

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ARTURO MERCADO, PABLO CARRANZA,
SERGIO DIAZ, JOSE ARTURO GALVAN
RESENDIZ, JOSE GUTIERREZ, HEYDY
JARQUIN JIMENEZ, JOSE LOPEZ-ARANDA,
MOISES MARTINEZ, JAVIER NAVARRETE,
EFREN PEREZ VILLEGAS, MIGUEL
RODRIGUEZ, ELEAZAR SAAVEDRA,
ANDRES TORRES CABRERA, MOISES
VEGA COSTILLA, MARIO GARIBALDI, and
RODOLFO MARMOLEJO,

Plaintiffs,

v.

DALLAS COUNTY, TEXAS, and LUPE
VALDEZ,

Defendants.

CIVIL ACTION NO.

3:15-CV-3841

JURY TRIAL DEMANDED

COMPLAINT

Freedom from pretrial detention is a fundamental right protected by the United States Constitution. “This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.” *Stack v. Boyle*, 342 U.S. 1, 3 (1951). “The consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect’s job, interrupt his source of income, and impair his family relationships.” *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Defendants held Plaintiffs in Dallas County jail for months pending trial, even for purported misdemeanors, without allowing immediate release on bond. Plaintiffs seek damages and injunctive relief under 42 U.S.C. § 1983.

PARTIES

1. Plaintiffs were held by Dallas County in detention. U.S. Immigration and Customs Enforcement (“ICE”) requested that Dallas County detain each Plaintiff for up to 48 hours after the time that each Plaintiff otherwise would have been released to facilitate ICE’s arrest of that Plaintiff. As a result, an “immigration hold” appears in each Plaintiff’s file. No Plaintiff is currently in Dallas County custody.

2. Dallas County is located in North Texas. Process for Dallas County may be effected on Clay Jenkins, County Judge, who is located at 411 Elm St., Dallas, Texas, 75202. Tex. Civ. Prac. & Rem. Code § 17.024(a).

3. Lupe Valdez is the Sheriff of Dallas County and is the highest ranking law-enforcement officer in Dallas County. She is responsible for the Dallas County Sheriff’s Department, Dallas County jails, and Dallas County inmates. Sheriff Valdez lives and works in Texas and in this District. Plaintiffs sue Sheriff Valdez in her personal and official capacity.

JURISDICTION AND VENUE

4. This is a civil-rights case arising under the United States Code, title 42. The Court thus has subject-matter jurisdiction over this lawsuit. 28 U.S.C. § 1331.

5. Defendants work and reside in Texas and in this District. Defendants regularly conduct business in Texas and this district. Defendants’ acts in Texas form the basis of this lawsuit. The Court thus has personal jurisdiction over Defendants.

6. Venue is proper under 28 U.S.C. § 1391 because many of the complained-of acts in this case occurred in Dallas County, Texas, and because Defendants reside and work in this District.

FACTUAL BACKGROUND

7. Plaintiffs were arrested and placed in Dallas County custody within the last two years. On information and belief, ICE requested that Dallas County detain each Plaintiff for up to 48 hours after the time that each Plaintiff otherwise would have been released to facilitate ICE’s arrest of that Plaintiff. As a result, each Plaintiff’s file includes an “immigration hold.” As an example, the following appears in the file for Plaintiff Moises Martinez:

Hold	Agency ID:
Bond Amount	0.00
Charge	ILLEGAL ALIEN
Warrant Number	DAL1504000
Magistrate	
Remark	HF INF

“Illegal Alien” is often used by Dallas County as shorthand for an immigration hold. At times, the hold indicates that no bond is allowed, as shown by the file for Plaintiff Efren Perez Villegas:

Hold	Agency ID:
Bond Amount	0.00
Charge	ILLEGAL ALIEN
Warrant Number	353015191
Magistrate	
Remark	H/F IMMIGRATION DETAINER NO BOND ALLOWED

Similarly, the file for Plaintiff Jose Lopez-Aranda states “H/F IMMIGRATION/NO BOND.”

8. ICE often provides a form to Dallas County entitled “Immigration Detainer.” The Immigration Detainer for Plaintiff Andres Torres Cabrera is attached as Exhibit A. The Torres Cabrera Immigration Detainer states that “there is reason to believe [Mr. Torres

Cabrera] is subject to removal from the United States.” Under federal law, being “subject to removal” is not a crime. The Immigration Detainer states that Mr. Torres Cabrera has a prior felony, but does not state (in form or substance) facts showing probable cause that would support arrest under the the Fourth Amendment, such as probable cause to believe that Mr. Torres Cabrera has committed a different criminal offense or is committing a different criminal offense. The Immigration Detainer requests that Dallas County maintain custody over Mr. Torres Cabrera:

IT IS REQUESTED THAT YOU: Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS** excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow [the Department of Homeland Security] to take custody of the subject.

Ex. A. The Immigration Detainer requests that Dallas County provide a copy of the Detainer to the subject, *id.*, but Mr. Torres Cabrera did not receive a copy of the Detainer.

9. Dallas County generally honors ICE’s requests to detain. Dallas County detains individuals after they would otherwise be released to allow ICE an opportunity to take custody of those individuals. ICE picks up detained individuals from Dallas County on a regular schedule, approximately two times a week. As a result, at times, Dallas County detains individuals for ICE for more than 48 hours. ICE does not always take custody of the individuals with immigration holds. For example, Dallas County detained Plaintiff Miguel Rodriguez after he otherwise would have been released for transfer to ICE. ICE did not take custody, and Dallas County eventually released Mr. Rodriguez.

10. Dallas County imposes pretrial detention on individuals subject to immigration holds (like Plaintiffs) in at least two ways. First, as shown in Mr. Perez Villegas’ file (which states “IMMIGRATION DETAINER NO BOND ALLOWED”) and Mr. Lopez-Aranda’s file (“H/F

IMMIGRATION/NO BOND”), Defendants do not allow bond for those with immigration holds, resulting in pretrial detention. Second, even if individuals subject to immigration holds are cleared for release (such as after a plea hearing), Dallas County detains those individuals pending transfer to ICE. Thus, even if Defendants accept bond, the bond does not result in release. On payment, Dallas County instead maintains pretrial detention, pending transfer to ICE. Under either method, Dallas County refuses immediate release on bond for individuals with immigration holds.

11. The first method—refusing to allow bond—directly imposes pretrial detention. If Dallas County will not allow bond, bail is illusory. Dallas County imposes pretrial detention by not allowing bonds for individuals with immigration holds.

12. The second method—detaining individuals for transfer to ICE based on an ICE request to detain—indirectly imposes pretrial detention. If an individual with an immigration hold attempts to post bond in Dallas County, and Dallas County allows the bond, Dallas County will **not** immediately release the individual. Instead, Dallas County will maintain custody for transfer to ICE. Dallas County’s practices are widely known. As a result, attempting to post bond is known as a futile exercise for those with immigration holds, because it will not result in immediate release. The scheme has predictable effects. Because Dallas County will not immediately release those on bond, individuals with immigration holds generally do not attempt to post bond, and Dallas County maintains pretrial detention over almost all individuals with immigration holds.

13. The second method is independently wrongful. Under state law, Dallas County must “at once set the accused at liberty” upon payment of bond. Tex. Crim. Code § 17.29(a).

Defendants cannot rely solely on a request to detain from ICE to justify any further arrest or detention, for at least the following reasons:

- Pursuant to Texas statute, all arrests generally require a warrant. An ICE request to detain is not a warrant, and the ICE request to detain does not satisfy any statutory exception that would allow Dallas County to arrest Plaintiffs without a warrant.
- Dallas County cannot show probable cause to believe that a different criminal offense has been or is being committed, and Dallas County has no other authority to detain that satisfies Article I, Section 9, of the Texas Constitution.
- Dallas County cannot show probable cause to believe that a different criminal offense has been or is being committed, and Dallas County has no other authority to detain that satisfies the Fourth Amendment of the United States Constitution.

14. Dallas County's wrongful two-part scheme predictably results in pretrial detention over most individuals with immigration holds. Dallas County reported to the Texas Commission on Jail Standards that, in June 2015, Dallas County held 557 prisoners that were subject to an ICE request to detain. Due to its two-part practice of refusing immediate release on bond to those with immigration holds, Dallas County unconstitutionally imposed pretrial detention on most of those individuals.

15. Dallas County and Sheriff Valdez are responsible for Dallas County's policy and practice of refusing immediate release on bond to individuals with immigration holds by (i) refusing to allow bond for those with immigration holds, and (ii) detaining individuals subject to an immigration hold, even after those individuals make bail or are otherwise cleared for release. In particular, Sheriff Valdez oversees and is responsible for Dallas County's decisions on (i) whether to allow bond posted for those with immigration holds, and (ii) whether to detain individuals with immigration holds that make bail or are otherwise cleared for release.

16. Dallas County imposed pretrial detention on most Plaintiffs, as detailed below:
 - i. Bail was nominally set for **Arturo Mercado** in February 2015 for \$100,000. An immigration hold was placed on Mr. Mercado. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Mercado remained in Dallas County custody until around April 2015.
 - ii. Bail was nominally set for **Pablo Carranza** in May 2015 for \$100,000. An immigration hold was placed on Mr. Carranza. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Carranza remained in Dallas County custody until around September 2015.
 - iii. Bail was nominally set for **Sergio Diaz** in January 2015 for \$50,000. An immigration hold was placed on Mr. Diaz, even though Mr. Diaz is a permanent resident of the United States. As a result, Dallas County initially would not allow Mr. Diaz immediate release on bond, resulting in pretrial detention. Dallas County imposed pretrial detention until ICE withdrew its request to detain, in around August 2015.
 - iv. Bail was nominally set for **Jose Arturo Galvan Resendiz** in November 2014 for \$2,500. An immigration hold was placed on Mr. Galvan Resendiz. As a result, Dallas County initially would not allow Mr. Diaz immediate release on bond, resulting in pretrial detention. Dallas County held Mr. Diaz until December 2014.
 - v. Bail was nominally set for **Jose Gutierrez** in July 2015 for \$100,000. An immigration hold was placed on Mr. Gutierrez. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Gutierrez remained in Dallas County custody until around September 2015.
 - vi. Bail was nominally set for **Heydy Jarquin Jimenez** in November 2014 for \$100,000. An immigration hold was placed on Ms. Jarquin Jimenez. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Ms. Jarquin Jimenez remained in Dallas County custody until around February 2015.
 - vii. Bail was nominally set for **Jose Lopez-Aranda** in May 2015 for \$100,000. An immigration hold was placed on Mr. Lopez-Aranda. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Lopez-Aranda remained in Dallas County custody until around September 2015.

- viii. Bail was nominally set for **Moises Martinez** in April 2015 for \$2,500. An immigration hold was placed on Mr. Martinez. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Martinez remained in Dallas County custody until around September 2015.
 - ix. Bail was nominally set for **Javier Navarrete** in December 2014 for \$2,500. An immigration hold was placed on Mr. Navarrete. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Martinez remained in Dallas County custody until later that month or January 2015.
 - x. Bail was nominally set for **Efren Perez Villegas** in June 2015 for \$10,000. An immigration hold was placed on Mr. Perez Villegas. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Perez Villegas remained in Dallas County custody until around September 2015.
 - xi. Bail was nominally set for **Miguel Rodriguez** in February 2015 for \$2,500. An immigration hold was placed on Mr. Rodriguez. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Rodriguez remained in Dallas County custody until around March 2015.
 - xii. Bail was nominally set for **Eleazar Saavedra** in April 2015 for \$100,000. An immigration hold was placed on Mr. Saavedra. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Saavedra remained in Dallas County custody until around September 2015.
 - xiii. Bail was nominally set for **Andres Torres Cabrera** in May 2015 for \$100,000. An immigration hold was placed on Mr. Torres Cabrera. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Torres Cabrera remained in Dallas County custody until around August 2015.
 - xiv. The 363d District Court in Dallas County granted **Moises Vega Costilla's** Motion for New Trial in April 2015. An immigration hold was placed on Mr. Vega Costilla. The immigration hold resulted in pretrial detention due to Dallas County's practice of refusing immediate release on bond to individuals with immigration holds. Mr. Vega Costilla remained in Dallas County custody until around May 2015.
17. Dallas County detained each Plaintiff listed in the previous paragraph for varying periods of time after the Plaintiff should have been released, relying solely on an ICE re-

quest to detain. For example, Plaintiff Miguel Rodriguez's case was disposed of on March 20, 2015, but Dallas County detained him until March 22, 2015, based solely on ICE's request to detain. In addition to the Plaintiffs in the previous paragraph, Dallas County detained the following Plaintiffs after they should have been released, based solely on an ICE request to detain:

- i. On August 20, 2015, the State of Texas filed a "Motion to Withdraw its Motion to Revoke or its Motion to Proceed with Adjudication" in the case against **Mario Garibaldi**. As a result of that filing, Mr. Garibaldi should have been released immediately. An immigration hold was placed on Mr. Garibaldi's file. As a result, Dallas County detained Mr. Garibaldi, relying solely on the ICE request to detain, after he should have been released. Mr. Garibaldi remained in Dallas County custody until around August 21, 2015.
- ii. Plaintiff **Rodolfo Marmolejo** was arrested for failure to pay a fine. The fine was paid on October 19, 2015, which should have resulted in Mr. Marmolejo's release. An immigration hold was placed on Mr. Marmolejo's file. As a result, Dallas County detained Mr. Marmolejo, relying solely on the ICE request to detain, after he should have been released. Mr. Marmolejo remained in Dallas County custody until around October 19, 2015 (later in the same day) or October 20, 2015.

18. Defendants abridged, in two ways, Plaintiffs' freedom from pretrial detention protected by the Fifth and Fourteenth Amendments to the United States Constitution. First, Dallas County's practice of refusing to allow bond for individuals with immigration holds directly results in unconstitutional pretrial detention. Dallas County and Sheriff Valdez are responsible for the County's policy of refusing to allow bond for individuals with immigration holds, and are thus responsible for this constitutional violation. Second, even if Dallas County accepts the bond, because Dallas County has a policy and practice of wrongfully detaining individuals with immigration holds for ICE on request (e.g., in violation of Texas statutes, the Texas Constitution, and the United States Constitution), Dallas County denies immediate release on bond, indirectly resulting in unconstitutional pretrial detention. Dallas County

and Sheriff Valdez are responsible for the County's policy of detaining individuals subject to an immigration hold, even after those individuals are otherwise cleared for release, and are thus responsible for this constitutional violation.

19. Dallas County's practice of honoring ICE requests to detain, even after those individuals are otherwise cleared for release, denies Plaintiffs their rights under the Fourth Amendment to the United States Constitution. After individuals are otherwise cleared for release, Dallas County does not have probable cause to believe that a different criminal offense has been or is being committed and has no other authority to detain that satisfies the Fourth Amendment. Dallas County and Sheriff Valdez are responsible for the County's policy of detaining individuals subject to an immigration hold, even after those individuals are otherwise cleared for release, and are thus responsible for this constitutional violation.

COUNT 1: 42 U.S.C. § 1983—SUBSTANTIVE DUE PROCESS
(ALL PLAINTIFFS EXCEPT MARIO GARIBALDI AND RODOLFO MARMOLEJO)

20. Plaintiffs incorporate the allegations of all previous paragraphs.

21. The Due Process Clauses of the Fifth and Fourteenth Amendments protect every person against government interference with certain fundamental rights and liberty interests, unless the interference is narrowly tailored to serve a compelling state interest.

22. Freedom from pretrial detention is a fundamental and clearly established right.

23. Defendants imposed pretrial detention on Plaintiffs, infringing the Plaintiffs' strong interest in liberty. This intentional or reckless pretrial detention is not narrowly tailored to serve a compelling state interest.

24. The moving force for this claim is Dallas County's practice of refusing immediate release on bond to individuals with immigration holds by (i) refusing to allow bond for

those with immigration holds, and (ii) honoring ICE requests to detain and detaining individuals subject to an immigration hold, even after those individuals are otherwise cleared for release, in violation of Texas statutes, the Texas Constitution, and/or the United States Constitution. Dallas County and Sheriff Valdez are responsible for these policies and practices. In particular, Sheriff Valdez oversees and is responsible for Dallas County's decisions on (i) whether to refuse bond posted for those with immigration holds, and (ii) whether to detain individuals with immigration holds that are otherwise cleared for release.

25. As a result of Defendants' actions, Plaintiffs suffered damages in an amount to be proven at trial.

COUNT 2: 42 U.S.C. § 1983—FOURTH AMENDMENT
(ALL PLAINTIFFS)

26. Plaintiffs incorporate the allegations of all previous paragraphs.

27. The Fourth Amendment prevents arrests and seizures, absent probable cause.

28. When an individual pays bail or is otherwise eligible for release, Dallas County must release that individual, absent a separate showing of probable cause that satisfies the Fourth Amendment.

29. Plaintiffs' rights under the Fourth Amendment are clearly established.

30. Dallas County has a policy and practice of detaining individuals who have otherwise been cleared for release, without requiring probable cause to believe that a different criminal offense has been or is being committed or other authority that would satisfy the Fourth Amendment. Instead, Dallas County justifies its detentions with ICE-issued requests to detain that neither satisfy the Fourth Amendment nor show probable cause to believe that a different criminal offense has been or is being committed.

31. Dallas County detained Plaintiffs after they were available for release, without probable cause that satisfies the Fourth Amendment. Further, Dallas County detained certain Plaintiffs for more than 48 hours.

32. The moving force for this claim is Dallas County's policy of honoring ICE requests to detain and detaining individuals subject to an immigration hold, even after those individuals are otherwise cleared for release. Dallas County and Sheriff Valdez are responsible for this policy. In particular, Sheriff Valdez oversees and is responsible for Dallas County's decision on whether to detain individuals with immigration holds that are otherwise cleared for release.

33. As a result of Defendants' actions, Plaintiffs suffered damages in an amount to be proven at trial.

JURY DEMAND

34. Plaintiffs demand a jury on all issues so triable.

PRAYER FOR RELIEF

Plaintiffs request the following relief:

- i. That the Court award Plaintiffs actual, compensatory, and punitive damages in an amount to be proven at trial;
- ii. That the Court award pre-judgment interest at the maximum rate allowed by law and post-judgment interest pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;
- iii. That Defendants pay Plaintiffs' reasonable attorney fees and costs as permitted by law, including as permitted by 42 U.S.C. § 1988;
- iv. That the Court enjoin Defendants from detaining Plaintiffs solely based on an immigration hold, Immigration Detainer, or a request from ICE; and
- v. That the Court award such other and further relief as the Court deems just and proper.

Dated: October 26, 2015

Respectfully submitted,



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