

## Ramirez v. Webb

United States District Court for the Western District of Michigan

July 2, 1987, Decided ; July 2, 1987, Filed

File No. K 81-344

**Reporter:** 1987 U.S. Dist. LEXIS 15403

Jesus Ramirez; Arturo Garcia; Guillermina Garcia; Jose Garcia; Arturo Garcia, Jr.; Juan Rodriguez; Jose Jimenez; Jesus Mendoza; Gregoria Guerrero; Zenaida Quinones; Janet Quinones; Awilda Quinones; Nelson Santiago; Cynthia McCleary; Martin Ramos; Domingo Coriano; Benedicto Padron; Timothy Ponce; Juan Guerrero; Jose Guerrero; Maria Guerrero, and Margarita Guerrero by their next friend, Gregoria Guerrero; Norma Garcia, Lupita Garcia, and Enedina Garcia by their next friend, Arturo Garcia; and Jose Angel Garza by his next friend Gregoria Guerrero; individually and on behalf of all others similarly situated, Alfredo Solis; Joe Manuel Solis by his next friend Alfredo Solis; Alvaro Aguilar and Nancy Aguilar, Plaintiffs, v Jack E. Webb, Gregory Kowalski, Thomas J. Keenan, Michael Went, John D. Hegelson, Michael T. Hawes, Gregory Dahl, Robert Wallis, Daniel Moritz, Timothy Houghtaling, Manfred Zarfl, Gregory Bednarz, John Dam, Frank Falkowski, James Wellman and Oscar Gonzalez, both individually and in their official capacity as agents of the Immigration and Naturalization Service; James H. Montgomery, both individually and in his current official capacity as District Director of the Immigration and Naturalization Service, Paul E. McKinnon, both individually and in his official capacity as District Director of the Immigration and Naturalization Service, and in his former official capacity as Associate Regional Commissioner for Enforcement Northern Division; Paul E. McKinnon, both individually and in his official capacity as District Director of the Immigration and Naturalization Service; Edward Short, both individually and in his official capacity as former Assistant District Director for Investigations of the Immigration and Naturalization Service in Detroit; Robert Wagus, both individually and in his current official capacity as Assistant District Director for Investigations of the Immigration and Naturalization Service in Detroit; Jerald D. Jondall, both individually and in his official capacity as District Director of the United States Border Patrol; Emil Orsack, both individually and in his current official capacity as Chief Patrol Officer of the United States Border Patrol; Ricky Dixon, James D. Kunkle, Brian F. Munson, James S. Gilmore, Stanley R. DeSonia, Donald C. Teeple, Steven E. Nusbaum, Edward T. Farley, Ronald Dowdy, Edwin W. Earl, Charles L. Huffman, Robert J. McNamara, James J. Higgins, Kenneth S. Harris, and Larry G. Laudner, both individually and in their official capacity as agents of the United States Border Patrol; J. L. Buzaitis, both individually and in his official capacity as

an agent of the Immigration and Naturalization Service or the United States Border Patrol; John Doe I through LXIX, both individually and in their official capacity as agents of the Immigration and Naturalization Service or the United States Border Patrol; The United States Immigration and Naturalization Service; Unknown Local Law Enforcement Agencies; Ronald Roe I and II, both individually and in their official capacity as agents of Unknown Local Law Enforcement Agencies, Defendants.

**Judges:** [\*1] ENSLEN

**Opinion by:** RICHARD A. ENSLEN

### Opinion

#### OPINION

On April 29, 1985 defendants filed a Motion to Dismiss and/or for Partial Summary Judgment and for Sanctions. As part of that motion, defendants requested that the Court enter a judgment in their favor on plaintiff Jose Jimenez' claim that certain defendants had unlawfully detained him in a lettuce field at the Basore Farm in August, 1982. In its January 31, 1986 decision on several pending motions, the Court granted defendants' motion with respect to Mr. Jimenez because it found that the statute of limitations barred Mr. Jimenez' claim.

On February 18, 1987 the Court granted plaintiffs' motion to alter or amend its statute of limitations decision and reinstated Mr. Jimenez' claim. I also noted that since I had reinstated Mr. Jimenez' claim as not being barred by the statute of limitations, I had to reconsider defendants' other grounds for dismissing such claim: in particular, I had to reconsider defendants' argument that they are entitled to a grant of qualified immunity on Mr. Jimenez' claim. I could not decide the qualified immunity issue at the February 18th hearing, however, because I did not have defendants' April 29th motion, which had [\*2] been sent to the Sixth Circuit. The Court accordingly requested defendants to submit a copy of their motion if they still wished the Court to consider their qualified immunity defense. I received a copy of defendants' motion, together with supporting documents and a copy of Mr. Jimenez' deposition transcript, on February 26, 1987.

Mr. Jimenez alleges, and testified at his deposition, that he was working in the lettuce fields at the Basore Farm in

August, 1982 when an INS agent, whom he believes to have been either James Wellman or John Hegelson, approached him and began to interrogate him about his citizenship. Plaintiff alleges he told the agent that he is a United States citizen. The agent, however, asked to see plaintiff's identification. Mr. Jimenez showed the agent his driver's license and social security card. Apparently still not satisfied, the agent took plaintiff to an INS vehicle, locked him inside, and interrogated him further. Finally, the agent released Mr. Jimenez and allowed him to resume his work. In the relevant portion of their April 29th motion, defendants argue that the INS agent's alleged actions did not violate plaintiff's clearly established constitutional [\*3] rights and that such agent hence is entitled to qualified immunity from plaintiff's claim for monetary relief. They support their argument with affidavits from Mr. Wellman and Mr. Hegelson and with Mr. Hegelson's deposition testimony.

Under the Supreme Court's decision in *Harlow v. Fitzgerald*, "officials 'are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory constitutional rights of which a reasonable person would have known.'" *Davis v. Sherer*, 82 L. Ed. 2d 139, 147 (1984) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). To claim this immunity, a defendant bears the burden of demonstrating "either that the law was not clearly established at the time of plaintiff's alleged injury, or, if the law was clearly established, that he neither knew or should have known of the relevant legal standard due to extraordinary circumstances." *Alexander v. Alexander*, 706 F.2d 751, 754 (6th Cir. 1983). In addition, the normal summary judgment standards apply to the Court's resolution of the qualified immunity defense. *Briggs v. Goodwin*, 698 F.2d 486, 489 (D.C. Cir. 1983). [\*4]

In this instance, defendant Wellman has submitted an affidavit in which he states that he was not involved in the Basore Farm operation in August, 1982, "did not participate in any of the alleged incidents, and specifically did not question or detain Jose Jimenez." Affidavit of James Wellman, P7. Plaintiff has not rebutted this affidavit, and the Court accordingly will grant defendants' April 29th motion with respect to plaintiff Jimenez' claim against defendant Wellman arising out of the August, 1982 Basore Farm incident.

The situation is different, however, with regard to defendant Hegelson, who states in his affidavit only that he "does not recall detaining anyone who claims to be a United States citizen" at the August, 1982 operation; that it is not his policy "to detain or interrogate anyone who offers credible evidence of United States citizenship"; and that "upon information and belief," he "did not question

Jose Jimenez." Affidavit of John D. Hegelson, PP13-15. At his deposition, moreover, defendant Hegelson stated that he was at the Basore Farm raid and that he did interrogate and arrest a person at the raid. Dep. at 108-15. These statements clearly do not suffice to [\*5] rebut plaintiff's complaint and deposition testimony. The issue, therefore, is whether, accepting plaintiff's allegations and testimony as true, defendant Hegelson's alleged misconduct violated plaintiff's clearly established constitutional rights.

The Supreme Court has held that "interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a *Fourth Amendment* seizure." *Immigration and Naturalization Service v. Delgado*, 466 U.S. 210, 216 (1984). A law enforcement official cannot proceed further, however, and detain a person "absent some reasonable suspicion of misconduct." *Id.*; *United States v. Sharpe*, 470 U.S. 675, 682 (1985); *Brown v. Texas*, 443 U.S. 47, 51 (1979) (the police must have "a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity"). This standard applies in the immigration law context. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975) (indicating an INS agent may make a *Terry* stop when his observations "lead him reasonably to suspect" that certain persons may be aliens [\*6] in the county illegally). As the Ninth Circuit has stated, the INS is required "to adduce articulable suspicion of both alienage and unlawful presence prior to the initiation of detentive stops." *LaDuke v. Nelson*, 762 F.2d 1318, 1327 (9th Cir. 1985). As the *Brignoni-Ponce* and *Brown* decisions indicate, this law was clearly established by August, 1982.

In this case, accepting plaintiff's deposition testimony as true, it appears that defendant Hegelson detained plaintiff in his car absent an articulable, reasonable suspicion that plaintiff was an alien who was in the county illegally. The Court accordingly fails to see how it can grant defendant Hegelson's motion for qualified immunity with regard to defendant Jimenez' claim.

DATED in Kalamazoo, MI: July 2, 1987

RICHARD A. ENSLEN, U.S. District Judge

ORDER

In accordance with the opinion dated July 2, 1987;

IT IS HEREBY ORDERED that defendants Wellman's and Hegelson's April 29, 1985 motion for partial summary judgment on plaintiff Jimenez' claim against them is GRANTED with respect to defendant Wellman and DENIED with respect to defendant Hegelson.

DATED in Kalamazoo, MI: July 2, 1987

RICHARD [\*7] A. ENSLEN, U.S. District Judge