

**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**  
**:**  
**:**  
**: Magistrate Judge Timothy S. Black**  
**:**  
**: PLAINTIFF’S REPLY IN SUPPORT**  
**: OF THEIR MOTION FOR PARTIAL**  
**: SUMMARY JUDGMENT AGAINST**  
**: BUTLER COUNTY**  
**:**

**I. INTRODUCTION**

Plaintiff has moved for partial summary judgment on the Fourth Amendment seizure claim directed solely at Defendants Butler County and Sheriff Richard K. Jones acting in his official capacity. (R. 66.) Defendant County states that “for the most part, Butler County does not dispute the facts included in Plaintiff’s Statement of Fact section.” (Defendants’ Response to Motion for Partial Summary Judgment, R. 73, p. 7.) The additional facts the County seeks to emphasize (see R.73, pp.8-9) are not material to the motion for partial summary judgment. Plaintiff was seized by Defendant Medellin in violation of the Fourth Amendment when he was detained for questioning without reasonable suspicion. The Sheriff had a policy of forcing undocumented workers out of the County. Pending during the action in this case was a request by the Sheriff to the County prosecutor regarding the parameters of his ability to act against undocumented workers. Rather than wait for an answer, the Sheriff hired Defendant Medellin, did not train him, but nonetheless deployed him within the County to perform duties as an “immigration specialist.” The County policy of hostility to “illegal aliens” and its failure

to train Medellin was the moving force behind this constitutional violation and constituted deliberate indifference on the part of the County to the constitutional rights of the individuals such as Plaintiff who were likely to come into contact with Defendant Medellin. The Plaintiff is entitled to summary judgment on his claim for an illegal seizure.

## **II. ARGUMENT**

### **A. PLAINTIFF WAS SEIZED IN VIOLATION OF THE FOURTH AMENDMENT WHEN COUNTY IMMIGRATION SPECIALIST MEDELLIN DIRECTED THAT HE BE BROUGHT TO THE TRAILER AND DIRECTED THAT HE ENTER A SMALL OFFICE FOR AN INTERVIEW.**

As outlined in Plaintiff's Motion for Partial Summary Judgment, the uncontested facts clearly show that Plaintiff was unconstitutionally seized by the Defendants. (R. 66.) The facts do not support Defendants' claim that Medellin and Berter simply talked to the workers about their I-9 forms or immigration status, like the officers in *INS v. Delgado*, 466 U.S. 210, 215 (1984). The following facts – not contested by the Defendant County - clearly established that the encounter was a nonconsensual seizure in violation of the Fourth Amendment:

- After Defendant Medellin arrived at the worksite, he spoke to Bruce Geiser, the J & A Drywall ("J & A") supervisor, and asked Mr. Geiser if he had any employees. Mr. Geiser responded that he did not have any employees, only subcontractors. (Def. Mot. for Summary Judgment, R. 55, p. 13.)
- Medellin then requested to talk to the subcontractors about their I-9 forms, and Bruce Geiser complied with Medellin's request by agreeing to bring the subcontractors to a construction trailer. (*id.*; Medellin depo., R.60, pp. 10-11; Berter depo., R.61, pp. 18-19.)
- Plaintiff and the other J & A subcontractors were directed to the construction trailer by supervisor Bruce Geiser. (Medellin depo., R.60, p. 11; Rodriguez Trevino depo., R.56, p. 43; Kathman depo., R.59, p. 13.)

- There was no other business purpose for the workers to assemble in the trailer; the workers assembled in the trailer because Defendant Medellin wanted to meet with them. (Medellin depo., R.60, p. 31; Kathman depo., R.59, p. 13.)
- Defendant Medellin agreed that his visit to the worksite had no state law connection, and that he was not there to investigate a state crime. (Def. Mot. for Summary Judgment, R.55, p. 12.; Medellin depo., R.60, p.57.) Nevertheless, Defendant Medellin noted in his log that four workers “absconded” from the worksite. (Medellin depo. Ex. 4 (Medellin log), R.60, p. 60.)
- When Plaintiff and the other J & A subcontractors arrived in the trailer, Mr. Medellin identified himself as an “immigration specialist” with the Butler County Sheriff’s Office. (Medellin depo., R.60, p. 36; Berter depo., R.61, p. 28; Def. Mot. for Summary Judgment, R.55, p.15.)
- Defendant Medellin was wearing a Sheriff’s Office badge, which was visible and attached to his belt. (Berter depo., R.61, pp. 28-29.) Deputy Berter was wearing a standard police uniform. (Berter depo., R.61, p.7; Def. Mot. for Summary Judgment, R. 55, p. 12.)
- Defendant Medellin did not explain what an immigration specialist was to the workers assembled in the trailer. (Berter depo., R.61, p. 29.)
- At least two Spanish-speaking J & A workers in the trailer do not recall that Defendant Medellin made it clear that he did not work for immigration. (Rodriguez Trevino depo., R.56, pp. 52, 57; Falcon depo., R.58, p. 19.) In fact, both Plaintiff and Oscar Falcon recall that Defendant Medellin said he was from immigration. (Rodriguez Trevino depo., R.56, p. 57; Falcon depo., R.58, p. 36-37; Falcon depo. Ex.A (Affidavit), R.58)
- Medellin requested that individuals in the trailer present their identification documents, and Defendant Medellin reviewed the identification documents with Defendant Berter present in the room. (Def. Mot. for Summary Judgment, R. 55, p. 15-17.) Plaintiff remembers that Defendant Medellin told the workers that they “needed to present” their immigration documents. (Rodriguez Trevino depo., R.56, p. 51.)
- Plaintiff indicated that he had left his identification documents in his vehicle, and was given permission to briefly leave the trailer to retrieve the documents in order to comply with Defendants’ demands. (Rodriguez Trevino depo., R.56, pp. 53-54.) Berter Depo., R.61, p.40
- Following the initial showing of paperwork, Defendant Medellin requested to speak with Plaintiff and other J & A workers individually in a smaller office within the trailer. (Def. Mot. for Summary Judgment, R. 55, p. 16). Defendant

Medellin decided to use the small room in the trailer. (Medellin depo., R.60, p. 40.)

- Plaintiff and the other workers were detained at the construction trailer for approximately one hour. (Kathman depo., R.59, p. 37.)
- Following the interviews in the small office, twelve workers informed Defendant Medellin that they were illegal aliens. (Medellin depo., R.60, p. 59.) Defendant Medellin informed management that the twelve workers were “illegal employees” and all twelve were terminated. (Medellin depo. Ex. 4 (Medellin Log), R.60.)

In the case at bar, it is clear that two seizures occurred in violation of the Fourth Amendment: first, when the J & A employees were assembled by Defendants Medellin and Berter in the large trailer, and second, when the employees were individually questioned on their immigration status in the small trailer by Defendant Medellin. Defendant seems to argue that a government agent must use some manner of physical force in order to seize an individual. Though such physical contact would certainly suffice to establish a seizure, under the present facts, the relevant inquiry in determining whether police questioning is a seizure under the Fourth Amendment is simply whether a reasonable person *under the circumstances* would have believed that he was not free to leave. *INS v. Delgado*, 466 U.S. 210 (1984.) In other words, a court should ask “whether a reasonable person would feel free to decline the officers’ requests or to otherwise terminate the encounter.” *U.S. v. Drayton*, 536 U.S. 194, 201 (2002)(quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991).)

The fact that Medellin was inquiring about immigration status does not expand on his right to detain individuals. Defendants mischaracterize the Supreme Court’s holding in *Muehler v. Mena*, 544 U.S. 93 (2005) in order to make an inaccurate contrary argument. The Court in *Muehler* held that it was not a Fourth Amendment violation to

question the plaintiff on her immigration status *while she was already being detained by officers during the execution of a valid search warrant*. *Id.* at 100-101. Because the otherwise proper detention was not prolonged by the questioning, the Court determined that there was no additional seizure within the meaning of the Fourth Amendment. *Id.* at 101. Therefore, questioning on immigration status can become an unlawful seizure if it prolongs the time reasonably required to conduct a *lawful* seizure, one based upon reasonable suspicion. *Id.* Unlike the plaintiff in *Muehler*, it is undisputed in this case that Defendants had no probable cause to arrest and detain J & A employees in the work trailer. (Medellin depo., R.60, p. 62.) Because the seizures in the case at bar were not lawful, the holding of *Muehler* is clearly inapplicable.

The display of a weapon by the officer, the physical touching of the individual by the officer, or use of a certain, authoritative tone may be factors in finding that a particular encounter between an individual and a government official was non-consensual and may have constituted a seizure. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). However, these factors are neither mandatory, nor exhaustive. Defendants also note that the length of the interviews were brief, and cite cases providing that longer interviews are “non-custodial.” R. 73, p. 13, *citing United States v. Crossley*, 224 F.3d 847, 862 (6th Cir. 2000). But as Defendant concedes, these cases deal with an individual’s right to be free from self-incrimination under the Fifth Amendment, not whether the detainment constituted a seizure for purposes of the Fourth Amendment. Under the Fourth Amendment, even an individual who is detained only “momentarily” may be deemed to have been seized. *Florida v. Royer*, 460 U.S. 491, 498 (1983).

Defendant correctly states that “voluntary cooperation of a citizen in response to non-coercive questioning” does not amount to a seizure. *United States v. Richardson*, 949 F.2d 851, 855 (6th Cir. 1991)(R. 73 at 10). However, the court in *Richardson* goes on to say that a seizure has occurred where an agent exercises authority such to make it apparent to an individual that he or she is “not free to ignore the officer and proceed on his way.” *Id.* Defendant relies on the fact that some employees declined to proceed to the trailer upon notification of Medellin’s request to show that the request could be ignored without consequence. (R. 73, pp. 8, 14.) However, this fact actually suggests that these workers knew that, once they entered the trailer, they would not be free to leave. An unlawful seizure does not automatically become a consensual encounter simply because some of the targeted individuals got away.

In this case, Plaintiff’s belief that he did not feel free to leave the construction trailer is objectively reasonable in light of the totality of the circumstances. Defendant Medellin was aware that there were individuals in the trailer that did not speak English; he spoke in both English and Spanish to the workers. (Medellin depo., R.60, pp. 39, 53.) Furthermore, Defendant Medellin believed that there were undocumented workers on the worksite. (Medellin depo. Ex. 4 (Medellin Log), R.60, p.43; Def. Reply in Support of Mot. for Summary Judgment, R. 70, p. 1-2.) Nevertheless, Defendant Medellin identified himself to the workers as an “immigration specialist” and discussed his previous employment with “immigration” or “INS” without clarifying that he lacked authority to enforce federal immigration law. (Medellin depo., R.60, p. 36; Rodriguez Trevino depo., R.56, p. 57.) A Spanish-speaking, non-native individual under these circumstances could reasonably believe that Defendant Medellin was an immigration agent with authority to

enforce civil immigration law, and therefore would feel compelled to comply with a Defendant Medellin's statement that the individual "needed to" present his immigration documents. Moreover, Defendant County has not submitted any testimony from any of the J&A workers that would support the argument that their presence in the trailer and their presence in the small trailer were consensual or voluntary.

The Defendants' attempts to distinguish the case at bar from that in *U.S. v. Knox*, 839 F.2d 285 (6th Cir. 1988), is attenuated at best. It is simply not logical that a person should feel less compelled to accompany an officer identifying himself as a federal immigration agent than a drug enforcement agent, particularly if that person is not a native citizen of the United States. The fact that the seizure in the case at bar did not occur in the vicinity of an airport security office, but instead occurred in the vicinity of another type of office, should not defeat the conclusion that a reasonable person in the Plaintiff's shoes would have felt compelled to comply with Defendant Medellin's demands. Whether or not the workers felt comfortable at work, a reasonable person certainly would not feel comfortable being removed from his actual worksite, taken to a supervisor's trailer and questioned by a local law enforcement official. Indeed, the Supreme Court has noted that "[w]here the encounter takes place is one factor, but it is not the only one." *Florida v. Bostick*, 501 U.S. 429, 437 (1991). The fact that both Plaintiff and Oscar Falcon felt compelled to comply with the Defendants requests is additional evidence that their belief was objectively reasonable.

Furthermore, there is no case law to support the Defendant's proposition that an illegal seizure requires having one's travel plans disrupted. Like the officers in *Knox*, Defendants in this case asked to have the employees assemble in the construction trailer,

and separated each employee for individual questioning in a smaller office. Plaintiff and the other employees were detained in the construction trailer for over an hour, for no business purpose, disrupting the normal course of their workday. (Kathman depo., R.59, p. 37.)

Defendants mischaracterize the nature of the questioning in this case and the case law controlling it. As the Supreme Court has elaborated: “law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions ... however ... [an individual] may not be detained even momentarily without reasonable, objective grounds for doing so.” *Florida v. Royer*, 460 U.S. 491, 497 (1983). The cases relied upon by Defendants involve police officers who approach individuals in public places or who question individuals without otherwise diverting them from their intended path, until reasonable suspicion is established. *E.g.*, *U.S. v. Drayton*, 536 U.S. 194 (2002)(search of passengers on Greyhound bus); *U.S. v. Garcia*, 866 F.2d 147 (6th Cir. 1989)(questioning of travelers arriving at airport). The questioning in this case took place only after removing the workers from the worksite and assembling them in a boss’s trailer.

Sixth Circuit case law clearly establishes that a court should distinguish an unreasonable seizure from a consensual police encounter. An seizure occurs where “the [individual] is asked to accompany the police ... to a place to which the [individual] had not planned to go.” *U.S. v. Campbell*, 486 F.3d 949, 956 (6th Cir. 2007). For example, in *Florida v. Royer*, an otherwise consensual encounter became an unlawful seizure where “the officers identified themselves as narcotics agents, told [the defendant] that he

was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license without indicating in any way that he was free to depart." *Royer*, 460 U.S. at 502. The Supreme Court concluded that, "these circumstances surely amount to a show of official authority such that 'a reasonable person would have believed he was not free to leave.'" *Id.* at 503 (quoting *U.S. v. Mendenhall*, 446 U.S. 544 (1980)). Similarly, in the case at bar, Defendant Medellin identified himself as an immigration specialist, and asked to see the workers' immigration documents, and asked them to accompany him into a small room where he questioned them on their immigration status. (Def. Mot. for Summary Judgment, R. 55, p. 15-16.)

Defendants similarly mischaracterize the holding of *Gardenhire v. Schubert*, 205 F.3d 303 (6th Cir. 2000) and incorrectly claim that Plaintiff's trip to his vehicle to secure identification made his seizure consensual. The Sixth Circuit in *Gardenhire* clearly stated that the "encounter [between the Gardenhires and the police] took on an arrest-like nature" at the moment the police "told the Gardenhires at their residence that they 'needed to go' to the police station." *Id.* at 314. The Court reasoned that "[a] police officer's statement that 'you need to go' somewhere carries substantial authoritative weight" such that "very few people could hear such a directive from a police officer and still think that they were free to act otherwise." *Id.* The court's decision did not hinge on the fact that the Gardenhires were subsequently read their *Miranda* rights at the police station or were questioned extensively by the police. Rather, the Court concluded that "[t]he custodial nature of the police station encounter *intensified* with the time the Gardenhires spent there and the fact that [the police] read them their *Miranda* rights." *Id.*

(emphasis added). Furthermore, the non-consensual nature of the encounter was not defeated by the fact that the plaintiffs, after being told that they “needed to go” to the police station, got into their own car and drove it down to the station where they met up with the police officers. *Id.* at 309. Therefore, the court found that the seizure began when the police instructed the Gardenhires to go somewhere other than where they had intended to go. *Id.* Similarly here, the workers were assembled in the trailer and directed to the small room – both places where they otherwise did not intend to go. Plaintiff’s effort to comply with the request for ID by retrieving it from his car does not make the activity in the trailer consensual.

**B. DEFENDANT BUTLER COUNTY’S POLICY OF HOSTILITY TO “ILLEGAL ALIENS” AND LACK OF TRAINING OF DEFENDANT MEDELLIN WAS THE MOVING FORCE BEHIND THE VIOLATION OF PLAINTIFF’S CONSTITUTIONAL RIGHTS**

As explained in detail in the motion for partial summary judgment, during the events of this case, the County policymaker was publicly declaring that his office had the authority to “enforce immigration laws.” Those public statements were wrong as a matter of law. The Sheriff knew those statements were wrong because (1) he knew that the agreement to cooperate with the federal government under §287(g) had not yet been signed; and (2) the Sheriff had pending an unanswered request of the Butler County Prosecutor as to the scope of the authority of Sheriff’s employees regarding immigration law. *See* Plaintiff’s Motion for Partial Summary Judgment, R. 66, pp. 25-28. During the events of this case the policy maker also posted billboards and made public statements declaring it to be County policy to reduce the number of illegal aliens in Butler County, Ohio. *Id.* at 3. Defendant Medellin was hired as an immigration specialist during this

time. Given no training and clearly thought it was appropriate to go to a worksite and ask that all the workers suspected of being illegal aliens be directed to a trailer so he could question them as a group and individually about their identification and immigration status. Medellin was implementing County policy – 12 of the workers were fired on the spot and one was arrested. But Medellin had no training at all with respect to the proper limits of his authority now that he was a county rather than a federal law enforcement official. These facts show that the County policy and failure to train were the moving force behind the illegal seizures in this case.

As outlined in Plaintiff's Motion for Partial Summary Judgment, 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 would have contact. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Whether the training is adequate or not should be determined in light of the particular tasks to be performed by the official in question. *Id.* at 390. 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. *Id.*; see also *Russo v. City of Cincinnati*, 953 F.2d 1036 (6th Cir. 1992).

Furthermore, 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.” *Owensby v. City of Cincinnati*, 414 F.3d 596, 660 (6th Cir. 2005).

It is undisputed that Defendant Medellin received no training with respect to his duties as an immigration specialist for Butler County. (Medellin depo., R.60, pp. 96-97;

Jones depo., R.62, pp. 14-15.) It is also undisputed that, although Sheriff Jones created the position of immigration specialist, there existed no job description for the position, and no written policy governing the conduct of an immigration specialist was available to Medellin. (Jones depo., R.62, pp. 10, 15; Medellin depo., R.60, p.85) Like the officers in *Owensby*, Sheriff Jones' policy left Medellin "confused and unable to discern" his constitutional obligations to the citizens of Butler County. 414 F.3d at 659. As such, Sheriff Jones' deficiency in training Defendant Medellin was so obvious that the failure to do so can and should be considered deliberate indifference as a matter of law. *Id.* at 660.

Sheriff Jones stated that he "that [Medellin] already came equipped with what he needed from the Federal Government." (Jones depo., R.62, p. 15.) Indeed, Defendants list Medellin's long list of accomplishments as a *federal immigration agent* as justification for the lack of any training to Medellin in his capacity as an immigration specialist for Butler County. (R. 73, p. 23.) However, it is undisputed that Defendant Medellin was deployed to the Port Union worksite as a county official, and not a federal agent. Defendants should not be permitted to rely on the fact that Medellin was previously trained to perform a wholly separate position as justification for completely failing to train him in his county position.

In this case, the unconstitutional seizure of Plaintiff was more than an anticipated result of the failure to train Defendant Medellin in the scope of his duties as immigration specialist – it was the County's intended result. Though it is claimed that Medellin was hired to "educate local businesses and the public regarding the laws with respect to undocumented workers", (R. 73, p. 23) it is clear that Medellin was actually deployed to

investigate and intimidate undocumented workers. This was the policy of the Butler County Sheriff's Department, and failure to train Medellin on the limitations of his authority constitutes deliberate indifference to the constitutional rights of individuals like Plaintiff. Had Medellin received training, he would have been on notice that his actions in rounding up suspected illegal aliens were unconstitutional. Consequently, the County policy of pushing illegal aliens out of the County and its failure to train Medellin as a county immigration specialist constituted the moving force behind the violation of Plaintiff's constitutional rights.

### **III. CONCLUSION**

Plaintiff has moved for summary judgment on a narrow part of the case. Defendant has identified no genuine issues of material fact regarding the County in this case. Plaintiff was seized in violation of his Fourth Amendment rights. The County policy of removing illegal aliens and its lack of adequate training of Defendant Medellin were the moving force behind the violation.

Plaintiff's Motion for Partial Summary Judgment should be granted and Defendants' Motion for Summary Judgment should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 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  
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