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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ANDRES SOSA SEGURA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 2:19-cv-00219-SAB

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

11/12/20
With Oral Argument: 9:30 A.M.
Video Hearing

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I. INTRODUCTION

On July 24, 2017, Plaintiff Andres Sosa Segura was returning home from Montana to Washington to be with his family. While he was transferring buses at the Spokane Intermodal Center (the "Center"), two Customs and Border Protection ("CBP") agents singled out Mr. Sosa for questioning, then took him to a parking lot for further detention after Mr. Sosa produced a "Know Your Rights" ("KYR") card. During the detention, the agents observed that Mr. Sosa was wearing an ankle monitor and ran a records check that revealed Mr. Sosa had been previously arrested and charged by Immigration and Customs Enforcement ("ICE"). Mr. Sosa was not a flight risk. Nevertheless, the agents proceeded to arrest Mr. Sosa for the same offense for which ICE had already arrested him. The agents placed Mr. Sosa in a patrol vehicle and transported him to the Colville Border Patrol Station where they fingerprinted Mr. Sosa and investigated him further before finally releasing him.

These undisputed facts demonstrate Mr. Sosa is entitled to summary judgment as to the USA's liability for false arrest and false imprisonment.[1] As a matter of law, and as the agents admit, the CBP agents arrested Mr. Sosa when they transported him to a Border Patrol facility for further investigation.

Moreover, at the time of the arrest, there is no dispute that the agents lacked a warrant and did not consider Mr. Sosa a flight risk. Under the statute governing the agents' warrantless arrest authority, not only did the CBP agents need probable cause to suspect that Mr. Sosa was in the United States in violation of federal immigration

[1] Due to factual disputes, Mr. Sosa reserves his WLAD claim for trial.

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law or had committed an offense against the United States, but they also needed probable cause to believe Mr. Sosa was likely to escape before a warrant could be issued. 8 U.S.C § 1357(a)(2), (5). Here, however, the agents both testified they did not think Mr. Sosa was a flight risk. Indeed, Mr. Sosa also wore an ankle monitor, which the agents understood had been issued in connection with Mr. Sosa's release on bond in a pending immigration proceeding.

Further, the CBP agents' arrest violated the rule that an individual out on bond cannot be arrested again based on probable cause for the same offense. The Supreme Court has applied this rule to immigration cases. Rearrests are unconstitutional because seizures must have a purpose. Once that purpose is exhausted, further seizure for the same basis is unreasonable; otherwise, an individual on bond could be harassed by continual rearrests based on the continuing existence of probable cause for the same offense. There is no dispute that ICE had already arrested and charged Mr. Sosa for being unlawfully present in the USA, that Mr. Sosa was out on bond for that violation, and that the agents knew these facts. The agents' arrest was unlawful because the only basis for that arrest—to ensure he answered charges for the same violation for which he was out on bond—was already exhausted.

II. STATEMENT OF FACTS

A. CBP's Transportation Checks at the Spokane Intermodal Center

The Spokane Intermodal Center is a bus and train station located in Spokane, Washington, over 100 miles by road from the U.S.-Canadian border. Statement of Material Facts ("SOMF") ¶¶ 1-2. [redacted]

[redacted]

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[redacted]

B. Mr. Sosa's October 2016 Arrest by ICE

In October 2016, nine months before the incident which is the subject of this dispute, ICE agents arrested Mr. Sosa as he and his wife exited a courthouse in Skamania County, Washington. *Id.* ¶ 16. ICE charged Mr. Sosa with being a noncitizen[2] who is present in the USA without admission. *Id.* ¶ 17; *see* 8 U.S.C. § 1182(a)(6)(A)(i). ICE then placed Mr. Sosa into custody at the Northwest Detention Center. *Id.* ¶ 18-19. After five weeks in detention, Mr. Sosa received a bond hearing, where an immigration judge ordered his release on payment of a bond. *Id.* ¶ 19. Mr. Sosa paid the bond with the assistance of a bond agency, who required him to wear an ankle monitor in connection with his release. *Id.* ¶ 20. Ankle monitors are used to track the wearer's location. *Id.* ¶ 21. As of July 24, 2017, those charges remained pending and Mr. Sosa continued to wear the ankle monitor. *Id.* ¶ 22. As of July 24, 2017, Mr. Sosa had not violated any of the terms of his immigration bond. *Id.* ¶ 22.

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[2] Given the derogatory nature of the term "alien," Plaintiff follows the lead of the Supreme Court's recent decision in *Barton v. Barr*, 140 S. Ct. 1442 (2020), and "uses the term 'noncitizen' as equivalent to the statutory term 'alien.' " *Id.* at 1446, n.2.

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C. Mr. Sosa's Initial Encounter with the CBP Agents

On July 24, 2017, Mr. Sosa arrived at the Center after riding a Greyhound bus from Montana. *Id.* ¶¶ 24-26. He was scheduled to transfer to a bus bound for Hood River, Oregon, near his home and family in Underwood, Washington. *Id*. That day, Border Patrol Agents Randall Roberts and Brian Flynn were conducting transportation checks and were standing outside the passenger waiting area when Mr. Sosa's bus arrived. *Id.* ¶¶ 27-28. Mr. Sosa was one of the last individuals to leave the bus, but he was not the last person. *Id.* ¶ 29. Like many of the other individuals exiting the bus, Mr. Sosa entered the bus station. *Id.* ¶ 30. The agents approached Mr. Sosa without speaking to any other bus passengers. *Id.* ¶ 31-32.

The parties disagree about what occurred next. *Id.* ¶ 33. Mr. Sosa explained that after approaching him, the agents immediately demanded to know where he was from. *Id.* ¶ 34. Mr. Sosa did not respond to these questions, asked if the agents were going to arrest him, and handed the agents a "Know Your Rights" card. *Id*. The KYR card stated that Mr. Sosa did not wish to talk and wanted to speak with an attorney. *Id*. Rather than respecting these rights, the agents continued to question Mr. Sosa and then led him outside the building to their patrol vehicles in the parking lot. *Id*.

Agents Roberts and Flynn, and the I-44 report that Agent Roberts prepared regarding the incident, each provide different versions of these initial moments. According to Agent Roberts' testimony, he saw Mr. Sosa on the Greyhound bus looking at him, although he later admitted he could not see Mr. Sosa's eyes through the tinted windows. *Id.* ¶ 36. After Mr. Sosa exited, Agent Roberts approached Mr. Sosa and asked Mr. Sosa where he was from. *Id*. According to Agent Roberts, Mr.

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Sosa did not respond and handed Agent Roberts his driver's license. *Id*. Roberts then asked Mr. Sosa where he was born, and Mr. Sosa allegedly responded "Mexico." *Id*. In deposition, Agent Roberts claimed Mr. Sosa admitted to not having any immigration documents, and that after making that admission, Mr. Sosa produced his KYR Card. *Id.* However, Agent Roberts' report of Mr. Sosa's arrest—which required Roberts to list "all the circumstances surrounding the . . . seizure"—does not say that Mr. Sosa admitted to not having any immigration documents prior to producing his KYR Card. *Id.* ¶ 35.

Agent Flynn asserted that after walking up to Mr. Sosa, Agent Roberts asked Mr. Sosa, "Of what country are you a citizen?" *Id.* ¶ 37. Agent Flynn testified that Mr. Sosa replied "Mexico," and that Agent Roberts then asked if Mr. Sosa had any documentation. *Id*. According to Agent Flynn, Mr. Sosa did *not* respond and instead produced his KYR Card. *Id*. Agent Flynn stated that Mr. Sosa produced his Washington state driver's license at some point after this while being escorted to the patrol vehicles. *Id*.

D. The CBP Agents' Detention of Mr. Sosa in the Parking Lot

While the initial moments of the encounter are disputed, the record establishes key undisputed facts about what happened after Mr. Sosa and the agents went outside to the patrol vehicle. After arriving at the patrol vehicle(s), Flynn conducted a pat-down search of Mr. Sosa and became aware of Mr. Sosa's ankle monitor. *Id.* ¶ 41. The parties dispute whether Mr. Sosa explained the reason for the monitor. *Id.* ¶ 42.

Flynn then proceeded to use Mr. Sosa's driver's license to run a records check on Mr. Sosa that revealed Mr. Sosa's earlier immigration arrest for unlawful

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presence by ICE. *Id*. ¶ 43, 46. This records check was not documented on the I-44. *Id*. ¶ 53. Agent Flynn called Dispatcher Robert Peterson ("Pete"), who ran Mr. Sosa's name through a large number of law enforcement and immigration-related databases. *Id.* ¶ 45. Based on those results, Pete informed Flynn that (1) Mr. Sosa had previously been arrested by ICE, and that (2) due to that arrest, he had been charged as a noncitizen present without admission in the United States. *Id.* ¶¶ 46-47. Pete also explained to Flynn that Mr. Sosa's ankle monitor was likely connected to this prior ICE arrest. *Id.* ¶ 48. The database query also revealed Mr. Sosa's "A number," a unique identifier for individuals who have had prior contact with the immigration system. *Id.* ¶ 49-50. Following the call, Pete emailed Flynn a copy of the query results, which also showed Mr. Sosa's arrest on October 6, 2016 by ICE/ERO Portland on the charge of "[noncitizen] present without admission or parole." *Id.* ¶ 51.

Despite learning about Mr. Sosa's prior arrest and charges, Roberts and Flynn decided to arrest Mr. Sosa. *Id.* ¶ 53. As both agents explained in their depositions, they arrested Mr. Sosa because they believed they had probable cause to believe Mr. Sosa was a noncitizen present in the United States without admission—the exact same offense for which Mr. Sosa had already been arrested and charged by ICE, and which was the basis for the immigration charges pending against him. *Id.* ¶ 55. The agents did not have a warrant for Mr. Sosa's arrest. *Id.* ¶ 56. Mr. Sosa's demeanor was compliant and nice, and both agents testified that neither considered Mr. Sosa a flight risk. *Id.* ¶ 56, 57.

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E. The CBP Agents' Detention of Mr. Sosa at Colville Station

Agent Roberts and Flynn then transported Mr. Sosa 1.5 hours to the Border Patrol Station in Colville, Washington. The parties dispute some of the facts regarding what happened at the station, but soon after arrival, the agents took Mr. Sosa's fingerprints. *Id.* ¶ 59. Sometime later, one of the agents or their supervisor contacted ICE Officer Koby Williams of the Yakima ICE office. *Id.* ¶ 60. Officer Williams explained that the Border Patrol should release Mr. Sosa so long as there were no additional charges to bring against him. *Id.* ¶ 61. Based on that information, the agents arranged for Mr. Sosa's transportation back to the Center. *Id.* ¶ 63. By this time, Mr. Sosa had long since missed his bus, and his wife was forced to drive several hours from Underwood to Spokane to pick him up. *Id.* ¶ 64. In total, from the time that Mr. Sosa was initially detained until his return to the Center, Mr. Sosa was in the custody of CBP agents for at least four hours. *Id.* ¶ 65.

III. LEGAL STANDARD

Summary judgment should be granted where there is no genuine dispute as to any material fact, such that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "An issue is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute is 'material' only if it could affect the outcome of the suit." *In re Barboza*, 545 F.3d 702, 707 (9th Cir. 2008).

Under Washington law, the "gist of an action for false arrest or false imprisonment is the unlawful violation of a person's right of personal liberty or the restraint of that person without legal authority." *Vargas Ramirez v. U.S.*, 93 F. Supp.

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3d 1207, 1218 (W.D. Wash. 2015) (quoting *Bender v. City of Seattle*, 99 Wn.2d 582, 591 (1983)). "[A] lawful seizure . . . is a complete defense to a claim for false arrest." *Id*. (citing *Hanson v. City of Snohomish*, 121 Wn.2d 552, 563-64 (1993)). The standard for false imprisonment is the same. *Bender*, 99 Wn.2d at 591. "The authority of federal immigration officers to detain and arrest suspected [noncitizens] is limited by the strictures of the Fourth Amendment." *Vargas Ramirez*, 93 F. Supp. 3d at 1218 (citing *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 725 (9th Cir.1983)). "[T]he lawfulness of a Border Patrol agent's seizure turns on the familiar principles of reasonable suspicion and probable cause." *Id*. "Whether an arrest is supported by probable cause is typically a mixed question of law and fact." *Id.* at 1222.

IV. ARGUMENT

A. General Fourth Amendment Principles

There are two types of police seizures under the Fourth Amendment—brief, investigative stops and full-scale arrests. *Reynaga Hernandez v. Skinner*, 969 F.3d 930, 937 (9th Cir. 2020). The type of seizure determines which constitutional standard applies. An investigative stop "must be supported by reasonable suspicion that the person is unlawfully present in the United States." *Vargas Ramirez*, 93 F. Supp. 3d at 1218. An arrest must either be supported by a warrant or, when Border Patrol agents conduct a warrantless arrest, probable cause of an immigration violation or offense and a flight risk determination. *See id*.; 8 U.S.C § 1357(a)(2), (5). When analyzing reasonable suspicion, courts "examine the totality of the circumstances to determine whether a detaining officer has a particularized and objective basis for suspecting criminal wrongdoing." *Reynaga Hernadez*, 969 F.3d

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at 937 (internal quotation marks omitted). "An officer cannot rely only upon generalizations that 'would cast suspicion on large segments of the [law-abiding] population.'" *Id.* (quoting *U.S. v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir. 2006)).

"Probable cause is more difficult to establish than reasonable suspicion, and is determined at the time the arrest is made." *Reynaga Hernadez*, 969 F.3d. at 938. Probable cause must be based on "reasonably trustworthy information sufficient to warrant a prudent person in believing that the accused had committed or was committing an offense." *Id*. (internal quotation marks and citation omitted).

Here, factual disputes prevent summary judgment as to whether the USA is liable for false arrest based on the CBP agents' reasonable suspicion or probable cause to believe Mr. Sosa was unlawfully present in the USA when the agents encountered Mr. Sosa inside the bus terminal, then took him to the parking lot for further questioning. *See generally* SOMF ¶¶ 34-38. However, the USA is liable for false arrest as a matter of law for the CBP agents' actions after this point. The undisputed facts show that the agents then arrested Mr. Sosa by placing him in a patrol vehicle and transporting him to Colville Station even though (1) Mr. Sosa was not a flight risk, and (2) an immigration judge had released Mr. Sosa on bond after ICE had already arrested on the same charges as the CBP agents about nine months before the July 24 incident.

B. The CBP Agents Arrested Mr. Sosa When They Put Mr. Sosa in the Car and Took Him to Colville Station.

Mr. Sosa was under arrest at the time the agents placed him in their patrol vehicle to transport him 1.5 hours to the Colville Border Station. By this point, the

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stop had gone on much more "than a minute" and "a brief question or two." *Reynaga Hernandez*, 969 F.3d at 938 (citation omitted). Indeed, the CBP agents testified that Mr. Sosa was under arrest, believing they had probable cause to arrest Mr. Sosa for being unlawfully present without admission. SOMF ¶ 54. Moreover, the Supreme Court has made clear that transport to a police station signifies an arrest has occurred. *Kaupp v. Tex.*, 538 U.S. 626, 630 (2003); *Hayes v. Fla.*, 470 U.S. 811, 816 (1985). "Such involuntary transport to a police station for questioning is 'sufficiently like arrest to invoke the traditional rule that arrests may constitutionally be made only on probable cause.'" *Kaupp* 538 U.S. at 630 (quoting *Hayes*, 470 U.S. at 816); *see also Pierce v. Multnomah Cty.*, 76 F.3d 1032, 1040 (9th Cir. 1996) (similar).

C. The CBP Agents' Warrantless Arrest of Mr. Sosa Was Unlawful Because Mr. Sosa Was Not Likely to Escape.

It is undisputed, and the USA admits, that Agents Flynn and Roberts did not have a warrant for Mr. Sosa's arrest. SOMF ¶ 56. Accordingly, the CBP agents were authorized to arrest Mr. Sosa only under the circumstances set forth in 8 U.S.C. § 1357(a)(2) and (a)(5), which govern CBP agents' warrantless arrests authority.

The Immigration and Nationality Act specifies when CBP agents may make a warrantless arrest. To make a warrantless arrest, a Border Patrol agent must have "reason to believe" both that (1) the individual "so arrested is in the United States in violation of any [a] law or regulation [governing admission, exclusion, expulsion, or removal of noncitizens]" ***and*** (2) the individual "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). Similarly, 8 U.S.C. §1357(a)(5) conditions immigration officers' warrantless arrest authority for any

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offense committed in the presence of an officer on "the likelihood of the person escaping before a warrant can be obtained." Controlling case law confirms an immigration officer must have ***both*** probable cause of an offense and probable cause of flight risk at the time of the arrest. *See Arizona v. U.S.*, 567 U.S. 387, 408 (2012) (holding that an Arizona statue allowing state and local officers to make warrantless arrests without meeting "likely to escape" requirement was preempted by 8 U.S.C. § 1357(a)(2) because the authority of federal officers to arrest an individual without a warrant is limited to situations where there is an individual is "likely to escape" before a warrant can be obtained); *U.S. v. Cantu*, 519 F.2d 494, 496-97 (7th Cir. 1975) (observing that the "likelihood of . . . escaping" is a "statutory limitation" that "is always seriously applied").

This flight-risk determination is not "mere verbiage." *U.S. v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 889 (S.D. Ohio 2016). As noted above, Courts of Appeals have made clear that this statutory requirement is one that must be "seriously applied." *Cantu*, 519 F.2d at 496-97; *see also De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) (citation omitted) ("[E]ven if an agent has reasonable belief, before making an arrest, there must also be a 'likelihood of the person escaping before a warrant can be obtained for his arrest.'"); *Westover v. Reno*, 202 F.3d 475, 479-80 (1st Cir. 2000) (finding arrest was "in direct violation" of § 1357(a)(2) because "[w]hile INS agents may have had probable cause to arrest Westover . . . there is no evidence that Westover was likely to escape")

The statute's "likely to escape" language means "likely to evade detention by immigration officers." *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1006 (N.D. Ill.

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2016). The phrase "reason to believe," moreover, "requires a particularized inquiry." *Id*. at 1007. Thus, an immigration official can only make a warrantless arrest where the official has a particularized basis to believe the individual is likely to evade detention by immigration officials before a warrant can be obtained. *See Meza v. Campos*, 500 F.2d 33, 34 (9th Cir. 1974) (applying an individualized likelihood-of-escape analysis).

Courts look to the objective facts available to the immigration official at the time of arrest in evaluating whether sufficient probable cause existed to believe an individual was likely to escape. *See, e.g., U.S. v. Ravelo-Rodriguez*, 2012 WL 1597390, at *16-17 (E.D. Tenn. Mar. 12, 2012), *report and recommendation adopted by* 212 WL 11598074 (E.D. Tenn. May 7, 2012) (noting "a court examines the objective facts within the knowledge of the agents in making a determination" as to whether an individual was likely to escape at the time of arrest) (internal citations and quotations omitted). Probable cause to believe an individual is likely to flee does not exist where the arresting agent knows the individual's name and address, the individual is nowhere near the border at the time of arrest, the individual shows no signs of running or attempting to escape, and the individual is compliant with the agent's instructions throughout the encounter. *See, e.g., U.S. v. Bautista-Ramos*, 2018 WL 5726236, at *7 (N.D. Iowa 2018), *report and recommendation adopted by* 2018 WL 57239848 (N.D. Iowa Nov. 1, 2018) (holding ICE officers did not have reason to believe defendant posed a risk of flight at the time of his warrantless arrest because ICE officers had previously "determined [defendant] was not a flight risk," defendant was not anywhere near the border, the agents knew

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defendant's true name and other identifying information, and the officers had "information suggesting [defendant] had been present in northwest Iowa since at least 2006"); *Davila v. U.S.*, 247 F. Supp. 3d 650, 669-70 (W.D. Penn. 2017) (declining to hold as a matter of law that agents possessed probable cause to believe plaintiff was likely to escape despite plaintiff being in vehicle and telling agents she was born in Mexico because she was nowhere near the border or headed in that direction, presented her driver's license showing her Pennsylvania address, and did not show "signs of running"); *Pacheco-Alvarez*, 227 F. Supp. 3d at 872, 889-90 (citation omitted) (holding that the defendant did not pose an escape risk, even though fingerprint evidence and his admissions confirmed he was in the country unlawfully, because defendant was arrested "just a few miles from his home" and there was no evidence that he "attempted to evade custody" or was "looking for an opportunity to run"); *Araujo v. U.S.*, 301 F. Supp. 2d 1095, 1102 (N.D. Cal. 2004) (holding defendant was not likely to escape when he was arrested at the home he shared with his wife, a United States citizen, and had filed an application to adjust his immigration status).

Here, it is undisputed that the CBP agents failed to comply with the flight risk requirement under 8 U.S.C. § 1357(a)(2) and (a)(5) when they arrested Mr. Sosa. Critically, both Agents Roberts and Flynn testified that neither considered Mr. Sosa a flight risk when they arrested him in the Intermodal Center's parking lot. SOMF ¶ 57. That alone should end this Court's inquiry. The agents' concessions that Mr. Sosa did not present a flight risk renders Mr. Sosa's warrantless arrest patently unlawful. *See Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir.

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1995) (holding that "Section 1357(a)(2) requires that the arresting officer reasonably believe that the [noncitizen] is in the country illegally *and* that [he] is 'likely to escape before a warrant can be obtained for [his] arrest.").

Even if Agents Roberts and Flynn had not acknowledged that Mr. Sosa posed no flight risk at the time of his arrest, the undisputed facts show they still would have lacked the requisite probable cause to believe Mr. Sosa was likely to flee. The agents knew Mr. Sosa's name, date of birth, and address because Mr. Sosa had provided the agents with his valid Washington State Driver's License. SOMF ¶ 39. They had also successfully located him in the CBP database and had his A number, which is a unique identifier for noncitizens. *Id.* ¶¶ 50-51. They also learned that Mr. Sosa had recently been arrested by ICE and had pending immigration charges, and were informed that Mr. Sosa's ankle monitor was likely tied to that arrest. *Id.* ¶¶ 47-49. In fact, the ankle monitor provided yet another mechanism to ensure Mr. Sosa's appearance at any future proceedings; both agents testified that the purpose of an ankle monitor was to track the individual wearing the monitor. *Id.* ¶ 21. Mr. Sosa was also not anywhere near the border at the time of his arrest. *Id.* ¶ 2. Finally, there is also no evidence that Mr. Sosa attempted to run or evade custody during his encounter with Agents Roberts and Flynn. To the contrary, the undisputed facts show that Mr. Sosa was compliant and behaved nicely. *Id.* ¶ 56.

As a result, there is no indication that the agents would have had trouble finding Mr. Sosa again if they had released him while they obtained a warrant. Taken together, these objective factors make clear Agents Roberts and Flynn lacked probable cause to believe Mr. Sosa was likely to escape before they could obtain a

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warrant for his arrest. *See, e.g., Bautista-Ramos*, 2018 WL 5726236, at *7; *Davila*, 247 F. Supp. 3d at 669-70; *Pacheco-Alvarez*, 227 F. Supp. 3d at 872, 889-90; *Araujo*, 301 F. Supp. 2d at 1102.

There is also no question that Agents Roberts and Flynn arrested Mr. Sosa solely because they believed they had probable cause Mr. Sosa was present in the United States without admission, as they testified during their depositions. SOMF ¶ 54. Courts have made clear that, under these circumstances, a flight risk determination is necessary. "'[A] holding that in every case in which an [noncitizen] is deportable an arrest can be made without a warrant . . . would be contrary to the statute itself, which requires a reasonable belief that the [noncitizen] is likely to escape,' *in addition to* a reasonable belief that the [noncitizen] is deportable." *Bautista-Ramos*, 2018 WL 5726236, at *6 (emphasis added) (internal quotation marks omitted) (quoting *Ravelo-Rodriguez*, 2012 WL 1597390, at *16). [redacted]

Because Agents Roberts and Flynn lacked "reason to believe" Mr. Sosa posed a risk of escape before they could obtain an arrest warrant, his warrantless arrest violated 8 U.S.C. § 1357(a)(2).

D. The CBP Agents' Arrest of Mr. Sosa Was Unlawful Because a Person Who Has Been Released on Bond Cannot Be Re-Arrested Based on Probable Cause for the Same Offense.

In addition, the CBP agents' arrest of Mr. Sosa was unlawful for another

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reason—it violated the fundamental rule that an individual who is out on bail cannot be arrested again based on probable cause for the same offense. As courts have explained in the immigration context, "Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also, e.g.*, *Lopez v. Sessions*, 2018 WL 2932726, at *13 (S.D.N.Y. June 12, 2018).

The Seventh Circuit recently addressed this issue in a non-immigration case. *See Williams v. Dart*, 967 F.3d 625, 634-35 (7th Cir. 2020), *reh'g denied* (Aug. 21, 2020). In *Dart*, the Cook County Circuit Court implemented a new pretrial release policy that reduced the use of cash bail. *Id*. at 630. The Sheriff disagreed with the new bail policy and refused to release the plaintiffs despite the court's bail orders. *See id*. at 630-31. The Seventh Circuit concluded the Sheriff's unilateral seizures could not be supported by the probable cause supporting the original arrest:

> It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable. … [T]he primary purpose of an arrest is to ensure the arrestee appears to answer charges. This purpose is accomplished by bringing the arrestee promptly before the court so that it may issue one of three orders: discharge, commitment, or bail….
>
> Once the arrestee appears before the court, the purpose of the initial seizure has been accomplished. Further seizure requires a court order or new cause; the original probable cause determination is no justification.…
>
> [N]o one disputes "the continuing existence of 'probable cause'" to believe plaintiffs committed the offenses charged. Once plaintiffs

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> appeared before the court, however, such probable cause ceased to be a justification for the Sheriff's unilateral seizure. Put differently, the original probable cause was "exhausted" by the courts' bail orders.

Id. at 634-35 (internal citations omitted).

Similarly, in an earlier Seventh Circuit case, then-Judge Stevens addressed a defendant who was rearrested for the same offense while out on bond, concluding the rearrest was unconstitutional. *U.S. v. Holmes*, 452 F.2d 249, 260-61 (7th Cir. 1971). Despite no new warrant being issued for his arrest, agents arrested the defendant after being advised of a superseding indictment, even though the judge ordered that the defendant's previous bond should stand. *Id*. at 260. Because the defendant was under indictment, probable cause for a crime technically existed. *Id*. at 260-61. "But since he had been admitted to bail, no purpose could have been served by continually rearresting him." *Id*. at 261. As the court explained,

> We recognize that a variety of valid causes for a rearrest of a person admitted to bail may exist, but certainly the continuing knowledge of his possible guilt of the offense charged in the indictment is not itself sufficient; *otherwise, harassment by continual rearrests could be justified by the continuing existence of 'probable cause.'* The Fourth Amendment requires both a reasonable foundation for a charge of crime and also the avoidance of 'rash and unreasonable interferences with privacy.' Since there was no valid justification for [the defendant's] arrest, we conclude that the search of his person on October 18, 1967, was prohibited by the Fourth Amendment.

Id. (emphasis added) (internal citation omitted). The court further clarified that its holding did not require a determination of whether the agents acted in good or bad faith. *Id*.

The Supreme Court has held that the prohibition against rearrest of an individual out on bail applies in the context of federal immigration detentions. In

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Carlson v. Landon, an immigrant was arrested under a warrant charging that he was subject to deportation based on his membership the Communist party; he was then released on bail. 342 U.S. 524, 531 (1952). After the enactment of a new federal act addressing deportability of Communists, the immigrant was taken into custody on the same warrant, but this time held without bail. *Id*. The immigrant challenged his detention, arguing that "his rearrest on the outstanding warrant, after he had once been released on bai[l], was improper." *Id*. at 546. The Supreme Court agreed:

> [T]he rule in criminal cases is that a warrant once executed is exhausted. This guards against precipitate rearrest. . . . Although in a civil proceeding for deportation the same branch of government issues and executes the warrant, we think the better practice is to require in those cases also a new warrant.

Id. at 546-47 (internal citations omitted). The court ordered his release absent a new warrant. *Id*. at 547.

Courts have continued to apply these rules in the immigration context. As one district court has explained,

> The federal government sometimes releases noncitizens on bond or parole while their removal proceedings are pending. Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk. Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings.

Saravia, 280 F. Supp. 3d at 1176. "'Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment." *Id*. at 1196 (quoting *U.S. v. Kordosky*, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988)). And

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another district court has explained that rearresting an unaccompanied noncitizen minor "solely on the ground that they are removable—the same basis on which they were detained in the first place" would be a result "in direct conflict with Congressional intent, constitutional due process, and common sense." *Lopez*, 2018 WL 2932726, at *13.

Here, there is no dispute that prior to the July 24 incident, ICE had previously charged Mr. Sosa with being unlawfully present in the USA, Mr. Sosa had pending immigration charges against him, and the immigration court had released Mr. Sosa on bond. SOMF ¶¶ 16-22. There is also no dispute that Agents Roberts and Flynn rearrested Mr. Sosa for the same offense for which he was out on bond—being unlawfully present in the USA. *Compare id.* ¶ 55, with *id*. ¶ 17, 52. Finally, there is no dispute that Mr. Sosa had not violated any of the terms of his immigration bond. SOMF ¶ 23. Thus, the undisputed facts demonstrate the CBP agents' arrest of Mr. Sosa was unconstitutional because the only basis for the arrest—probable cause that Mr. Sosa was unlawfully present in the USA—was exhausted.

In addition, it is undisputed that at least one of the agents had learned about Mr. Sosa's ankle monitor and had discussed it with the dispatcher before the agents transported Mr. Sosa to Colville Station. SOMF ¶¶ 41-49. As noted above, Agent Flynn called a dispatcher and learned that Mr. Sosa had been arrested by ICE and charged with being unlawfully present less than a year before the July 24 incident. *Id.* ¶¶ 44-52. The dispatcher on that call correctly concluded and advised Agent Flynn that Mr. Sosa's ankle monitor was related to his ICE arrest. *Id.* ¶ 48. As such, the undisputed facts demonstrate that the CBP agents knew Mr. Sosa had already

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been arrested and charged for being unlawfully present and released with the pending charge. Nevertheless, they chose to rearrest him to investigate the very same offense. Thus, the USA is liable for false arrest for Agent Roberts and Flynn's unlawful arrest of Mr. Sosa.

V. CONCLUSION

For the reasons stated above, the Court should grant Mr. Sosa's motion.

DATED this 22nd day of September, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for all parties of record.

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