UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-81280-CV-MARRA

MARCOTULO MENDEZ, and
FLORIDA IMMIGRANT COALITION, et al.

Plaintiff(s),

vs.

RIC L. BRADSHAW, in his official capacity as Sheriff of Palm Beach County,

Defendants
_____/

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND INCORPORATED STATEMENT OF FACTS AND MEMORANDUM OF LAW

COMES NOW, Defendant Ric L. Bradshaw in his official and individual capacities, by and through their undersigned counsel, pursuant to Fed.R.Civ.P. 56, and file this his Motion for Summary Judgment, Statement of Facts, and Memorandum of Law, as follows:

I. PLAINTIFF'S CLAIMS

Plaintiff filed a multi-count Petition for Writ of Habeas Corpus and "Civil Rights Complaint" [DE1] alleging, inter alia, that the Sheriff has unconstitutional policies and practices such as: 1) detaining individuals "for lengthy periods of time without allowing them to post the bond already determined by a state court judge" in reliance on Immigration and Custom Enforcement ("ICE"), and 2) the wrongful detainment of "pre-trial detainees for far longer than the ICE detainer's explicit 48-hour time limit. " [DE1, ¶¶ 1, 22, 27]. The complaint revolves around the detention and release of Plaintiff-Petitioner Marcotulio Mendez, who was detained on or about May 14, 2009, at

the Palm Beach County Jail ("Main Detention Center" or MDC). [DE1, ¶ 3]. It is further alleged that on May 14, 2009, Nicolas Lopez and Ely Mendez tried to pay Mendez's state court bond but that an "individual in the Sheriff's Office informed them that the bond would not be accepted because an ICE detainer had been issued." [DE1, ¶¶ 8, 32]. It is further alleged that Lopez again tried to post bond on July 25, 2009, but was then advised by an employee of the Sheriff's Office that "if he posted bond for Mr. Mendez, he would not only risk not getting his bond money back, but Mr. Mendez would not be released from jail as he has an immigration hold." [DE1, ¶ 33]. As of the filing of the Complaint on or about September 3, 2009, it was alleged that Mendez had been held for "more than three months since he tried to post bond, with no lawful authority for such continued detention." [DE1, ¶ 34].

Plaintiffs requested a habeas corpus remedy under 28 U.S.C. § 2241 ("The Great Writ") [DE1, ¶¶ 41-44], and two claims for relief:

Count I: Due Process (federal claim under 42 USC § 1983); and

Count II: Fourth and Fourteenth Amendment (federal claim under 42 USC § 1983).

Hence, the heart of this case is that the Plaintiffs assert that Defendant Sheriff confines Latinos and other detainees "without permitting them to post bond as authorized by a state court." (DE1, ¶ 22). Plaintiffs seek declaratory and injunctive relief, and assert that the Sheriff has the aforementioned custom, policy, and practice of improperly advising detainees regarding whether bond can be accepted, and also improperly holding detainees past a 48 hour time period if a federal ICE detainer is placed on them. Attached to the Complaint are four affidavits from Plaintiff Mendez, and three witnesses: Daniel M. Cohen (assistant public defender for Plaintiff Mendez), Nicolas Lopez, and Ely Mendez. [DE 1, pp. 18-24].

This Court has already analyzed the facts alleged in the Complaint in its Order regarding denying the motion to dismiss. [DE 48]. At the hearing on the motion to dismiss, counsel for Plaintiffs represented to this Court that the actual policy and practice complained of is not the actual federal law that authorizes a law enforcement agency to detain persons based on ICE action, but the way in which the Sheriff's Office handles bonds for persons subject to ICE action. In fact, Plaintiffs' counsel represented at the motion to dismiss hearing that Plaintiff Mendez was held by the Sheriff's Office and that bond could not be posted for him even before an immigration detainer was lodged by ICE against him. They have alleged that a Form 247 detainer had not been lodged against him at the time that the first attempt to bond him out occurred on May 14, 2009. [Exh. 10, Motion to Dismiss transcript, p. 19]. Thus, Plaintiffs appear to have revised the theory behind the alleged constitutional deprivation — they are not alleging that the federal detainer regulations are improper, but rather that detainees are denied an opportunity to post bond before the detainers are lodged. [Exh. 10, Motion to Dismiss transcript, p. 14].[1]

For each of the reasons below, and based on clear precedent in the Eleventh Circuit pertaining to cases involving alleged delayed releases from jails, and under any theory of a constitutional deprivation, summary judgment is appropriate as to both counts. Plaintiffs have no competent and relevant record evidence whatsoever to support their claims that a constitutional violation occurred (as opposed to, perhaps, mere negligence) or that their federal claims actionable

[1] The Complaint also contains a reference to alleged excessive force and/or false arrest. [DE1, ¶¶ 30-31]. However, the Plaintiffs agreed at the motion to dismiss hearing that this case is limited to the due process aspect pertaining to the policy of accepting bonds. *See Exhibit 10.* Even if there is an excessive force or false arrest claim, there is no evidence whatsoever that Defendant Sheriff is personally involved in the arrest or the use of force, and there is no allegation of a custom, policy, or practice in the Complaint pertaining to either excessive force or a false arrest.

under Section 1983 as to establishing a custom, policy or practice. Summary judgment is appropriate for the Sheriff in both his individual (qualified immunity) and official capacities.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS (S.D.FL.L.R. 7.5)

The following undisputed facts are offered by Defendant Sheriff to support this Motion for Summary Judgement:

1. 18 USC § 4002 allows for Defendant Sheriff to contract with and provide housing for detainees under federal holds:

> For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

2. 8 C.F.R. § 287.7 sets forth obligations for the Sheriff when immigration authorities place detainers on inmates:

> (a) Detainers in general. Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible . . .
>
> (d) Temporary detention at Department request. Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

See Exhibit 1A.

2. 8 C.F.R. § 236.6 sets forth obligations for the Sheriff while detaining persons on behalf of

ICE:

> No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

See Exhibit 1B.

3. At least one state court has made a finding that prior to May of 2009, when subjects arrive at the Palm Beach County Jail, which is under the care and control of Defendant Sheriff, federal agents from ICE placed in the jail record a form I-247, which is considered a federal detainer. This document required the recipient to detain an alien for forty-eight hours after the alien ceases to be in custody on state charges. If a form I-203 is filed, and the alien has been released from state custody, the alien continued to be held and is considered to be in federal custody pending deportation proceedings. At that time, the alien remained in jail as a federal detainee until ICE took custody of the alien from the sheriff. The jail used to receive monetary consideration pursuant to a contract with the federal government for holding federal prisoners, which consideration begins to run after the detainee is booked pursuant to the form I-203. *Ricketts v. Palm Beach County Sheriff*, 985 So.2d 591 (Fla. 4th DCA 2008), *rev denied* Fla. Supreme Court, 998 So.2d 1146 (2008). *See Exhibit 1C*.

4. Captain Robert Manley is the person at the Sheriff's Office with the most knowledge about

issues involving release of detainees (ie. "inmate management"). *See Exhibit 2A (*Manley depo., pp. 114-16, 205-08). He has taken part in explaining this process to the public and other interested parties, and has trained subordinate correctional deputies about the policies and procedures at the Sheriff's Office pertaining to inmate management. For example, he has testified that every foreign born detainee at the jail has an immigration check run on them, known as an IAQ or "Immigration Alien Query". (Exh. 2A, Manley depo., p. 209-10). If an IAQ produces no response, no detainee is held for an immigration or ICE hold. If there is a response, a fax or hand-delivery is received in the form of an I-247. (Exh. 2A, Manley depo., p. 210-13). This procedure has been in place since 2006.

5. Capt. Manley has also supplied an affidavit, attached hereto as *Exhibit 2D*, which is explained further herein, as well as two emails (directives in 2007 and 2008) pertaining to inmate management and federal holds. *See Exhibits 2B and 2C (attached as Exhibits A and B to the Manley Affidavit).* In his affidavit, Capt. Manley makes it clear that he has properly trained staff, and that there is no policy of improperly withholding the release of individuals subject to federal detainers, and that Plaintiff Mendez was not improperly held. *See Exhibit 2D*.

6. At least two subordinates deputies who work at the MDC were deposed in this case. Deputy Isaias Flores, who speaks Spanish, is a release deputy, who oftentimes informs persons bonding out detainees of the policies and procedures of the Sheriff's Office, that certain people may not be released even if a bond is posted. He was trained for at least one month pertaining to releases and three days in the area of bond. (Exh. 3, Flores depo, pp. 11-13). His experience is extensive. (Exh. 3, Flores depo, pp. 11-22). For example, he would advise

certain persons, where applicable, that although a cash bond would be accepted, because the booking process was not complete – a person may not be released pending holds in other jurisdictions, or immigration holds. Thus, an inmate with a federal hold "may post bond but that individual has a federal hold" (Exh. 3, Flores depo., pp. 18-22). Deputy Flores also testified that a person who posts bond does not need to be a U.S. citizen. (Exh. 3, Flores depo., pp. 29-30). Deputy Flores had never contacted ICE to report possible immigration violations of detainees, nor had he notified ICE so that they place such detainers on individuals. (Exh. 3, Flores depo., pp. 30-33).

7. Another deputy, Gerald Mitchell, was also deposed in this case. Similarly, he testified that he was informed of the proper procedures for the booking and release of inmates with ICE holds, and has not refused to accept cash bonds for detainees, even if there is a federal hold. (Exh. 4, Mitchell depo., pp. 19-30)

8. The contract to hold federal detainees (under the federal regulations referenced herein) was with the U.S. Marshall's Office, and it ended by May of 2009, before Plaintiff Mendez was initially incarcerated. *See Exhibit 2A (*Manley depo., pp. 114-16, 205-08) and *Exhibit 2D*. Once the contract ended, the Sheriff no longer held inmates specifically for federal detainers beyond a specific period of time. *See Exhibit 2D* (¶ 7).

9. Sheriff Ric L. Bradshaw has no personal involvement in how detainers at the Palm Beach County Jail are handled, and does not participate in that process. (Exh. 2A, Manley depo., p. 206); *Exhibit 2D* (¶ 2).

10. Once the federal contract with the U.S. Marshall ended, the procedure for detainees subject to immigration proceedings was that once ICE indicated an interest in the detainee (after an

IAQ was filed], ICE had 48 hours to take custody of the detainee or that detainee would be released by the jail (unless another agency/jurisdiction had a hold on the detainee). (Exh. 2A, Manley depo., pp. 121-23); *See Exhibit 2D* (¶ 7); *See* 8 C.F.R. § 287.7.

11. On May 15, 2009, Plaintiff Mendez was initially booked and appeared at a first appearance in the main detention center, and was offered an SOR release (Supervised Release Own Recognizance) or the option of posting a cash bond. He refused to accept the SOR release because he indicated that he planned to pay a cash bond. *See Exhibit 5A* (Justice Services Information System First Appearance Update); *see also Exhibit 2A*, (Manley depo., pp. 153-55). Hence, Mendez voluntarily remained incarcerated pending someone paying his bond – otherwise, he could have been cleared for release on the state charges via SOR.

12 . On May 14, 2009, Mr. Nicolas Lopez attempted to bond Plaintiff Mendez out. Mrs. Ely Mendez accompanied Mr. Lopez to the jail, and according to her deposition testimony, she was told he had a hold on him so if she posted a cash bond, he would not be released because of an immigration hold ("*the officer told us that you could post the money but if you posted it, you may lose it because the case was already in the hands of immigration.*" *See Exhibit 6* (Ely Mendez depo., pp. 23-24) (emphasis added). She also mistakenly thought that a person had to be a U.S. citizen to post bond. This is incorrect, as there is no such requirement at the MDC. (Exh. 2A, Manley depo., pp. 111-12).

13. Mr. Lopez did not hear the conversation between Ely Mendez and sheriff officials when she went into the bond posting area ("I don't know what happened in there") on May 14, 2009. *See Exhibit 7* (Nicolas Lopez depo., p. 39). On July 25, 2009, Mr. Lopez again attempted to bond Mendez out. He was allegedly told at that time that there was a federal hold on him.

See Exhibit 7 (Nicolas Lopez depo., p. 41).

14. Plaintiff Mendez testified in his deposition that he never spoke with his criminal defense lawyer (Cohen) about any immigration detainer, and could not recall whether he even mentioned the bond issue in May 2009 with his lawyer. *See Exhibit 8* (Mendez depo., pp.33-35). It is clear that Mendez did not complain about his bond at the time he entered the jail on or about May 14, 2009. Plaintiff Mendez was represented by assistant public defender Daniel Cohen for his criminal charges. Cohen testified that in situations where immigration holds were placed on detainees that he represented, such as Mendez: "*no one ever said, You can't [post the bond]. You absolutely are prohibited from it. It was not that rigid, but it was represented in such a way that he's [detainee] is not going to get out.*" *See Exhibit 9* (Daniel Cohen depo., pp. 79-80) (emphasis added). Despite having a lawyer, Plaintiff Mendez made no attempt whatsoever to exhaust state remedies (such as filing a motion with a state court judge assigned to his criminal case) to force the Sheriff's Office to accept the cash bond initially offered by Ely Mendez with the help of Mr. Lopez, or to seek habeas corpus relief in a Florida appeals court.

15. Mr. Cohen, however, was well aware of the panoply of remedies available in state court for his client (if in fact the bond had not been accepted) because he had dealt with more than a dozen habeas petitions for other clients before Plaintiff Mendez, and was also familiar with the ICE detainer process, due to the written opinion in *Ricketts v. Palm Beach County Sheriff*, 985 So.2d 591 (Fla. 4th DCA 2008). *See Exhibit 9* (Daniel Cohen depo., pp. 79-85) (emphasis added).

16. Captain Robert Manley at all material times supervised intake and release at the main

detention center, and has trained staff in all material respects with detainers. *See Exhibit 2D* (¶ 1, 12). He testified that whether or not a person has an immigration hold on them, anyone can post a cash bond and such bond will be registered. (Exh. 2A, Manley depo., pp. 47-48); *See Exhibit 2D* (¶ 17, 19). General advice is usually given to the person posting bond if there is a hold on the detainee from another jurisdiction, or a federal hold, and the advice includes a warning that the detainee would not be released because of the hold. (Exh. 2A, Manley depo., pp. 47-48). In fact, some ICE holds are removed and the detainee is released. (Exh. 2A, Manley depo., pp. 84-85).

17. Capt. Manley also personally emphasized to bondsmen and persons posting cash bonds that there was no difference between posting bond for persons with or without ICE detainers, except that they would be advised of ICE holds (which are treated like any other hold). (Exh. 2A, Manley depo., pp. 129-30).

18. Capt. Manley has testified that the Sheriff has not refused to accept bonds, but instead, oftentimes persons subject to ICE holds choose not to post their state court cash bonds. (Exh. 2A, Manley depo., p. 132)*; Exhibit 2D* (¶ 17, 19). It is not a violation of a Sheriff's Office policy to advise persons posting bonds that the detainee had a federal hold. (Exh. 2A, Manley depo., pp. 133-34).

19. As of May of 2009, detainees were not held at the Palm Beach County Jail on just federal detainers – rather, there first had to be a state charge or a federal charge in order to be held. (Exh. 2A, Manley depo., pp. 137-38).

20. Capt. Manley has testified that the Sheriff's policy has always remained to "accept bonds on local charges regardless of any other holds" and that there has been nothing done to correct

that policy or otherwise change it. (Exh. 2A, Manley depo., pp. 144-46). In fact, the policy has not changed and such policy has been communicated to various officials in the criminal justice system. (Exh. 2A, Manley depo., pp. 160-65, 179-80); *see also Exhibit 2D* (¶ 1, 11, 7). The concerns were that local officials and judges did not understand that detainees could not be bonded out of ICE holds. (Exh. 2A, Manley depo., pp. 163). For example, there was concern why the jail would not transport detainees to state court when they were in federal custody because of ICE holds.

21. When questions arose about another detainee and his ability to post bond despite there being a federal detainer, a sergeant on duty was available to field questions and Capt. Manley offered to personally assist persons posting that bond. (Exh. 2A, Manley depo., pp. 150-51); *See Exhibit 2D* (¶ 4, 9, 10, 12).

22. In the case of Plaintiff Mendez, Capt. Manley was first advised of the situation when reading about it in the local paper [*Palm Beach Post*]. He determined, after investigation, that Mendez had in fact been booked on local charges, and that another state court warrant was also holding him at the jail. (Exh. 2A, Manley depo., pp. 152-53). He was not aware of any jail official not accepting a cash bond for Mendez. *See Exhibit 2D* (¶ 15).

23. Once Mendez was in federal custody, no local action could be taken on him. (Exh. 2A, Manley depo., pp. 161). Whether a cash bond was entered for him and what should happen to that bond if Mendez had been in federal custody is a matter for the courts, not the Sheriff's Office. (Exh. 2A, Manley depo., pp. 164-66). Upon reviewing Mendez's jail "booking card" at his deposition (*See Exhibit 5B*), Capt. Manley surmised that Plaintiff Mendez was originally booked on state charges under booking number 2009026364, that he then had a

failure to appear warrant and was assigned booking number 2009029386, and was then booked on a federal holding, and assigned booking number 2009055501. (Exh. 2A, Manley depo., pp. 182-84). From that "booking card," it appeared that Mendez was booked for ICE holds on October 19, 2009 at 10:05 p.m. (Exh. 2A, Manley depo., pp. 185-88). However, the original hold had been placed on Mendez on May 15, 2009, at 11:05 a.m. (it appears on the booking card as 8 CFR 287.7). Capt. Manley testified that had he known Mendez had concerns about whether his bond could have been posted, he would have intervened if necessary. *See Exhibit 2D* (¶ 18).

24. The Sheriff's Office felt that it was germane to notify persons placing bonds that if there are holds on a detainee, whether federal in nature or not, there was a possibility that a bond could be forfeited. (Exh. 2A, Manley depo., pp. 167-69); *See Exhibit 2D* (¶ 17).

25. Capt. Manley was not aware of any persons having trouble locating detainees at the Palm Beach County Jail because of the provisions of 8 CFR § 236.6, although the Sheriff's Office does deny requests for information on where people are being held if it is not at the Palm Beach County Jail. (Exh. 2A, Manley depo., pp. 176-77). The Sheriff's Office was advised by ICE attorneys that information had to remain confidential. (Exh. 2A, Manley depo., pp. 204-05); *See Exhibit 2D* (¶ 4, 9).

26. Plaintiff Mendez never reported any problems to jail staff via the written complaint procedure, and if he had, Capt. Manley would have taken additional steps to ensure that a cash bond was accepted.. *See Exhibit 2D* (¶ 5, 6, 18).

27. The Sheriff's Office properly staffs the inmate management section and has proper computer systems in place to properly manage inmates. Capt. Manley also continually reiterates the

policies pertaining to inmate management, and has made sure that jail staff know the same. *See Exhibit 2D* (¶ 12, 13, 14).

III. DEFENDANTS' ARGUMENT IN SUPPORT OF SUMMARY JUDGMENT

A. Standard of Review for Motion for Summary Judgment

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is ***no genuine issue*** of material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56c. The plain language of Rule 56c mandates the entry of summary judgment after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue of material fact since a complete failure of proof concerning an essential element of the non- moving party's case necessarily renders all other facts immaterial. The moving party is entitled to judgment as a matter of law where the nonmoving party has failed to make a sufficient record on an essential element of the case with respect to which that party has the burden of proof. *Celotex v. Catrett*, 466 U.S. 317, 323 (1986).

After the movant has met its burden under Rule 56c, the burden of production shifts and the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at 325. According to the plain language of Rule 56c, the non-moving party "may not rest upon the mere allegations or denials of the adverse party's pleadings," but instead must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Elect. Indust. Co. v. Zenith Radio Corp*., 475 U.S. 574, 587 (1986). Hence, so long as the non-moving party has had an ample opportunity to conduct discovery (which is the situation in this case), he or she must

come forward with affirmative evidence to support its claims in the complaint. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 257 (1986). A mere scintilla of evidence supporting the opposing party's position will not suffice, as there must be a sufficient showing that the jury could reasonably find for the non-moving party on the central issue (in this case, whether there is evidence of a deliberate indifference to the rights of Plaintiff Mendez). *Walker v. Derby*, 911 F.2d 1573, 1577 (11th Cir. 1990). Moreover, self-serving affidavits also will not suffice (that is, an affidavit cannot in and of itself create a disputed fact if it is self-serving).

In this case, summary judgment is appropriate because the Plaintiffs, like those in *West v. Tillman, infra*., cannot produce any record evidence which shows that the Sheriff's custom, policy, or practice as it pertains to release of detainees, such as Plaintiff Mendez, in any way impinges on any constitutional right, and that the Sheriff was deliberately indifferent to the rights of Mendez or others. Sheriff Bradshaw is entitled to qualified immunity, as well, in his individual capacity.

B. Legal Memorandum in Support of Summary Judgment

1. Younger abstention doctrine (as to injunctive relief claims)

To the extent that Plaintiffs are attempting to challenge the way in which bonds are accepted for state charges, this Court lacks jurisdiction and must abstain under the *Younger* doctrine. *See Pompey v. Broward County*, 95 F.3d 1543 (11th Cir. 1996) (*Younger* doctrine precluded federal court from hearing civil rights action brought by persons who had been subjected to county's "Daddy Roundups" and allegedly incarcerated for failure to pay child support obligations without having counsel appointed for them or meaningful opportunity to be heard concerning ability to pay.) Since *Younger*, the Supreme Court and the Eleventh Circuit have applied and expanded upon that abstention doctrine. In *O'Shea v. Littleton*, 414 U.S. 488, 499, 94 S.Ct. 669, 677-78 (1974), the

Court, in an alternative holding, held that the district court had properly declined to provide equitable relief to plaintiffs who sought an injunction against various state officials, including state judges. The plaintiffs had alleged that the state judges had unconstitutionally: (1) set bond in criminal cases without regard to the facts of a case; (2) set sentences higher and imposed harsher conditions on black persons than white persons; and (3) required black persons, when charged with violations of city ordinances that carry fines and possible jail sentences if the fines cannot be paid, to pay for a trial by jury. *Id.* at 492, 94 S.Ct. at 674. The plaintiffs requested that the federal district court enjoin those practices, and the district court declined to do so. In holding that the district court had properly declined to enjoin those practices, the Supreme Court stated that " 'the principles of equity, comity, and federalism ... must restrain a federal court when asked to enjoin a state court proceeding.' " *Id.* at 499, 94 S.Ct. at 678 (quoting *Mitchum v. Foster*, 407 U.S. 225, 243, 92 S.Ct. 2151, 2162 (1972)). Relying on both Younger and *O'Shea*, the Eleventh Circuit held in *Luckey v. Miller*, 976 F.2d 673 (11th Cir.1992) ("*Luckey V* "), that abstention was proper in a class action challenge to the adequacy of Georgia's indigent criminal defense system. In *Lucky V*, the plaintiffs had alleged an unconstitutional systemic delays in the appointment of counsel in their criminal cases, which allegedly led to the inability of counsel to represent them adequately.

It appears that Plaintiffs are challenging how the Sheriff processes bonds when there is a potential or actual ICE hold on a detainee, and seeking injunctive relief to set forth a procedure to handle ICE holds and release procedures. To the extent that such a challenge violates principles of equity, comity, and federalism, this Court should refrain from addressing the issue on abstention grounds. Furthermore, to the extent that there is challenge to a reasonable period of time for delay in releasing a person from custody, Plaintiffs are estopped under the principles announced in

Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854 (1975), wherein the Supreme Court held that the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest, and the refinement of that principle in *County of Riverside v. McLaughlin*, 111 S.Ct. 1661 (1991), wherein the Supreme Court held that up to 48 hours is a presumptively reasonable delay before making a release determination.

2. Applicability of McKinney v. Pate

McKinney v. Pate, 20 F.3d 1550 (11th Cir. 1994), stands for the proposition that Plaintiff cannot bring a procedural due process claim to federal court where there is an adequate state remedial measure. In Florida, state courts inherently have the power to remedy deficiencies and cure due process violations, on certiorari review, of the type complained about by Plaintiff. *McKinney, supra* at 1563-64. Mr. Cohen, as lawyer for Plaintiff Mendez, knew about the state court remedies, because he directly participated in many of them with other defendants relating to their incarceration. *See Exhibit 9* (Cohen depo.). There is no record evidence that Plaintiff Mendez availed himself of the available remedies. Accordingly, this Court can further abstain under *McKinney*.

3. Failure to show deliberate indifference (Section 1983 claims)

Plain and simple is the fact that Plaintiffs cannot show that there was any unreasonable delay in either processing a bond for Plaintiff Mendez, or in refusing to release him. To the extent that Plaintiffs are actually challenging the Sheriff's processing of individuals who have ICE federal detainers placed on them, Plaintiffs' fail to show a constitutional violation. The most pertinent case in the Eleventh Circuit is *West v. Tillman*, 496 F.3d 1321 (11th Cir. 2007), wherein inmates brought a § 1983 action against the sheriff, the deputy warden of county jail, corrections officer, and jail employees, alleging that their due process rights were violated when the jail failed to process

properly court orders authorizing their release from custody. First, this Court is clearly aware that a Section 1983 claim alleging a denial of procedural due process requires proof of three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir.2003) (citing *Cryder v. Oxendine*, 24 F.3d 175, 177 (11th Cir.1994).

The Eleventh Circuit noted in *West* that, despite staff shortages and even long release delays in terms of weeks because of obvious mistakes (tantamount to nothing more than negligence), there was not a constitutional violation in terms of delayed releases of individuals. In fact, the court noted that despite the numerous detailed deficiencies, (1) jail records staff were not deliberately indifferent to the inmates' due process right to timely release; (2) any failure of corrections officer to check on the inmate's release status was mere negligence, not deliberate indifference; (3) supervisory officials were not deliberately indifferent to the inmate's due process right to timely release; and that (4) the jail's written policy covering the basic procedures for intake and release of inmates was not an unconstitutional custom or policy. The *West* opinion details numerous instances of negligence in the release of inmate; however, the Court was careful to note that the repeated acts of negligence did not rise to the level of deliberate indifference.

The Court noted the extremely onerous burden of a plaintiff in establishing deliberate indifference. To establish such a violation, Plaintiffs must show that Defendants acted with deliberate indifference to a plaintiff's due process rights. *Id.* at 1563. Human error does not equal deliberate indifference. Plaintiffs must show that Defendant had "(1) subjective knowledge of a risk of serious harm; [and] (2) disregard[ed] ... that risk; (3) by conduct that is more than mere negligence." *Cagle v. Sutherland*, 334 F.3d 980, 987 (11th Cir.2003) (internal quotation marks and

citation omitted) (alteration in original). The deliberate indifference standard is "a difficult burden for a plaintiff to meet," *Popham v. City of Talladega*, 908 F.2d 1561, 1563 (11th Cir.1990); and courts are competent to decide as a matter of law whether a Plaintiff has carried his or her burden. *See, e.g., Gobert v. Caldwell*, 463 F.3d 339, 352 (5th Cir.2006) (concluding "as a matter of law" that, while "trier of fact might find negligence" based on the evidence, a finding of "deliberate indifference ... could not be sustained"); *Pietrafeso v. Lawrence County*, 452 F.3d 978, 983-84 (8th Cir.2006) (reviewing district court's grant of judgment as a matter of law for defendants and concluding that, at most, plaintiff had presented evidence of negligence, not deliberate indifference). In the context of this case, Plaintiffs cannot prove one iota of evidence that Defendant Sheriff deliberately refused to accept cash bonds, or deliberately delayed release of detainees under the guise of federal immigration laws. Furthermore, this is not a case where there is alleged the existence of a formal, express municipal policy — Plaintiffs have pointed to no written directive or regulation establishing a purported policy. *Compare Polk County v. Dodson,* 454 U.S. 312, 326, 102 S.Ct. 445, 454 (1981).

To the extent that Plaintiffs are claiming a false imprisonment (due to the alleged delayed release) under Section 1983, Plaintiffs are required to show common law false imprisonment and a due process violation under the Fourteenth Amendment. *See Cannon v. Macon County*, 1 F.3d 1558, 1562-63 (11th Cir.1993), modified on other grounds, 15 F.3d 1022 (1994). The elements of common law false imprisonment are an intent to confine, an act resulting in confinement, and the victim's awareness of confinement. *See id.* at 1562 n. 3. The Fourteenth Amendment Due Process Clause includes the "right to be free from continued detention after it was or should have been known that the detainee was entitled to release." *West, supra*. at 1327. The Plaintiffs are further

required to show deliberate indifference in the release procedure.

Likewise, to establish a due process violation under a false imprisonment theory, Plaintiffs must prove that Sheriff Bradshaw acted with deliberate indifference. *Id.* This means that Sheriff Bradshaw had to have had subjective knowledge of a risk of serious harm and disregarded that risk by actions beyond mere negligence. *Id.* Moreover, as an alleged supervisory official, Sheriff Bradshaw is only liable under § 1983 for the unconstitutional acts of his subordinates if he personally participated in the allegedly unconstitutional conduct, or his actions were causally connected to the alleged constitutional deprivation. *Id.* At 1328. A causal connection may be shown by evidence of (1) "a custom or policy that results in deliberate indifference to constitutional rights," (2) "facts that support an inference that the supervisor[ ] directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so," or (3) "a history of widespread abuse" that notified the supervisor of the need to correct the alleged deprivation, but he failed to do so. *Id.* at 1328-29.

It is also clear that proof of a single, isolated incident of unconstitutional activity generally is not sufficient to impose municipal liability under *Monell*. *Anderson v. City of Atlanta*, 778 F.2d 678, 685 (11th Cir.1985). In this case, there is not even record evidence of an isolated incident. Hence, Plaintiffs cannot survive summary judgement because of the following record evidence:

1. Captain Robert Manley, the person most knowledgeable of the inmate management system at the Main Detention Center ("MDC"), has no knowledge of any unreasonable delay in the release of Plaintiff Mendez, and at all material times he was ready, willing, and able to answer any questions anyone had about the applicability of federal detainers to inmates at the MDC (*See Exhibits 2A and 2D*);

and

2. Federal regulations allow Sheriff Bradshaw to run immigration alien inquiries ("IAC") to determine if a foreign born detainee is a person of interest to the federal government; and

3. Persons may post bond for any detainee at the jail, and at most, a courtesy warning is given to those persons who post bond, that the detainee may not be released subject to a federal immigration hold; (See Depo excerpts and affidavit of Capt. Manley); and

4. There is no competent record evidence of bonds being refused on state charges; at best, Ely Mendez was confused and admitted in her deposition that she was advised that she could post the $3,000 bond for Plaintiff Mendez, but she refused to do so (and made that decision, although she could have entered it); and

5. Plaintiff Mendez was well-represented by legal counsel and chose not accept SOR release (for an immediate release from the state bond) and also chose not pursue state court remedies through his lawyer, but could have availed himself of all sorts of state court remedies to deal with the alleged failure to accept bond, such as filing a motion with the judge or petition for a writ of habeas corpus; and

6. Plaintiff's criminal trial lawyer (Daniel Cohen) knew about the state court remedies but chose not to pursue him under the belief that the federal regulations themselves were unconstitutional (and it can be inferred that he chose not to pursue those state court remedies purposefully); and

7. Plaintiff Mendez never made a verbal or written complaint about the alleged delay

in release in May of 2009 (although there was a procedure by which he could do so based on the affidavit of Capt. Manley, Exh. 2D); and

8. Deputy Flores and Deputy Mitchell testified that they were well trained in the area on inmate management, would always accept bonds, and knew how to handle federal immigration (or ICE) holds; and

9. There is no relevant evidence which indicates that Plaintiff Mendez was improperly held under any theory, and even if there may be such an inference, there is no evidence of deliberate indifference due to the policies and procedures in place, the training of staff, and the availability of Capt. Manley to handle inquiries into release determinations.

C. Applicability of Qualified Immunity

Under the doctrine of qualified immunity, government officials performing discretionary functions may not be held individually liable for civil damages so long as their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Lassiter v. Alabama A&M Univ.*, 28 F.3d 1146, 1149 (11th Cir.1994) (en banc) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 2738 (1982)). In determining whether Defendant Bradshaw has satisfied this standard, this Court must determine whether Defendants violated Plaintiff Mendez's federal rights. *See Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 2156, (2001). If this Court concludes that such a violation occurred, then it must determine "whether the right was clearly established" at the pertinent time by the pre-existing law. *Id.* Apparently, Plaintiff asserts that his over-detention resulted in a violation of his Fourteenth Amendment due process right to be free from continued detention after the state should have known that they were entitled to

release. *See, e.g., Cannon v. Macon County*, 1 F.3d 1558, 1562-63 (11th Cir.1993). It is clear from that argument herein that there was no due process violation pertaining to the application of federal holds and the release of inmates from state court charges.[2]

However, should this Court surmise that such a violation occurred, the constitutional rights of detainees in the context of federal holds is not clearly established by pre-existing law. There is no reported decision whatsoever on how a local law enforcement agency is to handle releases pursuant to its obligations under federal law, such as 18 USC § 4002 and 8 C.F.R. §§ 236.6 and 287.7. The federal regulations clearly places an obligation on Defendant Sheriff to take certain action:

> Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

However, even if there was a delay in determining whether a detainer was to be placed on Plaintiff Mendez, there is not clearly establish law in this context. For example, the U.S. Supreme Court has recognized the propriety of delays in release. See *County of Riverside v. McLaughlin*, 111 S.Ct. 1661 (1991) (48 hours is a presumptively reasonable delay before making a release determination for warrantless arrest). Accordingly, summary judgment is appropriate as to Defendant Bradshaw in his individual capacity.

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[2] "Once the defendant establishes that he was acting within his discretionary authority, the burden shifts to the plaintiff to show that qualified immunity is not appropriate." *Lee*, 284 F.3d at 1194. In evaluating whether Plaintiff has met his burden, a court asks "whether taken in the light most favorable to the party asserting the injury, do the facts alleged show that Defendant's conduct violated a constitutional or statutory right? If so, the second question is whether the right, be it constitutional or statutory, was clearly established." *Hadley, supra* at 1329.

WHEREFORE, Defendant Bradshaw in his official and individual capacity respectfully requests that this Honorable Court grant his Motion for Summary Judgment (as to all counts of the Complaint), for any or all of the grounds alleged herein, and to grant such other and further relief as this court deems just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Motion for Summary Judgment has been furnished by CM/ECF to all counsel of record, on this 30th day of June, 2010.

Respectfully submitted,

Fred Gelston

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