UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JULIO TRUJILLO SANTOYO,)
)
Plaintiff,)
)
v.) Civil No. 5:16-CV-855-OLG
)
BEXAR COUNTY,)
)
Defendant.)

ORDER

This case is before the Court on the Motion for Reconsideration filed by Defendant Bexar County (docket no. 43). Defendant's motion seeks reconsideration of the Court's Order partially granting Plaintiff's partial motion for summary judgment (docket no. 36 at 18), which related to Plaintiff's Section 1983 claim against Bexar County arising from the County's prolonged detention of him pursuant to a detainer request placed by United States Immigration and Customs Enforcement (ICE). The Court finds that the motion for reconsideration should be GRANTED; that the partial summary judgment that was entered in Plaintiff's favor should be vacated; and that summary judgment should be entered in Defendant's favor on that claim.

Background

Plaintiff asserted claims under 42 U.S.C. § 1983 for violations of the Fourth, Fifth, and Fourteenth Amendments; claims for declaratory relief under 28 U.S.C. §§ 2201 and 2202; and claims for violations of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1226(a) and 1357(a)(2) and (d). Plaintiff's claims all arise from his detention at the Bexar County Adult Detention Center (BCADC) from March 24, 2016, to June 7, 2016—detention that Bexar County carried out in part on the basis of an ICE detainer request. Docket no. 11 at 1 & ¶¶ 54-86. Plaintiff asserted claims against the Department of Homeland Security (DHS), Immigration and

Customs Enforcement (ICE), other federal defendants, and Bexar County. This Court dismissed Plaintiff's claims against DHS, ICE, and the other federal defendants, docket no. 53 at 2-10, and dismissed Plaintiff's Section 1983 claim against Bexar County that was premised on the County's policy of requiring written judicial authorization before releasing detainees from BCADC, which was set forth in paragraphs 61-70 of Plaintiff's First Amended Complaint, docket no. 36 at 18. However, the Court granted Plaintiff's Motion for Partial Summary Judgment as to a single claim: Plaintiff's Section 1983 claim against Bexar County that related to the County's policy of honoring all ICE detainer requests, which was set forth in paragraphs 54-60 of Plaintiff's First Amended Complaint. Docket no. 36 at 18. The Court reasoned that a municipal policy of fulfilling all ICE detainer requests violated the Fourth Amendment because of the inevitability under such a policy that municipalities "would engage in warrantless detention of individuals who were not suspected of any criminal offense, but who became the subjects of ICE detainer requests" for reasons unrelated to probable cause to believe they had committed any criminal offense. Docket no. 36 at 14-16. The Court also specifically noted that "the 'collective knowledge doctrine' would not apply in this case because the record does not indicate any communication or cooperation between the ICE personnel who made the probable cause determination and the County officials who processed the detainer request." Docket no. 34 at 12-13 (citing *United States v. Powell*, 732 F.3d 361, 369 (5th Cir. 2013)).

Defendant Bexar County moved pursuant to Fed. R. Civ. P. 59(e) for reconsideration of the Court's Order granting summary judgment in Plaintiff's favor on his Section 1983 ICE detainer request claim, and the Court deferred a ruling on that motion pending further rulings from the United States Court of Appeals for the Fifth Circuit in a case presenting similar issues regarding the constitutionality of a municipal policy of blanket fulfillment of ICE detainer requests, *City of El Cenizo v. Texas*, SA-17-CV-404-OLG. Docket no. 53 at 1-2.

On March 13, 2018, the Fifth Circuit issued an opinion in the *El Cenizo* case that reversed this Court's issuance of a preliminary injunction prohibiting enforcement of a state law requiring that municipalities honor all ICE detainer requests. *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 173 (5th Cir. 2018).[1] The Fifth Circuit "disavowed" this Court's prior summary judgment order in this case to the extent that it "suggested the Fourth Amendment requires probable cause of criminality in the immigration context[,]" *El Cenizo*, 890 F.3d at 188 n.22, and reversed this Court's holding in that case that a state law mandate of total detainer fulfillment would likely violate the Fourth Amendment, reasoning in part that "[u]nder the collective-knowledge doctrine . . . the ICE officer's knowledge [of the basis of removability for the purpose of issuing a detainer request] may be imputed to local officials even when those officials are unaware of the specific facts that establish probable cause of removability[.]" *El Cenizo*, 890 F.3d at 187-88. The Fifth Circuit further found that "[c]ompliance with an ICE detainer thus constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself provides the required 'communication between the arresting officer and an officer who has knowledge of all the necessary facts.'" *El Cenizo*, 890 F.3d at 187-88 (quoting *United States v. Ibarra*, 493 F.3d 526, 530 (5th Cir. 2007)). The Fifth Circuit has denied a petition for a rehearing *en banc*, no petition for certiorari has been filed, and the deadline for any request for further appellate review of the Fifth Circuit's opinion has passed.

Pursuant to an Order from this Court, the parties have submitted briefing regarding the imapct of the Fifth Circuit's opinion in *El Cenizo* on this Court's partial grant of summary judgment for Plaintiff. Docket nos. 59; 60. Plaintiff contends that nothing in the Fifth Circuit's *El*

[1] The Fifth Circuit's initial opinion was withdrawn and a superseded opinion was issued with changes not pertinent to the issues in this case. *City of El Cenizo, Texas v. Texas*, 885 F.3d 332 (5th Cir. 2018), *withdrawn from bound volume, opinion withdrawn and superseded*, 890 F.3d 164 (5th Cir. 2018).

Cenizo opinion should alter this Court's partial grant of summary judgment, both because the Fifth Circuit in that case considered facial Fourth Amendment challenges, and this case presents an as-applied challenge; and because the detainer that provided the basis for Plaintiff's detention was not accompanied by an administrative warrant and predated changes to ICE's detailer policy that requires the issuance of an administrative warrant with every detainer. Docket no. 59 at 4-6. Plaintiff also argues that Bexar County's reliance on the detainer that provided the basis for his prolonged detention violated the Fourth Amendment for an additional reason: Because ICE made no assessment regarding whether Plaintiff posed an escape risk, which Plaintiff argues rendered the detainer facially invalid under 8 U.S.C. § 1357(a)(2). Docket no. 59 at 4-5 (citing *Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill. 2016)). For that reason, Plaintiff argues, the facially defective detainer could not have provided the predicate to apply the collective knowledge doctrine, since "ICE officers cannot delegate power that they cannot exercise themselves." Docket no. 59 at 5. Plaintiff argues that Bexar County may not rely upon ICE's inaccurate representation at the time the detainer issued that a final removal order had been entered because the County detained Plaintiff pursuant to its policy of complying with all detainer requests—including those in which the detainer request was unaccompanied by any assertion of probable cause or risk of escape. Docket no. 59 at 8-9. Finally, Plaintiff argues that Bexar County "willfully ignored" evidence tending to dissipate the probable cause of removability because it continued to hold Plaintiff even after ICE failed to take custody of Plaintiff for more than 48 hours of the dismissal of the criminal charges against him, and ignored Plaintiff's and his girlfriend's complaints regarding his continued detention more than 48 hours after dismissal of the criminal charges. Docket no. 59 at 9-10. Plaintiff acknowledges Bexar County's contention that it was unaware of the dismissal of the charges, but argues that "if collective-knowledge is the touchstone for the basis for the arrest, the court order dismissing the charge [should be]

imputed to them." Docket no. 59 at 10 n.4. On this reasoning, Plaintiff argues that, to the extent that the Court reconsiders its Order on the parties' summary judgment motion, "it should find that the County is liable for the full amount of time they detained Santoyo without a warrant under the collective knowledge doctrine" or alternatively, "allow discovery into whether the County has a practice or custom of ignoring dissipating evidence in other cases involving the detention of noncitizens pursuant to detainers." Docket no. 59 at 10-11.

In its briefing, Bexar County argues that the Fifth Circuit in *El Cenizo* established a rule under which the collective knowledge doctrine imputes probable cause based on the existence of a detainer, regardless of whether that detainer is accompanied by an administrative warrant as is now required under ICE policy implemented after Plaintiff's release but before the *El Cenizo* litigation. Docket no. 60 at 2. Bexar County further argues that the detainer issued in this case communicated probable cause to support Plaintiff's prolonged detention because a box on the detainer form, which was signed by a "Deportation Officer," was checked so as to attest that "[p]robable cause exists that the subject is a removable alien . . . based on "a final order of removal against subject[.]" Docket no. 60 at 5. Bexar County acknowledges Plaintiff's arguments that, because this attestation was incorrect—no final order of removal had actually been entered—the detainer was invalid, but argues that Bexar County nonetheless correctly relied upon the false attestation of probable cause. Docket no. 60 at 5-6. These arguments largely mirror those asserted in Bexar County's motion for reconsideration, which was filed before the Fifth Circuit's *El Cenizo* opinion was issued.

Legal Standards and Analysis

Rule 59(e) of the Federal Rules of Civil Procedure permits a court to alter or amend a judgment upon "a showing of (1) an intervening change in controlling law; (2) new evidence not previously available; or (3) the need to correct a clear legal error or to prevent manifest

injustice." *Farquhar v. Steen*, 611 Fed. Appx. 796, 800 (5th Cir. 2015) (quoting *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002)).

In the context of a claim under 42 U.S.C. § 1983, "a municipality cannot be held vicariously liable for the constitutional torts of its employees or agents"; rather, "[a] municipality is liable only for acts directly attributable to it through some official action or imprimatur." *Valle v. City of Houston*, 613 F.3d 536, 541 (5th Cir. 2010). Thus, to establish municipal liability under Section 1983, a plaintiff must plead and prove "(1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose 'moving force' is that policy or custom." *Valle*, 613 F.3d at 541-42 (quoting *Pineda v. City of Houston*, 291 F.3d 325, 328 (5th Cir. 2002)). To establish that a municipal policy or practice is the "moving force" of a constitutional violation, a plaintiff "must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Valle*, 613 F.3d at 542 (quoting *Bd. of the County Comm'rs v. Brown*, 520 U.S. 397, 404 (1997)). The "requisite degree of culpability," in turn, requires a showing that "the municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision." *Valle*, 613 F.3d at 542; *Piotrowski v. City of Houston*, 237 F.3d 567, 579 (5th Cir. 2001).

The Court previously found that facts not in dispute establish that Plaintiff has satisfied the first and second elements of his Section 1983 claim, showing that Bexar County, at the time of Plaintiff's detention, maintained a policy, of which the then-Sheriff Susan Pamerleau had actual knowledge, of fulfilling all ICE detainer requests subject only to exceptions not pertinent to this case. Docket no. 36 at 8-9. Bexar County does not seek reconsideration of these findings. Rather, its arguments go to the third Section 1983 prong: Whether Plaintiff suffered any Fourth

Amendment violation that flowed from the ICE detainer fulfillment policies that Bexar County maintained at the time of his detention.

Detention pursuant to an ICE detainer request is a Fourth Amendment seizure that must be supported by probable cause or a warrant. *Arizona v. United States*, 567 U.S. 387, 132 S. Ct. 2492, 2509 (2012); *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) ("Because [the detainee] 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."); *Cervantez v. Whitfield*, 776 F.2d 556, 560 (5th Cir. 1985) (reciting stipulation). As the Court previously noted, the detainer in this case that supplied the basis for Bexar County's prolonged detention of Plaintiff indicated that "probable cause exists that the subject is a removable alien . . . based on . . . a final order of removal against the subject." Docket no. 22-1 at 11. Plaintiff asserts—and Bexar County does not appear to dispute—that this recitation of probable cause was inaccurate because at the time the detainer was issued, no final order of removal had in fact been entered as to Plaintiff. Docket nos. 59 at 8-9; 60 at 5-6. The Court's previous Order did not reach the truth or falsity of the recitation of probable cause set forth in the detainer. Instead, the Court reasoned that, even assuming the truth of the detainer's probable cause claim, probable cause could not be imputed to Bexar County for two reasons: first, because ICE had assessed the existence of probable cause that Plaintiff was removable, not whether he had committed any criminal offense; and second, because "even if the probable cause requirements between County officials and 8 U.S.C. § 1357(d)(1) were interchangeable," the record "does not indicate any communication or cooperation between the ICE personnel who made the probable cause determination and the County officials who processed the detainer request[,]" thus precluding application of the collective knowledge doctrine. Docket no. 36 at 12-13.

Bexar County is correct that the Fifth Circuit has rejected this reasoning. In *El Cenizo*, the Fifth Circuit found that, since "Courts have upheld many statutes that allow seizures absent probable cause that a crime has been committed"—collecting cases involving the seizure of the mentally ill, incapacitated, and juvenile runaways—this Court had erred in "holding that state and local officers may only arrest individuals if there is probable cause of *criminality*." *El Cenizo*, 890 F.3d at 188; *see also Weisler v. Jefferson Par. Sheriff's Office*, 736 Fed. Appx. 468, 471 (5th Cir. 2018) ("the Fourth Amendment does not limit arrests to criminal law violations"; concluding that arrest for violation of state window-tint statute did not violate Fourth Amendment). The *El Cenizo* Court also specifically disavowed this Court's prior summary judgment order in this case, as well as one other district court opinion, to the extent that they "suggested the Fourth Amendment requires probable cause of criminality in the immigration context." *El Cenizo*, 890 F.3d at 188 n.22.

Likewise, the Fifth Circuit in *El Cenizo* found that "[u]nder the collective-knowledge doctrine . . . [an] ICE officer's knowledge may be imputed to local officials even when those officials are unaware of the specific facts that establish probable cause of removability." *El Cenizo*, 890 F.3d at 187 (citing *United States v. Zuniga*, 860 F.3d 276, 283 (5th Cir. 2017)). The Fifth Circuit reasoned that the "some degree of communication" requirement is satisfied by the checked box on the detainer form stating a conclusion that probable cause exists, since the officer carrying out the seizure "need not have personal knowledge of the evidence that gave rise to the reasonable suspicion or probable cause, so long as he is acting at the request of those who have the necessary information." *El Cenizo*, 890 F.3d at 187 (quoting *Zuniga*, 860 F.3d at 283). For that reason, the Fifth Circuit found that "[c]ompliance with an ICE detainer thus constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself

provides the required "communication between the arresting officer and an officer who has knowledge of all the necessary facts." *El Cenizo*, 890 F.3d at 187-88.

The Court finds that the development of this appellate authority establishes a basis for relief under Fed. R. Civ. P. 59(e) and requires this Court to vacate its partial grant of summary judgment in Plaintiff's favor. Although the challenge in the *El Cenizo* litigation was a facial Fourth Amendment challenge, the Fifth Circuit's holdings in that case—that the Fourth Amendment does not require suspicion of criminality and regarding the collective knowledge doctrine—are not specific to the context of a facial challenge. And, although Plaintiff is correct that *El Cenizo* considered the Fourth Amendment implications of a state-law mandate of detainer fulfillment in the context of an ICE policy that requires administrative warrants to accompany all detainers, the Court agrees with Bexar County that, under the facts in this case, the detainer that formed the basis for Plaintiff's prolonged detention included an assertion of probable cause of removability equivalent to that found in an administrative warrant. Docket no. 22-1 at 11. Plaintiff argues for two reasons that the detainer in this case provided an inadequate predicate for application of the collective knowledge doctrine: first, because it inaccurately stated that a final order of removal had already been entered; and second, because it contained no indication that any ICE agent had, in addition to assessing the existence of probable cause of removability, determined the existence of an escape risk, which Plaintiff argues is required under 8 U.S.C. § 1357(a)(2). The Supreme Court has made clear that, when a seizure is carried out by an officer whose sole basis for reasonable suspicion or probable cause was communicated to him in accordance with the collective knowledge doctrine, and that communicated suspicion is later revealed to have been deficient, "an otherwise illegal [seizure] cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the [seizure]." *United States v. Hensley*, 469 U.S. 221, 230 (1985) (quoting *Whiteley v. Warden,*

Wyo. State Penitentiary, 401 U.S. 560, 568 (1971)). However, in this case, Plaintiff need not only establish a Fourth Amendment violation to prevail on his Section 1983 municipal liability claim against Bexar County; he must show that that the County's practice with respect to blanket fulfillment of ICE detainers is either facially unconstitutional or was "promulgated with deliberate indifference to the 'known or obvious consequences' that constitutional violations would result." *Piotrowski*, 237 F.3d at 579 (quoting *Bd. of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 405 (1997)). This Court previously found that Plaintiff had satisfied this requirement because "[a]n obvious consequence of Defendant's practice is that individuals who are the subjects of ICE detainers will be detained by County officials who make no assessment, and have no knowledge, regarding whether probable cause exists that those individuals have committed any crime." Docket no. 36 at 13. This conclusion is untenable in light of the Fifth Circuit's holding that the Fourth Amendment imposes no requirement of suspicion of criminality in the immigration context. Even assuming that Plaintiff is correct that ICE erroneously stated the existence of a final order of removal and failed to assess whether he posed an escape risk in this case, the Fourth Amendment violation flowing from that error—an error which Bexar County would not have been in a position to detect—is not a "known or obvious consequence" of Bexar County's policy of blanket ICE detainer fulfillment. The same is true of Plaintiff's assertion that the detainer was invalid because of the absence of an individualized determination by ICE that Plaintiff posed a flight risk. Even assuming the truth of Plaintiff's assertion that the detainer was deficient for this reason, such a deficiency would not render Bexar County liable for honoring the detainer because it is not a "known or obvious consequence" of Bexar County's policy of blanket detainer fulfillment. Rather, Plaintiff's claim that his detainer was deficient for this reason is one that sounds against the federal Defendants—and one that the Court has already considered and dismissed. Docket no. 53 at 5-9.

Plaintiff provides no authority in support of his argument that the collective knowledge doctrine should be applied to impute to Bexar County knowledge regarding the dismissal of the state-court criminal charges against him. The Court has already considered and ruled upon Plaintiff's Section 1983 claim that relates to Bexar County's failure to promptly release him following dismissal of the criminal charges, and Plaintiff has not identified any intervening change in controlling law, newly discovered evidence, or legal error that would provide the basis for relief from that judgement under Fed. R. Civ. P. 59(e).

For these reasons, the Court finds that, in light of the standards set forth by the Fifth Circuit in *El Cenizo*, these is no genuine dispute of material fact regarding Plaintiff's Section 1983 claim arising from Bexar County's fulfillment of the ICE detainer that was placed as to him, and that Bexar County is entitled to a judgment as a matter of law on that claim. The Court accordingly concludes that Defendant Bexar County's motion seeking summary judgment on this claim, docket no. 13, should be GRANTED.

Conclusion and Order

It is therefore ORDERED that Defendant's Motion for Reconsideration (docket nos. 41; 43) is GRANTED; and

It is further ORDERED that the portion of this Court's Order partially granting summary judgment for Plaintiff on the claim set forth at ¶¶ 54-60 of Plaintiff's First Amended Complaint (docket no. 36 at 18) is VACATED, and that Defendant's motion seeking summary judgment on that claim (docket no. 13) is GRANTED.

There are no claims or issues remaining to be resolved in this case. It is therefore ORDERED that the Clerk of the Court shall close this case upon entry of this Order.

SIGNED this 17 day of January, 2019.

ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE