

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

CLAUDIA VALDEZ-SANDOVAL

Plaintiff,

v.

DAVID C. WALCHER, in his official capacity of Sheriff of Arapahoe County, Colorado

Defendant.

COMPLAINT

INTRODUCTION

1. Late in the evening on June 28, 2012, Plaintiff Claudia Valdez-Sandoval fled from a physical confrontation with her husband. She ran to a neighbor's home and initiated a call to police to come and help her. Arapahoe County sheriff's deputies arrived and wound up arresting Ms. Valdez—not her husband—for domestic violence (a charge that was later dismissed). She was booked into the Arapahoe County Jail in the wee hours of Friday June 29, 2012.

2. On Friday morning, Ms. Valdez went to court and was released on a personal recognizance bond. The jail refused to release her, however, on the ground that Immigration and Customs Enforcement (ICE) had issued an "ICE hold," also known as an ICE detainer.

3. The ICE detainer stated that ICE had "initiated an investigation" to determine whether Ms. Valdez was subject to deportation proceedings. It asked the Arapahoe County Sheriff to continue to hold Ms. Valdez in custody an additional 48 hours (excluding weekends and holidays) after she would otherwise be released.

4. The Arapahoe County Sheriff's Office continued to hold Ms. Valdez in custody for an additional three days, solely on the ground that ICE had stated its interest in investigating her.

5. By holding Ms. Valdez in jail without legal authority, Defendant Arapahoe County Sheriff's Office deprived Ms. Valdez of her liberty without due process of law, in violation of the Fourteenth Amendment. The unlawful imprisonment also violated the right of Ms. Valdez to be free of unreasonable seizures, in violation of the Fourth Amendment. In this action, Ms. Valdez seeks compensation pursuant to 42 U.S.C. § 1983.

JURISDICTION AND VENUE

6. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

7. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All parties reside within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

PARTIES

8. Plaintiff Claudia Valdez-Sandoval is a resident of Colorado.

9. Defendant David C. Walcher is the Sheriff of Arapahoe County, Colorado. He is in charge of the Arapahoe County Sheriff's Office and the Arapahoe County Detention Facility ("ACDF"). He has custody and control of all persons confined in ACDF and is responsible for formulating policies applicable to the jail and detention of prisoners. Defendant Walcher is sued in his official capacity.

10. At all times relevant to this Complaint, Defendant and his employees and agents acted or failed to act under color of state law.

BACKGROUND ON IMMIGRATION DETAINERS

11. Immigration detainers (also called “ICE detainers” or “ICE holds”) are routinely issued by Immigration and Customs Enforcement division of the Department of Homeland Security (DHS). These detainers are issued on a standard form, ICE form I-247.

12. The I-247 form identifies a prisoner in the custody of a law enforcement agency, and it asks the law enforcement agency to continue to detain that prisoner for an additional 48 hours (excluding weekends and holidays) after he or she would otherwise be released.

13. Thus, detainers ask law enforcement agencies to hold the prisoner for up to an additional 5 days if the 48-hour period occurs over a three-day holiday weekend. ICE requests this extended detention so that it can decide whether to take that person into federal custody for a possible immigration violation.

14. Immigration detainers are not warrants; they are not court orders; they are not issued or approved by judges.

15. Instead, immigration detainers are unsworn documents that may be issued by a wide variety of immigration enforcement agents and deportation officers.

16. Immigration detainers do not represent a finding of a person’s immigration status.

17. The fact that ICE has issued a detainer does not mean that the subject is actually a non-citizen subject to deportation.

18. Even in a case where the subject of an immigration detainer is present in violation of federal immigration laws, that status is not a crime under federal or state law.

19. As ICE acknowledges and federal courts have held, an immigration detainer is merely a request, not a command that local law enforcement must obey.

20. In Colorado, the authority of a peace officer to make an arrest or otherwise deprive a person of liberty derives from the Colorado Constitution and the statutes enacted by the legislature.

21. No Colorado statute authorizes a peace officer to deprive persons of liberty on the ground that ICE has issued an immigration detainer. No Colorado statute authorizes a peace officer to deprive persons of liberty on the ground that federal immigration authorities suspect a civil violation of federal immigration law. Accordingly, Colorado sheriffs have no authority under Colorado law to deprive someone of liberty because ICE has issued an immigration detainer.

22. When Defendant relied on an immigration detainer to deprive Ms. Valdez of liberty, he acted without lawful authority.

FACTUAL ALLEGATIONS

23. Ms. Valdez has been living in the Denver metro area for fourteen years. At the time of the events described in this Complaint, she had been married for twelve years, and the couple had three children.

24. Late in the evening of June 28, 2012, Ms. Valdez had an argument with her husband that turned physical. Frightened, Ms. Valdez fled to a neighbor's house with her children and asked the neighbor to call the police to help her

25. Deputies from the Arapahoe County Sheriff's Office arrived. They wound up arresting Ms. Valdez on a domestic violence charge. The charge was dismissed soon afterwards.

26. Early on the morning of June 29, 2012, Ms. Valdez was booked into the Arapahoe County Detention Center on the domestic violence charge.

27. She was taken to court the morning of June 29, 2012, and the court granted her a personal recognizance (PR) bond.

28. Ms. Valdez signed the PR bond at 10:50 a.m. that day, at which point she was entitled to release.

29. Although Ms. Valdez was entitled to release from custody on Friday morning June 29, Defendant refused to release her. One or more employees of the Defendant told Ms. Valdez that she would remain incarcerated because ICE had placed a “hold” on her.

30. The immigration detainer that ACDF received named Ms. Valdez and stated that DHS had “initiated an investigation” to determine whether Ms. Valdez was subject to removal proceedings.

31. The detainer asked ACDF to continue to maintain custody of Ms. Valdez “for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, beyond the time when [she] would have otherwise been released” to allow ICE to take her into custody.

32. Pursuant to Defendant’s custom, practice, and/or policy of honoring immigration detainers and similar requests from ICE to maintain custody of prisoners after they would otherwise have been released, Ms. Valdez remained incarcerated in Defendant’s jail for an additional three days. During that three days, Defendant’s only ground for continuing to hold Ms. Valdez was the request from ICE to continue to maintain custody.

33. At no time during that three days did a judicial officer review the grounds for continuing to hold Ms. Valdez in custody. At no time did any judicial officer determine that the continued incarceration was based on probable cause. Indeed, at the moment that Defendant

first began to hold Ms. Valdez solely on the ground that ICE had requested continued custody, Defendant knew that no judicial officer would review the facts or the legal grounds for the detention while Ms. Valdez was incarcerated at ACDF.

34. With regard to the continued incarceration of Ms. Valdez in ACDF after her PR bond was authorized, all the actions and failures to act of Defendant and his employees were carried out pursuant to the policy, custom, and/or practice of the Defendant.

35. Ms. Valdez was released to ICE on Monday July 2, 2012 at 7:40 a.m.

36. Later that day, ICE released her on bond.

FIRST CLAIM FOR RELIEF
Fourth Amendment - 42 U.S.C. § 1983

37. The foregoing allegations are incorporated by reference.

38. The Fourth Amendment forbids unreasonable seizures.

39. Ms. Valdez was deprived of her liberty without lawful authority, in violation of her right to be free of unreasonable seizures.

40. When Defendant chose to hold Ms. Valdez on an immigration detainer, he carried out a new seizure that must be supported by probable cause.

41. Defendant did not have probable cause to detain Ms. Valdez or to deprive her of her liberty.

42. Defendant subjected Ms. Valdez to an unreasonable seizure in violation of her rights under the Fourth Amendment.

43. Defendant's customs, policies and/or practices described herein, adopted and implemented with deliberate indifference, caused the violation of Ms. Valdez's rights.

44. Ms. Valdez is entitled to compensatory damages, attorney's fees and costs pursuant to 42 U.S.C. § 1988, and any other relief the Court deems just.

SECOND CLAIM FOR RELIEF
Fourth and Fourteenth Amendment - 42 U.S.C. § 1983

45. The foregoing allegations are incorporated by reference.

46. The Fourth Amendment, or in the alternative the Due Process clause, require that all warrantless arrests or seizures of persons be supported by a prompt judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.

47. Absent prompt judicial determination that the deprivation of liberty is justified by law, the jailer must release the prisoner.

48. By choosing to continue to hold Ms. Valdez in custody solely on the basis of an immigration detainer, Defendant carried out a warrantless seizure or a warrantless arrest.

49. Defendant subjected Ms. Valdez to extended restraint of liberty without a prompt judicial determination of probable cause, in violation of the Fourth Amendment or, in the alternative, in violation of the Due Process Clause.

50. Defendant's customs, policies and/or practices described herein, adopted and implemented with deliberate indifference, caused the violation of Ms. Valdez's constitutional rights.

51. Ms. Valdez is entitled to compensatory damages, attorney's fees and costs pursuant to 42 U.S.C. § 1988, and any other relief the Court deems just.

THIRD CLAIM FOR RELIEF
Fourth and Fourteenth Amendment - 42 U.S.C. § 1983

52. The foregoing allegations are incorporated by reference.

53. Ms. Valdez was granted a personal recognizance bond entitling her to release, but Defendant refused to release her.

54. An arrestee obtains a liberty interest in being freed of detention once he or she is entitled to release on bond.

55. Defendant had no legitimate justification for declining to release Ms. Valdez after she was granted a PR bond.

56. Detention of Ms. Valdez based on the immigration detainer constituted arbitrary, wrongful government action. By refusing to release Ms. Valdez after she was granted a personal recognizance bond, Defendant subjected Ms. Valdez to a violation of her rights under the Fourth Amendment and the Due Process Clause.

57. Defendant's customs, policies and/or practices described herein, adopted and implemented with deliberate indifference, caused the violation of Ms. Valdez's constitutional rights.

58. Ms. Valdez is entitled to compensatory damages, attorney's fees and costs pursuant to 42 U.S.C. § 1988, and any other relief the Court deems just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

- A. Compensatory damages;
- B. An award of reasonable attorney's fees and costs, pursuant to 42 U.S.C § 1988 and any other applicable law;
- C. Prejudgment interest and post-judgment interest on any award of damages to the extent permitted by law; and
- D. Any additional relief the Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury.

DATED May 28, 2014.

s/ Mark Silverstein

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