

DISTRICT COURT, EL PASO COUNTY, COLORADO

270 S. Tejon Street
Colorado Springs, Colorado 80901

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CASE NUMBER: 2018CV32870

Plaintiff:

Saul Cisneros,

v.

Defendant:

Bill Elder, in his official capacity
as Sheriff of El Paso County, Colorado

▲ COURT USE ONLY ▲

Case Number:

Div.: Ctrm:

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COMPLAINT AND JURY DEMAND

INTRODUCTION

1. Plaintiff Saul Cisneros seeks damages for the four months of false imprisonment he endured in the El Paso County Criminal Justice Center (CJC) due to the policies and practices of El Paso County Sheriff Bill Elder.

2. On November 24, 2017, Mr. Cisneros was charged with two misdemeanor offenses and jailed in the CJC. The court set his bond at \$2000. On November 28, 2017, his daughter paid the \$2000 bond, but the CJC did not release him. Sheriff Elder continued to hold Mr. Cisneros on the ground that he was suspected of civil violations of federal immigration law.

3. Sheriff Elder falsely imprisoned Mr. Cisneros for nearly four months after state law required his release, from November 28, 2017 to March 20, 2018. Sheriff Elder carried out this unlawful deprivation of liberty in the absence of a judicial warrant, without probable cause of a crime, and without any other valid legal authority.

4. Colorado sheriffs have limited authority and limited powers. They have only the authority that is provided in the Colorado Constitution and Colorado statutes. Colorado law provides Colorado sheriffs with no authority to enforce federal immigration law or to hold prisoners in custody for alleged civil violations of federal immigration law.

5. Being present in violation of the federal immigration laws is a civil matter, not a crime. Nevertheless, at the request of federal immigration authorities, Sheriff Elder imprisoned Mr. Cisneros solely because he was suspected of being removable from the United States. Sheriff Elder therefore deprived Mr. Cisneros of his liberty without legal authority.

JURISDICTION AND VENUE

6. This Court has jurisdiction under Colo. Rev. Stat. § 13-1-124(1)(b).

7. Venue is proper in El Paso County pursuant to Colorado Rule of Civil Procedure 98(c).

PARTIES

8. Plaintiff Saul Cisneros has lived in Colorado Springs, Colorado for more than 20 years. He was a pretrial detainee in the El Paso County Criminal Justice Center (CJC) from November 24, 2017 until the El Paso County Sheriff's Office (EPSO) released him on March 20, 2018.

9. Defendant Bill Elder is the Sheriff of El Paso County. He is responsible for all EPSO policies and practices. He has ultimate supervisory responsibility for employees and deputies who work at EPSO. He is sued in his official capacity.

FACTUAL ALLEGATIONS

The El Paso County Sheriff's Unlawful Detention of Plaintiff Saul Cisneros

10. Saul Cisneros is 48 years old. He has three children in Colorado Springs, ages 20, 15, and 11.

11. On November 24, 2017, Mr. Cisneros was booked into the CJC. He was charged with two misdemeanor offenses. Mr. Cisneros had never been convicted of a crime.

12. The court set bond for Mr. Cisneros at \$2000. On November 28, 2017, Gloria Cisneros, Saul's eldest daughter, went to the jail to post bond for her father. She posted the money and obtained a receipt, but her father was not released.

13. Pursuant to Sheriff Elder's practices, deputies notified U.S. Immigration and Customs Enforcement (ICE) that the CJC had been asked to release Mr. Cisneros on bond. ICE sent the CJC Forms I-247A (Detainer) and I-200 (Administrative Warrant). As explained further below, ICE used these forms to request that the CJC continue detaining Mr. Cisneros because ICE suspected that Mr. Cisneros was removable from the United States.

14. EPSO placed what it calls an "ICE Hold" on Mr. Cisneros and continued to detain him in the CJC.

15. The next day, November 29, 2017, Gloria made several calls to the CJC. She was told that after she posted the bond money, ICE put a "hold" on her father, so EPSO would not release him. Later that day, another EPSO deputy explained to Gloria that with an "ICE hold" on her father, he could not get out on bond.

16. Gloria was able to obtain the return of the money she had posted in her unsuccessful attempt to secure her father's release on bond.

17. Pursuant to EPSO's practices at the time, EPSO did not release Mr. Cisneros on bond, because ICE had sent an I-247A Form and an I-200 Form to the jail.

18. As explained further below, a court preliminarily enjoined these practices on March 19, 2018. Mr. Cisneros posted bond on March 20, 2018, and EPSO released him.

ICE Forms I-247A and I-200

19. Immigration enforcement officers employed by ICE, an agency within the Department of Homeland Security (DHS), make requests that EPSO continue to detain prisoners after its authority under state law has ended.

20. The requests are formalized by documents that ICE officers send to EPSO regarding particular prisoners held in the CJC.

21. The requesting documents are standardized ICE forms. They include an immigration detainer, ICE Form I-247A; an administrative warrant, ICE Form I-200 (Warrant for Arrest of Alien); and an I-203 Form. None of these forms is reviewed, approved, or signed by a judicial officer.

22. An immigration detainer, ICE Form I-247A, identifies a prisoner being held in a local jail. It asserts ICE believes there is probable cause to remove the prisoner from the United States. It asks the jail to continue to detain that prisoner for an additional 48 hours after he or she would otherwise be released, to allow time for ICE to take the prisoner into federal custody.

23. An immigration detainer is not reviewed, approved, or signed by a judge or judicial officer. Immigration detainers are issued by ICE agents.

24. Being present in violation of the federal immigration laws is a civil matter, not a crime.

25. For many years, the wording of ICE detainer forms suggested that compliance with the federal request was mandatory. In prior years, EPSO believed that compliance with the detainer's request for continued custody was a command from the federal government that EPSO had a legal obligation to obey.

26. The detainer form language has changed. It is now clear that detainers, Form I-247A, represent a request from the federal government, not a command. This change was made prior to November 24, 2017, when Saul Cisneros was first imprisoned.

27. In a further effort to enlist the assistance of local law enforcement, ICE sends sheriffs an administrative warrant, ICE Form I-200, to accompany the I-247A detainer request. An administrative warrant names a particular prisoner in a sheriff's custody and asserts that ICE has grounds to believe that the subject is removable from the United States.

28. ICE administrative warrants (ICE Form I-200) represent ICE agents' unsworn assertions of probable cause. They are not reviewed, approved, or signed by a judge or judicial officer. Federal law states that ICE administrative warrants may be served or executed only by certain ICE agents who have received specialized training in immigration law.

The IGSA and Form I-203

29. DHS and El Paso County have signed a contract that provides for housing ICE detainees at the CJC. This contract is called an Intergovernmental Services Agreement (IGSA). The IGSA between DHS and El Paso County was in operation during Mr. Cisneros's detention and is still in operation.

30. An IGSA is a contract between ICE and a state or local government for the purpose of arranging housing for federal detainees. The contract calls for ICE to pay a daily rate for each ICE detainee housed in the local jail.

31. The IGSA between ICE and El Paso County states that its purpose is "for the detention and care of persons detained under the authority of the Immigration and Nationality Act"

32. The IGSA contemplates that ICE will bring certain detainees to the CJC for temporary housing, at ICE's expense. It applies to persons who are already in the custody of ICE officers at the time that they arrive at the CJC. It does not purport to grant or delegate any authority to Sheriff Elder to initiate a seizure for the purpose of enforcing federal immigration law.

33. ICE uses Form I-203 to track detainees housed at its various contract facilities, including the CJC. Form I-203 is signed by an authorized ICE official. It is an internal administrative form signed by a deportation officer. It accompanies ICE detainees when ICE officers place them in, or remove them from, a detention facility. According to the portion of the ICE Detention Standards titled "Admissions Documentation," a Form I-203 must accompany every detainee who is brought into an ICE detention facility. Regarding releases, the ICE

Detention Standards state that “a detainee’s outprocessing begins when release processing staff receive the Form I-203.”

34. The I-203 Form functions as documentation for daily-rate billing purposes for ICE detainees held at the CJC under the IGSA.

35. Although the I-203 Form bears the title “Order to Detain or Release Alien,” is it not an order that is reviewed, authorized, approved, or signed by a judge or a judicial officer. It confers no authority on a Colorado sheriff to initiate custody of an individual who is not already in federal custody.

36. Mr. Cisneros was not held pursuant to the IGSA.

EPSO’s Practices Causing Mr. Cisneros’s Unlawful Detention

37. During Mr. Cisneros’s detention, it was EPSO’s policy and practice to refuse to release prisoners who had posted bond, completed their sentence, or resolved their criminal case whenever ICE had faxed or emailed an immigration detainer (ICE form I-247A) and an administrative warrant (ICE Form I-200).

38. When a prisoner is booked into the CJC, fingerprints are sent to the Federal Bureau of Investigation and to ICE. In addition, in some cases, CJC officials initiate contact with ICE directly when they believe that ICE may be interested in a particular prisoner.

39. During Mr. Cisneros’s detention, EPSO used the term “ICE hold” to indicate that (1) for the particular prisoner, ICE had sent Form I-247A and/or I-200, (2) CJC staff would contact ICE to notify it of the prisoner's release date and time, and (3) EPSO would continue to hold the prisoner for ICE if the prisoner posted bond, completed his/her sentence, or otherwise resolved his/her criminal charges.

40. During Mr. Cisneros’s detention, even when a prisoner did not have an “ICE hold,” Sheriff Elder’s written policies required deputies to delay the processing of bond paperwork when the prisoner was a “foreign born national.” Under these policies, deputies notified ICE that the CJC had been asked to release a “foreign born national” on bond. The written policy stated that the CJC would delay the prisoner’s release on bond, for a period of two hours, so that ICE had an opportunity “to place a hold.” Thus, Sheriff Elder intentionally and unjustifiably delayed the release on bond of “foreign born nationals,” a group that includes legal permanent residents and numerous additional categories of noncitizens who are legally present in the United States.

41. Pursuant to Sheriff Elder’s practices, a prisoner who had no “ICE hold” or I-247A form on file and whose bond was being processed would not be released if ICE responded to the CJC’s inquiry by sending an I-247A form and an I-200 Form. At that point, at the request of ICE, deputies would place an “ICE hold” on the prisoner, and the CJC would refuse to release the prisoner on bond.

42. “ICE hold” is not a legal term. There was no legal significance to EPSO’s notation of “ICE hold.” Pursuant to Sheriff Elder’s policies and practices during Mr. Cisneros’s detention, however, the notation “ICE hold” unjustifiably caused the continued imprisonment of detainees whose release was required by Colorado law.

43. During Mr. Cisneros's detention, CJC deputies actively discouraged friends and family members from posting bond for pretrial detainees who have "ICE holds." Deputies told friends or family members that they would be wasting their money if they posted bond. They explained that posting bond would not result in the prisoner's release, because the CJC would hold the detainee for ICE.

44. During Mr. Cisneros's detention, CJC inmates were transferred to what EPSO termed "IGSA holds" when state-law authority to hold the prisoners ended and ICE had sent an I-203 Form in addition to an I-200 Form and/or an I-247A Form. Pursuant to the policies in place at the time, this change in the characterization of the inmate's status did not require ICE officers personally to appear to take physical custody of the inmate.

45. According to Sheriff Elder, the transfer of an inmate to an "IGSA hold" meant the detainee was effectively transferred from state custody to federal custody.

46. To the contrary, none of the forms ICE provided to EPSO—an I-247A Form, an I-200 Form, an I-203 Form, or any combination of them—justified Sheriff Elder's refusal to release prisoners when the state-law authority for their detention ended.

47. It was EPSO's practice during Mr. Cisneros's detention that no one held in the CJC was personally served with Form I-247A.

Changes to EPSO's Practices on March 8, 2018

48. EPSO formally approved Directive Number 18-02, titled "Change in Ice Procedures," on March 15, 2018, but started following it in practice on March 8, 2018. This change was made after a meeting with ICE supervisors on March 8, 2018, where EPSO learned that ICE had changed its procedure and practice in 2017.

49. EPSO Directive Number 18-02 ended EPSO's policy and practice of transferring inmates to "IGSA holds" when ICE sent the CJC an I-203 Form in addition to an I-200 Form and/or an I-247A Form. Rather, under the Directive, detainees were transferred to federal custody and housed pursuant to the IGSA only if EPSO had received ICE Form I-247A and ICE Form 200, and an ICE agent appeared in person—within 48 hours of the conclusion of state-law authority—to serve paperwork on the detainee and provide ICE Form I-203 to the CJC. Under the Directive, the inmate was released if an ICE agent did not personally appear to take custody within 48 hours of the expiration of state-law authority to hold the inmate.

50. Under EPSO Directive Number 18-02, if Mr. Cisneros had posted bond, EPSO would have held him for an additional 48 hours, in order to provide ICE an opportunity to take him into ICE custody.

Court Order Resulting in Mr. Cisneros's Release on Bond

51. Mr. Cisneros, along with another plaintiff, sued Sheriff Elder for declaratory and injunctive relief on behalf of a class in Case No. 18CV30549 (District Court, El Paso County). On March 19, 2018, the court in that case issued a preliminary injunction and enjoined many of the practices described above. The court found that Mr. Cisneros and his co-plaintiff "demonstrated a likelihood of success on the merits of their claim that Sheriff Elder does not

have authority under Colorado law to refuse to release the Plaintiffs when they post bond or otherwise resolve their criminal cases.”

52. It its order, the court enjoined Sheriff Elder “from relying on ICE immigration detainers or ICE administrative warrants as grounds for refusing to release the Plaintiffs from custody when they post bond, complete their sentences, or otherwise resolve their criminal cases. If Plaintiffs post bond, Defendant is ordered to release them pending resolution of their criminal matters.”

53. Mr. Cisneros’s daughter posted bond for Mr. Cisneros for the second time on March 20, 2018. On that date, he was finally released from the CJC.

Notice of Claim to Defendant

54. Mr. Cisneros filed a written notice of claim with Defendant as required by C.R.S. § 24-10-109.

55. On March 9, 2018, Mr. Cisneros filed with Defendant a notice containing the following: (a) his name and address and the name and address of his attorneys; (b) a concise statement of the factual basis of the claim; (c) the name and address of the known employees involved; (d) a concise statement of the nature and the extent of Mr. Cisneros’s injuries; and (e) a statement of the amount of monetary damages that is being requested.

56. Defendant has not responded to the notice. Ninety days following the March 9, 2018 notice of claim passed on June 7, 2018. Therefore, pursuant to C.R.S. § 24-10-109(6), Mr. Cisneros may file this lawsuit against Defendant.

CLAIM FOR RELIEF

(False Imprisonment)

57. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth in this claim.

58. Plaintiff was a pre-trial detainee in Defendant’s custody. His bond was set at \$2,000.

59. On November 28, 2017, Gloria Cisneros, Plaintiff’s eldest daughter, went to the jail to post bond for her father. She posted the money and obtained a receipt.

60. As a result of Sheriff Elder’s unlawful policies, Plaintiff was not released on bond. He remained imprisoned in the El Paso County Jail.

61. Sheriff Elder knowingly and intentionally restricted Plaintiff’s freedom of movement. Plaintiff was aware that his freedom of movement was restricted.

62. Sheriff Elder restricted Plaintiff’s freedom of movement without legal justification.

63. Sheriff Elder is liable to Plaintiff for false imprisonment.

64. At the time of the false imprisonment, Plaintiff was not incarcerated pursuant to a conviction for a crime. He was not awaiting sentencing. He was entitled to be released.

65. Plaintiff is entitled to damages for false imprisonment, and any additional relief the Court deems just.

PRAYER FOR RELIEF

66. Wherefore, Plaintiff requests the following relief:

- A. Compensatory damages;
- B. Costs and prejudgment interest; and
- C. Any additional relief the Court deems just.

JURY DEMAND

Pursuant to C.R.C.P. 38, Plaintiff demands a trial by jury of all claims so triable.

s/Stephen G. Masciocchi

Stephen G. Masciocchi, # 19873

Kyriaki Council, # 51157

HOLLAND & HART, LLP

*In cooperation with the American Civil
Liberties Union Foundation of Colorado*

s/Mark Silverstein

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