

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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STEPHEN R. LEWIS, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

WENDY MELENDREZ RIVAS,)
)
Plaintiff,)
vs.)
)
TERRY MARTIN, SHERIFF OF LAGRANGE)
COUNTY, in his individual and official)
capacity; JOHN DOE 1, LAGRANGE COUNTY)
JAIL COMMANDER; and JOHN DOE 2,)
LAGRANGE COUNTY ASSISTANT JAIL)
COMMANDER, in their individual capacities;)
)
Defendants.)

No. 1:10CV197

**COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES**

COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES

INTRODUCTION

1. This is a civil action arising under 42 U.S.C. §1983 and 1988, 28 U.S.C. § 2201, *et seq.*, and the Fifth and Fourteenth Amendments of the United States Constitution.
2. Plaintiff WENDY MELENDREZ RIVAS (“MELENDREZ RIVAS”) brings this suit against defendant TERRY MARTIN Sheriff of LaGrange County (“MARTIN”) in his individual and official capacity and Defendants JOHN DOE 1 and JOHN DOE 2 in their individual capacities, based upon their failure and refusal to release MELENDREZ RIVAS from custody simply because Immigration and Customs Enforcement (“ICE”) officer/agents lodged an immigration detainer (Form I-287) against MELENDREZ RIVAS, even though Defendant MARTIN or Defendants JOHN DOE 1 and JOHN DOE 2 no longer had any legal authority to further detain plaintiff MELENDREZ RIVAS.

3. After being arrested for bouncing a \$10 check, Plaintiff MELENDREZ RIVAS was charged with a felony offense, given a \$250 bond, and then discouraged from posting the bond. Specifically, MELENDREZ RIVAS was informed that even if she paid bond, she would not be released from custody because of the immigration detainer that had been lodged against her.

4. Despite receiving incorrect and false information regarding her release from custody, on February 12, 2010 MELENDREZ RIVAS' \$250 bond was paid. As a result of paying the bond on February 12, 2010, Plaintiff met all the conditions for her release from state custody and Defendants no longer had any legal authority to detain MELENDREZ RIVAS beyond February 17, 2010 but nevertheless continued to detain her after that date simply because an immigration detainer had been lodged against her in flagrant disregard to her rights.

JURISDICTION

5. This Court has jurisdiction over the claims alleged in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory relief is authorized by 28 U.S.C. § 2201.

VENUE

6. Venue is proper in the Northern District of Indiana under 28 U.S.C. §1391(b) because all of the events giving rise to the claims made in this complaint occurred in this judicial district and because all Defendants reside in this district.

PARTIES

7. Plaintiff MELENDREZ RIVAS is currently a resident of Dallas, Texas. At times relevant to this complaint, RIVAS was a resident of Michigan.

8. Defendant TERRY MARTIN is the Sheriff of LaGrange County, Indiana. Defendant MARTIN oversees the LaGrange County Jail which is located within the Northern District of Indiana. As Sheriff of LaGrange County, MARTIN is the official with final policy-making authority for the department. Defendant MARTIN has the authority to release individuals who have otherwise satisfied their conditions of release or are otherwise entitled to be released.

9. Defendant, JOHN DOE 1 is the jail commander of LaGrange County Jail. Based upon an inmate request form Plaintiff MELENDREZ RIVAS filled out on February 12, 2010, Defendant JOHN DOE 1 was aware of the fact that MELENDREZ RIVAS' bond had been paid and was being detained beyond the 48-hour period.

10. Defendant JOHN DOE 2 is the assistant jail commander of LaGrange County Jail. Based upon an inmate request form Plaintiff MELENDREZ RIVAS filled out on February 12, 2010, Defendant JOHN DOE 2 was aware of the fact that MELENDREZ RIVAS' bond had been paid and was being detained beyond the 48-hour period.

11. The actions alleged in this case taken by Defendants were under color of state and federal law.

LAWS APPLICABLE TO THIS CASE

12. The due process clause of the Fifth Amendment to the United States Constitution, incorporated by the Fourteenth Amendment, prohibits the deprivation of life, liberty or property without due process of the law.

13. All persons, regardless of immigration status, are entitled to the Fifth and Fourteenth Amendments guarantee of due process of law.

14. Title 8 of the United States Code sets forth a comprehensive scheme governing the immigration of aliens to the United States, including procedures for detaining, deporting, and removing aliens.

15. Under 8 C.F.R. §287.7(a), federal immigration officials are empowered to issue a Form I-247 Immigration Detainer advising law enforcement agents that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, and requesting that the agency advise DHS, prior to release of the alien, so that DHS may assume custody.

16. “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, Sunday, and holidays in order to permit assumption of custody by the Department.” 8 C.F.R. § 287.7 (d.) In other words, immigration detainers only allow criminal justice agencies to maintain custody of an alien for a period not to exceed 48 hours and if ICE does not assume custody, the individual must be released.

17. Although 8 C.F.R. § 287 empowers ICE to issue an immigration detainer on an undocumented immigrant or legal permanent resident who is being held by a law enforcement agency, the regulation cannot be used to impinge that individual’s right to due process of law under the Fifth and Fourteenth Amendment, including, in this instance, the right to be released after the 48-hour period has expired.

18. A person may not be detained simply because an immigration detainer has been lodged, because the language of the detainer makes clear that the state agency cannot hold an individual if ICE fails to pick up that individual within 48 hours. To do otherwise violates his or her Fifth and Fourteenth Amendments right to liberty.

FACTS

Melendrez Rivas is Charged with a Felony Offense and Arrested for Bouncing a \$10 Check

19. On December 10, 2008, MELENDREZ RIVAS wrote a check made payable to a local gas station in LaGrange County, Indiana in the amount of \$10.

20. The check was later returned because of insufficient funds.

21. On June 3, 2009, unbeknownst to Plaintiff MELENDREZ RIVAS, felony charges were filed against her regarding the \$10 check

22. On June 11, 2009, a bench warrant was issued for MELENDREZ RIVAS arrest setting her bond at \$250.

23. On January 29, 2010, MELENDREZ RIVAS was arrested and taken into custody in Coldwater, Michigan based upon the June 3, 2009 charges and subsequent arrest warrant.

24. Plaintiff MELENDREZ RIVAS waived extradition from Michigan to Indiana and was transported to LaGrange County Jail in Indiana.

25. Prior to January 29, 2010, ICE officers lodged an immigration detainer against MELENDREZ RIVAS.

26. The immigration detainer issued for MELENDREZ RIVAS stated, "Federal regulations (8CFR 287.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sunday's [sic] and Federal holidays) to provide adequate time for DHS to assume custody of the alien."

27. Beginning on or about Friday, January 29, 2010 and continuing until her release, MELENDREZ RIVAS repeatedly asked jail officials whether she could be released after her bond was paid.

28. In response, MELENDREZ RIVAS was informed that she would not be released because of the immigration detainer lodged against her.

29. Plaintiff MELENDREZ RIVAS was also informed that ICE would not assume custody of her until after the resolution of her criminal case.

30. Despite being informed and discouraged from posting her \$250 bond, on Friday, February 12, 2010 MELENDREZ RIVAS's bond was paid at 10:12 a.m. (EST).

31. By paying the \$250 bond, MELENDREZ RIVAS was eligible for release from state custody because she satisfied all of conditions for her release.

32. Therefore, MELENDREZ RIVAS should have been released 48 hours after paying her bond on Friday, February 12, 2010 or no later than approximately 10:12 a.m. (EST) Wednesday, February 17, 2010. (The 48-hour time limit excludes weekend and holidays; in this case, Monday, February 15, 2010 was a federal holiday.)

33. On Friday, February 12, 2010 at 9:00 p.m., MELENDREZ RIVAS filled out an inmate request form (“inmate form”).

34. On the inmate form, MELENDREZ RIVAS stated, “[m]y bond got paid today and Officer Rosales told me you were waiting on a call from INS in Chicago to see if they wanted to keep my hold because Michigan originally put me on hold but since were [sic] in Indiana you have to go trough [sic] Chicago now. So I was wondering if they did keep the hold or whats [sic] going on since my bond got paid.”

35. On Tuesday, February 16, 2010, MELENDREZ RIVAS received a response to her inmate form from Defendants which stated: “I show a hold for INS and haven’t been told otherwise.”

36. The inmate form revealed that the request had been referred to Defendants JOHN DOE 1, the Jail Commander, and JOHN DOE 2, the Assistant Jail Commander.

37. Defendants did not release plaintiff MELENDREZ RIVAS from custody on Wednesday, February 17, 2010 or 48 hours after her bond had been paid.

38. On or about Friday, February 19 or Saturday, February 20, 2010, MELENDREZ RIVAS filled out another inmate request form asking LaGrange County jail officials when she could be released.

39. MELENDREZ RIVAS never received a response from Defendants to February 19th or 20th inmate request.

40. On Monday, February 22, 2010, prior to noon, MELENDREZ RIVAS' attorneys faxed Defendant MARTIN a letter which advised Defendant MARTIN that he was detaining MELENDREZ RIVAS in violation of federal law and requesting Defendant MARTIN to immediately release plaintiff.

41. On February 22, 2010, shortly after noon, MELENDREZ RIVAS was released from LaGrange County Jail.

Defendant's Liability -- LaGrange County knew
Melendrez Rivas Could not be Held beyond the 48-Hour Period

42. Defendant MARTIN is responsible for establishing procedures, policies, and practices that ensure that every individual held at the LaGrange County Jail is promptly released when legal authority to hold individuals expires.

43. In the absence of such policies and procedures, there is an obvious risk that persons held at the LaGrange County Jail will be detained beyond the time they are legally entitled to be released.

44. Defendant MARTIN'S policies or procedures or lack thereof resulted in the unlawful detention of MELENDREZ RIVAS beyond the time period defendants were authorized to detain Plaintiff.

42 U.S.C. § 1983

Deprivation of the Right to Due Process under
the Fifth and Fourteenth Amendments

45. Plaintiff with this reference hereby incorporates ¶¶ 1 through 44 as if set forth fully herein.

46. This Count is brought against the defendants pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201. There is an actual controversy between Plaintiff MELENDREZ RIVAS and the defendants with respect to whether the conduct of the Sheriff of LaGrange County and individual officers violated her right to due process. This Count seeks an order declaring the rights of the Plaintiff with respect to that controversy.

47. Plaintiff MELENDREZ RIVAS had a liberty interest in being free from unlawful and prolonged detention, specifically, being detained by the LaGrange County Jail once the 48-hour period expired.

48. Plaintiff MELENDREZ RIVAS was deprived of her protected liberty interest without due process of law.

49. Defendant MARTIN's policies, practices, and procedures with regard to ICE detainees failed to protect Plaintiff MELENDREZ RIVAS from unlawful and prolonged detention.

50. These policies, practices, and procedures did not afford Plaintiff MELENDREZ RIVAS procedural protections.

51. Defendant MARTIN's policies, practices and procedures violated Plaintiff MELENDREZ RIVAS' right to due process by prolonging her detention.

52. On February 12, 2010, Plaintiff MELENDREZ RIVAS filled out an inmate request form informing defendants that plaintiff had paid bond and asking when she would be released from custody.

53. Plaintiff MELENDREZ RIVAS' inmate request put Defendants JOHN DOE 1, JOHN DOE 2, and MARTIN on notice that she was eligible for release from state custody.

54. MELENDREZ RIVAS received a response four days later on February 16, 2010, stating, "I show a hold for INS and haven't been told otherwise" and was not released.

55. Despite knowing she was eligible for release, Defendants JOHN DOE 1, JOHN DOE 2, and MARTIN did not release her 48 hours after Plaintiff MELENDREZ RIVAS satisfied the conditions of her release.

56. Upon information and belief, according to the inmate request form filled out by Plaintiff MELENDREZ RIVAS on February 12, 2010, Defendants JOHN DOE 1, JOHN DOE 2, and MARTIN were either involved in or acquiesced in or both the decision to hold Plaintiff beyond the 48-hour period.

57. Defendants JOHN DOE 1, JOHN DOE 2, and MARTIN, in their individual capacities, violated MELENDREZ RIVAS' right to due process.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

- A. Assume jurisdiction over this matter;

- B. Enter a Declaratory Judgment that the conduct policies and practices of Defendants JOHN DOE 1, JOHN DOE 2, and MARTIN complained of herein are unlawful and violate the Fifth and Fourteenth Amendments of the United States Constitution;
- C. Award Plaintiff such damages as will fully compensate her for the economic loss, emotional distress, and deprivation of her constitutional rights caused by Defendants' conduct;
- D. Award Plaintiff her costs and reasonable attorney's fees and costs;
- E. Award Plaintiff damages on account of the false imprisonment; and
- F. Award Plaintiff such other and further relief as the Court deems just.

Respectfully Submitted,

By Christopher C. Myers
One of the Attorneys for Plaintiff

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