

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

GARLAND CREEDLE,

Plaintiff,

v.

Case No.:

CARLOS A. GIMENEZ, in his official
capacity as Mayor of Miami-Dade County,
Florida; and MIAMI-DADE COUNTY,
Florida,

JURY TRIAL DEMANDED

Defendants.

**COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF**

Plaintiff Garland Creedle sues Defendants Carlos A. Gimenez and Miami-Dade County, Florida, and states the following:

INTRODUCTION

1. Miami-Dade County unlawfully arrested and detained Plaintiff Garland Creedle solely for civil immigration purposes, even though Mr. Creedle is a U.S. citizen who cannot be deported. The County voluntarily detained Mr. Creedle at the request of federal immigration authorities of Immigration and Customs Enforcement (ICE). The detention occurred pursuant to a directive from Mayor Carlos A. Gimenez that requires the Miami-Dade Corrections and Rehabilitation Department (MDCR) to deny release for 48 hours or more to any person who is the subject of a check-the-box immigration detainer request. *See* Exhibit A, Attached.

2. Mayor Carlos A. Gimenez issued the immigration detainer directive on January 26, 2017. The directive reversed over three years of prior policy, under which Miami-Dade Co.

declined to use millions of taxpayer dollars to underwrite the federal government's immigration enforcement agenda.

3. Defendants' policy of acceding to immigration detainer requests runs contrary to hundreds of other cities and counties across the country that have reaffirmed their commitment to limit their unnecessary and unlawful involvement in federal immigration enforcement. The detention policy causes the County routinely to violate the Fourth and Fourteenth Amendments to the U.S. Constitution as well as Florida law.

4. Plaintiff requests a declaratory judgment that the Mayor's directive unlawfully violates the prohibition against unlawful seizures under the Fourth Amendment to the U.S. Constitution, Plaintiff's substantive due process rights under the Fourteenth Amendment of the U.S. Constitution, and Florida law. Plaintiff also requests monetary damages pursuant to 42 U.S.C. § 1983.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343, 1367, 2201-02, and Article III of the U.S. Constitution. Venue is proper in the Southern District of Florida under 28 U.S.C. § 1391(b)(2).

PARTIES

Plaintiff

6. Plaintiff Garland Creedle was born in Honduras. He is 18 years old. Mr. Creedle is a U.S. citizen and has been since birth by virtue of the U.S. citizenship held by his father, Willie Edward Creedle.

Defendants

7. Defendant Carlos A. Gimenez is the Mayor of Miami-Dade County, Florida. Mayor Gimenez is responsible for issuing the January 26, 2017 directive to MDCR that it detain any individual in its custody beyond the time they would otherwise be entitled to release solely on the basis of a request by ICE. Defendant Gimenez is sued in his official capacity.

8. Defendant Miami-Dade County is a political subdivision of the State of Florida that can be sued in its own name. Miami-Dade County is responsible for the acts of MDCR, an administrative department of Miami-Dade County.

9. Defendant Miami-Dade County and its agent Mayor Carlos Gimenez are sued in their official capacities and are “persons” liable for monetary damages pursuant to 42 U.S.C. § 1983. *See Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978).

STATEMENT OF FACTS

“Immigration Detainer” Requests

10. When a person is arrested and taken to a Miami-Dade County jail, department of corrections officials take their fingerprints. These fingerprints are sent to the Federal Bureau of Investigation and the Department of Homeland Security.

11. The fingerprint background check reveals any outstanding judicial warrants, which appear on the booking officer’s computer screen. A county correctional official transfers this information to the inmate’s “jail card.”

12. The fingerprint background check may also trigger a detainer request from federal immigration authorities at ICE to hold a person beyond the point that the person’s criminal custody has come to an end.

13. A detainer request is not a judicial warrant but a request issued by an ICE enforcement official.

14. An immigration detainer request is a boilerplate, checkbox form issued by a rank-and-file federal immigration officer for a civil immigration purpose.

15. Once Miami-Dade correctional officials are alerted of a detainer request made by ICE, they mark the detained person's jail card with the phrase "immigration hold" or "immigration detainer."

16. MDCR officers announce in open court when people have immigration holds on them.

17. From the moment that a person's jail card is marked to indicate an immigration detainer MDCR treats the detained person as if he or she is not eligible for release.

18. The practice of treating everyone with an immigration detainer as not eligible for release has immediate and dire effects.

19. People with immigration detainers cannot pay the standard bond amount to get out of the jail the same day that they are arrested.

20. Any inmate with an immigration detainer becomes ineligible for house arrest or a diversion program.

21. When detained persons or their family and friends ask about a detained person's eligibility for bond or try to post bond, MDCR officers announce that the detained person will not be released because of the detainer.

22. As a result of the immigration detainers, some bond companies will not post bond.

23. Detainers are a creature of Department of Homeland Security (DHS) agency regulation. *See* 8 C.F.R. § 287.7(b) (authorizing all “deportation officers” and “immigration enforcement agents,” among others, to issue detainers). A detainer requests a local law enforcement agency (LEA) to arrest and detain an individual in the LEA’s custody *after* the person is entitled to release for potential action by federal immigration authorities.

24. Under the immigration detainer, MDCR officials prolong the detention of the person *after* he or she is entitled to release for potential action by federal immigration authorities.

25. A detainer is not supported by a warrant or any other probable cause determination by a detached and neutral judicial officer. Nor is it supported by a sworn, particularized showing of probable cause that the subject is a noncitizen and removable under federal immigration law.

26. A detainer is a fill-in-the-blank form with check boxes for a generic list of potential sources of information that do not form the basis for a particularized probable cause determination that the detainer subject committed a civil immigration violation, including “biometric confirmation of the subject’s identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.”

27. The form used by immigration authorities to lodge a detainer is called a “Department of Homeland Security (DHS) Request for Voluntary Transfer.”

28. Detainer requests are not supported by probable cause in the form of a sworn statement of specific facts relating to the subject of the detainer.

29. The detainer request form contains no determination that there is a reason to believe that the subject individual is “likely to escape before a warrant can be obtained,” as is required when federal authorities make a warrantless civil immigration arrest under federal law. 8 U.S.C. § 1357(a)(2).

**The 2013 County Resolution Limiting Miami-Dade’s Participation
in the Federal Government’s Immigration Detainer Regime**

30. ICE detainers are merely *requests* for detention – they do not purport to *require* localities like Miami-Dade to do anything. *See Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (detainer regulation “authoriz[es] only permissive requests” for detention); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40 (D.R.I. 2014); *aff’d in part*, 793 F.3d 208 (1st Cir. 2015); *Miranda-Olivares v. v. Clackamas County*, 2014 WL 1414305, *4-8 (D. Or. Apr. 11, 2014).

31. In December 2013, Miami-Dade’s Board of County Commissioners enacted a resolution which directed the Mayor to limit the County’s authority to hold individuals pursuant to immigration detainer requests. *See* Miami-Dade Cty. Bd. of Comm’rs, Resolution 1008-13 (Dec. 3, 2013), *available at* <http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2013/132196.pdf>. Under this policy:

Miami-Dade Corrections and Rehabilitation Department may, in its discretion, honor detainer requests issued by United States Immigration and Customs Enforcement only if the federal government agrees in writing to reimburse Miami-Dade County for any and all costs relating to compliance with [ICE] detainer requests and the inmate that is the subject of such a request has a previous conviction for a Forcible Felony, as defined in Florida Statute section 776.08, or the inmate that is the subject of such request has, at the time the Miami-Dade Corrections and Rehabilitation Department receives the detainer request, a pending charge of a non-bondable offense, as provided by Article I, Section 14 of the Florida Constitution, regardless of whether bond is eventually granted.

Id. at 5. The policy thus imposed two conditions that must be satisfied before the County may detain an individual pursuant to an ICE detainer. As a threshold matter, the County would not participate in any immigration detention unless the federal government agreed to reimburse the County for all associated costs in writing. And if the federal government agreed to reimbursement, the County would detain only individuals who have been charged or convicted of certain enumerated offenses.

32. The Resolution became effective on December 13, 2013 – ten days after its adoption. *Id.* at 6. *See* Miami-Dade Home Rule Charter § 2.02(D) (providing the Mayor a 10-day veto period over “any legislative [. . .] decision of the Commission”). Because the federal government declined to reimburse the County for any expenses associated with detainers, the MDCR – the department responsible for the County’s jails – stopped holding individuals pursuant to ICE detainer requests in January 2014.

33. The Board of County Commissioners ratified its position when, just over a year ago, it unanimously resolved to oppose statewide legislation that would preempt its anti-detainer policy. *See* Miami-Dade Cty. Bd. of Comm’rs, Resolution 77-16 (Jan. 20, 2016), *available at* <http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2015/153028min.pdf>. The resolution recognized that since the County Commission adopted the County’s detainer policy in 2013, “the taxpayers of Miami-Dade County have saved hundreds of thousands of dollars in costs that are unreimbursed by the federal government associated with honoring immigration detainer requests.” *Id.* at 4.

34. The Board’s 2013 resolution also recognized that federal courts across the United States “have found that local law enforcement agencies that detain individuals on the sole authority of a detainer request violate the Fourth Amendment of the U.S. Constitution, exposing

such agencies to legal liability unless there has been an independent finding of probable cause to justify detention.” *Id.* The Board noted that “a judge is not required to review or approve an immigration detainer,” and that a detainer “may be issued by a single Immigration[] and Customs Enforcement officer when there are no immigration proceedings pending.” *Id.* at 6. This process, the Board recognized, “does not meet the U.S. Constitution’s minimum standard for authorizing detention after an inmate is scheduled to be released.” *Id.* The Board thus opposed “legislation that would preempt policies set by th[e] Board related to immigration detainer requests.” *Id.* at 8.

35. For more than three years, MDCR dutifully followed the detainer policy enacted by the Board of County Commissioners.

Mayor Gimenez’s 2017 Directive

36. On January 26, 2017, the Mayor sent a memorandum to MDCR’s Interim Director, Daniel Junior, directing Mr. Junior and his staff “to honor all immigration detainer requests[.]” *See* Exhibit A, Attached. The directive was not preceded by any public notice or opportunity for debate, nor did it make any mention of the Board of County Commissioners’ resolution to limit MDCR’s authority to hold people pursuant to detainer requests.

37. On February 17, 2017, the Board of County Commissioners amended its 2013 Resolution (1008-13) to direct the Mayor “to ensure that, related to immigration detainer requests, Miami-Dade County ... is cooperating with the federal government to the extent permissible by law.” Miami-Dade Cty. Bd. of Comm’rs, Resolution 163-17 (Feb. 17, 2017), <http://www.miamidade.gov/govaction/matter.asp?matter=170440&file=false&yearFolder=Y2017>.

38. MDCR is following Mayor Gimenez's directive and, since January 26, 2017, has maintained a practice of holding individuals in its custody beyond the time they would otherwise be released on the sole basis that the person is the subject of an immigration detainer request.

MDCR's Unlawful Arrest and Detention of Plaintiff

39. Plaintiff Garland Creedle, who was born in Honduras, has been a U.S. citizen since the moment of his birth by virtue of his father's U.S. citizenship. He is 18 years old.

40. Mr. Creedle came to the United States from Honduras in 2015.

41. Immigration enforcement officials arrested him and put him in administrative removal proceedings before an immigration judge.

42. On April 28, 2015, immigration officials with the Department of Homeland Security filed a motion with the immigration judge stating that the proceedings should be terminated on the grounds that Mr. Creedle is a U.S. citizen. *See Exhibit B, Attached.*

43. In the motion, the Department stated that Mr. Creedle had submitted documentation showing that he had acquired citizenship through his father, Willie Edward Creedle, and that termination was warranted because Mr. Creedle is a U.S. citizen. *Id.*

44. On April 30, 2015, an immigration judge granted the federal government's motion and terminated proceedings against Mr. Creedle. *See Exhibit C, Attached.*

45. On the evening of March 12, 2017, Mr. Creedle was arrested after an alleged domestic dispute and taken to Miami-Dade County jail, where he was held on bond.

46. Mr. Creedle was never charged in court with the offense for which the police arrested him. The State of Florida issued a "No Action" in his case.

47. On the evening that police arrested Mr. Creedle, county correctional officials fingerprinted him.

48. Early the next morning, on March 13, 2017, MDCR received an immigration detainer request from ICE Deportation Officer Alexander Martinez on a Request for Voluntary Transfer from from ICE naming Mr. Creedle as its subject. *See Exhibit D, Attached.*

49. Mr. Creedle told county correctional officials that he is a U.S. citizen.

50. Alexander Martinez is an immigration enforcement officer, not a neutral and detached adjudicator.

51. The Request for Voluntary Transfer form contained the bare assertion by Alexander Martinez that Mr. Creedle was “a removable alien” under civil immigration law.

52. The box checked on the form stated that this determination was based on a “biometric confirmation of the subject’s identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.” The form contained no additional information concerning this supposed “biometric confirmation” or “records check” of Mr. Creedle.

53. The form requested MDCR to detain Mr. Creedle an additional 48 hours, excluding holidays and weekends, beyond the time he would otherwise be entitled to release.

54. The detainer did not allege probable cause to believe that Mr. Creedle had committed any crime. Nor did the detainer form state facts amounting to an individualized determination that there was probable cause to believe that Mr. Creedle was removable from the United States, or that there was reason to believe that Mr. Creedle posed a risk of flight. The detainer listing Mr. Creedle as a subject was not supported by a warrant or any other probable cause determination by a detached and neutral judicial officer. Nor did it include any individualized assessment of Mr. Creedle’s risk of flight.

55. On March 13, 2017, during normal business hours, Mr. Creedle sought to be released from MDCR and posted bond. *See Exhibit E, Attached.*

56. Mr. Creedle was entitled to be released immediately upon posting of the bond.

57. Rather than release Mr. Creedle after the bond was posted, MDCR maintained custody over him for transfer to ICE.

58. Mr. Creedle spent the night of March 13, 2017 in jail in the custody of MDCR.

59. Based on nothing more than the purported authority of the immigration detainer, MDCR detained Mr. Creedle beyond the time he was entitled to release solely because ICE issued a detainer request.

60. On March 14, 2017, ICE officials interviewed Mr. Creedle in jail and withdrew the detainer request.

61. After ICE withdrew the detainer request, Mr. Creedle was released on bond.

CAUSES OF ACTION

COUNT I

Fourth Amendment Violation

(42 U.S.C. § 1983)

Damages and Declaratory Judgment

62. Plaintiff incorporates paragraphs 1 to 61 as if fully stated herein.

63. Defendants detained Mr. Creedle by continuing to hold him after the legal grounds for his custody expired, solely because Defendants had received an immigration detainer requesting his continued detention.

64. Defendants detained Mr. Creedle pursuant to an official directive issued by Defendant Mayor Gimenez on January 26, 2017, which requires MDCR to “honor all immigration detainer requests.” Ever since Mayor Gimenez issued his order, MDCR has engaged in a practice of detaining all individuals subject to an immigration detainer beyond the time they

would otherwise be entitled to release. Mr. Creedle's detention was therefore made under color of law.

65. As a consequence of Defendants' actions, Mr. Creedle suffered violations of the Fourth Amendment to the U.S. Constitution, which prohibits "unreasonable searches and seizures" and provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Pursuant to the incorporation doctrine, the due process clause of the Fourteenth Amendment makes the Fourth Amendment applicable to local governments. *See, e.g., Mapp v. Ohio*, 367 U.S. 643 (1961) (freedom from unreasonable search and seizure); *Aguilar v. Texas*, 378 U.S. 108 (1964) (warrant requirement).

66. As a proximate and reasonably foreseeable result of Defendants' actions, Mr. Creedle suffered injuries, including financial, pain and suffering, humiliation, and emotional harm.

COUNT II
Violation of Fourteenth Amendment
(42 U.S.C. § 1983)
Damages and Declaratory Relief

67. Plaintiff incorporates paragraphs 1 to 61 as if fully stated herein.

68. Defendants falsely imprisoned Mr. Creedle by violating the due process clause of the Fourteenth Amendment to the U.S. Constitution and committing the common law tort of false imprisonment. *See Campbell v. Johnson*, 586 F.3d 835, 840 (11th Cir. 2009).

69. Pursuant to its policy of honoring ICE detainees, Defendants held Mr. Creedle after he was no longer in lawful custody on state criminal charges. 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." *Id.* at 840 (citing *Cannon v. Macon*

County, 1 F.3d 1558, 1563 (11th Cir.1993), *modified on other grounds*, 15 F.3d 1022 (1994)). Defendants intended to confine Mr. Creedle and detained him with deliberate indifference to his false imprisonment. Defendants were aware of a risk of serious harm and disregarded that risk by actions beyond mere negligence. Mr. Creedle was aware of his confinement. As alleged in Count III and incorporated herein, Defendants were not empowered under Florida law or any other authority to detain Mr. Creedle based on a civil immigration violation.

70. As a proximate and reasonably foreseeable result of Defendants' actions, Plaintiff suffered injuries, including pain and suffering, humiliation, and emotional harm.

COUNT III
Florida Unlawful Imprisonment
Damages and Declaratory Relief

71. Plaintiff incorporates paragraphs 1 to 61 as if fully stated herein.

72. Defendants detained Mr. Creedle without any authority, in violation of Florida law, thereby unlawfully imprisoning him. Defendants lacked a warrant to detain him and had no authority to make a warrantless arrest. *See* § 901.15, Fla. Stat.

73. Defendants unlawfully detained Mr. Creedle against his will and without legal authority or "color of authority," which was unreasonable and unwarranted under the circumstances. *See Mathis v. Coats*, 24 So.3d 1284 (Fla. 2d DCA 2010); *City of Hialeah v. Rehm*, 455 So.2d 458 (Fla. 3d DCA 1984).

74. MDCR employees are not law enforcement officers authorized to arrest without a warrant. *See Pierre v. City of Miramar, Florida, Inc.*, 537 Fed. Appx. 821, 824-25 (11th Cir. 2013) (holding that a county correctional officer is not a "law enforcement officer" for purposes of section 901.15(1)).

75. Mr. Creedle's detention was made pursuant to the order issued by Defendant Mayor Gimenez on January 26, 2017, which required MDCR to "honor all immigration detainer requests."

76. Since Mayor Gimenez issued his order, MDCR has detained individuals subject to an immigration detainer beyond the time they would otherwise be entitled to release.

77. As a proximate and reasonably foreseeable result of Defendants' actions, Mr. Creedle suffered injuries, including financial, pain and suffering, humiliation, and emotional harm.

78. Pursuant to Fla. Stat. § 768.28(6), Mr. Creedle has provided the requisite administrative notice of his unlawful imprisonment claim.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and:

- a. Declare Mayor Gimenez's January 26, 2017 directive on immigration detainees invalid;
- b. Declare that Defendants' detention of Mr. Creedle pursuant to ICE's immigration detainer violated his Fourth Amendment right to be free from unreasonable seizure, violated his substantive due process right under the Fourteenth Amendment to be free from false imprisonment, and constituted unlawful imprisonment under Florida law;
- c. Award Mr. Creedle compensatory damages;
- d. Award Mr. Creedle reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- e. Grant any other equitable relief this Court may deem just and proper.

Respectfully submitted,

By: /s/ Rebecca Sharpless

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