanding *administrative* warrant of removal from the United States." Ex. L, NCIC Warrant Hit (emphasis added). The screen further showed that Mr. Rodriguez had an "immigration violation—failure to appear for removal" and was "unlawfully present due to order of removal or exclusion from the USA," and indicated that the NCIC file was that of an "immigration violator." *Id.* Finally, the record provided a telephone number for ICE, indicating that a law enforcement officer could call it for "immediate hit confirmation and availability of [ICE] detainer." *Id.* The NCIC file showed neither any criminal history nor any criminal or judicial warrants for Mr. Rodriguez, nor did it even specify the legal basis for Mr. Rodriguez's removal order. *Id.*; *see also* Ex. F, Thomas. Dep. 26:15-20; 34:13-35:1. The administrative warrant is based on a removal order issued *in absentia* which states Mr. Rodriguez was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). Dkt. 37, Mr. Rodriguez's

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Removal Order. Nothing in the removal order—which the Officer Defendants did not have in their possession on the morning of February 8, 2018— indicates any basis for criminal liability.

Defendants Thomas and Gardner then called the ICE number. Ex. F, Thomas Dep. 27:10-23. Defendant Thomas first spoke to ICE Agent Shannon. *Id.* at 30:17-22. That call lasted nearly half an hour. Ex. G, Thomas Bodycam at 12:44-40:12. At no time during the call did ICE ever indicate that Mr. Rodriguez was wanted because he had committed a crime. Ex. F, Thomas Dep. 32:11-13. During that call, Defendant Gardner left the patrol vehicle and informed Mr. Rodriguez that he and Defendant Thomas "were calling [ICE] and seeing what they want to do," but that "we don't have you for charges." Ex. C, Tiemann Bodycam at 26:55-27:35. Defendants Gardner and Tiemann then handcuffed and searched Mr. Rodriguez, and shortly thereafter, escorted Mr. Rodriguez to Defendant Thomas's patrol car. *Id.* at 27:50-31:50.

Once Mr. Rodriguez was placed in the patrol car, Defendant Thomas continued his call with ICE Agent Shannon for several more minutes until she stated another ICE agent would be contacting Defendant Thomas to advise as to whether ICE wanted to take action against Mr. Rodriguez. Ex. G, Thomas Bodycam at 32:11-40:11; Ex. F, Thomas Dep. 29:8-31:4; Ex. M, Email from ICE Agent Shannon to Thomas. Shortly after ending that call, Defendant Thomas received a call from ICE Agent Bailey, who "confirmed that [ICE] wanted [Defendant Thomas] to take [Mr. Rodriguez] into custody on their behalf." Ex. B, Thomas Incident Report. On that call, Defendant Thomas volunteered to transport Mr. Rodriguez to the ICE Field Office. *Id*; Ex. F, Thomas Dep. 35:7-9. At *no* point during this process did Defendants Thomas, Gardner, or any other officer obtain *any* information that indicated Mr. Rodriguez had committed a crime. Ex. F, Thomas Dep. 26:15-20, 32:7-13, 34:13-35:1; Ex. J, Gardner Dep. 75:3-7; Ex. H, Tiemann Dep. 20:23-21:14; Ex. B, Thomas Incident Report; Ex. I, Gardner Incident Report.

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Defendants Gardner and Thomas then drove Mr. Rodriguez to the ICE Field Office in Tukwila, Washington. Ex. F, Thomas Dep. 38:15-17. As they prepared to drive away, Mr. Rodriguez pleaded with an individual on his phone to "take care of my babies." Ex. G, Thomas Bodycam at 49:50; *see also* Ex. C, Tiemann Bodycam at 13:45 (Mr. Rodriguez explaining to Defendant Tiemann he has three young children). After arriving at the ICE Field Office, Defendants Gardner and Thomas transferred Mr. Rodriguez to ICE custody. During the transfer, Defendant Gardner asked the ICE officers if they had a "copy of the detainer." Ex. G, Thomas Bodycam at 59:52; *see also* Ex. F, Thomas Dep. 38:21-39:12 (explaining why detainer was important to obtain); Ex. J, Gardner Dep. 59:12-62:16 (same). One ICE agent responded by stating he had "nothing right now," while Agent Bailey stated he could "hook [Defendants Gardner and Thomas] up" with a detainer. Ex. G, Thomas Bodycam at 59:55-1:00:07. After completing the transfer, Agent Bailey brought Defendants Thomas and Gardner into another room, *id.* at 1:02:52, where Agent Bailey helped them obtain a Form I-247 detainer. Ex. F, Thomas Dep. 41:5-22; Ex N, Copy of Form I-247 ICE Detainer.

Before leaving the ICE Field Office, Defendants Gardner and Thomas offered a photograph and identity information for Mr. Rodriguez's co-worker to Agent Bailey. Ex. G, Thomas Bodycam at 1:12:28-1:13:18. They did so even though the NCIC database contained *no* information whatsoever regarding the co-worker and they had *no* reason to suspect him of a crime. Ex. F, Thomas Dep. 44:10-21. Agent Bailey then speculated that the co-worker's ID may be fake—even though Defendant Thomas never doubted the ID's authenticity—and the three lamented that Washington State issues driver's licenses to "illegals." Ex. G, Thomas Bodycam at 1:13:15-1:14:40; Ex. F, Thomas Dep. 46:5-6.

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II. The City's policies regarding immigration enforcement

At the time the Defendant Officers seized Mr. Rodriguez, Defendant City of Tukwila (the City) had conflicting policies regarding TPD officers' involvement in immigration enforcement. Those conflicting policies remain in effect today. In short, while certain City policies discourage providing assistance to federal immigration authorities or enforcing immigration law, other policies mandate enforcing immigration law—particularly where that assistance involves an ICE warrant. Prior to February 8, 2018, the City's policy required TPD officers to enforce an administrative ICE warrant once they confirmed the warrant was active. Even today—after TPD issued a policy directive in response to Mr. Rodriguez's arrest—TPD policy continues to require officers to detain an individual with an ICE warrant while the officer waits for a supervisor to decide what, if any, other immigration enforcement action to take.

The City's policy is evident in both its written policies and the TPD's practice in the field. First, TPD Policy 411 generally prohibits City officers from making arrests based on immigration status. Ex. O, Policy 411. Policy 411.1 states, inter alia, that "[t]he immigration status of individuals alone is generally not a matter for police action." *Id.* Similarly, policies 411.3 and 411.4 explain that "immigration status" is not relevant to a police investigation nor a basis to seize an individual; instead, the officer must have suspicion the seized individual has committed a crime. *Id.*

However, other TPD policies instruct officers to seize an individual based solely on immigration status or for a civil immigration violation. City officers can make an arrest based on immigration status "[w]hen assisting ICE at its specific request," *id.* (Policy 411.2), and should arrest a noncitizen where there is "a valid warrant" for that individual, Ex. P, Policy 409.7. The policy does not define what constitutes "a valid warrant" but the Defendant Officers' and Chief

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Linton's description of TPD policy demonstrate that a "valid warrant" includes administrative immigration warrants that are not based on criminal charges and have not been authorized by a neutral magistrate. Chief Linton explained in his deposition that TPD policy at the time of Mr. Rodriguez's arrest was to detain an individual based on a warrant in NCIC and to "confirm" that warrant, regardless of which agency uploaded the warrant to NCIC. Ex. Q, Linton Dep. 52:11-14, 52:20-24, 73:1-3 ("[W]hen I get an NCIC hit for a warrant, whether it comes from the FBI, the DEA, DHS, the City of ABC, I'm looking at a warrant."), 73:11-12.

These same policies remain largely in effect today. Following Mr. Rodriguez's arrest, Chief Linton issued a directive to TPD officers explaining that officers should seek guidance from the chain of command when they encounter ICE warrants. Ex. R, Linton Directive. The directive states the TPD should not detain an individual based on an administrative warrant from ICE. *See id.* However, as Chief Linton explained, and as all the Defendant Officers have stated, the City's policy pursuant to the directive is to detain an individual upon receiving notice of an ICE warrant while bringing the matter up the chain of command to Chief Linton. Ex. Q, Linton Dep. 76:2-10, 78:6-13 (confirming directive is still in effect), 79:4-12 (contending that an officer may detain based on administrative warrant while the matter goes up the chain of command), 81:24-82:10; *see also, e.g.*, Ex. F, Thomas Dep. 60:25-61:4; Ex. J, Gardner Dep. 42:16-21, 75:19-21; Ex. H, Tiemann Dep. 31:22-32:6; Ex. K, Stephenson Dep. 34:3-11. The TPD Chief then consults legal counsel to determine how to address the warrant hit. Ex. Q, Linton Dep. 89:18-90:11. Similarly, policies 411 and 409 remain unchanged since the February 8, 2018, incident. *See id.* at 83:8-11 (acknowledging that the directive departs from prior policy only in that "[i]t just brings the decision to my level. That's the only thing."). In short, under current policy, the TPD continues to instruct officers to detain persons with ICE administrative warrants

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until leadership determines what subsequent actions should be taken. Consequently, current policy dictates an NCIC hit for such a warrant will result in an individual's seizure, as it did in Mr. Rodriguez's case. *Id.* at 79:22-80:4, 81:3-11. Notably, this TPD policy conflicts with a City Ordinance passed in response to Mr. Rodriguez's arrest. On August 29, 2018, the Tukwila City Council passed an ordinance that explicitly prohibits "detain[ing] . . . a person based on any administrative or civil immigration detainer request unless accompanied by a valid criminal warrant issued by a judge." Ex. S, City Ordinance No. 2587. The TPD has not incorporated the City Ordinance into its policy manual. Ex. Q, Linton Dep. 97:18-22.

III. The City's training on immigration enforcement matters

Prior to February 8, 2018, the City provided no training to its officers regarding involvement in immigration enforcement. *E.g.*, Ex. Q, Linton Dep. 34:3-36:7; Ex. T, Prasad Dep. 41:7-9; Ex. U, Defs.' Response to Question 4 of Second Set of Interrogatories. In addition, the TPD has not provided training regarding immigration enforcement matters since the February 8, 2018, incident—other than to circulate and inform officers about the directive discussed in the prior section. Ex. Q, Linton Dep. 95:18-23, 99:1-3; Ex. F, Thomas Dep. 66:4-67:10; Ex. J, Gardner Dep. 79:10-19; Ex. H, Tiemann Dep. 30:23-31:18; Ex. K, Stephenson Dep. 29:4-25. Similarly, the City has not provided training to help officers understand the difference between administrative and criminal warrants since Mr. Rodriguez's arrest. Ex. J, Gardner Dep. 42:22-43:1. Finally, the City has not provided any training regarding the new City ordinance that states that the TPD should not enforce administrative warrants. Ex. Q, Linton Dep. 98:16-99:7; Ex. V, Chen Email; Ex J, Gardner Dep. 91:23-92:21; Ex. K, Stephenson Dep. 32:13-33:11; Ex. H, Tiemann Dep. 33:17-34:11.

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ARGUMENT

I. Plaintiff is entitled to summary judgment of his § 1983 claim.

Summary judgment is warranted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[F]acts must be viewed in the light most favorable to the non-moving party only if there is a 'genuine' dispute as to those facts." *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (citation omitted). A non-moving party "must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). Mr. Rodriguez satisfies all four prongs necessary to prevail under 42 U.S.C. § 1983: "(1) a violation of rights protected by the Constitution or created by a federal statute, (2) proximately caused (3) by a conduct of a 'person' (4) acting under color of state law." *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

Both the individual Defendant Officers and the City of Tukwila are "persons" subject to liability under 42 U.S.C. § 1983. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978) (holding that a municipality constitutes a person for purposes of § 1983 liability). Defendants cannot dispute that they acted under color of state law when they directly caused Plaintiff's arrest. *See Anderson v. Warner*, 451 F.3d 1063, 1068-69 (9th Cir. 2006). Moreover, the inquiry into "fault and causation is straightforward" where "a particular municipal action *itself* violates federal law, or directs an employee to do so." *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 404 (1997). Thus, the only issue before this Court is whether the arrest violated Mr. Rodriguez's constitutional rights, and whether the City is liable for that violation.

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II. Defendants' seizure of Mr. Rodriguez based on an administrative immigration warrant deprived him of his right to be free from unreasonable seizures.

Mr. Rodriguez called the Tukwila Police Department seeking protection for himself and his family. After responding to his call, Defendants instead detained and arrested Mr. Rodriguez based on information in a law enforcement database that stated Mr. Rodriguez was subject to an *administrative* warrant from ICE. An administrative warrant is not approved by a judge. Rather, only ICE officers may issue the immigration form, and only designated federal officials may execute the warrant. Moreover, an administrative warrant is based on a civil violation, and does not indicate a criminal violation has occurred. Finally, Washington State law not only provides no authority for Defendants to enforce civil immigration law, but to the contrary, prohibits such actions. As such, Defendants had no lawful authority to deprive Mr. Rodriguez of his liberty based upon the administrative warrant.

1. An administrative immigration warrant is not issued by neutral magistrate.

Defendants violated Mr. Rodriguez's Fourth Amendment rights by detaining him and arresting him—and then transferring him to ICE custody—even though they had no legal authority to enforce civil immigration laws. The Fourth Amendment protects against "unreasonable searches and seizures." U.S. Const. amend. IV. Specifically, the Fourth Amendment prohibits government officials from detaining an individual in the absence of a probable cause finding made "by a neutral and detached magistrate." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); *see also Manuel v. City of Joliet*, 137 S. Ct. 911, 917 (2017) (drawing on *Gerstein* to explain that "a pretrial restraint on liberty is unlawful unless a judge (or grand jury) first makes a reliable finding of probable cause"); *Coolidge v. New Hampshire*, 403 U.S. 443, 449-53 (1971) (finding a warrant issued by state Attorney General to be invalid because he was in charge of prosecution and not a neutral magistrate).

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An administrative warrant lacks the essential *judicial* safeguard of a criminal warrant, as an immigration officer issues the warrant without any review by a neutral magistrate. *See* 8 C.F.R. § 241.2(a) (enumerating immigration officials authorized to issue removal warrants "based on the final administrative removal order"); U.S. Dep't of Homeland Sec. (DHS), Federal Law Enforcement Training Centers, *ICE Administrative Removal Warrants*, https://tinyurl.com/hk4mku6 (last visited Jan. 08, 2019) ("[T]he removal warrant used by ICE is not a criminal warrant signed by a federal judge."). Yet "probable cause for the issuance of an arrest warrant must be determined by someone independent of police and prosecution." *Gerstein*, 420 U.S. at 118. Like the state law enforcement officer who oversaw the investigation and prosecution in *Coolidge*, ICE officers are in charge of investigating and prosecuting immigration violations and thus do not constitute neutral finders of probable cause. *See Coolidge*, 403 U.S. at 453; *see also Gerstein*, 420 U.S. at 114 ("[T]he detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty."); *El Badrawi v. Dep't of Homeland Sec.*, 579 F. Supp. 2d 249, 275-76 (D. Conn. 2008) (treating as "warrantless" an arrest pursuant to an administrative warrant signed by an ICE agent, who was not a "neutral magistrate (or even a neutral executive official)").

2. Only designated officials are authorized to detain persons for civil immigration enforcement purposes.

The INA, implementing regulations, and controlling case law all confirm that Defendants did not have authority to take any enforcement action based on the administrative warrant. Instead, only enumerated federal immigration officers are authorized to execute immigration warrants. *See* 8 U.S.C. § 1357(a) ("Any officer or employee of the [DHS] authorized under regulations prescribed by the [Secretary] shall have power . . . ."); 8 C.F.R. § 287.5(c)(1) (only "immigration officers who have successfully completed basic immigration law enforcement

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training are hereby authorized and designated to exercise the arrest power conferred by [8 U.S.C. § 1357(a)(2)] . . . "); 8 C.F.R. § 287.8(c) ("Only designated immigration officers are authorized to make an arrest."); 8 C.F.R. § 287.5(e)(3) ("The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power pursuant to [8 U.S.C. § 1357(a)] to execute warrants of arrest for administrative immigration violations."); 8 C.F.R. § 241.2(b) (specifying that an officer designated in 8 C.F.R. § 287.5(e)(3) may execute an administrative warrant). As the Supreme Court explained in *Arizona v. United States*, "[t]he federal statutory structure instructs when it is appropriate to arrest [a noncitizen] during the removal process." 567 U.S. 387, 407 (2012); *see also Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 457 (4th Cir. 2013) ("But the civil immigration warrant did not provide the deputies with a basis to arrest or even briefly detain Santos.").

Because immigration law is a complex civil matter, Congress crafted a statutory scheme that does not permit local law enforcement officers to enforce civil immigration violations absent limited exceptions that do not apply to this case. [2] Thus, as the Court described in *Arizona*, *see* 567 U.S. at 407-09, the INA and implementing regulations confirm that state and local officers do not have authority to take any enforcement action based on an ICE warrant. DHS may issue a warrant pending a decision of removability, or following an order of removal, but "[i]n both instances, the warrants are executed by federal officers who have received training in the enforcement of immigration law." *Id.* at 408. Indeed, the administrative warrant is directed only

[2] The principle exception is for state officials who undergo a special training and certification program under 8 U.S.C. § 1357(g). That exception does not apply here. *See* U.S. ICE, Delegation of Immigration Authority Section 287(g) INA, https://www.ice.gov/287g (last updated Aug. 10, 2018) (showing no § 1357(g) agreements in Washington State).

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to an "immigration officer" authorized by statute to execute immigration warrants, and does not authorize state, county, or other local officials to place an immigration hold or perform any other immigration enforcement activity. *See* DHS, *Warrant of Removal/Deportation*, https://tinyurl.com/yb98xpw6 (last visited Jan. 08, 2019).

The Ninth Circuit has further clarified that even where local authorities have a lawful basis to initially detain a person—unlike the instant case—the Fourth Amendment requires a valid warrant issued by a neutral magistrate or reasonable suspicion of *criminal* activity in order to continue detaining an individual. *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012). ("While the seizures of the named plaintiffs based on traffic violations may have been supported by reasonable suspicion, any extension of their detention must be supported by additional suspicion of criminality."); *see also Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) ("Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification."); *Santos*, 725 F.3d at 468 ("[D]eputies violated Santos's rights under the Fourth Amendment when they seized her after learning that she was the subject of a civil immigration warrant . . . .").

3. State law does not provide any authority for Defendants to arrest Mr. Rodriguez.

Moreover, state law does not provide any authority for state or local enforcement officers to investigate, let alone detain, persons based on allegations of civil immigration violations. In *Ramirez-Rangel v. Kitsap Cty.*, No. 12-2-09594-4, 2013 WL 6361177 (Wash. Super. Ct. Aug. 16, 2013), the Superior Court issued judgement against the Kitsap County Sheriff's office after officers similarly detained and then transported individuals to ICE because the individuals were suspected of violating immigration laws. The court declared that Article 1, § 7 of the state

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Constitution "forbids local enforcement officers from prolonging a detention to investigate or engage in questioning about an individual's immigration status, citizenship status and/or national origin." *Id.* at *2; *cf. Lunn v. Commonwealth*, 78 N.E. 3d 1143, 1156-59 (Mass. 2017) (finding that no Massachusetts state law authorizes officers to make arrests for federal civil immigration matters and that state officers do not have inherent authority to carry out DHS detention requests); *Cisneros v. Elder*, No. 2018-CV-30549, Order Granting Preliminary Injunction, at 5-7 (Colo. Dist. Ct. Mar. 19, 2018) (administrative warrant did not authorize local sheriff to effect a seizure under Colorado's warrantless-arrest statute, which only authorizes warrantless arrests for, inter alia, criminal offenses) (Attachment 1).

The Washington State Supreme Court has also advised that an administrative immigration warrant "does not authorize state or local law enforcement officials to arrest the designated noncitizen." Wash. State Supreme Court Gender & Justice Comm'n and Minority & Justice Comm'n, *Immigration Resource Guide for Judges* 2-8 (July 2013), https://tinyurl.com/yb3h6dw9. In addition, a 2014 guide from the Washington Association of Prosecuting Attorneys specifically notifies police officers that "[j]ust because an ICE warrant is in the NCIC database does not make the warrant 'criminal.'" Ex. W, Pamela B. Loginsky, Wash. Assoc. of Prosecuting Attys., *Confessions, Search, Seizure, and Arrest* 145 (June 2014) (citation omitted). Similarly, the Washington State Attorney General's Office also issued guidance for local agencies in April 2017, instructing that "Forms I-200 and I-205 entitled 'warrant for arrest' or 'warrant of removal/deportation[]' . . . . are 'administrative warrants'" that can be enforced only by federal immigration officers. Wash. State Office of the Att'y Gen., Guidance Concerning Immigration Enforcement 15 (Apr. 2017), https://tinyurl.com/y7jnz3vm. These sources make abundantly

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clear that state and local law enforcement have no authority to detain or arrest an individual based on an ICE warrant or suspected civil immigration violations.

4. Defendants have conceded they had no basis to suspect criminal activity.

Finally, as Defendants have conceded, no other facts gave Defendants any reason to suspect that Mr. Rodriguez was wanted for criminal activity. Defendants have already acknowledged that "courts may as a very general principle find that local agencies cannot detain individuals simply for being in the United States illegally (often considered a civil matter)." Dkt. 25 at 12. The Ninth Circuit has long held that unlawful presence amounts to "only a civil violation" and that "admission of illegal presence . . . does not, without more, provide probable cause of the criminal violation of illegal entry." *Gonzales v. City of Peoria*, 722 F.2d 468, 476-77 (9th Cir. 1983), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999). These holdings "always were, and remain, the law of the circuit, binding on law enforcement officers." *Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir. 2011). As a result, "if the Defendants are to enforce immigration-related laws, they must enforce only immigration-related laws that are criminal in nature." *Melendres*, 695 F.3d at 1001.

Unable to contest this well-established law, Defendants previously argued they had reasonable suspicion to seize Mr. Rodriguez, speculating that his immigration offense "*might* have been criminal in nature," because he *may* have committed a violation under 8 U.S.C. § 1253(a). Dkt. 25 at 12 (emphasis added). However, Defendants' subsequent sworn testimony has made clear that that (1) they had no reason to suspect any criminal activity and (2) their determination to detain and arrest Mr. Rodriguez was based solely on their discovery of the administrative warrant. *See, e.g.*, Ex. F, Thomas Dep. 43:5-7 ("[W]e arrested him based off the warrant. The warrant provides probable cause."); Ex. J, Gardner Dep. 75:3-4 (claiming that the

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"criminal activity" justifying Mr. Rodriguez's arrest was "the confirmation of a criminal warrant"); Ex. T, Prasad Dep. 13: 5-9 (confirming he authorized Officer Gardner to book Mr. Rodriguez into the ICE Field Office upon information about confirmed warrant); *see also* Ex. B, Thomas Incident Report. No other information suggested that Mr. Rodriguez had committed a crime. Ex. F, Thomas Dep. 32:7-13; 34:13-35:1. The arresting officers confirmed it was irrelevant to them whether the warrant was for a civil violation or a criminal matter. *Id.* at 54:21-55:5 ("It doesn't matter" whether a warrant provides probable cause "for a criminal immigration violation or a civil immigration violation"); Ex. J, Gardner Dep. 45:14-20.

Nor can Defendants speculate as to unknown criminal immigration violations, because [w]hether probable causes exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at *the time of the arrest*." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (emphasis added). Similarly, this Court has explained in the context of a § 1983 claim for unlawful arrest that "[a] court may not consider additional facts that became known only after the arrest was made." *Dunn v. Hyra*, 676 F. Supp. 2d 1172, 1186 (W.D. Wash. 2009). Here, the *only* information Defendants possessed when they seized Mr. Rodriguez was regarding an administrative warrant issued by ICE, which they had no authority to enforce. Thus, Defendants cannot claim they had lawful authority to seize Mr. Rodriguez.

III. The City of Tukwila is also liable for the unlawful seizure.

A local government entity is liable under § 1983 "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy," causes a constitutional violation. *Monell*, 436 U.S. at 694. A plaintiff establishes causation where the policy or custom "*itself* violates federal law, or directs an employee to do so." *Brown*, 520 U.S. at 404. In addition, a municipality is liable due to a

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"policy of inaction," or failure to act, where "such inaction amounts to a failure to protect constitutional rights." *Oviatt ex rel. Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (citing *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)). In order to impose municipal liability on a local government, a plaintiff must establish that the policy or custom "amounts to deliberate indifference to the plaintiff's constitutional right" and that it was "the moving force behind the constitutional violation." *Oviatt*, 954 F.2d at 1474 (internal quotations and citation omitted); *see also Castro v. City of Los Angeles*, 833 F.3d 1060, 1076 (9th Cir. 2016) (en banc).

First, the City had a policy and custom of requiring officers to detain an individual in order to confirm any NCIC warrant hit, without differentiating between criminal and administrative warrants. Chief Bruce Linton, the final policymaker for TPD, testified on behalf of the City that it was established TPD practice to confirm every NCIC warrant hit by "contact[ing] the originating agency" regardless of what agency entered the warrant into NCIC. Ex. Q, Linton Dep. 47:3-11; *see also id.* at 73:1-3 (stating that the policy is the same "whether it comes from the FBI, the DEA, DHS, the City of ABC"). Under the City's policy, any warrant provided reasonable suspicion permitting an officer "to detain [a] person for a reasonable amount of time to confirm the warrant." *Id.* at 52:23-24. Second, the City had a policy of deeming any warrant, including a civil immigration warrant, a valid arrest warrant "once it's confirmed by the originating agency." *Id.* at 73:11-12. Under the City's written policy, officers were also permitted to enforce civil immigration law "[w]hen assisting ICE at its specific request." Ex. O, Policy 411.2.

These City policies instructed TPD officers to seize individuals solely on the basis of an administrative ICE warrant, in violation of the Fourth Amendment and the INA. *See supra* pp. 6-8. The Officer Defendants acted pursuant to these policies in seizing Mr. Rodriguez on the basis

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of information regarding an administrative ICE warrant. *See id.*; Ex. F, Thomas Dep. 54:21-55:5 (testifying that TPD officers "act on the warrant" on behalf of an originating agency whether it is for a criminal or civil immigration violation); Ex. J, Gardner Dep. 45:14-20 ("We confirm all warrants."); Ex. T, Prasad Dep. 31:1-14 (confirming that arrest based on ICE warrant is consistent with TPD policy because it provides reasonable belief that someone is engaged in criminal activity).

In addition, the City also had a policy of inaction—namely, it failed to adopt and implement specific policies to differentiate between warrants for criminal violations and those for civil immigration violations. The Ninth Circuit "consistently has found that a [municipality's] lack of affirmative policies or procedures to guide employees can amount to deliberate indifference, even when the [municipality] has other general policies in place." *Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1189 (9th Cir. 2006); *see also, e.g.*, *Oviatt*, 954 F.2d at 1478 (finding that a county's "lack of procedures to alleviate" prolonged pretrial detention "amounted to deliberate indifference"); *cf. Fairely v. Luman*, 281 F.3d 913, 918 (9th Cir. 2002) (holding that plaintiff stated claim for municipal liability where City's alleged warrant procedures created high risk of wrongful liberty deprivation). At the time of Mr. Rodriguez's arrest, TPD's written policy manual contained two chapters addressing immigration issues, entitled "Arrest or Detention of Foreign Nationals," Ex. P, Policy 409, and "Immigration Violations," Ex. O, Policy 411. As detailed above, *supra* pp. 6-8, the City's policies generally precluded officers from enforcing federal immigration law, and instructed officers to arrest foreign nationals only upon "a valid warrant" or "probable cause to believe that the foreign national has violated a federal criminal law, a state law, or a local ordinance." Ex. P, Policy 409.7. However, the City established no specific policies instructing officers that a valid warrant must be signed by a neutral magistrate,

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and accordingly, that administrative ICE warrants do not constitute valid arrest warrants enforceable by TPD. Nor did any City policy instruct TPD officers that an administrative ICE warrant provides neither reasonable suspicion nor probable cause for a criminal offense.

This refusal to adopt specific policies amounts to a deliberate indifference to the constitutional rights of noncitizens residing in Tukwila, such as Mr. Rodriguez. Binding Supreme Court and Ninth Circuit case law provided the City ample reason to know that its officers could not detain individuals for civil immigration violations. *See supra* pp 10-13. Moreover, state law sources have also repeatedly confirmed that local officers may not enforce administrative warrants or enforce immigration violations. *See supra* pp 13-14. Indeed, after the Superior Court's declaratory judgment in *Ramirez –Rangel*, the ACLU of Washington and Northwest Immigrant Rights Project sent a letter to all local law enforcement agencies in Washington State, including the TPD, advising of the need to "update your polices, trainings and guidelines to ensure that this unlawful practice is not occurring in your jurisdiction." Talner Decl. ¶ 2 & Ex. A; *see also* Enoka Decl. ¶¶ 2-3 & Exs. A-B (noting additional letters sent to TPD stating that local law enforcement officers may not enforce federal civil immigration law).[3]

The lack of specific policies—i.e., the City's failure to act—caused the Officer Defendants to violate Mr. Rodriguez's Fourth Amendment rights by arresting him without any reasonable suspicion, much less probable cause, of a criminal violation. *See supra* pp 9-16. In their depositions the Defendant Officers explained that *any* warrant is a valid basis for arrest regardless of whether that warrant was issued based only on immigration status and without a

[3] According to the U.S. Census Bureau, between 2013 and 2017, 40.5% of Tukwila's population consisted of foreign born persons, and 49.4% of its residents spoke a language other than English at home. *See* U.S. Census Bureau, Quick Facts, Tukwila City, Washington, https://tinyurl.com/y837pdoh (last accessed Dec. 27, 2018).

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neutral magistrate. *See supra* pp 15-16. Ex. F, Thomas Dep. 27:18-28:2, 43:5-7, 50:17-18 (noting that Chief Linton said Defendant Thomas had done nothing wrong because he "acted on a warrant"), 54:21-55:5; Ex. J, Gardner Dep. 45:14:20, 46:17-21 ("[W]e detain people pending confirmation of warrants."); Ex. H, Tiemann Dep. 26:15-21, 37:1-5 (suggesting that administrative warrants are in fact criminal warrants); *see also* Ex. T, Prasad Dep. 29:15-19, (stating that he did not differentiate between criminal warrants and administrative warrants), 31:1-14 (asserting that arrest based on ICE warrant is consistent with TPD policy and that ICE warrant provides reasonable belief someone is engaged in criminal activity).

In addition, a local government entity may also be held liable on the basis of inadequate training "where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Canton*, 489 U.S. at 388. A plaintiff may establish such liability by showing that "in light of the duties assigned to specific officers . . . the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers can reasonably be said to have been deliberately indifferent to the need." *Id.* at 390. Furthermore, "the identified deficiency in a city's training program must be closely related to the ultimate injury." *Id.* at 391 (emphasis omitted).

The City, by its own admission, offered no training to its officers regarding the nature of civil immigration violations and their lack of authority to enforce federal immigration laws. The only "training" on immigration law the City offered was to require officers to review its written policies. *See* Ex. U, Defs.'s Response to Question 4 of Second Set of Interrogatories (responding that City's training on immigration law was only "in the form of reviewing [TPD] policy and policy updates"); Ex. Q, Linton Dep. 34:3-36:7. For the same reasons noted *supra* pp. 17-20, the City acted with deliberate indifference in failing to train TPD officers on immigration issues.

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Binding case law, legal guidance from state authorities, and the City's large immigrant population all rendered "the need for more or different training . . . obvious." *Canton*, 489 U.S. at 390. Despite this obvious need, the City provided no training on immigration-related issues.

Indeed, none of the Defendant Officers could recall receiving any training on the appropriate circumstances for enforcing federal immigration law or assisting federal immigration authorities. Ex. F, Thomas Dep. 52:2-9, 60:21-24 (testifying that he received no training on immigration law); Ex. J, Gardner Dep. 86:10-21; Ex. H, Tiemann Dep. 25:4-23, 29:12-24; Ex. K, Stephenson Dep. 26:22-25, 27:1-15 (stating he has received no training on when police officers can enforce immigration law, or when it is appropriate to work with ICE); *see also* Ex. T, Prasad Dep. 41:7-9. The Defendant Officers' understanding of when they may enforce federal immigration law also reflects this complete lack of training. For example, Officer Thomas stated in his deposition that a local law enforcement officer can enforce both criminal and civil immigration law and that it is a crime to be unlawfully present in the United States or to work unlawfully in the United States. Ex. F, Thomas Dep. 54:21-56:23. Other officers stated similar misunderstandings of federal immigration law and their own authority to enforce that law, Ex. H, Tiemann Dep. 27:2-28:1; Ex. K, Stephenson Dep. 27:16-21; or expressed a lack of knowledge regarding relevant immigration law matters. Ex. T, Prasad Dep. 42:17-43:15.

IV. Mr. Rodriguez satisfies the requirements for injunctive and declaratory relief to prevent future constitutional violations.

While TPD Chief Linton immediately issued a directive after the February 8, 2018, incident, he made clear that the policy does not change the TPD's operations, but just brings a decision about an administrative warrant to "my level." Ex Q, Linton. Dep. 83:10-11, 100:8-18 (noting that "we haven't really changed anything"). Moreover, TPD has not incorporated the City ordinance that was enacted as a result of the incident. *See supra* p. 8. Consequently, Mr.

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Rodriguez seeks permanent injunctive relief to enjoin TPD's policy, as well as declaratory relief stating that Defendants' policy of seizing an individual to investigate an administrative warrant is unconstitutional.

First, Mr. Rodriguez has standing to pursue both an injunction and declaratory relief. A plaintiff that seeks an injunction based on a past incident must point to a "real and immediate threat" that he or she will face "repeated injury" to have standing to request such relief. *See Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (citation omitted). To demonstrate such a real and immediate threat, Mr. Rodriguez must show (1) that TPD officers always detain people on a civil immigration warrant, or (2) that the City has a policy of seizing individuals based on a civil immigration warrant. *Lyons*, 461 U.S. at 106; *LaDuke v. Nelson*, 762 F.2d 1318, 1326 (9th Cir. 1985) (distinguishing result in *Lyons* in part because of an "official INS policy for the conduct of ranch checks"); *Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001) (inmates had standing for injunctive relief where Idaho Department of Corrections had a retaliation policy).

Here, Mr. Rodriguez can point to Defendants' policy that requires TPD officers to unconstitutionally detain him. As detailed above, TPD policy instructs officers to detain individuals based on an ICE warrant while requesting direction from the chain of command. *See supra* pp. 6-8. Both Chief Linton and other officers articulated this understanding of TPD policy. *See supra* p. 7. Moreover, despite a City Ordinance to the contrary, the TPD continues *not* to differentiate between administrative warrants and criminal warrants. *See supra* pp. 6-8. The Officer Defendants' fundamental misunderstanding of administrative warrants further underscores the City's policy and the high likelihood that Mr. Rodriguez would again be seized unconstitutionally if he reencounters the TPD. *See supra* pp. 15-18, 21. Such a reencounter is not speculative. As Mr. Rodriguez explained to the Officer Defendants, criminal activity occurs

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regularly on his property. *See supra* p. 2. Over the past few years, his house has been burglarized and he has he has been the victim of several trespassers. *Id.* Moreover, Mr. Rodriguez has reported two of these incidents to the police, underscoring the likelihood that he will again become subject to the City's seizure policy. Ex. D, Mr. Rodriguez's 2016 Police Report.[4]

Second, Mr. Rodriguez satisfies the requirements to obtain declaratory relief and permanent injunctive relief. As for declaratory relief, the City's policy is unconstitutional for the reasons explained above—it authorizes seizures based on warrants that local law enforcement may not enforce. *See supra* pp. 10-16. As for permanent injunctive relief, "the party seeking [such] relief [must] demonstrate[] that: (1) it is likely to suffer irreparable injury that cannot be redressed by an award of damages; (2) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (3) that the public interest would not be disserved by a permanent injunction." *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1243 (9th Cir. 2018) (internal quotation marks omitted).

Mr. Rodriguez satisfies all these elements. Unconstitutional seizures are a well-established form of irreparable injury for which an injunction is an appropriate remedy. *Melendres*, 695 F.3d at 1002. Moreover, the deprivation of constitutional rights also provides a basis to provide an injunctive remedy. *Id.*; *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of First Amendment freedoms, even for a short time, would result in irreparable injury). The balance of hardships and public interest also favor Mr. Rodriguez. In cases like this one—where the government is the opposing party—these two factors merge. *See Medina v. U.S. Dep't of Homeland Sec.*, 313 F. Supp. 3d 1237, 1252 (W.D. Wash. 2018). First, "it is always in the

[4] For similar reasons, Mr. Rodriguez has standing to pursue declaratory relief regarding the City's current policy. *See Hodgers-Durgin*, 199 F.3d at 1044; *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007).

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public interest to remedy deprivation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (citation omitted). Furthermore, an injunction is appropriate here given the evident confusion and conflict in the City's policies. "[T]he public interest cannot be disserved by an injunction that brings clarity to all parties and to citizens dependent on public services." *City & Cty. of San Francisco*, 897 F.3d at 1244. Finally, an injunction here would enhance public security and safety. Noncitizens report crimes at lower rates when they fear that doing so could result in immigration consequences—precisely what happened in this case. *See, e.g.*, Nik Theodore, Dep't of Urban Planning & Policy, Univ. of Illinois, Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement, 5-6 (2013) (concluding from survey results that "because police increasingly are involved in enforcing immigration laws, a substantial share of the Latino population in the surveyed counties is less likely to initiate contact with local law enforcement authorities"); James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. Times, Oct. 9, 2017. Such data further supports issuing an injunction.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant summary judgment in his favor on the claims asserted herein.

Dated this 8th day of January, 2018.

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s/ Matt Adams
Matt Adams, WSBA #28287

s/ Leila Kang
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s/ Aaron Korthuis
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CERTIFICATE OF SERVICE

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

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And I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: None.

DATED this 8th day of January, 2019.

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