

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**LUIS ROBERTO RODRIGUEZ
TREVINO,**

Plaintiff,

v.

RICHARD K. JONES, et al.

Defendants.

: Case No. 1:08-cv-00339
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:
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: Magistrate Judge Timothy S. Black
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:
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**MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST BUTLER
COUNTY AND MEMORANDUM IN SUPPORT**

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Plaintiff Luis Roberto Rodriguez Trevino moves, pursuant to Rule 56(a)(2) of the Federal Rules of Civil Procedure, for Partial Summary Judgment against Defendant Butler County. Specifically, Plaintiff seeks an order holding Defendant Butler County liable for violating Plaintiff's right to be free of unreasonable searches and seizures at 8514 Port Union Road in Butler County on January 2, 2007 through the implementation of the County policy and custom on immigration enforcement.

MEMORANDUM

I. Introduction

This civil rights action challenges an illegal search and seizure of Plaintiff at a construction site in Butler County, Ohio. This motion for partial summary judgment is directed solely to the entity Defendant, Butler County or the Sheriff acting in his official capacity. In this case County policy and lack of training was the moving force behind the violation. A short summary of the argument follows.

Mr. Rodriguez Trevino was a worker at the Port Union site. Defendants Medellin and Berter were employees of the Butler County Sheriff's office. Mr. Medellin's title was "immigration specialist." Mr. Rodriguez Trevino was subjected to an unreasonable seizure when he was directed to the construction trailer at the request of Defendant Medellin. The seizure continued when Defendant Medellin directed Mr. Rodriguez Trevino to enter the small room inside the construction trailer. In both instances the Plaintiff was directed to accompany or to remain in the presence of the Sheriff's employees at locations where the Plaintiff did not otherwise intend to go. At all times relevant to this case Defendant Medellin and Berter were engaging in civil enforcement

of federal immigration law. They had no authority to engage in such civil enforcement of federal immigration law. Plaintiff was present in the trailer and in the small office and produced the documents that led to his arrest only because he was unreasonably seized by Defendants Medellin and Berter. Therefore his arrest violates the Fourth Amendment.

At the time of the events in this case, Defendant Sheriff Jones, Policymaker for Defendant Butler County, had an established policy of discouraging undocumented workers from settling and working in Butler County Ohio. Defendant Medellin was hired by Defendant Butler County approximately two months before the arrest of Plaintiff. Mr. Medellin had extensive experience enforcing the criminal and civil provisions of federal immigration law during his thirty years as a federal immigration agent. He had no experience or training with respect to his duties and/or the boundary of his authority as an immigration specialist at the county level. He had no job description. During the period that the Sheriff deployed Medellin into the community, the Sheriff was also seeking a legal opinion from the County prosecutor as to whether local law enforcement agents had authority to enforce federal immigration law. He had received no response at the time of the events of this case so he had given no guidance to Medellin. After the activities of Defendant Medellin and Berter in this case, Sheriff Jones, policymaker for Butler County, saw no basis for disciplining Medellin or Berter. In fact, to this day Defendant Medellin remains employed as an immigration specialist employed by Butler County and he has no job description. Defense counsel in this case insist, that on these facts, Defendant Medellin and Berter have “the authority to investigate, and even make arrests, for violations of federal law and, specifically, violations of immigration law.” R. 55: Def

Motion for Summary Judgment, p.20.¹ This policy is wrong as a matter of law. Thus, County policy misdirected Medellin into asserting more authority than he possessed and the failure to train Medellin in the duties of a county level immigration specialist is the moving force behind his improper seizure of the Plaintiff in this case. The County is therefore liable under Section 1983 for the Fourth Amendment violation suffered by the Plaintiff in this case. Defendants have moved for summary judgment on all claims. R. 55. It is in large part the arguments made in that motion which make appropriate this cross motion for partial summary judgment against the County under Fed. Rule 56 (a)(2).

II. Statement of Facts

A. Butler County Hires an Immigration Specialist, Robert Medellin, and Provides no Job Description or Training

1. Defendant Sheriff Jones is the policy maker for Butler County with respect to law enforcement activity.²
2. Sheriff Jones decided to add the position of immigration specialist to the staff of the Butler County Sheriff Office (BCSO) in 2006.³
3. Sheriff Jones added the position in response to complaints by constituents about the presence of undocumented persons in Butler County.⁴
4. The goal of the County immigration effort was to reduce the number of illegal aliens in Butler County, Ohio.⁵

¹ Statements made by a party-opponent in pleadings may be used against him as admissions. *Shell v. Parrish*, 448 F.2d 528, at 535 (6th Cir. 1971)(anything said by the party-opponent in a pleading may be used against him as an admission); *Barnes v. City of Cincinnati* (in Title VII sex discrimination case, City admitted treating plaintiff differently in motion for summary judgment). See Doc.31: Pltf Response in Opposition to Motion for Summary Judgment (Southern District Oh. Case no. 1:00-cv-00780). *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005).

² R.62: Jones Depo TR at 16:11-16:14.

³ R.62: Jones Depo TR at 4:22-5:9.

⁴ R.62: Jones Depo TR at 5:12-5:18.

5. There is no job description for the position of immigration specialist.⁶
6. Defendant Medellin was hired as an immigration specialist in October 2006.⁷
7. Defendant Medellin is a retired federal immigration officer with nearly 30 years experience enforcing the criminal and civil provisions of federal immigration law.⁸
8. Defendant Medellin had no training with respect to his duties as an immigration specialist for Butler County.⁹
9. The position of immigration specialist is a civilian position. The person in that position does not have arrest power.¹⁰

B. Medellin Pursues Immigration Investigation re Port Union Road Worksite

10. In December, 2006, Defendant Medellin received complaints from union workers that there was friction with undocumented workers at the worksite at 8514 Port Union Road in Butler County, Ohio. R. 55: Def Motion for Summary Judgment, pp.11-12.¹¹
11. One of the companies identified in the complaints was J & A Interior Systems aka J & A Drywall (J&A). R. 55: Def Motion for Summary Judgment, p.13.
12. Defendants Medellin and Berter went to the worksite on the morning of January 2, 2007. Medellin was wearing civilian clothes and had his badge attached to his

⁵ R.62: Jones Depo TR at 6:2-6:10; 28:20-29:14.

⁶ R.60: Medellin Depo TR at 85:9-13.

⁷ R.55-3: Medellin Affidavit ¶2.

⁸ R.55-3: Medellin Affidavit.

⁹ R.60: Medellin Depo TR at 96:25-97:3.

¹⁰ R.60: Medellin Depo TR at 9:1-5; R.62: Jones Depo TR at 33:11-21.

¹¹ R.60: Medellin Depo TR at 5:20-8:14.

- belt. Medellin carried a concealed weapon. Berter was in uniform. R. 55: Def Motion for Summary Judgment, p.12.¹²
13. The purpose of the visit was to educate employers as to the document requirements for legal employment, specifically, the completion of I-9 forms. R. 55: Def Motion for Summary Judgment, p.12.
14. Defendant Medellin was not going to investigate a crime. *Id.*
15. Defendant Medellin agreed that his purpose in visiting had no state law connection.¹³
16. The log of Defendant Medellin states that he received an anonymous tip about J&A Drywall on December 13, 2006 and that approximately 60 – 100 “illegal aliens” were working for J&A at the Port Union Distribution Center. A second tip on December 14 also claimed that illegal aliens were working at that site. Surveillance of the site was conducted by Defendant Medellin with Deputy Berter on December 27 and without Deputy Berter on December 28.¹⁴
17. Defendant Deputy Berter stated in his incident report that he was present with Defendant Medellin at the worksite on January 2, 2007 “as part of an ongoing investigation about illegal immigrants working on the construction site.”¹⁵ At the preliminary hearing on charges brought against the Plaintiff, Defendant Berter testified,

We had gotten information through a confidential informant that there was possibly illegal immigrants working on the job site. So myself and Deputy

¹² R.60: Medellin Depo TR at 35:9-36:7, 38:10-17; R.60: Medellin Depo Ex.5 (Motion to Suppress TR at 27:7-19); R.60: Medellin Depo Ex.8: 1/31/07 Medellin Memo to Chief Dwyer, p.1; R.61: Berter Depo TR at 28:19-29:12.

¹³ R.60: Medellin Depo TR at 58:4-14.

¹⁴ R.60: Medellin Depo TR at 57:9-14; R.60: Medellin Depo Ex.4: Chronology, p.1 (990557).

¹⁵ R.61: Berter Depo Ex. 11 Incident Report, p.2 (990001).

(INAUDIBLE) went there to speak to the general contractor about the possibility of him having illegal immigrants working on the job site.

R.61: Berter Depo Ex.14 Preliminary hearing 1-9-07 TR at 4:10-13.

C. Plaintiff and Other Workers Are Directed to Assemble in Trailer at Request of Defendant Medellin

18. Defendant Medellin spoke to Bruce Geiser of J&A and asked if he had any employees. Mr. Geiser responded that he did not have any employees, only subcontractors. R. 55: Def Motion for Summary Judgment, p.13.
19. The Defendant Medellin asked Mr. Geiser if he could speak to the J&A subcontractors regarding the I-9 forms and Geiser agreed. *Id.*
20. The log of events prepared by Defendant Medellin states that “Writer asked if it was okay to talk to the subcontractors regarding I-9 paperwork completion, and if they had any questions. Mr. Giser [sic] agreed to contact his subcontractors. Mr. Giser [sic] summoned the twenty-nine subcontractors in question to the office.”¹⁶
21. The incident report completed by Defendant Deputy Berter states, “Upon speaking to the General Contractor all of the suspected illegal workers were brought to a construction trailer on site.”¹⁷
22. Mr. Kathman is a Project Manager at the worksite.¹⁸ He is a witness identified by Defendants and they have submitted an affidavit from him in support of their motion for summary judgment. R. 55-1: Affidavit of Joe Kathman. Mr. Kathman was present in the trailer when the Defendant BCSO employees met with the workers.¹⁹ He testified that there was no business purpose for the workers to

¹⁶ R.60: Medellin Depo Ex.4, p.1 (990557).

¹⁷ R.61: Berter Depo Ex. 11, p.2 (990001).

¹⁸ R.59: Kathman Depo TR at 6:10-11.

¹⁹ R.59: Kathman Depo TR at 9:18-10:10; R. 55-1, Affidavit ¶¶5-11.

gather in the trailer.²⁰ The workers were brought to the trailer by Mr. Geiser because Defendant Medellin wanted to meet with them.²¹

23. Defendant Medellin identified himself as an immigration specialist with the Butler County Sheriff's Office. R. 55: Def Motion for Summary Judgment, p.15. He stated that "I may have talked about immigration. I did make the statement that I was a retired special agent with immigration, or ICE now."²²

D. Defendant Medellin directed the Workers to show their ID

24. Defendant Medellin spoke in English sometimes and in Spanish to the workers.²³

25. Defendant Medellin agrees that when he addressed the workers who had been directed to the trailer, he had no probable cause to arrest them for any violation of state law.²⁴

26. Each person was requested by Defendant Medellin to present their identification papers. R. 55: Def Motion for Summary Judgment, p.15. Mr. Kathman stated that Medellin told the workers that, "he was with the Butler County Sheriff's Office and he was going to be taking a look at their paperwork."²⁵ Kathman observed that the paperwork produced by the workers included "driver's licenses and identification."²⁶ The workers showed their papers to Mr. Medellin in the large room of the trailer while Defendant Berter stood in the room. R.55-1: Kathman affidavit, ¶10.

²⁰ R.59: Kathman Depo TR at 13:18-22.

²¹ R.60: Medellin Depo TR at 31:16 -32:9.

²² R.60: Medellin Depo TR at 36:16-18.

²³ R.61: Berter Depo TR at 29:24-30:3; R.60: Medellin Depo TR at 39:19-23; R.60: Medellin Depo Ex. 5, pp. 71, 81).

²⁴ R.60: Medellin Depo TR at 62:3-16.

²⁵ R.59: Kathman Depo TR at 22:1-6.

²⁶ R.59: Kathman Depo TR at 24:13-16.

27. Plaintiff Rodriguez Trevino said Defendant Medellin told them that “We needed to present our documents for each person.” He understood the “documents” to be “identification documents.”²⁷ Oscar Falcon, another worker directed to the trailer, stated that Defendant Medellin said he was from immigration and that he had to check identification.²⁸

28. The incident report prepared by Defendant Deputy Berter states that, “All of the suspected illegal workers were brought to a construction trailer on site. All of the workers were asked to provide identification.”²⁹ Oscar Falcon described it as follows:

Q. When you first met Mr. Medellin in
22 the large room, how did he introduce himself to
23 the group?

24 A. He said he was Mr. Medellin and he
25 wanted to see the I.D.s.

1 Q. Did he tell you why he wanted to
2 see the I.D.s?

3 A. Not at first he didn't tell us.

4 Q. Did he eventually tell you?

5 A. Because he was the Immigration.

R.58: Falcon Depo TR at 36:21-37:5.

E. Defendant Medellin directed Plaintiff and other workers into a small room for individual interviews

29. At some point, in his effort to comply with the Defendant’s instructions, Plaintiff asked for and was granted permission by Deputy Berter to go to his car and retrieve ID.³⁰

²⁷ R.57: Rodriguez Trevino Depo TR at 51:17-22.

²⁸ R.58: Falcon Depo TR at 22:17-23.

²⁹ R.61: Berter Depo Ex. 11, p.2 (990001).

³⁰ R.61: Berter Depo TR at 39:18-25; R.61: Berter Depo Ex.14 Preliminary Hearing TR, p.9.

30. Defendant Medellin decided to use the small room in the trailer.³¹ Plaintiff

Rodriguez Trevino and the other J&A workers were interviewed individually in the small office which was Mr. Kathman's office. R. 55: Def Motion for Summary Judgment, p.16.

31. Mr. Kathman stated that Medellin "took them back" individually to Kathman's office.³² He agreed that the only reason the workers went back to the office was in compliance with a request by Mr. Medellin.³³

32. Plaintiff was one of those workers who went back to the small room.³⁴ Oscar

Falcon stated that he only went to the small room because he was directed there by Mr. Medellin:

9 Q. Did you want to go to the office
10 with Mr. Medellin?

11 A. No, actually I didn't.

12 Q. So is the only reason you went
13 there because Mr. Medellin asked you to go
14 there?

15 MR. YOSOWITZ: Objection. Go ahead.

16 THE WITNESS: Yes.

R.58: Falcon Depo TR at 36: 9-16

F. The Immigration Investigation Resulted in the discharge of 12 workers and the arrest of Plaintiff

33. Plaintiff and the other workers were detained at the trailer for approximately one hour.³⁵ Oscar Falcon said that the workers stayed at the trailer even after they

³¹ R.60: Medellin Depo TR at 40:8-9.

³² R.59: Kathman Depo TR at 23:10.

³³ R.59: Kathman Depo TR at 23:23 – 24:4.

³⁴ R.56: Rodriguez Trevino Depo TR at 55:2-7.

³⁵ R.59: Kathman Depo TR at 37:10-37:14.

were interviewed in the small office because “they didn’t let us leave until everybody was finished.”³⁶

34. Defendant Medellin does not recall if he ever showed anyone an I-9 during his contact with the workers.³⁷ Mr. Kathman never observed an I-9.³⁸

35. Following the interviews Defendant Medellin informed management that 12 of the workers were “illegal employees.” All twelve were terminated.³⁹

36. During the individual interview of Mr. Rodriguez Trevino by Medellin in the small office Mr. Rodriguez Trevino produced identification documents to Medellin and Mr. Rodriguez Trevino admitted that he was not legally present in the United States.⁴⁰

37. Mr. Rodriguez Trevino was arrested for forgery but was acquitted of all charges.

R. 55: Def Motion for Summary Judgment, p.18.

III. Argument

Defendant Medellin and Deputy Berter were engaged in the civil enforcement of federal immigration law. They had no authority to do so. They unreasonably seized the Plaintiff. Defendants were not trained and they acted pursuant to County policy. That lack of training and County policy were the moving force behind the violation of the Fourth Amendment. Partial Summary Judgment should be granted against the Defendant Sheriff in his official Capacity and Butler County in this case.

³⁶ R.58: Falcon Depo TR at 35:22-23.

³⁷ During his August 21, 2009 deposition, Defendant Medellin testified that he had an I-9 in his briefcase, but he did not remember whether he showed any I-9s to anyone at the work site or during the individual interviews held in the small room of the trailer. R.60: Medellin Depo TR at 83:21-84:6. However, during the May 9, 2007 Motion to Suppress Oral Arguments held in Mr. Rodriguez Trevino’s criminal case, Medellin testified that he may have had a blank I-9 with him for demonstration purposes, but he never showed it to anyone. (R.60, Exhibit 5 Motion to Suppress TR at 88:4-25, 107:6-107:19).

³⁸ R.59: Kathman Depo TR at 32:11-32:14.

³⁹ R.60: Medellin Depo Ex. 4 (990557).

A. Standard for Summary Judgment

Summary judgment is proper where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Hunt v. Sycamore Community School Dist. Bd. of Educ.*, 542 F.3d 529 (6th Cir. 2008). The central issue is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *S.S. v. Eastern Kentucky University*, 532 F.3d 445 (6th Cir. 2008), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

In evaluating motions for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. *E.E.O.C. v. Watkins Motor Lines, Inc.*, 463 F.3d 436 (6th Cir. 2006), *citing Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157-159 (1970). Nevertheless, “the mere existence of *some* alleged factual dispute will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Baker v. Sunny Chevrolet, Inc.*, 349 F.3d 862 (6th Cir. 2003), *citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986) (emphasis in original). In this case, particularly in light of how the issues have been framed by the defendants in their motion for summary judgment, R. 55, there are no contested issues of material fact. There indeed may be some factual discrepancies but these are not material to the core issue of an unreasonable seizure pursuant to county policy. Summary judgment should be granted against the County and Sheriff in his individual capacity.

⁴⁰ R.56: Rodriguez Trevino Depo TR at 57:14-57:25.

B. Plaintiff was Seized in Violation of the Fourth Amendment When County Immigration Specialist Directed That He Be Brought to The Trailer and Directed that He Enter a Small Office for an Interview

Plaintiff was seized in violation of the Fourth Amendment when Defendant Medellin directed that Plaintiff and the other workers be brought to the construction trailer and directed that Plaintiff and the other workers each enter the small office for an interview with Immigration Specialist Medellin.

The Fourth Amendment states that “the right of the people to be secure... against unreasonable...seizures shall not be violated.” For Fourth Amendment purposes, a person is seized “if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *INS v. Delgado*, 466 U.S. 210 (1984), quoting *United States v. Mendenhall*, 466 U.S. 544, 554 (1980); *Florida v. Bostick*, 501 U.S. 429, 439 (1991); *Bennett v. City of Eastpointe*, 410 F.3d 810, 834 (6th Cir. 2005). In some cases, the Supreme Court has recast the inquiry as “whether a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter.” *U.S. v. Drayton*, 536 U.S. 194, 201 (2002)(quoting *Bostick*, 501 U.S. at 436). Under either formulation of this rule, a court must consider all of the circumstances surrounding an encounter between a citizen and police.

The Sixth Circuit has also often declared that “the one occurrence which seems to distinguish ‘seizures’ from casual contacts between police and citizens is when the defendant is asked to accompany the police...to a place to which the defendant had not planned to go.” *U.S. v. Garcia*, 866 F.2d 147, 151 (6th Cir. 1989); *U.S. v. Campbell*, 486 F.3d 949, 956 (6th Cir. 2007)(quoting *Garcia*). That is, a person is seized when law enforcement asks him to go where he or she had not planned to go. *See U.S. v. Knox*, 839

F.2d 285 (6th Cir. 1988); *U.S. v. Jefferson*, 650 F.2d 854, 856 (6th Cir. 1981); *see also U.S. v. Saperstein*, 723 F.2d 1221, 1226 (6th Cir. 1983)(finding seizure based, in part, on fact that DEA agent requested that the defendant accompany him to the DEA office). In *U.S. v. Knox*, a DEA agent approached three airline travelers in an airport. The agent walked up to the three travelers and identified himself. He then requested that the three travelers accompany him to a smaller office within the larger airport. Based on these facts alone, the Sixth Circuit affirmed the lower court's determination that this encounter was a seizure. *Knox*, 839 F.2d at 289; *see also Jefferson*, 650 F.2d at 856 (The DEA agent, "immediately after identifying himself[,] requested [the defendant] to accompany him to the baggage claims office. In these circumstances, [the defendant] could not reasonably believe that he was free to leave.").

In this case a reasonable person in Plaintiff's shoes would not feel free to terminate the encounter. Deputy Berter described the entire effort in his incident report as an "immigration investigation" of "suspected illegal workers" who were "*brought to a construction trailer on site.*" He also said "All of the workers were asked to provide identification."⁴¹ Defense witness Kathman confirmed that here was no business purpose to bring the workers to the trailer and they only came to the trailer because Medellin asked to meet with them:

12 Q. Right. But if Mr. Medellin hadn't
13 shown up that day and a uniformed officer
14 hadn't shown up that day, would you have
15 nonetheless gathered all those J&A workers in
16 that trailer?

17 A. At that time, no.

18 Q. On that day. I mean was there a
19 business purpose to gather those workers in the
20 work trailer other than to meet with

⁴¹ R.60 Medellin Depo Ex. 5, p. 98:2-11 (emphasis added).

21 Mr. Medellin?

22 A. No.

R.59: Kathman Depo TR at 13:12-13:22.

The transfer of Plaintiff and the other workers individually to the small office was another seizure since they did not independently intend to go to that office. Mr. Kathman stated that Medellin “took them back” individually to Kathman’s office.⁴² He agreed that the only reason the workers went back to the office was in compliance with a request by Mr. Medellin.⁴³ Oscar Falcon was asked directly whether he wanted to go to the small office and he said “no” and that he only went because he was directed there by Defendant Medellin.⁴⁴ Plaintiff also had no independent reason for going to the small office.

Defendant Medellin conceded as much when he testified during the criminal prosecution of the Plaintiff:

THE COURT: Do you think it's possible that in that situation that the defendant or the other people interviewed privately could have been left with that impression that they were back there to talk to a former immigration officer who is here with a gun and a badge working for the sheriff's office to talk about immigration issues?

THE WITNESS: I understand what you are saying, and I would say that yes, I guess it could be possible...⁴⁵

The fact that, after the workers were told to produce ID, Plaintiff went to his car and retrieved his ID does not change the fact that he was seized by Defendants Medellin and Berter. The Sixth Circuit has also established that a seizure may occur and may

⁴² R.59: Kathman Depo TR at 23:10.

⁴³ R.59: Kathman Depo TR at 23:23 – 24:4.

⁴⁴ R.58: Falcon Depo TR at 35:24-36:16.

⁴⁵ R.60: Medellin Depo Ex.5, p. 98.

continue even where a citizen is allowed to leave the presence of officers and to go to his or her car – as long as the citizen is still acting at the direction of the officers. *See Gardenhire v. Schubert*, 205 F.3d 303 (6th Cir. 2000). In *Gardenhire v. Schubert*, police officers came to the plaintiffs’ residence. The officers told the plaintiffs that they ‘needed to go’ to the police station. *Id.* at 312. The plaintiffs got into their own car and drove to the station, where they met the officers again. *Id.* at 309. Following other events, the plaintiffs sued, alleging a Fourth Amendment violation. In response to this claim, the defendants moved for summary judgment based on qualified immunity. *Id.* at 308. The Sixth Circuit affirmed a denial of summary judgment, noting that “a jury could find that a reasonable person in the [the plaintiffs’] position would have felt that they were not free to leave” even though the plaintiffs were not continually in the presence of the officers. *Id.* at 314. The court also stated that “[a] police officer’s statement that ‘you need to go’ somewhere carries substantial authoritative weight...[V]ery few people could hear such a directive from a police officer and still think they were free to act otherwise.” *Id.* at 314. In this case Plaintiff was merely complying with Defendant Medellin’s statement that he “needed” to show his identification.⁴⁶

It is clear, therefore, that the Plaintiff was seized by Defendants Medellin and Berter both when he was directed, at Medellin’s request, to go to the trailer and when Medellin directed him to go to the small office. It was during this unconstitutional seizure that Plaintiff presented documents that caused his arrest.

The fact that this case involves undocumented workers makes no difference to the determination as to whether the Plaintiff was seized. As set out below, the Defendants had no authority to enforce the civil provisions of immigration law. Even if they did,

⁴⁶ R.57: Rodriguez Trevino Depo TR at 51:17-22.

Plaintiff was seized under the Fourth Amendment. In *INS v. Delgado*, the immigration officers interviewed the suspected undocumented workers at their work stations – the workers did not need to move anywhere in response to the immigration officer questions. *Delgado*, 466 U.S. 210, 218 (1984). This case is materially different since Plaintiff and the other workers literally left their work stations at the request of the Defendant Sheriff employees, gathered in the trailer to meet with the officers, and again moved to the small office at the direction of Defendant Medellin. This is a seizure.

C. Defendant Butler County Policy and Lack of Training for Defendant Medellin Was The Moving Force Behind the Fourth Amendment Violation Suffered by Plaintiff.

Butler County had a policy of reducing the number of undocumented persons that were present in the County.⁴⁷ The County had no written policies to guide Butler County employees in how to implement this policy. Defendant Sheriff Jones is the top policy maker for law enforcement in the County.⁴⁸ He did cause a billboard to be posted in a public place in the County that would inform Plaintiff and all others that they were not welcome. The billboard had a photo of the Sheriff and his badge and the words “illegal aliens here” inside a circle with a line drawn through it, consistent with the universal symbol for “no.”⁴⁹ The Sheriff hired Defendant Robert Medellin as an immigration specialist to implement this policy.⁵⁰ But Defendant Medellin received no training with

⁴⁷ R.62: Jones Depo TR at 16:15-16:19; Gerhardstein Declaration Ex. A-2: 6/27/06 Ltr to Clark (990736); *Id.*, Ex. A-4: 12/14/06 email re. article ‘Butler County Sheriff gets Immigration Enforcement Powers’ (990741); Ex. B: 12/13/06 Blog Post.

⁴⁸ R.62: Jones Depo TR at 16:11-14.

⁴⁹ R.62: Jones Depo Ex.15: Website pages, p.7.

⁵⁰ R.60: Medellin Depo TR at 5:9-19 (“My responsibilities [December 13, 2006] were to provide liaison between the sheriffs department and immigration, or I should say ICE now. They were in the process of applying for the 287(g) authority and from time to time I would interrupt or explain certain issues pertaining to immigration to Sheriff Jones.”); R.62: Jones Depo TR at 4:22-5:9, 13:1-12 .

respect to immigration duties as a *county* official.⁵¹ The policy of forcing “illegal aliens” out of the County, combined with the complete lack of guidance to County employees in its implementation was the moving force behind the violation of the Fourth Amendment rights of Plaintiff in this case.

1. Standard for holding County Liable

Local governments can generally be liable under 42 U.S.C. § 1983 based on one of three theories: (1) the action was taken pursuant to a formal policy; (2) the action was taken pursuant to a longstanding practice or custom; and (3) the action was taken by a person serving as a “final policymaker.” *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 694 (1978). Plaintiff agrees that Butler County⁵² cannot be liable under the doctrine of respondeat superior. *Id.* at 691. However, Butler County is liable for its official policy, practice and custom that is the “moving force” behind the constitutional violation. *Id.* at 694; *City of Canton v. Harris*, 489 U.S. 378, 389 (1989). Under Ohio law, the county sheriff makes the policy for the county with regard to the operation of his office and discharge of his duties. *Stone v. Holzberger*, 807 F.Supp. 1325, 1335 (S.D.Ohio 1992)(citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 484-85 (1986)).

Furthermore, a local government’s failure to train its employees can amount to a policy or custom actionable under § 1983 where the failure to train “evidences ‘deliberate indifference’ to the rights of its inhabitants.” *City of Canton*, 489 U.S. at 389 (citing *Pembaur*, 475 U.S. at 483-484). The Supreme Court has recognized that deliberate

⁵¹ R.60: Medellin Depo TR at 96:25-97:3; R.62: Jones Depo TR at 14:25-15:11.

⁵² In this motion a judgment against Butler County and a judgment against the Sheriff in his official capacity are two ways of describing the same legal concept. *Monell*, 436 U.S. at 691 (holding that local

indifference is found, *inter alia*, where there is a lack of adequate training in light of foreseeable consequences that could result from lack of instruction. *Id.* at 390. As the Supreme Court held in *City of Canton*:

[i]t may happen that in light of the duties assigned to specific officers or employees the need for more and different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need.

489 U.S. at 390. Therefore, the issue of whether the training was inadequate is assessed in light of the task performed by the officer. *Id.*

2. The Duties of County Immigration Specialist Required Special Training Because Local Officials Have No Authority to Enforce Civil Immigration Laws

A policy of discouraging undocumented workers from taking jobs inside a local political jurisdiction is not in and of itself an unconstitutional policy. The challenge is simply to make sure that those who are tasked to this work know the boundaries of their authority and the rights of the persons with whom they will come in contact. In this case it was particularly important for Immigration Specialist Medellin to receive training because in his role with the county he had dramatically less authority than he enjoyed as a federal immigration officer. He needed training to learn the difference in his two roles.

The Defendants in their motion for summary judgment claim that as a county immigration specialist Defendant Medellin actually possessed the power to enforce federal immigration law. See R. 55: Def Motion for Summary Judgment, pp. 19-22.

government officials sued in their official capacities are “persons” for the purposes of § 1983 in those cases in which a local government would be suable in its own name).

That contention is wrong and is itself evidence of a policy that caused defendant Medellin to violate the Plaintiff's rights in this case.⁵³

In fact, State and local officials are authorized to enforce some criminal provisions but are *not* authorized to enforce the civil provisions of the Federal Immigration Code. Immigration law is a federal law, promulgated by Congress. *See* Title 8 of the United States Code. The enforcement of the immigration laws has typically been delegated to Immigration and Customs Offices. The immigration code has two types of provisions: civil offenses and criminal offenses.

“Illegal presence,” which refers to an alien whose presence in this country is contrary to law, makes an alien deportable. 8 U.S.C. § 1227(b). Deportation hearings are conducted by an administrative judge, and are civil in nature. 8 U.S.C. § 1229a.

“Illegal entry,” on the other hand, is a criminal offense. 8 U.S.C. § 1325(a). Illegal entry applies to a person who “(1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact.” Illegal entry is a misdemeanor for first time offenders. *Id.* In addition to illegal entry, there are other criminal provisions making it a violation to, among other things, re-enter the country upon removal and bringing and harboring aliens are criminal offenses. *See* 8 U.S.C. §§ 1324-1326.

Local law enforcement officers have limited authority to enforce the criminal provisions of the Immigration Code. *Gonzales v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983)(overruled on unrelated grounds in *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037

⁵³ See cases cited *supra* note 3.

(9th Cir. 1999). In this case, several plaintiffs filed suit after being arrested by city police officers pursuant to a city policy that allowed officers to arrest people that the officers reasonably suspected of being illegal aliens. The Ninth Circuit held that local law enforcement officers only have the ability to arrest a person for criminal violations of the Immigration Code. The court noted that there was a difference between the criminal code and mere illegal presence. The court noted that there are many ways that a person could have been illegally present in the country without ever having illegally entered the country, such as an expired visa, or a change of student status. *Id* at 477.

The Ohio Attorney General's office recently cited the Ninth Circuit's decision in *Gonzales*, creating a distinction between the criminal and civil provisions of the immigration code. Ohio Atty. Gen. Op. No. 2007-018. In this opinion, the attorney general found that county sheriffs may arrest and detain an alien without a warrant if the officer has probable cause to believe that the alien has violated a criminal provision of the immigration. However, the opinion also clearly stated that a county official may not arrest and detain an alien for a violation of a civil provision of the federal immigration code. *Id.*⁵⁴

The misdemeanor of illegal entry ends when an alien has reached a place of repose within the country. *Gates v. Superior Court*, 193 Cal. App. 3d 205, 216 (Cal. App. 2. Dist., 1987), *citing U.S. v. Rincon-Jimenez*, 595 F.2d 1192, 1194 (9th Cir. 1979). Under California law, once the crime of illegal entry ends, a local law enforcement officer may not arrest an alien for illegal entry, because the misdemeanor crime did not occur in the officer's presence. *Id.* at 216. As such, the court found that a police policy that allowed arrests for illegal entry after the crime had already been completed was

improper. *Id.* at 222. Under Ohio law, as in California, warrantless arrests can be made only if the misdemeanor is committed in the presence of the arresting officer. *City of Columbus v. Leneer*, 16 Ohio App.3d 466, 476 N.E.2d 1085 (Ohio App., 1984). See O.R.C. § 2935.04. The arrest in this case only occurred pursuant to an illegal seizure – all in violation of Plaintiff’s rights.

3. Lack of Training was the Moving Force behind the Violation in this Case

Defendant Jones provided no training and no guidance for Defendant Medellin as to the scope of his authority as a county immigration specialist. Defendant Jones gave Medellin specific duties that required training in order to avoid violating the rights of those with whom Medellin would meet in the course of his duties. There is ample authority for holding entities liable in similar circumstances. The Sixth Circuit found in *Russo v. City of Cincinnati*, 953 F.2d 1036 (6th Cir. 1992), that a plaintiff can show that alleged inadequate training is the cause of a constitutional violation where (1) the training program is inadequate for the tasks the officer is assigned to perform, (2) the inadequacy was the result of the local government’s deliberate indifference, and (3) the inadequacy “closely related to” or “actually caused” the injury.

In *Russo*, an individual suffering from schizophrenia was released from a psychiatric treatment facility on a two-hour pass. He indicated to family members that he wished not to return to the facility. The police were called to the suspect’s apartment and a confrontation occurred, resulting in the shooting death of the suspect. *Id.* at 1039-41. At the time, Cincinnati police officers received 7 to 8 hours of training in dealing with “disturbed-distressed” individuals. Further, the City police procedure manual included a section on the handling of mentally ill individuals. *Id.* at 1045. Despite this training, an

⁵⁴ See Gerhardstein declaration, Ex.A-6, Syllabus 1.

expert in police procedures determined that the officers involved did not understand the appropriate procedures for dealing with a mentally ill individual. *Id.* at 1047. The Sixth Circuit held that the training program regarding use of force on mentally ill citizens was sufficiently inadequate that a jury could hold that it caused the excessive force applied by Cincinnati police to the suspect. *Id.* at 1048. In this case, Defendant Medellin did have training on immigration law but he had no training at all on what he could do to enforce immigration law as a *county* official. He was deployed to Plaintiff's worksite as a *county* official.

The facts of the instant case are also similar to two recent cases in this District involving failure to train claims: *Abdi v. Karnes*, 556 F.Supp. 2d. 804 (S.D. Ohio 2008) and *Owensby v. City of Cincinnati*, 414 F.3d 596 (2005), *aff'd*, 414 F.3d 596 (6th Cir. 2005), *cert. denied*, 547 U.S. 1129 (2006).

In *Owensby*, undisputed evidence indicated that police officers restrained Owensby with a choke hold technique, beat him repeatedly, and after handcuffing him, maced him in the face before placing him in the back seat of a police cruiser. *Owensby*, 414 F.3d at 634-636. Even though at least two officers had Owensby's blood on their shirts, and two other officers noted that Owensby appeared not to be breathing and was bleeding, none of the eleven police officers on the scene called for medical assistance, and Owensby died as a result of the injuries sustained. *Id.* at 635-637.

Owensby's estate filed a § 1983 action against the individual police officers and the three respective municipalities, including the City of Cincinnati, as a result of the force used on Owensby as well as the officers' denial of medical care. *Id.* at 628-629. The district court granted the plaintiff's partial motion for summary judgment against the

City of Cincinnati and its police chief for denial of medical care, finding that their failure to train and supervise their officers constituted a violation as a matter of law. *Id.* at 659. The court's decision rested in large part on undisputed evidence that the police department's policy was ambiguous, and rendered the officers "confused and unable to discern" their constitutional obligations to Owensby. *Id.* Furthermore, the court stated that where the policy itself serves to require the constitutional violation, the deficiency in training is so "obvious" that the failure to do so "can properly be characterized as deliberate indifference" as a matter of law. *Id.* at 660.

In *Abdi*, a deputy police officer fatally shot Abdi, who suffered from paranoid schizophrenia, in the discharge of an arrest warrant determining that Abdi was a danger to himself and others. *Abdi*, 556 F.Supp. 2d at 808-809. Abdi's estate filed a § 1983 action against the Franklin County Sheriff's Office as a result of the shooting. The family claimed that the Sheriff failed to adequately train its deputies on the use of force against the mentally ill. *Id.* at 805-806. Two deputies, primarily assigned to serve arrest warrants, were involved in the incident. One had received only general instruction during basic police training eighteen years prior and the other had received no training whatsoever in dealing with the mentally ill. *Id.* at 806. The district court denied the defendant's motion for summary judgment, noting that "[t]he need for ... training depends in large part on the specific duties of a particular deputy ... Because of [the deputy's] job function [was primarily serving warrants for arrest, many of which involved the mentally ill], the need for such training was much greater than that of the other deputies." *Id.*

In *Abdi*, as in the case at bar, the sheriff's office was aware of the need for special training due to the officer's primary job functions, as well as its availability. *Id.* at 817.

The sheriff's office was a participant in a Mental Health Task Force program which recommended establishment of "crisis intervention teams" and training in methods for handling and subduing mentally ill suspects. The sheriff and supervisors personally attended seminars advocating this approach. *Id.* at 806. Further, the probate court's order authorizing the arrest of Abdi indicated that a crisis intervention team should be used, "if appropriate." *Id.* Despite this knowledge, the sheriff's office dispatched deputies with no training in dealing with the mentally ill to arrest Abdi, whose mental illness was the very purpose for his arrest. *Id.*

Though many failure to train cases focus on recurring violations by officials as evidence of deliberate indifference, proving that such violations have previously occurred is not necessary. It is possible for a municipal authority to be liable for failure to train upon the first occurrence of a particular violation if the failure to train would have the "highly predictable consequence" of causing constitutional violations. *Gregory v. City of Louisville*, 444 F.3d 725, 753 (6th Cir. 2006) citing *Cherrington v. Skeeter*, 344 F.3d 631 (6th Cir. 2003).

The plaintiff in *Gregory* asserted that the City had failed to adequately train its officers in the handling of exculpatory evidence. The plaintiff was wrongfully imprisoned for several years after being convicted of rape. DNA testing of hairs found at the scene later confirmed plaintiff's innocence. *Gregory*, 444 F.3d at 753. No evidence of any training program was produced. The Sixth Circuit held that the failure to provide any training on key duties with direct impact on constitutional rights of citizens was enough to require denial of summary judgment to the defendant municipality. *Id.* at 754.

In sum, a municipality may be liable for failure to adequately train its officials and employees where such failure evidences deliberate indifference to the rights of individuals with whom the officials will have contact. Whether training is adequate or not should be determined in light of the particular tasks to be performed by the official in question. Additionally, the inadequacy of the training must be closely related to the ultimate injury alleged. Where the need for training is obvious, and the inadequacy of the training would have the highly predictable consequence of resulting in a constitutional violation, the municipality may be held liable for failing to train.

In the instant case the Sheriff knew that as a local law enforcement agency the Sheriff's department did not have full power to enforce immigration law. In fact he applied for expanded powers in June, 2006 under §287(g) of the Immigration and Nationality Act (INA).⁵⁵ On December 13, 2006, Sheriff Jones issued a press release stating that his request for this expanded authority had been approved. In this release the Sheriff states, "[i]n essence, the Butler County Sheriff's Office will have powers to enforce federal immigration law."⁵⁶ The Sheriff was quoted in the media that day saying, "I will be able to enforce federal immigration law. If you trespass into community or this country and you're in this county, the local sheriff will be able to enforce these immigration laws."⁵⁷ During this period the Sheriff asked the Butler County Prosecutor for guidance as to the authority that county law enforcement officers had with respect to federal immigration law. In turn, on March 2, 2007, the Butler County Prosecutor passed the question on to the Ohio Attorney General in the form of a

⁵⁵ Gerhardstein Declaration, Ex. A-2.

⁵⁶ Ex.B; <http://www.butlersheriff.org/phpBB/viewtopic.php?t=148> .

⁵⁷ Gerhardstein Declaration, Ex.A-4.

letter from Butler County Prosecuting Attorney Robin N. Piper to Marc Dann, Attorney General of Ohio. The letter asked:

Pursuant to the Sheriff's duty, under O.R.C. § 311.07, to "preserve the public peace," does the Sheriff have the authority to arrest and detain aliens, found in Butler County, based upon evidence establishing probable cause to believe that such aliens have violated federal immigration laws?"

Gerhardstein Declaration, Ex. A-1: 3/2/07 Letter to Marc Dann.

No response was received from the Ohio Attorney general until June 28, 2007, when the office issued Opinion No. 2007-018,⁵⁸ and replied that a county sheriff may only arrest and detain an alien upon probable cause that the alien has violated a *criminal* provision of federal immigration law. However, the opinion also informed that the sheriff "may not arrest and detain an alien for a civil violation of the federal law." *Id.* at Syllabus. The opinion further notes that "illegal presence in the United States is a civil, not a criminal, violation of federal immigration law." *Id.* at n.5. This is so because criminal violations of federal law constitute a breach of the peace under O.R.C. § 311.07 and § 311.08, while civil violations of federal law do not. *Id.*, p. 6. The Opinion also outlined constitutional limitations on the sheriff's ability to arrest and detain aliens, the applicable requirements to establish reasonable suspicion and probable cause and restrictions on the acceptable duration of detention. *Id.*, p.8.

The opinion, and a subsequent follow-up opinion, No. 2007-029,⁵⁹ further articulated that the county sheriff could enter into an agreement with Federal ICE to perform some limited federal functions. However, the sheriff and deputies would still not be authorized to arrest and detain aliens for strictly civil violations. Ohio Atty. Gen. Op.

⁵⁸ Attached as Gerhardstein Declaration, Ex. A-6.

⁵⁹ Attached as Gerhardstein Declaration, Ex. A-7.

No. 2007-018 *and* 2007-029 at Syllabus.⁶⁰ The letters to the Ohio Attorney General included proposed Memoranda of Agreement between the Butler County Sheriff's Office and the Federal Immigration and Customs Enforcement agency.⁶¹

The Sheriff did not actually sign the Memorandum of Agreement authorizing any immigration related work by sheriff employees until February 5, 2008, a year after the events of this case.⁶² That agreement required extensive training of employees who would exercise immigration enforcement power, including training regarding the "scope of immigration officer authority."⁶³ Further, the Agreement specifies that, county officers will "immediately contact" Immigration and Customs Enforcement (ICE) representatives when matters of "investigative interest to ICE" arise in the course of performing duties authorized by the Agreement. The Agreement provides a list, including "alien related arrests, which could reasonably be expected to generate media interest," but notes that the list is by no means exhaustive. The Agreement further provides that, even when such matters of interest include State and/or local violations, the State and federal agencies should work jointly. *Id.* at p. 2. This agreement which had been in draft form form many months, shows that the Sheriff was aware that limitations existed on local authority and that, even after approval by ICE to perform some limited federal functions, local officials must defer to ICE on matters of federal interest.

Thus at the time of the events of this case on January 2, 2007, the Butler County Sheriff: 1) did not yet have any expanded powers with respect to immigration enforcement, 2) had requested but not yet received guidance regarding the power of

⁶⁰ See Exs.A-6 *and* A-7.

⁶¹ Gerhardstein Declaration, Ex. A-1: 3/2/07 letter from Butler County Prosecutor to Attorney General.

⁶² Gerhardstein Declaration, Ex.A-3: February 2008 Memorandum of Agreement.

⁶³ *Id.*, p.6 (990014).

county sheriff employees to enforce immigration law, and 3) had become an outspoken national figure calling for more local power and tough immigration enforcement.⁶⁴ In addition, the Sheriff had hired Defendant Medellin as an “immigration specialist,” although he provided Medellin no training, and he provided Medellin with no job description.⁶⁵ Defendant Medellin was therefore deployed to implement the County policy on immigration but had no guidance on the boundaries of his authority. This was dangerous because Defendant Medellin was a former federal immigration officer, a position in which he had full enforcement authority. In that position it was not expected that a federal immigration official would have occasion to review or determine the scope of authority that a state or local official would possess.⁶⁶

Like the deputies in *Abdi*, because Defendant Medellin was hired as an immigration specialist, it was inevitable that he would come into contact with those suspected of violations of federal immigration law. Further, also as in *Abdi*, the policy making authority, the sheriff, was aware that there were limitations imposed on a county official in enforcing federal immigration law. Additionally, as evidenced by the proposed Memorandum of Agreement with ICE, the sheriff was aware that further training would be required for employees charged with performing federal functions and that, even if the Agreement had been effective at the time, local officials would be required to defer to ICE in several respects. Had the Defendant waited for advice from the Ohio Attorney General regarding the proper role of a county sheriff in enforcing federal immigration law, perhaps proper instructions or training could have been issued. Unfortunately, the

⁶⁴ Ex.B: 12/13/06 Jones Press Release; Ex.C: 6/19/06 Article ‘Latinos Rattled by Ohio Sheriff’s Mission’; Ex.A-4: 12/14/06 Email re. Article ‘Butler County Sheriff gets Immigration Enforcement Powers’.

⁶⁵ R.60: Medellin Depo TR at 85:9-13, 96:25-97:3; R.62 Jones Depo TR at 14:25-15:11.

⁶⁶ R.65: Wilkens Depo TR at 19:20-20:14.

Defendant did not wait for such advice, and Defendant Medellin was deployed with no training as to the scope of his authority and the constitutional rights of Mr. Rodriguez Trevino were consequently violated.

Having been trained as a Federal Immigration Agent, Defendant Medellin was accustomed to having authority to enforce all aspects of federal immigration law, both civil and criminal. Medellin's log of activities indicates that, in late December of 2006, he was following up on a lead that multiple illegal aliens were working at the Port Union Road worksite.⁶⁷ This investigation led to the unlawful seizure of Mr. Rodriguez Trevino. These logs put Defendant Medellin's supervisors on notice of this investigation but they did nothing to inform Medellin of the limits to his authority. Further, because the Butler County Sheriff's Office hired Medellin into the particular position of an immigration specialist *because* he had experience as a federal agent, it should have been readily apparent to the County that Medellin would require training on his new scope of authority. The failure to provide such training had the highly predictable consequence of resulting in constitutional violations, namely Mr. Rodriguez Trevino's right to be free from unreasonable seizures.

D. Defendants' Action in this case was an unauthorized effort to Enforce the Civil Provisions of the federal Immigration Code which caused Defendants to violate the Fourth Amendment.

Defendants agree that they did not have probable cause to arrest the Plaintiff when he was directed to the trailer.⁶⁸ Defendants agree that none of the actions in this case were taken based on an effort to enforce the criminal provisions of federal

⁶⁷ R.60: Medellin Depo Ex. 4, pp.1-2 (99057-99058).

⁶⁸ R.60: Medellin Depo TR at 61:6-62:6, 62:9-62:16.

immigration law.⁶⁹ R.55, pp.12, 22. Rather, Defendants claim that the actions of Medellin and Berter were consistent with their authority to educate employers about I-9s and with their authority to enforce federal law.⁷⁰ R. 55, pp.8,12, 36.

As set out above, Plaintiff and the other dry wall workers in this case were seized and questioned. Police may only detain and question an individual if the officers have reasonable suspicion, based upon objective facts, that the individual is involved in criminal activity. *U.S. v. Grant*, 920 F.2d 376 (6th Cir. 1990), citing *Terry v. Ohio*, 392 U.S. 1, 16-19, 88 S.Ct. 1868, 1877-78, 20 L.Ed.2d 889 (1968). An officer's hunch or generalized suspicion is not enough to justify the detention of an individual. *Id.* The officers in *Grant* were federal immigration officers enforcing immigration laws at the time that the unreasonable search, which resulted in the discovery of narcotics, occurred. The Sixth Circuit held that these officials did not have any reason to suspect the plaintiff of being guilty of a crime when they saw him sleeping on an airplane. *Id.* Similarly here, Defendant Medellin and Berter had no reason to suspect Plaintiff and the workers of any crimes when they were rounded up and directed to the trailer and small office.

In all cases that discuss the authority of local law enforcement officers to arrest and detain aliens the police have had a valid reason to initially begin the questioning. *See Gonzales*, 722 F. 2d 478 (Several incidents: police responded to complaint of 25 people loitering behind a market, police responded to complaint of fight, and police stopped people leaving post office because of suspicious behavior), *United States v. Salinas-Calderon*, 728 F. 2d. 1298 (10th Cir. 1984)(police stopped car because driver was driving erratically, found six people hiding in the trunk), *United States v. Vasquez-Alvarez*, 176

⁶⁹ R.60: Medellin Depo Ex.5, p.62:9-16.

⁷⁰ R.60: Medellin Depo TR at 57:15-58:14, 73:13-20.

F. 3d 1294 (10th Cir. 1999)(police questioned alien because he was suspected of drug dealing), *United States v. Santana-Garcia*, 264 F. 3d 1188 (10th Cir. 2001)(driver stopped for traffic violation). Not so in this case.

There is no evidence that the officers reasonably suspected Mr. Rodriguez Trevino, or any of the other workers, of any crimes that the agency had the authority to enforce at the time that the Defendants detained them. Instead, the individual defendants acted pursuant to Butler County's "ongoing investigation about illegal aliens working on the construction site."⁷¹ There was no reason to suspect that any of the workers had violated any criminal laws or criminal provisions of the Immigration Code. The officers admit in their incident report that this raid occurred because of an ongoing investigation of illegal aliens.⁷² If anything, the individual defendants suspected that the workers were guilty of "illegal entry," a misdemeanor. However, illegal entry ends when a person has reached a state of repose in the county. All of these workers had reached that point, as they were working their regular job, and not in the process of entering the United States. Thus, as the officers cannot arrest people for misdemeanors that occur outside of the officers' presence, the officers did not have authority to detain these workers.

Even if the officers believed that the workers, like Mr. Rodriguez Trevino, were illegally present in the country, this is a violation of U.S. civil law, and the officers did not have the authority to enforce the civil provisions of the Immigration Code.

As the officers did not have probable cause that the workers were violating any Ohio criminal law or any federal immigration laws, the raid was unconstitutional,

⁷¹ R.61: Berter Depo Ex. 11, p.2 (990001).

⁷² *Id.*

conducted pursuant to county policies, and as a result the county is liable under §1983 as a matter of law.

III. Conclusion

For these reasons, the court should enter summary judgment against Defendant Butler County and Sheriff Jones in his official capacity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2009, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

/s/Alphonse A. Gerhardstein
Counsel for Plaintiffs