

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Luis Roberto Rodriguez Trevino,	:	
	:	Case No. 1:08-cv-00339-HJW
Plaintiff,	:	
	:	
-vs-	:	
	:	Magistrate Judge Timothy S. Black
Richard K. Jones, et. al.,	:	
	:	
Defendants.	:	

**DEFENDANTS RICHARD K. JONES, ROBERT E. MEDELLIN, DANIEL BERTER
AND BUTLER COUNTY, OHIO’S REPLY IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT (DOC. 55)**

Plaintiff brought claims against Defendants related to his arrest for the Ohio offense of forgery. Defendants have moved for summary judgment. (See Doc. 55). Plaintiff has opposed summary judgment. (See Doc. 67). This reply shows that Plaintiff has made conclusions unsupported by facts and has misapplied case law in an attempt to support his claims.

A. LOCAL LAW ENFORCEMENT OFFICERS CAN ASK QUESTIONS REGARDING AN INDIVIDUAL’S LEGAL STATUS WITHOUT VIOLATING THE CONSTITUTION.

Plaintiff argues that Mr. Medellin and Deputy Berter went to the Port Union construction site to investigate and determine whether illegal aliens were working at the construction site. (See Pltf’s. Memo. Opp. Summary Judgment, Doc. 67, pp. 6, 20).¹ Of course, this is hardly surprising given that the nature of the complaint made to Mr. Medellin concerned the presence of

¹ To support this assertion, Plaintiff uses testimony from Defendant Berter taken at a preliminary hearing in Plaintiff’s criminal case. (See Pltf.’s Memo. Opp. Defs.’ Mot. for Summary Judgment, Doc. 67, p. 6.) Of course, this testimony is only admissible against Defendant Berter and cannot be used to support claims against any other Defendant. That is, a party’s own statement is admissible as non-hearsay *only if it is offered against that party*. See, *Stalbosky v. Belew*, 205 F.3d 890, 894 (6th Cir. 2000). See also, *United States v. Sauza-Martinez*, 217 F.3d 754, 760 (9th Cir. 2000) (finding that one defendant’s statements were not admissible as party-admissions against co-defendant); 5 Weinstein’s Federal Evidence 801-42 (2d. ed.).

undocumented workers at the worksite causing friction with individuals that worked in various trades. (Medellin depo., pp. 6-8). Nevertheless, assuming, *arguendo*, that Mr. Medellin and Deputy Berter went out to the worksite for the sole purpose of determining whether there were illegal aliens at the worksite, they would not be in violation of any constitutional provision or any clearly established law.

As stated in Defs. Mot. for Summary Judgment (Doc. 55), it is well settled that local officials may question individuals regarding their immigration status without running afoul of the Constitution. (See Doc. 55, pp. 19-22). Put another way, it has not been clearly established—and Plaintiff cites no contrary authority—that local officials cannot question individuals regarding immigration status. As such, Defendants are entitled to qualified immunity.² Plaintiff claims that local officials must have an independent justification to simply talk to an individual about his/her immigration status. (See Pltf's. Memo. Opp. Summary Judgment, Doc. 67, pp. 19-20). Plaintiff's claim directly contravenes the Supreme Court's holding in *Muehler v. Mena*, 544 U.S. 93 (2005). In *Muehler*, the Supreme Court squarely rejected the Ninth Circuit's holding (and Plaintiff's argument in this case) that officers were required to have independent reasonable suspicion in order question an individual regarding immigration status. *Id.* at 100-101. Moreover, the Court held that merely questioning an individual about his/her immigration status does not constitute a seizure: "this Court has held repeatedly that mere police questioning does not constitute a seizure." *Id.*, citing *Florida v. Bostick*, 501 U.S. 429, 434, 115 L. Ed. 2d 389, 111 S. Ct. 2382. Defendants do not dispute that reasonable suspicion and/or probable cause is needed to *seize* an individual for questioning, but as discussed below, the objective evidence shows that Plaintiff was not seized until he was arrested for forgery. As such, Mr. Medellin's

² Government officials are entitled to qualified immunity if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Pearson v. Callahan*, 129 S. Ct. 808, 815, 172 L.Ed.2d 565 (2009).

questioning of Plaintiff regarding his identification and immigration status did not violate the Constitution, and he is entitled to qualified immunity.

B. PLAINTIFF WAS NOT SEIZED AT THE CONSTRUCTION SITE AT ANY TIME PRIOR TO HIS ARREST FOR FORGERY.

Plaintiff argues that he was seized when Mr. Medellin spoke to him and asked for his identification at his workplace construction trailer. In arguing that he was seized, Plaintiff impermissibly focuses on subjective understandings of the situation rather than the understanding of an objectively reasonable person in Plaintiff's situation. Thus, it is of no importance, for example, that Plaintiff's co-worker states that he felt that he needed to cooperate with Mr. Medellin. (See Falcon depo., at pp. 35-36; Pltf's. Memo. Opp. Defs. Mot. For Summary Judgment, Doc. 67, p. 16). It is also not relevant that Mr. Medellin testified at Plaintiff's criminal suppression hearing that it was *possible* the workers felt the need to cooperate. (See Pltf's. Memo. Opp. Defs. Mot. for Summary Judgment, Doc. 67, p. 17; Medellin depo., Ex. 5, p. 98).³ The objective inquiry is whether a reasonable person under the circumstances would have believed that he was not free to leave. *INS v. Delgado*, 466 U.S. 210, 215 (1984). In this case, the objective facts conclusively show that the encounter was not a seizure:

- Plaintiff and the other J & A employees came to the construction trailer at the request of either Bruce Geiser, the J & A supervisor, or "one of the Hispanic guys" working for J & A, not at the request of Mr. Medellin or Deputy Berter. (Falcon depo., p. 14; Trevino depo., p. 43, respectively).
- Some employees simply ignored the request to go to the trailer and none of those employees were arrested or detained for not going to the trailer. (Falcon depo., p. 15, 17).

³ Apparently, the judge presiding over Plaintiff's criminal trial did not feel that the encounter was a seizure because Plaintiff's Motion to Suppress was denied and the case proceeded to trial.

- When the workers first got to the trailer, they were not ordered where to sit or stand, but rather, “put [themselves] in the position [they] wanted to be in around the room.” (Falcon depo., p. 21).
- Mr. Medellin identified himself as an immigration specialist with the Butler County Sheriff’s Office. (Berter depo., p. 28; Medellin depo., p. 36; see also Falcon depo., pp. 22, indicating that Mr. Medellin stated that he worked for Butler County).⁴ Mr. Medellin made it clear that he did not work for immigration. (Kathman Affidavit, ¶ 6).
- The workers were not threatened with arrest or told that they were going to be subjected to criminal penalties. (Falcon depo., pp. 25-27).
- During the group meeting in the trailer and the brief individual interviews in Mr. Kathman’s office, neither Mr. Medellin nor Deputy Berter physically restrained Plaintiff (or any other worker), handcuffed Plaintiff or limited his freedom of movement. (Falcon depo., pp. 25-27; Kathman Affidavit, ¶ 14).
- No weapons or handcuffs were displayed. *Id.*
- Plaintiff actually left the trailer, *unescorted and at his own request*, went out to his car, and came back to the trailer. (Trevino depo., p. 70; Berter depo., pp. 40-41).
- The length of the interviews in Mr. Kathman’s office was very brief, lasting no more than 2-3 minutes. (Kathman Affidavit, ¶ 11; Falcon depo., p. 27).
- The exits were not blocked. Deputy Berter was standing in a corner and not doing much of anything. (Falcon depo., p. 31; Kathman Affidavit, ¶ 10). The door to the construction trailer was open. (Falcon depo., p. 32).
- During the interviews, the workers in the conference room sat around the table talking amongst themselves. (Falcon depo., p. 33).
- Mr. Medellin was cordial the entire time that he was at the worksite. There was no intimidation or anger from Mr. Medellin. (Kathman Affidavit, ¶ 14).
- Everyone in the trailer, except for Plaintiff, eventually returned to work. (Falcon depo., p. 30).

The objective evidence demonstrates that Plaintiff was not seized for Fourth Amendment purposes. Plaintiff relies on the fact that he and other workers now say that they subjectively felt

⁴ Later in his deposition, Oscar Falcon states that Mr. Medellin said he was “the Immigration.” (Falcon depo., p. 36). It is unclear what Mr. Falcon means by this statement since Mr. Falcon clearly testified that Mr. Medellin stated he was with Butler County.

that they needed to comply with Mr. Medellin. The Supreme Court has clearly indicated that subjective notions of seizure are insufficient to turn a consensual encounter into a seizure: “While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.” *Delgado*, 466 U.S. at 216 (1984).

The cases cited by Plaintiff in support of his seizure argument actually help show why the encounter in the construction trailer was not a seizure. Plaintiff relies first on *United States v. Drayton*, 536 U.S. 194 (2002). In *Drayton*, three members of the Tallahassee Police Department boarded a Greyhound bus as part of a routine drug and weapons interdiction effort. *Id.* at 197. One officer knelt on the driver’s seat and faced rearward so that he could observe the passengers. *Id.* at 197-198. Another officer stood at the rear of the bus while the third officer spoke with individual passengers regarding their travel plans and luggage. *Id.* at 198. The officers did not inform the passengers that they did not have to cooperate. *Id.* One officer asked the defendant, “Mind if I check you?” *Id.* at 199. The defendant responded by lifting his hands about eight inches from his legs. *Id.* The officer conducted a pat-down of defendant’s thighs and detected hard objects similar to those found on defendant’s companion. *Id.* Defendant was arrested and a further search revealed several bundles of cocaine in defendant’s boxer shorts. *Id.* The Court of Appeals granted the defendant’s motion to suppress. The Supreme Court reversed.

The Supreme Court reiterated that law enforcement officers need no reasonable suspicion or probable cause to ask questions of an individual or request consent to search that individual: “Even when law enforcement officer have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage—provided they do not induce cooperation by coercive means.” *Id.* at 201, citing *Florida v. Bostick*, 501 U.S.

429, 434-435 (1991). In ruling that the encounter on the bus was not a seizure, the Court looked at the following factors: (1) no weapon was brandished and no intimidating movements were made by the officers, (2) the aisle of the bus was free so that defendant could exit, and (3) the officer spoke in a polite, quiet voice. *Id.* at 203. In this case, it is undisputed that neither Mr. Medellin nor Deputy Berter brandished a weapon or made intimidating movements. It is also undisputed that, like the aisle of the bus in *Drayton*, the exit to the construction trailer was open and unobstructed. (Falcon depo., p. 32). Finally, the evidence in the record indicates that Mr. Medellin was cordial and polite to the workers in the construction trailer. (Kathman Affidavit, ¶ 14) Plaintiff points out that Deputy Berter was in uniform and both Deputy Berter and Mr. Medellin were armed. (Pltf's Memo. Opp. Defs. Mot. for Summary Judgment, Doc. 67, p. 5).

The *Drayton* court found these factors insignificant:

Officers are often required to wear uniforms and in many circumstances this is casue for assurance, not discomfort. Much the same can be said for wearing sidearms. That most law enforcement officers are armed is a fact well known to the public. The presence of a holstered firearm thus is unlikely to contribute to the coerciveness of the encounter absent active brandishing of the weapon.

Id. at 204-205. Thus, under the Supreme Court's analysis in *Drayton*, there was no seizure while Mr. Medellin was talking to Plaintiff in the construction trailer.

The remaining cases cited by Plaintiff do not advance his cause either. For example, Plaintiff cites *United States v. Garcia*, 866 F.2d 147 (6th Cir. 1989). Plaintiff, without analysis, cites one sentence from the case to posit that he was seized. A complete analysis of *Garcia*, however, shows that it does not support a seizure claim in this case. In *Garcia*, defendants John Garcia and Alan Wolfe appealed their conviction for possession of cocaine with intent to distribute. *Id.* at 148. Garcia and Wolfe were stopped by Hamilton County Sheriff's Agents as they arrived at the Cincinnati Airport from Miami, Florida. *Id.* at 149. The agents were

suspicious because Garcia and Wolfe were both wearing black t-shirts and bib overalls in contrast to the majority of business travelers, who wore suits. *Id.* The agents followed as the defendants went to several different rental car booths. *Id.* Neither claimed any luggage and they were both carrying gym bags as carry-on luggage. *Id.* Garcia appeared nervous and kept glancing over his shoulder. *Id.*

As Garcia and Wolfe prepared to leave in their rental car, the agents approached them and asked to see identification and plane tickets. *Id.* The agents then asked for permission to search the defendants' carry-on bags. *Id.* A search of Garcia's bag revealed cocaine. *Id.* Defendants were then arrested. *Id.* Garcia claimed that the initial contact with the agents was a seizure. The Sixth Circuit disagreed: "This review of precedents leads us to conclude that the initial stop and subsequent search of Garcia's bag was consensual. Clearly, the stop and early questioning were permissible." *Id.* at 151. *Garcia* does not help Plaintiff—the Sixth Circuit found that there was no seizure until they were actually arrested.

Plaintiff next cites *United States v. Knox*, 839 F.2d 285 (6th Cir. 1988). Once again, Plaintiff cites the case, but does not analyze it. In *Knox*, an agent for the Drug Enforcement Administration (DEA) in Atlanta notified a DEA agent in Memphis that three individuals were en route who had acted suspiciously at the Atlanta airport. *Id.* at 287. Based upon the defendants' actions when they deplaned in Memphis, DEA agent Richard Holmes believed that the defendants were involved in drug smuggling. *Id.* at 288. Agent Holmes approached the defendants and asked them if they would accompany him to the airport security office. *Id.* Defendants agreed and each was placed in separate rooms in the vicinity of the security office, along with their luggage. *Id.* Each defendant was then questioned separately. *Id.* They were not told that they could leave, but were told that they were not under arrest. *Id.* The Sixth

Circuit ruled that the defendants were seized when the Agent Holmes asked them to accompany him to the airport security office for questioning. *Id.* at 289. *Knox* is distinguishable from the instant case. Surely the intrusion of between being asked to go to an airport security office by a DEA agent is much higher than being asked to report to a construction trailer that is at one's place of employment. Indeed, in the instant case, Oscar Falcon testified that work was a place he felt comfortable at. (Falcon depo., p. 10). One is not likely to feel comfortable going to a security office or police station. Unlike the defendants in *Knox*, Plaintiff's travel plans were not disrupted. He simply reported to a different part of his everyday worksite. As such, *Knox* does not support Plaintiff's seizure argument.

Finally, in response to the uncontested fact that Plaintiff left the construction trailer and came back, Plaintiff argues that a seizure can continue even when a citizen is allowed to leave the presence of officers and come back. Plaintiff relies on *Gardenhire v. Schubert*, 205 F.3d 303 (6th Cir. 2000). Plaintiff's reliance is misplaced. In *Gardenhire* and unlike the instant case, the Gardenhires were threatened with arrest if they did not comply with the officers' orders. The Court found the following facts significant:

- (1) Chief Schubert told the Gardenhires at their residence that they "needed to go" to the police station;
- (2) the Gardenhires were read their *Miranda* rights at the police station;
- (3) the Gardenhires were questioned extensively at the police station;
- (4) the Gardenhires were told later, at the store, that they "needed to go" to the Justice Center;
- (5) officers instructed the Gardenhires that they "needed to follow" a police officer to the station; and
- (6) officers advised the Gardenhires that they would be booked on criminal charges and released on bond.

Id. at 314. None of these factors are present in the instant case. Prior to his arrest for forgery, neither Mr. Medellin nor Deputy Berter ever told Plaintiff that he “needed to go” anywhere, much less that he “needed to go” with them to the Sheriff’s office. No employee was “extensively questioned.” It is undisputed that the length of the interviews in Mr. Kathman’s office was very brief, lasting no more than 2-3 minutes. (Kathman Affidavit, ¶ 11; Falcon depo., p. 27). Finally, Plaintiff’s own witness, Oscar Falcon concedes that none of the workers, Plaintiff included, were ever threatened with arrest if they did not comply. (Falcon depo., pp. 25-27). Thus, the police conduct in *Gardenhire* was much more authoritative and coercive than any conduct by Mr. Medellin or Deputy Berter. As such, Plaintiff’s reliance on *Gardenhire* is not persuasive.

In sum, Plaintiff relies on his subjective feeling that he was seized. Reliance on subjective feelings is not admissible and is not determinative of the seizure issue. Rather, this Court must rely on objective factors. In this case, the objective factors weigh heavily in favor of a determination that Plaintiff was not seized as a matter of law. As such, Plaintiff’s unlawful seizure claim should be dismissed.

C. DEFENDANTS DID NOT VIOLATE PLAINTIFF’S RIGHT TO EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT.

The standard for showing an Equal Protection violation in this case is not disputed by the parties. In order to show an Equal Protection violation, Plaintiff must show that the challenged law enforcement practice “had a discriminatory effect and that it was motivated by a discriminatory purpose.” *Wayte v. United States*, 470 U.S. 598, 608 (1985); See Ptlf.’s Memo. Opp. Defs. Mot. for Summary Judgment, Doc. 67, at p. 22). Plaintiff offers only unsupported conclusions as evidence of discrimination by Defendants. Unsupported conclusions are not sufficient to withstand summary judgment.

First, Plaintiff states that Mr. Medellin never met with the majority community persons who allegedly expressed concern about “friction” at the worksite with the undocumented workers. (Ptlf.’s Memo. Opp. Defs. Mot. for Summary Judgment, Doc. 67, at p. 24). There is no citation to the record for this fact and no basis in the record for this fact. Next, Plaintiff states that Medellin simply used the alleged complaints as a basis to target the Hispanic J & A workers for investigation. *Id.* Again, Plaintiff provides no citation to the record for this fact—because there is no citation and there is no evidence that Mr. Medellin or any other Defendant targeted anybody. Plaintiff then concludes that the stated purpose of the worksite visit—to discuss I-9 forms—was pretext for discrimination. Plaintiff offers no facts to support that conclusion. Lastly, as stated above, even assuming that Mr. Medellin and Deputy Berter went to the worksite to investigate the presence of undocumented workers, they would not be violating the Constitution.

It is undisputed that all of the J & A employees (except those who left) came to the construction trailer. This included Caucasian, Hispanic and Black employees and regular employees and subcontractors alike. (See Trevino depo., p. 44, stating that white and Hispanic workers went to the trailer; Falcon depo., p. 17, stating that white, black and Hispanic workers went to the trailer; Kathman Affidavit, ¶ 9, indicating that Caucasian and Hispanic males came to the trailer, and, in addition, regular J & A employees as well as sub-contractors; Medellin depo., p. 32, Hispanics, blacks and Caucasians). According to Oscar Falcon and Joe Kathman, every worker showed their identification not just Hispanics. (Falcon depo., p. 24; Kathman Affidavit, ¶ 10). Moreover, regarding the personal interviews, Mr. Medellin recalls that he interviewed at least one Caucasian. (Medellin depo., p. 41). Deputy Berter recalls that black, white and Hispanic workers were interviewed. (Berter depo., p. 35). There is simply no evidence Mr.

Medellin (who is Hispanic, see Complaint, ¶ 5) and Deputy Berter possessed any discriminatory intent at the worksite or at any other time. Plaintiff relies on *Farm Labor Organizing Committee v. Ohio State Hwy. Patrol*, to bolster his Equal Protection argument. It does not. In *Farm Labor*, there was a vast amount of direct and circumstantial evidence to support plaintiffs' equal protection claim. For example, in *Farm Labor*,

Trooper Kiefer . . . testified that when he found Hispanic passengers hiding under a blanket, he called the Border Patrol, but that if he found white people hiding under a blanket, he would not. Sgt. Elling likewise testified that he would not call the Border Patrol regarding a motorist ["]unless ["]he would think that they would probably be Hispanic in nature." And Trooper Pahl admitted that she once had contacted the Border Patrol after coming across two Hispanic men whose car had broken down, but that she wouldn't do the same for a white man.

308 F.3d 523, 535 (6th Cir. 2002). Plaintiff has presented no evidence even remotely similar to the purposeful discrimination in *Farm Labor*, which would indicate that any Defendant in this case treated Hispanics differently than other race or ethnicity. The mere fact that Mr. Medellin spoke English and Spanish was simply a function of the fact that some J & A workers spoke English and some spoke Spanish. There is no evidence of discrimination. As such, Defendants are entitled to summary judgment on Plaintiff's Equal Protection claim.

D. SHERIFF JONES IS ENTITLED TO QUALIFIED IMMUNITY

The parties agree that Sheriff Jones had no direct personal involvement in the events surrounding the worksite visit on January 2, 2007. Rather, Plaintiffs' claims against the sheriff may go forward, if at all, only under a theory of supervisory liability. In this case, Plaintiffs have failed to muster sufficient evidence to meet this stringent standard of liability.

The Sixth Circuit has explained that "§ 1983 liability must be based on more than respondeat superior, or the right to control employees." *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999), *cert. denied*, 530 U.S. 1264, 120 S. Ct. 2724, 147 L. Ed. 2d 988 (2000). "Thus, a

supervisory official's failure to supervise, control or train the offending individual is not actionable unless the supervisor either encouraged the specific incident of misconduct or in some other way directly participated in it." *Shehee*, 199 F.3d at 300 (internal quotation marks and citation omitted)." At a minimum a plaintiff must show that the official at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers." 199 F.3d at 300 (internal quotation marks and citation omitted).

Plaintiff argues that Sheriff Jones is liable because he failed to properly train Mr. Medellin regarding his authority as an immigration specialist. Yet, to establish supervisory liability, it is not enough to point after the fact to a particular sort of training which, if provided, might have prevented the harm suffered in a given case. Rather, such liability attaches only if a constitutional violation is "part of a pattern" of misconduct, or "where there is essentially a complete failure to train the police force, or training that is so reckless or grossly negligent that future police misconduct is almost inevitable or would properly be characterized as substantially certain to occur." *Hays v. Jefferson County*, 668 F.2d 869, 874 (6th Cir.) (citations omitted), *cert. denied*, 459 U.S. 833, 103 S. Ct. 75, 74 L. Ed. 2d 73 (1982). Only in such circumstances can it be said that a supervisor's liability rests upon "active unconstitutional behavior," as opposed to "a mere failure to act." *Shehee*, 199 F.3d at 300 (internal quotation marks and citation omitted).

In this case, Plaintiff has not provided any evidence to conclude that the events of this case were an "almost inevitable" or "substantially certain" byproduct of a lack of training as to Mr. Medellin's authority as an immigration specialist. First, Mr. Medellin came to the Butler County Sheriff's Office with a high level of training. (See Part E below). Further, it is undisputed that Mr. Medellin knew that, as a Butler County employee, he did not have police authority or the authority to arrest anyone. (Medellin depo., p. 9). It is also undisputed that Mr.

Medellin did not arrest anyone at the worksite. Rather, Deputy Berter arrested Plaintiff for forgery. There is no evidence of any prior complaints regarding Mr. Medellin's conduct at worksites or that Sheriff Jones was aware of any prior complaints regarding Mr. Medellin's conduct at worksites. Under this record, Plaintiff cannot sustain his § 1983 claims against Sheriff Jones in his individual capacity as a matter of law.

Plaintiff makes vague references that Sheriff Jones's "policy on the treatment of undocumented workers was instrumental in the constitutional violations [alleged] that occurred on that day..."⁵ Plaintiff fails to state what he believes the unconstitutional policy was.⁶ Unsupported statements cannot be a basis for liability against Sheriff Jones.

E. PLAINTIFF'S OFFICIAL CAPACITY CLAIMS FAIL AS A MATTER OF LAW

The only official capacity claim alleged by Plaintiff is that Mr. Medellin was inadequately trained regarding the boundaries of his role as a county official. (Pltf.'s Memo. Opp. Defs. Mot. for Summary Judgment, Doc. 67, pp. 30-31). Specifically, Plaintiff argues that there was no job description for Mr. Medellin and no specific training as to his legal authority.

Plaintiff's arguments miss the point. Even assuming that Plaintiff is correct and that there was never a job description for Mr. Medellin or that the Sheriff's Office failed to train Mr. Medellin on his role as a county employee versus his role as an ICE Agent, there is no evidence to suggest that these failures were the moving force behind the constitutional violation alleged to have occurred in this case. There is nothing to suggest that had there been a job description in

⁵ See also, "Jones set a policy that directly resulted in the violation of Plaintiff's rights." Plaintiff never identifies what this alleged "policy" is.

⁶ In his summary of the case, Plaintiff states that Butler County has a policy of investigating illegal immigrants working at construction sites. (See Pltf.'s Memo. Opp. Defs. Mot. for Summary Judgment, p. 3). To the extent that this is the policy that Plaintiff believes is unconstitutional, Plaintiff is wrong. As stated in Section A above, there is nothing unconstitutional about local law enforcement inquiring about an individual's legal status so long as the individual is not seized without reasonable suspicion or probable cause.

place, that this would have had any bearing on Mr. Medellin's actions on January 2, 2007. Thus, these theories cannot provide the basis for failure to train liability against Butler County.

Similarly, the need for training regarding Mr. Medellin's authority as a county employee is not obvious in the abstract. Mr. Medellin has thirty years of law enforcement experience, specifically, in the field of immigration law. (Medellin Affidavit). In particular, Mr. Medellin has extensive knowledge of laws relating to the employment of undocumented workers. He has participated in hundreds of worksite enforcement actions which included auditing employer/employee paperwork such as I-9 Forms. (*Id.* at ¶ 7). He has attended classes, seminars and courses regarding the Immigration Reform Control Act and fraudulent document detection. (*Id.* at ¶ 6.). In 1989, Mr. Medellin was recognized as Investigator of the Year by the National Association of Federal Investigators for his work in enforcing the employer sanctions provisions of the Immigration Reform and Control Act of 1986. (*Id.* at ¶ 5). Further, as stated above, Mr. Medellin was well aware of the limits of his authority and knew that he did not have law enforcement powers. The alleged failure to provide specific training regarding Mr. Medellin's county authority was not "so likely" to result in a violation of Plaintiff's Fourth Amendment rights that the County can be said to have been deliberately indifferent to the need for this particularized training without any prior notice. *See Jordan v. Blackwell*, No. 5:06 CV 214, 2008 U.S. Dist. LEXIS 75046 (M.D. Ga. 2008) (Plaintiff had no official capacity claim regarding a deputy's lack of specific training as a school resource officer).

A § 1983 claim for failure to train exists "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Failure to train only becomes "deliberate" where "in light of the duties assigned to specific officers or employees the need for more or different

training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the [county] can reasonably be said to have been deliberately indifferent to the need.” *Id.* at 389. Here, Plaintiff has failed to show that Sheriff Jones was deliberately indifferent to the need for more county authority training. Nothing offered by Plaintiff demonstrates that the training of Medellin related to his authority was so obviously inadequate that a constitutional violation was likely to result. As such, Defendants are entitled to summary judgment on Plaintiff’s official capacity claim.

F. PLAINTIFF DOES NOT REFUTE THAT PROBABLE CAUSE EXISTED FOR HIS FORGERY ARREST.

Plaintiff originally asserted a claim for malicious prosecution, alleging that Defendants arrested him for forgery without probable cause. Plaintiff now states that “[t]his case is not about whether there is probable cause for forgery.” (Pltf’s. Memo. Opp. Defs. Mot. for Summary Judgment, Doc. 67, p. 31). It is undisputed that Plaintiff was indicted for two counts of forgery. In order for a malicious prosecution claim to survive summary judgment under Ohio law, Plaintiff “must bring forward substantial evidence” to rebut the indictment. *Hubbard v. Gross*, 199 F. App’x 433, 441 (6th Cir. 2006). Plaintiff has not brought forward any evidence to rebut his forgery indictment.⁷ He merely cites law that indicates he is not collaterally estopped from addressing his forgery arrest in a civil action. This does not obviate the requirement to put forth some evidence as to why probable cause did not exist for Plaintiff’s forgery arrest. As such, Defendants are entitled to summary judgment regarding Plaintiff’s malicious prosecution claim.

⁷ Plaintiff does argue that his indictment on the forgery charges does not preclude his other claims unrelated to his forgery arrest. Defendants did not argue this and do not dispute this. The indictment precludes his claims based on his arrest for forgery.

G. PLAINTIFF CANNOT RECOVER DAMAGES RELATING TO HIS REMOVAL

As a matter of law Defendants did not cause Plaintiff to be removed from the United States. Plaintiff was removed on his own volition pursuant to a removal action filed by the Department of Homeland Security. Defendants were not involved in that proceeding. The authorities are clear that, in a case based on an unlawful seizure, the chain of causation is broken when an independent agency or body makes its own determination regarding a plaintiff's legal status. *Hand v. Gary*, 838 F.2d 1420 (5th Cir. 1988) (in section 1983 action based on false arrest, grand jury or other independent intermediary breaks chain of causation unless defendant policemen mislead intermediary); *Scanlon v. Flynn*, 465 F. Supp. 32 (S.D. Fla. 1978) (stating that under New York law, damages for false arrest are measured only to time of arraignment or indictment because, after such an evaluation, subsequent detention is attributed to independent, supervening determination of probable cause, not to earlier improper arrest). Therefore, as a matter of law, Plaintiff is not entitled to damages relating to his removal.

For the foregoing reasons, and for the reasons set forth in Defendants' Motion for Summary Judgment (Doc. 55), Defendants respectfully request that this Court GRANT their Motion for Summary Judgment.

Respectfully submitted,

/s/ Andrew N. Yosowitz

Steven G. LaForge (0036737)

e-mail: stevelaforge@isaacbrant.com

Andrew N. Yosowitz (0075306)

email: any@isaacbrant.com

Marianne Pressman (0059512)

email: mpressman@butlersheriff.org

*Co-Counsel for Richard K. Jones, Robert
Medellin and Daniel Berter*

ISAAC, BRANT, LEDMAN & TEETOR, LLP

250 East Broad Street, Suite 900

Columbus, Ohio 43215-3742

(614) 221-2121 (Phone)

(614) 365-9516 (Fax)

*Attorneys for Defendants Butler County,
Ohio, Richard K. Jones, Robert Medellin
and Daniel Berter*

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Andrew N. Yosowitz

Andrew N. Yosowitz