

04/30/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0661

CLERK OF DISTRICT COURT
TRICIA BROOKS

2018 NOV 16 PM 4:23

FILED
BY: B. Chambers
DEPUTYMatthew J. Cuffe
District Judge
512 California Avenue
Libby, MT 59923MONTANA NINETEENTH JUDICIAL DISTRICT COURT,
LINCOLN COUNTYAGUSTIN RAMON,
On behalf of himself and all others
Similarly situated,

Plaintiffs,

-vs-

ROBY BOWE, in his individual
Capacity And his official capacity
as Sheriff of Lincoln County and
administrator of Lincoln County
Detention Center,

Defendant.

DV-18-218

ORDER DENYING
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

On October 31, 2018, Agustin Ramon, Plaintiff, filed a Class Action Complaint for Declaratory and Injunctive Relief and Individual Claim for Damages. On that same date, Plaintiff applied for a Temporary Restraining Order, Preliminary Injunction, and Order to Show Cause. Regarding the Temporary Restraining Order, Preliminary Injunction, and Order to Show Cause, the Court set a briefing schedule and a hearing was held on November 9, 2018. Responsive briefs, supplemental authority, and responses to supplemental authority have been filed. The matter is ready for ruling.

EXHIBIT 2

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PROCEDURAL BACKGROUND/FACTS

The Court is hesitant to identify anything in this section as a fact. Neither party presented any witness testimony or documentary evidence. Affidavits were attached to the briefs, but these affidavits of course are hearsay and often restated statements of other persons (in other words double hearsay). Although this is not testimony or evidence, there does appear to be some common ground.

Plaintiff was arrested for felony burglary and his bond set at \$25,000. His wife worked with a bail bondsman out of Missoula, MT, to secure his release. When the bondsman attempted to bail Plaintiff out, he learned that there was an immigration detainer for Plaintiff, requesting that he be detained up to an additional 48 hours. He also learned that the detention center staff will cooperate with immigration officials regarding that detainer. The bondsman elected not to post bail and returned any fees received to Plaintiff's wife. The bail bondsman did not testify or submit an affidavit.

Defendant is the Sheriff of Lincoln County and the administrator of the Lincoln County Detention Center. It is the practice of the Lincoln County Detention Center to cooperate with immigration officials and notify the agency that issued a detainer such as the one in this case, when the Lincoln County Detention Center learns the subject of the detainer is about to be released. Ordinarily, the agency picks up the subject as soon as he or she is released. In rare situations, the subject may remain incarcerated for a brief period of time, one to two hours, pending arrival of the federal agent.

Plaintiff argues Montana law does not provide authority to hold prisoners in custody on state criminal charges, after they would otherwise be released, for a civil federal immigration detainer.

LEGAL DISCUSSION

I. Standing/Ripeness

First, there is no dispute that Plaintiff is being lawfully held on State criminal charges. Defendant contends Plaintiff's Complaint and this application for TRO/Preliminary Injunction is not ripe for decision until he posts bail and is held solely on the basis of the immigration detainer.

Plaintiff's bail has been set and terms of a conditional release issued in his pending criminal case. Plaintiff is not contesting the reasonableness of the bail amount. Rather, he argues he is unable to post bond because Defendant will honor the immigration detainer and hold him until a border patrol officer takes him into custody. Neither party disputes that in the event bond is posted, Defendant will advise immigration officials and, if necessary, hold him until they pick up Plaintiff.

Defendant's argument as to standing puts Plaintiff in an untenable position. The immigration detainer requests the Lincoln County Detention Center to detain Plaintiff for up to an additional 48 hours beyond the time when he would otherwise be released from custody. After the 48-hour period expires, Plaintiff will be released or will have already been secured by an immigration officer. Under Defendant's argument, the matter will never be ripe or by the time a court can review the issue it will be moot.

Moreover, this is a request for a preliminary injunction. Preliminary injunctions are proper when it appears during the litigation that the adverse party threatens to do some act in violation of the applicant's rights. MCA §27-19-201(3). That is the very situation we have here. Plaintiff alleges Defendant threatens his rights. Plaintiff has standing to bring this issue and the issue is ripe for consideration.

II. Preliminary Injunction Standard

Plaintiff applies for this preliminary injunction asking the court to prohibit Defendant, Sheriff Bowe, from refusing to release Plaintiff from custody based on an immigration detainer if he posts bond, completes his sentence, or otherwise resolves his criminal case. (Docket No. 3, p. 2) A preliminary injunction can be granted:

- (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
- (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears that the applicant has applied for an order under the provisions of 40-4-121 or an order of protection under Title 40, chapter 15.

MCA §27-19-201. Courts must consider the likelihood of success on the merits of the claim, whether the movant will suffer irreparable injury, whether the threatened alleged injury outweighs the damage of the proposed injunction, and whether the injunction, if issued, would be adverse to the public interest. *Van Loan v. Van Loan* (1995) 271 Mont. 176, 182, 895 P.2d 614, 617. Here, Plaintiff argues he has a high likelihood of success on the merits because Montana does not authorize detention for an immigration detainer. He is incorrect. Because he is incorrect on the basic premise, the court finds he fails to establish irreparable injury. Plaintiff did not argue in favor of any remaining factors.

A. Likelihood of success.

Plaintiff has provided cases from various jurisdictions to support his argument that Montana does not authorize detention based on civil immigration detainers. These cases are state specific. Put another way, each case analyzes that state's specific statutory scheme. These cases come from various district courts from around the country.

Notably, Plaintiff did not cite to, or discuss in his briefing, the one case from a Montana District Court that looked at this very issue, *Arturo Valeria-Gonzalez v. Jason Jarrett*, Montana 18th Judicial District, Gallatin County, Cause No. DV 17-688B. Plaintiff did mention the case during the hearing, but it was only in passing.

Consistent with the Tenth Amendment to the United States Constitution, the Federal Government cannot command states to enforce federal programs. *Lunn v. Commonwealth*, 477 Mass. 517, at 527, 78 N.E.3d 1143 (Mass. 2017) (citing *Prinz v United States*, 521 U.S. 898 (1997) and *New York v. United States*, 505 U.S. 144 (1992)). As such, an immigration detainer is merely a request, not a demand, to local law enforcement to detain individuals on behalf of Immigration and Customs Enforcement (ICE), a federal agency. State law enforcement compliance with immigration detainers is intended to be voluntary. See *Lunn*, 477 Mass. 517, 526, (citing *Galarza v Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014); *Miranda-Olivares v Clackamas County*, 2014 U.S. Dist. LEXIS 50340 (Ore. Dist. 2014).

In this case, there does not appear to be any dispute that Defendant, in his capacity as administrator for the Lincoln County Detention Center, voluntarily cooperates with the requests of immigration detainers. The question then is does Montana law authorize the Lincoln County Detention Center to voluntarily hold Plaintiff.

Plaintiff argues there is no authority in Montana to hold him for a purely civil immigration process once he posts bond, or completes his sentence, or otherwise resolves his criminal case. Plaintiff relies on search and seizure analysis under the laws of the State of Montana, the Montana and U.S. Constitutions. He also argues further detention must be analyzed as an arrest and a determination whether the arrest is justified under state law. Plaintiff cites to *Lunn*, a Massachusetts case, holding that there was no Massachusetts' law to support a civil hold, and several other cases from Colorado and New York reviewing those State's statutes. However, as the Honorable Rienne H. McElyea, District Court Judge for Montana's 18th Judicial District Court stated, the analysis of this case must be based on Montana law.

Plaintiff fails to acknowledge the authority given to detention centers by the laws of the State of Montana. As decided by Judge McElyea under very similar factual circumstances in the context of a Petition for Writ of Habeas Corpus, Montana law does authorize individuals to be held in a detention center on a civil matter. An example of such an authorized hold is a civil contempt proceeding. See generally MCA §3-5-501. Indeed, Montana's statutes for detention facilities specifically authorize a detention center to detain individuals in civil circumstances. Montana Code Annotated §7-32-2203(3) states:

Detention centers are used as follows:

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law.

This court agrees with Judge McElyea that an immigration detainer falls within the authority of MCA §7-32-2203(3) as a confinement of persons upon civil process and/or confinement of persons by other authority of law. The court finds the Lincoln County Detention Center does have the authority under Montana law to detain Plaintiff on a civil immigration detainer. Plaintiff has failed to meet his burden of establishing a likelihood of success on the merits of his claim.

B. Irreparable Injury

Because Montana law does authorize the detention of Plaintiff on a civil immigration detainer, the court finds he cannot show irreparable injury.

IT IS HEREBY ORDERED that Plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction is **DENIED**.

DATED November 16, 2018.


Matthew J. Cuffe
District Judge

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