UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JILMAR RAMOS-GOMEZ,

Plaintiff,

v.

REBECCA ADDUCCI, et al.,

Defendants.

_____/

CASE No. 1:20-CV-969

HON. ROBERT J. JONKER

OPINION AND ORDER

INTRODUCTION

Grand Rapids police arrested Jilmar Ramos-Gomez ("Plaintiff") in December of 2018 on local criminal charges following an incident at a local hospital. Acting on an inquiry from a police captain, the United States Immigration and Customs Enforcement's ("ICE") Detroit Field Office investigated whether Plaintiff was lawfully present in the country. The investigation included a face-to-face interview of Plaintiff at the local jail. The investigation concluded there was probable cause to believe Plaintiff was unlawfully present in the United States. Accordingly, an immigration detainer entered and Plaintiff ultimately spent three days in immigration custody before his attorney provided satisfactory proof to immigration agents that Plaintiff is actually an American citizen. Upon receipt of the information, ICE released the detainer and freed Plaintiff.

Mr. Ramos-Gomez brings this civil rights action against three ICE agents and the director working in the Detroit Field Office and alleges that his immigration hold was the result of a conspiracy amongst these officers to target him for deportation based solely on race and ethnicity grounds. All defendants have moved to dismiss. (ECF Nos. 20, 21, 22 and 31). After hearing

from the parties and performing a careful review of the record, and for the reasons recited below, the Court grants the defense motions and dismisses this case for failure to state a claim.

PLAINITFF'S FACTUAL ALLEGATIONS

1. Mr. Ramos-Gomez's Criminal Detention

On November 21, 2018, Mr. Ramos-Gomez suffered "a mental health episode related to his" post-traumatic stress disorder. (*Id.* at ¶ 14). During the episode, Mr. Ramos-Gomez found his way to the roof of Spectrum Hospital in Grand Rapids, Michigan. (*Id.*). Mr. Ramos-Gomez was arrested by officers with the Grand Rapids Police Department, and he was brought to the Kent County Correctional Facility (KCCF) where he was booked on criminal charges. (*Id.*).

2. Captain Curt VanderKooi Alerts ICE Officers

That evening, non-party Curt VanderKooi, a captain with the Grand Rapids Police Department, saw a local television news report about Mr. Ramos-Gomez's arrest. (*Id.* at ¶¶ 16-17).[1] The news report mentioned Mr. Ramos-Gomez's name and displayed Mr. Ramos-Gomez's booking photo, both of which are recognizably Latino. (*Id.*). Mr. Ramos-Gomez claims that after viewing the report, and based on nothing more than his name and appearance, Captain VanderKooi emailed Derek Klifman (an ICE officer based in the Detroit Field Office but who worked in the Grand Rapids sub-office), to question whether Mr. Ramos-Gomez was lawfully present in the country. (*Id.* at ¶¶ 10, 17-18). Specifically, Captain VanderKooi asked Klifman, "Could you please check his status?" (*Id.* at ¶ 17). Mr. Ramos-Gomez contends that this message did not come out of the blue. Rather, Captain VanderKooi and ICE officers at the Detroit Field Office had engaged in at least eighty-seven email exchanges between 2017 and 2019 about

[1] As a captain with the Grand Rapids Police Department, VanderKooi is a member of the department that arrested Mr. Ramos-Gomez, but Mr. Ramos-Gomez does not allege that Captain VanderKooi was involved in his arrest or otherwise knew about it prior to the news program.

possible targets for immigration enforcement actions. (*Id.* at ¶ 53). Captain VanderKooi was a designated "liaison" between local law enforcement and ICE. (*Id.* at. ¶ 56).

3. ICE Checks Government Databases

After receiving Captain VanderKooi's message, Defendant Klifman forwarded the email to Defendant Matthew Lopez (another officer at the ICE Grand Rapids sub-office). Thereafter Klifman, Lopez, and Defendant Richard Groll (a third Grand Rapids-based ICE officer) performed an investigation into Mr. Ramos-Gomez's immigration status.

According to Mr. Ramos-Gomez, at this point ICE officers in Grand Rapids already had information that identified him as an American citizen. This is because, when he was arrested, Mr. Ramos-Gomez had on his person his United States passport, Marine Corps identification tags, and a REAL ID compliant driver's license that identified him as a veteran. (*Id.* at ¶ 15). A requirement for a REAL ID license is proof of lawful presence in the United States. *See* U.S. Department of Homeland Security, *REAL ID Frequently Asked Questions*, https://www.dhs.gov/real-id/real-id-faqs (last visited Dec. 27, 2021). And on November 22, 2018, a KCCF employee emailed ICE a copy of the facility's arrest log that indicated Mr. Ramos-Gomez's place of birth was the United States. (First Am. Compl. ¶ 15).

Despite having this information, ICE agents (who Mr. Ramos-Gomez suspects were Defendants Klifman and/or Lopez) performed two separate database searches on November 23, 2018, to check into Mr. Ramos-Gomez's immigration status. While Mr. Ramos-Gomez insinuates this was unnecessary given the information ICE agents already had in hand, he argues that these searches only confirmed his American citizenship. The first search was performed on a Department of Homeland Security database. (*Id.* at ¶ 21). That search generated a report that identified Mr. Ramos-Gomez's place of birth as Michigan; listed his Social Security Number; and

reflected that Mr. Ramos-Gomez had a REAL ID compliant driver's license. (*Id.*). A separate search of a database maintained by the United States Citizenship and Immigration Services (USCIS) also listed Mr. Ramos-Gomez's Social Security Number and a military address. (*Id.* at ¶ 22). There was no alien number listed, and the database reflected that Mr. Ramos-Gomez had previously filed an I-130 petition for a relative and that the petition had been approved. Mr. Ramos-Gomez claims that such petitions cannot be approved unless the filer is a United States Citizen or otherwise has lawful status. (*Id.*).

4. Defendant Lopez Requests an Immigration Detainer After Interviewing Mr. Ramos-Gomez

On the same day of the database searches, Defendant Lopez went to KCCF to interview Mr. Ramos-Gomez. (*Id.* at ¶ 23). Following a short interview, Defendant Lopez asked Defendant Groll to issue an immigration detainer on the grounds that Mr. Ramos-Gomez was a foreign national unlawfully present in the United States. An ICE memorandum dated that day remarked that "[u]pon review of database information, ICE-ERO Grand Rapids, MI determined the subject was amenable to DHS/ICE enforcement action." (*Id.* at ¶ 32).[2] This was so even though

[2] A review of the entirety of the memorandum suggests some important context for Defendants' decision to request an immigration detainer. The document reflects that during the interview Mr. Ramos-Gomez told Defendant Lopez that he was "born in Guatemala and [was] a citizen of Guatemala and Columbia." (ECF No. 16-6, PageID.242). According to the memorandum, Mr. Ramos-Gomez told Defendant Lopez that he entered the United States "without inspection." In fact, Mr. Ramos-Gomez asked Defendant Lopez for a stipulated removal to Guatemala, but ICE officers declined to grant one "because the subject appeared to have some sort of mental or cognitive issues." (ECF No. 16-6). The Memorandum of Investigation was not attached as an exhibit to Mr. Ramos-Gomez's original or First Amended Complaint. Mr. Ramos-Gomez did, however, attach it as an exhibit as part of his brief in opposition to Defendants' motion to transfer the lawsuit. (ECF No. 16-6). And Judge Michelson referenced the memorandum in her Order transferring the case to this Court. (ECF No. 35, PageID.537). Furthermore, as noted above, Mr. Ramos-Gomez quotes part of the memorandum in the First Amended Complaint and references other portions, including that the controlling office was the Detroit Field Office and that Mr. Ramos-Gomez had a pending mental health review." (First. Am. Compl. ¶ 32; *see also* ECF No. 16-6, PageID.242). Notwithstanding all this, Mr. Ramos-Gomez is adamant that the Court

Mr. Ramos-Gomez was "pending a mental health review" ordered by a Magistrate Judge. (*Id.*). Defendant Lopez then wrote back to Captain VanderKooi that "I was able to interview [Mr. Ramos-Gomez] at Kent County [Correctional Facility] this morning, and he is a foreign national illegally in the U.S. Thank you for the lead he will be coming into our custody when he is released from his criminal case. Let me or Derek [Klifman] know if you ever had any other good leads." (*Id.* at ¶ 31).

The detainer was authored by Defendant Groll. (*Id.* at ¶ 26). It concluded that "probable cause exists that the subject is a removable alien." (ECF No. 16-2, PageID.236). The detainer

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cannot use the portion of the memorandum regarding any statements he made to ICE agents in deciding the pending Rule 12 motions. Mr. Ramos-Gomez says this is so because he disputes the accuracy of the recorded statements. (ECF No. 25, PageID.382).

In reviewing a motion to dismiss, a "court may consider 'exhibits attached [to the complaint], public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein,' without converting the motion to one for summary judgment. *Rondigo, L.L.C. v. Township of Richmond*, 641 F.3d 673, 680-81 (6th Cir. 2011) (quoting *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008)). "While documents integral to the complaint may be relied upon, even if they are not attached or incorporated by reference, it must also be clear that there exist no material disputed issues of fact regarding the relevance of the document." *Ouwinga v. Benistar 419 Plan Servs.*, 694 F.3d 783, 797 (6th Cir. 2012).

The Court is inclined to believe the entire Memorandum of Investigation may properly be considered on the Rule 12 stage under this authority. The document is clearly referenced in the First Amended Complaint, and the information ICE officers had in hand before issuing the immigration detainer is certainly integral to Mr. Ramos-Gomez's case. And it is likely admissible either as a public record or as a party admission. The court further knows of no authority that would permit a plaintiff to cherry pick portions of a document in a complaint, and then prevent a reviewing court from referencing other portions of the same document (one that the plaintiff himself has provided elsewhere in the case) in deciding a Rule 12 motion. Ultimately, however, the Court need not decide whether the memorandum can, or cannot, be considered without converting the motion into one for summary judgment. The Rule 12 record, without any consideration of the Memorandum of Investigation, is sufficient to resolve the pending motions in Defendants' favor. Accordingly, the Court expressly states it is not relying on the admissions attributed to Mr. Ramos-Gomez in the Memorandum of Investigation for the result it reaches today.

stated this determination was based on "[s]tatements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." (*Id.*).

5. ICE Receives Additional Information while Mr. Ramos-Gomez is in Custody on his Criminal Charges

Mr. Ramos-Gomez remained in custody at KCCF based on his original arrest for about three weeks, until approximately December 14, 2018. He claims that during that time, both ICE and other law enforcement entities received additional information that confirmed he was an American citizen.

For example, on November 26, 2018, Captain VanderKooi emailed Defendant Lopez and the police officer assigned to Mr. Ramos-Gomez's criminal case, Detective Adam Baylis. (First Am. Compl. ¶ 34.a). The subject line of the email was "Spectrum Helicopter Pad Loco" and in the body of the message Captain VanderKooi remarked "It is not clear what mad intent was involved in this breach of hospital security but here is the report." (*Id.*). Captain VanderKooi attached a copy of the referenced police report to his email. The report reflected that Mr. Ramos-Gomez had a passport and a "pistol purchase permit" in his possession. According to Mr. Ramos-Gomez, a permit holder must be a United States Citizen or permanent resident. (*Id.*). Also on November 26, Detective Baylis informed the state court prosecutor that ICE would be taking custody of Mr. Ramos-Gomez after he was released on bond from the state charges. Mr. Ramos-Gomez claims that the prosecutor "responded immediately with alarm" and noted that Mr. Ramos-Gomez was a veteran and possessed a passport when he was arrested. (*Id.* at ¶ 34.b).

Despite these developments, no one took any action to revoke the immigration detainer.

6. Mr. Ramos-Gomez is Transferred to ICE Custody

Mr. Ramos-Gomez was scheduled to be released on bond from KCCF on December 14, 2018. On that date, his mother arrived to pick him up. She was told, however, that Mr. Ramos-Gomez had been placed in immigration custody. (*Id.* at ¶ 37). Indeed, ICE was transporting Mr. Ramos-Gomez to the Calhoun County Correctional Facility (CCCF), which is a state correctional facility that contracts with ICE to house immigration detainees. (*Id.* at ¶¶ 38-39).

Two days later on December 16, 2018, ICE issued formal paperwork relating to Mr. Ramos-Gomez's detention and removal proceedings. A Supervisory Detention and Deportation Officer prepared a Notice of Custody Determination that stated Mr. Ramos-Gomez would be held in immigration detention pending a final administrative determination of the case. (*Id.* at ¶ 41). The same day, ICE issued a Notice to Appear to Mr. Ramos-Gomez that charged him with being a citizen of Guatemala who was unlawfully present in the United States. (*Id.* at ¶ 42).

Eventually, counsel for Mr. Ramos-Gomez learned that Mr. Ramos-Gomez was in ICE custody. The attorney provided documentation of Mr. Ramos-Gomez's United States citizenship to ICE. (*Id.* at ¶ 48).[3] After the information was reviewed, ICE released Mr. Ramos-Gomez from custody. (*Id.* at ¶ 50). All told, Mr. Ramos-Gomez spent three days in immigration custody.

PROCEDURAL BACKGROUND

Mr. Ramos-Gomez initiated this lawsuit on November 22, 2019, in the United States District Court for the Eastern District of Michigan. (ECF No. 1). A First Amended Complaint

[3] Mr. Ramos-Gomez is a natural born citizen. Plaintiff Jilmar Ramos-Gomez was born in the State of Michigan, and therefore is a United States citizen by virtue of his birth in the United States. (First Am. Compl. ¶ 8, ECF No. 14, PageID.141). He served in the United States Marine Corps and completed a tour of duty in Afghanistan. (*Id.*).

was filed in that district on April 24, 2020, naming additional defendants. (ECF No. 14). In that Complaint, which is the operative pleading, Mr. Ramos-Gomez sued five individuals: ICE Deportation Officers Klifman, Lopez, and Groll; the unknown Supervisory Detention and Deportation officer who signed the Notice of Custody Determination; and Rebecca Adducci, the Director of the Detroit Field Office. (First Am. Compl. ¶¶ 9-13, ECF No. 14, PageID.141-142). Mr. Ramos-Gomez sues all defendants in their individual capacities, and he seeks compensatory and punitive damages along with fees and costs. (*Id.* at PageID.157).

The First Amended Complaint raises two claims against the Defendants. The first is under 42 U.S.C. § 1985(3). "[T]hat subsection of the Ku Klux Klan Act of 1871 bars two or more people from conspiring to deprive a person of equal protection of the laws." (Op. & Ord. Granting Defendants' Mtn. to Transfer Venue, ECF No. 35, PageID.541). Mr. Ramos-Gomez says that Defendants violated this statute when they "entered into an agreement . . . with the GRPD, Captain VanderKooi, Detective Baylis, and other ICE, GRPD, and CCCF officers, for the purpose of depriving Plaintiff of the equal protection of the law." (First. Am. Compl. ¶ 74, ECF No. 14, PageID.155). Mr. Ramos-Gomez's second claim is brought against the Defendants under 42 U.S.C. § 1986. In broad terms, "that statute makes a person liable for knowing that others are violating § 1985, 'having power to prevent' that violation, and failing to use 'reasonable diligence' to prevent the violation." (*Id.*). Mr. Ramos-Gomez alleges that "Defendants were aware and had information in their possession showing that Plaintiff was a United States citizen and veteran, that he was being targeted for immigration enforcement because of his race or ethnicity, [and] that an immigration detainer had been issued[.]" (First Am. Compl. ¶ 79, ECF No. 14, PageID.156). "Despite this knowledge," Mr. Ramos-Gomez alleges, "Defendants refused or otherwise failed to

take action to intervene and prevent the unlawful detention of Plaintiff and the violations of his Constitutional rights." (*Id.* at ¶ 80).

On April 10, 2020, Defendants filed a motion in the Eastern District of Michigan under 28 U.S.C. § 1404(a) to transfer the case to this Court. (ECF No. 11). Defendants also filed the instant motions to dismiss. (ECF Nos. 20, 21, 22, and 31). On October 8, 2020, Judge Michelson granted the transfer motion. (ECF No. 35). Accordingly the case, along with the pending motions, was transferred to this Court. (ECF No. 36). Following transfer, the case was held in abeyance at the request of Plaintiff's counsel for a time due to the ongoing COVID-19 pandemic. On July 12, 2021, the Court convened a Rule 16 scheduling conference and heard argument on the pending motions to dismiss. (ECF No. 51). At the conclusion of the hearing, the Court took the motions under advisement.

Thereafter, Mr. Ramos-Gomez filed a motion for leave to file a supplemental brief. (ECF No. 54). Specifically, Mr. Ramos-Gomez seeks leave to file a supplemental brief to provide additional authority in support of his argument that the statements in the Memorandum of Investigation concerning Defendant Lopez's interview with Mr. Ramos-Gomez at KCCF cannot be considered at the Rule 12 stage. The motion also seeks to provide additional authority on the use of circumstantial evidence in support of a conspiracy claim. To the extent Plaintiff seeks to provide additional authority regarding the use of admissions attributed to Plaintiff in the Memorandum, the motion is dismissed as moot because the Court is not relying on those reported admissions in the decision it reaches today. The remainder of the motion to supplement is denied. The issues have already been thoroughly briefed, and the Court discerns no reason to reopen briefing.

LEGAL STANDARDS AND ANALYSIS

1. Mr. Ramos-Gomez Fails to State Actionable Claims against These Particular Defendants

Mr. Ramos-Gomez has alleged that Defendants Adducci, Klifman, Lopez, Groll, and the John Doe Supervisory Detention and Deportation Officer engaged in a conspiracy with others to deprive him of his civil rights, in violation of 42 U.S.C. § 1985(3). Section 1985(3) imposes civil liability upon the participants in a conspiracy intended to deprive, "either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3). In their motions, Defendants argue that: (1) § 1985(3) does not apply to federal officers, (2) that the intracorporate-conspiracy doctrine bars these particular claims in any event and (3) that, at a minimum, qualified immunity applies because the asserted theories of liability were not and are not clearly established. Without an actionable Section 1985(3) claim, the defense adds, Mr. Ramos-Gomez's second claim for relief under Section 1986 necessarily fails. The Court agrees.

A. Section 1985(3) Does Not Apply to Federal Officer Defendants

Mr. Ramos-Gomez's conspiracy claim fails because Section 1985(3) does not, in the Court's view, apply to federal officials. There is no controlling decision from the Supreme Court or the Sixth Circuit, and other Circuits are split. *Compare Iqbal v. Hasty*, 490 F.3d 143, 176 (2d Cir. 2007), and *Davis v. Samuels*, 962 F.3d 105, 114 (3d Cir. 2020) (finding that Section 1985(3) does apply to federal officials), *with Cantú v. Moody*, 933 F.3d 414, 419 (5th Cir. 2019) ("Our precedent holds § 1985(3) does not apply to federal officers."). District Courts within the Sixth Circuit appear mixed. Some courts have found that Section 1985(3) does apply to federal officers. *See Zelaya v. Hammer*, 516 F. Supp. 3d 778, 804 (E.D. Tenn. 2021); *Bergman v. United States*, 551 F. Supp. 407, 414 (W.D. Mich. 1982) (Enslen, J.) (permitting a Section 1985(3) claim against

federal defendants to go forward to trial). Other decisions have come out the other way. *Hill v. McMartin*, 432 F. Supp. 99, 101 (E.D. Mich. 1977). The Court concludes that the most persuasive authority weighs against extending potential Section 1985(3) liability to federal actors.

Mr. Ramos-Gomez suggests that the Court should side with those cases that extend Section 1985(3) to federal officers because the Supreme Court in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), extended Section 1985(3) beyond state actors to private actors. But the decision to extend liability under Section 1985(3) to private actors is fundamentally different than the question of whether to extend potential liability to federal actors. *Cf. Alharbi v. Miller*, 368 F. Supp. 3d 527, 566-568 (E.D.N.Y 2019) (reviewing *Griffin* and concluding that "§ 1985(3) is inapplicable to federal officers acting under color of federal law, consistent with the clear purpose behind the Civil Rights Act."). The context of this case involves a core federal function: namely, enforcement of federal immigration law by federal immigration officers. In such circumstances, the Court must be especially cautious in creating new theories of liability for the same reason the Supreme Court emphasized that caution is needed in deciding whether to imply new *Bivens*-style rights in *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017). There, the Court made clear that a *"Bivens* remedy will not be available if there are special factors counseling hesitation in the absence of affirmative action by Congress." *Id.* at 1857 (internal quotation marks and citation omitted). The Court further instructed that the "inquiry must concentrate on whether the Judiciary is well suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed. Thus, to be a "special factor counselling hesitation," a factor must cause a court to hesitate before answering that question in the affirmative." *Id.* at 1857-58. The Court believes a similar analysis warrants caution before expanding Section 1985(3) liability to

federal defendants, and that under the costs and benefits analysis of *Abbasi*, Mr. Ramos-Gomez's Section 1985(3) claim against the defendants, who are all federal officials, cannot proceed.[4]

B. Plaintiff's Claims Fail Under the Intracorporate Conspiracy Doctrine Anyway

Furthermore, Mr. Ramos-Gomez's claim is also barred by the intracorporate conspiracy doctrine. The doctrine provides that if "all of the defendants are members of the same collective entity, there are not two separate 'people' to form a conspiracy…." *Johnson v. Hills & Dales Gen. Hosp.*, 40 F.3d 837, 839–40 (6th Cir. 1994) (quoting *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.*, 926 F.2d 505, 510 (6th Cir. 1991)), *cited in Jackson v. City of Cleveland*, 925 F.3d 793, 817 (6th Cir. 2019). As a result, if defendants are members of the same corporate entity, they cannot conspire with one another as long as they are acting within the scope of their employment. The Sixth Circuit has repeatedly applied the doctrine to claims under § 1985(3). *Johnson*, 40 F.3d at 839-40 (quoting *Hull*, 926 F.2d at 510). As a result, unless members of the same collective entity (such as the ICE Detroit field office) are acting outside the scope of their employment (which Mr. Ramos-Gomez does not allege), they are deemed to be one collective entity and not capable of conspiring. *Jackson*, 925 F.3d at 817-19. Applying this authority, the intracorporate conspiracy doctrine defeats Mr. Ramos-Gomez's conspiracy claim here because all the Defendant participants in the alleged conspiracy were employees of the same entity (namely,

[4] The dismissal of the Section 1985(3) claim also means the Defendants are entitled to dismissal of the Section 1986 claim against them in Count II of the First Amended Complaint. This is because a claim under § 1986 "depends on the existence of a claim under § 1985." *Mollnow v. Carlton*, 716 F.2d 627, 632 (9th Cir. 1983) (citing *Williams v. St. Joseph Hosp.*, 629 F.2d 448, 452 (7th Cir. 1980)). Section 1986 is merely a remedial provision for conspiracies properly alleged under Section 1985. In the absence of a proper Section 1985 claim, Section 1986 provides no remedy. *See Amadasu v. Christ Hosp.*, 514 F.3d 504, 507 (6th Cir. 2008); *Haverstick Enterprises, Inc. v. Financial Federal Credit Union, Inc.*, 32 F.3d 989, 993 (6th Cir. 1994). The same result follows for each of the other bases for dismissal for the Section 1985(3) claim. *See Bartell v. Lohiser*, 215 F.3d 550, 560 (6th Cir. 2000) (explaining that § 1986 is derivative and conditioned on establishing a § 1985 violation).

ICE's Detroit field office) and they were acting within the scope of their employment as part of ICE's legitimate activity in immigration enforcement.

Mr. Ramos-Gomez contends that the intercorporate conspiracy doctrine does not apply because he has alleged third-parties not a part of the ICE Detroit Field Office—namely Captain VanderKooi and Detective Baylis, both of the Grand Rapids Police Department and unnamed employees of CCCF—participated in the conspiracy. He admits he has not joined these others as defendants, but says that is not necessary. (Pl's Br. 25 n.1, ECF No. 25, PageID.384 (quoting *Jacobs v. Pa. Dep't of Corr.* No. 04-1366, 2011 WL 2295095 (W.D. Pa. June 7, 2011)). Plaintiff cites no Sixth Circuit authority on point, and the Court knows of none. As a practical matter, decisions from the Sixth Circuit have applied the intracorporate conspiracy doctrine when all the *defendants* are members of the same entity. *See Johnson*, 40 F.3d at 839-40 (applying the doctrine where "all of the defendants are members of the same collective entity."). What was true in *Johnson* is true here too: all the named defendants work for the same entity. The Court applies *Johnson* and finds the intracorporate conspiracy doctrine bars the claims here just as it did in *Johnson*. To do otherwise would permit a plaintiff to circumvent the doctrine by the simple expedient of alleging a broad conspiracy against joined and unjoined individuals, but proceeding against a chosen few even though those few all work for the same entity.

But even assuming for purposes of argument that Court must consider Captain VanderKooi's and the CCCF's involvement, the result still holds. This is because there are no factual allegations about how these third parties, especially Detective Baylis and CCCF officers, participated in the alleged conspiracy, or even knew anything about it. In such a context, mere cooperation between agencies does not demonstrate a conspiratorial meeting of the minds. *See Mendoza v. United States Immigration and Customs Enforcement*, 849 F.3d 408, 421 (8th Cir.

2017). Moreover, everything that Mr. Ramos-Gomez alleges against these third-parties is based in the context of their role as agents for the Detroit sub-office. Mr. Ramos-Gomez alleges, for example, that VanderKooi was the "liaison" between the GRPD and ICE. (First Am. Compl. ¶ 56, ECF No. 14, PageID.151). He further alleges that CCCF was acting under a contract it had with ICE to house immigration detainees. (*Id.* at ¶ 38). These allegations demonstrate that the Defendants, VanderKooi, and CCCF officers were all acting either as employees, contractors or agents of the ICE's Detroit Field Office as part of ICE's immigration enforcement activities. Accordingly, the intracorporate conspiracy doctrine properly applies.

C. Defendants Are Entitled to Qualified Immunity in Any Event

Under the doctrine of qualified immunity, "'government officials performing discretionary functions generally are shielded from liability from civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Phillips v. Roane County*, 534 F.3d 531, 538 (6th Cir. 2008) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "As the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Determining whether the government officials in this case are entitled to qualified immunity generally requires two inquiries: "First, viewing the facts in the light most favorable to the plaintiff, has the plaintiff shown that a constitutional violation has occurred? Second, was the right clearly established at the time of the violation?" *Id.* at 538-39 (citing *Silberstein v. City of Dayton*, 440 F.3d 306, 311 (6th Cir. 2006)); *cf. Pearson v. Callahan*, 555 U.S. 223 (2009) (holding that the two-part test is no longer considered mandatory; thereby freeing district courts from rigidly, and potentially wastefully, applying the two-part test in cases that could more efficiently be resolved by a modified application of that framework). This

analysis applies equally to Mr. Ramos-Gomez's Section 1985(3) claim at the motion to dismiss stage. *See Vaduva v. City of Xenia*, 780 F. App'x 331, 338 n.7 (6th Cir. 2019); *see also Crawford v. Tilley*, 15 F.4th 752, 763 (6th Cir. 2021) (discussing at length the ability to make qualified immunity determination at dismissal stage and providing extensive discussion of the standards).

For qualified immunity purposes, "clearly established" means that the "contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Id.* (internal citation omitted). The Supreme Court has explained that the term "clearly established" "depends largely 'upon the level of generality at which the relevant 'legal rule' is to be identified.'" *Wilson v. Layne*, 526 U.S. 603, 614-15 (1999) (quoting *Anderson*, 483 U.S. at 639). The Court has instructed courts to define the federal right at issue in the specific context of the case, and to take care not to define a case's context in a manner that imports a genuinely disputed factual proposition. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

As the Court's discussion above makes clear, "it is by no means clearly established that § 1985(3) applies to federal officers acting under color of federal law." *Alharbi*, 368 F. Supp. 3d at 568 (citing *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017); *Fazaga v. Federal Bureau of Investigation*, 916 F.3d 1202, 1209 (9th Cir. 2019)). Indeed, Mr. Ramos-Gomez's argument is foreclosed by *Abbasi*, which noted that "[c]lose and frequent consultations to facilitate the adoption and implementation of policies are essential to the orderly conduct of governmental affairs. Were those discussions, and the resulting policies, to be the basis for private suits seeking damages against the officials as individuals, the result would be to chill the interchange and

discourse that is necessary for the adoption and implementation of governmental policies." *Abbasi*, 137 S. Ct. at 1868. This consideration, the Court suggested, means "that officials employed by the same governmental department do not conspire when they speak to one another and work together[.]" *Id.* At minimum, the defendants in that case "would not have known with any certainty that the alleged agreements were forbidden by law." *Id.* The Court thus found that the officers were entitled to qualified immunity on the Section 1985(3) claims. The same result follows here. Viewing the facts under the Rule 12 lens, the Court cannot say that a reasonable official, under the circumstances of this case, would have known that the investigation and agreement were forbidden by law. *See Alharbi*, 368 F. Supp. 3d at 568.

2. Mr. Ramos-Gomez Fails to State a Twombly Plausible Conspiracy Claim Against the Defendants

Furthermore, and as an independent basis for dismissal, Mr. Ramos-Gomez fails to allege with any specificity facts showing the existence of a conspiracy, or an agreement, by the Defendants to deprive him of his civil rights. Instead, Mr. Ramos-Gomez simply alleges that each Defendant committed one or more isolated acts and concludes from this that these acts were part of a conspiracy with other Defendants and/or third-parties. Absent from Mr. Ramos-Gomez's allegations, however, are specific factual allegations suggesting that these separate acts were part of a conspiracy. Additionally, Mr. Ramos-Gomez fails to allege any facts that would demonstrate Defendants acted with some class-based animus and at bottom, nothing in the First Amended Complaint shows that Defendants conspired to deprive Mr. Ramos-Gomez of his right to equal protection of the laws because of class-based animus.

A. Legal Standards

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires only a "short and plain statement" of a claim designed to "give the defendant fair notice" of the claim against him. *Conley*

v. Gibson, 355 U.S. 41, 47 (1957). But the Supreme Court has clarified that to meet that standard and survive a Rule 12(b)(6) motion to dismiss, a complaint must allege sufficient facts to meet that standard and survive a Rule 12(b)(6) motion to dismiss, a complaint must allege sufficient facts to "raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). *Twombly* did not change the notice-pleading standard; "detailed factual allegations" are still not necessary, but the Supreme Court did hold that a plaintiff's complaint must contain "more than labels and conclusions." *Id.* In so holding, the Court took a step away from the long-standing "no set of facts" standard established by *Conley*. *Conley*, 355 U.S. at 45-46 ("[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."). Indeed, the Court found that "*Conley*'s 'no set of facts' language had been questioned, criticized, and explained away" such that "this famous observation had earned its retirement." *Twombly*, 550 U.S. at 563. Applying a newly crafted "plausibility" test, the Court held that in the antitrust context a complaint alleging a Sherman Act Section 1 claim must include "enough factual matter (taken as true) to suggest than an agreement was made." *Id.* at 556. The agreement need not be probable, but the complaint must contain sufficient factual allegations "to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Id.*

In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court itself made clear that *Twombly* reaches well beyond the anti-trust context. *Iqbal* reiterates broadly that:

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that

> are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'

Iqbal, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556-57, 570). The determination of whether a complaint states a plausible claim is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679 (citation omitted). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]' — 'that the pleader is entitled to relief.'" *Id.* (quoting FED. R. CIV. P. 8(a)(2))). Accordingly, this Court need not accept legal conclusions as true. *See Heyne v. Metro. Nashville Pub. Sch.*, 665 F.3d 556, 564 (6th Cir. 2011); *Jones v. City of Cincinnati*, 521 F.3d 555, 559 (6th Cir. 2008). Legal conclusions that are "masquerading as factual allegations" will not suffice to state a claim. *Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 276 (6th Cir. 2010) (quoting *Tam Travel, Inc. v. Delta Airlines, Inc.*, 583 F.3d 896, 903 (6th Cir. 2009)).

To state a claim under § 1985(3), a plaintiff must allege:

> (1) a conspiracy involving two or more persons (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws and (3) an act in furtherance of the conspiracy (4) which causes injury to a person or property, or a deprivation of any right or privilege of a citizen of the United States.

Smith v. Thornburg, 136 F.3d 1070, 1078 (6th Cir. 1998). Applying the above standards, furthermore, "conspiracy claims must be pled with some degree of specificity and . . . vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim.'" *Ctr. For Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 832 (6th Cir. 2007) (quoting *Gutierrez v. Lynch*, 826 F.2d 1534, 1538-39 (6th Cir. 1987)); *see also Twombly*, 550 U.S. at 565 (recognizing that allegations of conspiracy must be supported by allegations of fact that support a "plausible suggestion of conspiracy," not just a "possible" one); *Fieger v. Cox*, 524 F.3d 770, 776 (6th Cir. 2008); *Spadafore v. Gardner*, 330 F.3d 849, 854 (6th Cir. 2003). "[V]ague allegations

of a wide-ranging conspiracy are wholly conclusory and are, therefore, insufficient to state a claim." *Hartsield v. Mayer*, No. 95-1411, 1996 WL 43541, at *3 (6th Cir. Feb. 1, 1996). A conspiracy claim fails when a plaintiff alleges facts showing that the defendants acted together but does not allege facts showing that the parties agreed to an objective to deprive the plaintiff of his civil rights. *See Siefert v. Hamilton Cnty. Bd. of Comm'rs*, 951 F.3d 753, 768 (6th Cir. 2020). A simple allegation that defendants conspired to cover up wrongful actions is too conclusory and too speculative to state a claim of conspiracy. *Birrell v. Michigan*, No. 94-2456, 1995 WL 355662, at *2 (6th Cir. June 13, 1995). Finally, the plaintiff must "allege . . . some class-based discriminatory animus behind the conspirators' action." *Newell v. Brown*, 981 F.2d 880, 886 (6th Cir. 1992) (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)); *see also Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268 (1993) (explaining that discriminatory animus is an element of a § 1985(3) claim).

B. Discussion

The factual allegations in Mr. Ramos-Gomez's First Amended Complaint fail to establish a *Twombly* plausible Section 1985(3) claim. Looking at the well-pleaded facts apart from the legal gloss Mr. Ramos-Gomez adds, the pleadings reflect that Mr. Ramos-Gomez had been arrested with multiple IDs and other indica of United States citizenship. An officer with local law enforcement who had a preexisting relationship with ICE referred Mr. Ramos-Gomez, who was already in custody on state charges, for an immigration check based on the officer's glance at the individual's race and name. Federal immigration officials in fact checked, and at least some database checks also indicated United States Citizenship; but one agent interviewed Mr. Ramos-Gomez while he was still being held on state charges. An immigration hold was placed on Mr. Ramos-Gomez and

a hearing was set. He was held for three days in immigration custody and then released after his citizenship status was satisfactorily established to the agents well before the hearing.

In the Court's mind, that's not enough for a *Twombly*-plausible invidious racial discrimination claim. After all, the ICE Defendants did not automatically place a hold on Mr. Ramos-Gomez after receiving Captain VanderKooi's message. They performed an investigation that included an interview. The detainer itself (which is referenced in Mr. Ramos-Gomez's First Amended Complaint at ¶¶ 24-28) says the totality of information, including "statements made by" Mr. Ramos-Gomez "to an immigration officer and/or other reliable evidence" (ECF No. 16-2, PageID.236) was used to determine probable cause that Mr. Ramos-Gomez was not lawfully present in the United States. After approximately seventy-two hours in immigration custody, and long before the hearing, ICE officers decided to release the hold. This is fully consistent with a diligent investigation and reasonable decisions—initially to hold while the facts were reviewed, and then to release. Along the way, there is nothing from the ICE officers that says or suggests any derogatory view of Mr. Ramos-Gomez based on race.

The sole focus on the alleged facts was determining whether Mr. Ramos-Gomez was deportable, or not, which is their job. Indeed, to the extent there is anything even potentially racially charged alleged in this case, it is at the local law enforcement level, but not at the ICE level and there is nothing alleged that would indicate the defendants shared this animus. As to the defendants in this case, the First Amended Complaint documents a run-of-the-mill immigration check of a local referral that resulted in a brief hold and a prompt release. All this, moreover, took place while Mr. Ramos-Gomez was in state custody on other charges unrelated to immigration and so is not entirely unlike routine warrant checks on arrestees to ensure there is no other agency that has a detention request out on the individual.

To find, as Mr. Ramos-Gomez urges here, that the alleged facts amount to a conspiracy amounting to liability under Section 1985(3) would mean that any mistaken detainer would automatically translate to a *Twombly*-plausible claim. That would do exactly what *Twombly* generally, and *Abassi* more specifically, are designed to avoid—frustrating government officials from performing their duties in the absence of concrete factual allegations that fairly and plausibly suggest something nefarious is underneath it all.

Under the above framework, Mr. Ramos-Gomez's allegations of a conspiracy amongst the Defendants amounting to Section 1985(3) liability fail to suffice. The First Amended Complaint might outline the generalities of an alleged conspiracy, but looking specifically at the allegations as to each of the Defendants, the Court finds that Mr. Ramos-Gomez has failed to establish a *Twombly* plausible Section 1985(3) claim (and by extension, a Section 1986) claim, against each of the Defendants.

i. Defendant Adducci

Mr. Ramos-Gomez alleges the following as to Defendant Adducci. She was the Field Office Director of ICE's Detroit Field Office, and she oversaw the actions of the other defendants in this case. (First Am. Compl. ¶ 9, ECF No. 14, PageID.141). She has responsibilities for actions in the district to identify individuals for immigration enforcement, transfer individuals to ICE custody, and issue immigration detainers. (*Id.*). She is responsible for all detainers that are issued by the Detroit Field Office. (*Id.* at ¶ 28). That's as far as Mr. Ramos-Gomez's specific allegations against Defendant Adducci go, but he points out that he has alleged that ICE officers out of the Detroit Field Office have participated in some, or all, of at least eighty-seven email exchanges over a number of years with Captain VanderKooi that were part of an agreement, he says, to racially profile individuals. (*Id.* at ¶¶ 53-55).

This is not enough to plausibly allege that Director Adducci entered into a conspiracy or took any overt acts to deprive Mr. Ramos-Gomez, or anyone else, of their equal protection rights. To be sure, a plaintiff need not plead a conspiracy with direct evidence. Circumstantial evidence may be enough. *Weberg v. Franks*, 229 F.3d 514, 528 (6th Cir. 2000). But here there is a paucity of specific facts, direct or circumstantial, that would make out a *Twombly*-plausible conspiracy claim as to Defendant Adducci. *Cf. Rudd v. City of Norton Shores*, 977 F.3d 503, 518-19 (6th Cir. 2020) (finding, in Section 1983 conspiracy action, the plaintiff had pointed to sufficient nonconclusory allegations suggesting that defendants entered into a conspiracy). Here, there is nothing pleaded that would even hint, either directly or circumstantially, that Defendant Adducci had any knowledge about the complained of actions. Thus Mr. Ramos-Gomez has not plausibly alleged the first element of a Section 1985(3) claim. *See McFeeter v. Jones*, 104 F. App'x 552 (6th Cir. 2004) (granting summary judgment on Section 1985 claim to defendant officer where the plaintiff failed to identify any evidence suggesting the officer knew of the complained of assault).

In a similar vein, Mr. Ramos-Gomez fails to plausibly allege the remaining elements of the claim against Defendant Adducci. As set out above, the only hint of class-based animus that Mr. Ramos-Gomez points to is the subject line of Captain VanderKooi's follow up email with Mr. Ramos-Gomez's arrest report, and that Captain VanderKooi had previously emailed Defendant Klifman about the immigration status of another individual who happened to be an individual of color. Even if this is enough to allege the requisite animus, there's nothing pleaded to suggest that Defendant Adducci knew of, much less shared, that animus. Viewed in the light most favorable to Mr. Ramos-Gomez, all this does is show that a local law enforcement officer could possibly have had a class based motivation in referring an induvial for an immigration check and that ICE agents working under Defendant Adducci's supervision did their job in executing an

investigation. Mr. Ramos-Gomez does not allege that defendant did anything out of the ordinary course of their duties in performing this immigration check. *See Fracaro v. Priddy*, 514 F. Supp. 191, 199 (M.D.N.C. 1981) (granting summary judgment where the plaintiff's evidence of conspiracy was a class-based animus on the part of a single defendant board member). Finally, Mr. Ramos-Gomez utterly fails to allege that Defendant Adducci took any acts in furtherance of the conspiracy. Indeed, he alleges no affirmative acts at all as to this defendant.

For all these reasons, Mr. Ramos-Gomez fails to state a *Twombly*-plausible claim against Defendant Adducci.

ii. Defendant Klifman

Mr. Ramos-Gomez also fails to plausibly allege facts suggesting that Defendant Klifman conspired with others to deprive him of his federal rights. Mr. Ramos-Gomez alleges that Defendant Klifman received Captain VanderKooi's email and forwarded it on to Defendant Lopez, and that Defendant Klifman received at least one other immigration check request from Captain VanderKooi. (First. Am. Compl. ¶¶ 17, 20, 61-62). On one occasion, after receiving an immigration check from Captain VanderKooi, Defendant Klifman noted that the individual had an order of deportation and that "I'll see what I can do when you guys locate him!" (*Id.* at ¶ 67). Defendant Klifman also had previously congratulated Captain VanderKooi for VanderKooi's role as a "U-Visa gatekeeper." (*Id.* at ¶ 57). In addition to receiving immigration check requests from Captain VanderKooi, Defendant Klifman and others also sent requests to Captain VanderKooi for reports on various individuals. (*Id.* at ¶ 68). Mr. Ramos-Gomez also surmises that Defendant Klifman was one of the ICE agents who checked the government databases as part of the investigation. (First. Am. Compl. ¶ 21).

While Mr. Ramos-Gomez alleges more here than he does as to Defendant Adducci, he still fails to plausibly allege a Section 1985(3) claim. Viewed in the light most favorable to the plaintiff, nothing in the First Amended Complaint plausibly alleges that Defendant Klifman was doing anything else than performing a routine immigration check within the course of his lawfully prescribed duties of an individual referred by a local official.

iii. Defendant Lopez

The First Amended Complaint also fails to contain specific facts alleging that Defendant Lopez entered into a conspiracy, acted in furtherance of the conspiracy, or held the requisite animus. Mr. Ramos-Gomez alleges that after receiving Captain VanderKooi's request from Defendant Klifman, an individual who was possibly Defendant Lopez performed a database search. (*Id.* at ¶ 20). Defendant Lopez then went to KCCF and interviewed Mr. Ramos-Gomez. (*Id.* at ¶ 23). A detainer was issued, and Defendant Lopez then responded to Captain VanderKooi about the results of the investigation. (*Id.* at ¶ 31). Later, Lopez received another email from Captain VanderKooi with a subject line of "Spectrum Helicopter Pad Loco" and a copy of the police report. (*Id.* at ¶ 34.a). Again, Mr. Ramos-Gomez entirely fails to move beyond the speculative and possible to a *Twombly* plausible claim. Indeed, there is nothing specific that would even possibly indicate that Defendant Lopez was doing anything other than his job.

iv. Defendant Groll

The same holds true for Defendant Groll. Like Defendants Klifman and Lopez, Mr. Ramos-Gomez alleges that Defendant Groll was an ICE officer based in ICE's Grand Rapids sub-office. (*Id.* at ¶ 12). Defendant Groll prepared and signed the detainer that placed an immigration hold on Mr. Ramos-Gomez after Defendant Lopez's interview. (*Id.* at ¶ 26). The detainer listed Mr. Ramos-Gomez as a Guatemala citizen when, in fact, he is an American citizen.

(*Id.* at ¶¶ 29-30). These scant alleged facts are insufficient to demonstrate any conspiratorial meeting of the mind, racial animus, or act in furtherance of a conspiracy on Defendant Groll's part.

CONCLUSION

For all the above reasons, the Court concludes that Defendants are entitled to the relief they seek. **ACCORDINGLY, IT IS ORDERED:**

1. Plaintiff's Corrected Motion for Leave to File a Supplemental Brief (ECF No. 54) is **DISMISSED IN PART AS MOOT**. The remainder of the motion is **DENIED.**
2. Defendants' Motions to Dismiss (ECF Nos. 20, 21, 22, and 31) are **GRANTED.**
3. This case is **DISMISSED.** A separate Judgment shall issue.

Dated: January 26, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE