IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

MIRNA RUBIDIA ARTIGA CARRERO	*	
Plaintiff,	*	
v.	*	Civil Action No.: 1:16-cv-03939-JKB
CHRISTOPHER FARRELLY, ET AL.,	*	
Defendants.	*	

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PLAINTIFF'S OPPOSITION TO CHRISTOPHER FARRELLY AND BALTIMORE COUNTY'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Introduction

On August 26, 2014, Baltimore County Police Officer Christopher Farrelly detained Mirna Artiga based on her Latino appearance for the purpose of investigating her immigration status. Officer Farrelly then transported her to another county to deliver her into the custody of United States Immigration and Customs Enforcement ("ICE") where she was detained for at least six weeks before finally being reunited with her family. In doing so, Officer Farrelly violated Ms. Artiga's rights under Fourth, Fifth, and Fourteenth Amendments. Officer Farrelly is liable for all of the harm his actions caused Ms. Artiga, as is Baltimore County, which participated in the violation of Ms. Artiga's rights by failing to train Officer Farrelly on the limits of his authority to stop, detain, and arrest undocumented immigrants solely for the purpose of enforcing civil immigration laws.

Defendants' arguments in support of their Motion to Dismiss or for Summary Judgment are unavailing. There is no support for Defendants' claim that Ms. Artiga cannot bring suit under 42 U.S.C. § 1983 because of her immigration status and Defendants consistently ignore

the plainly-worded, plausible allegations of Ms. Artiga's Complaint and controlling case law from the Fourth Circuit – case law that clearly establishes local law enforcement officers cannot do what Officer Farrelly did to Ms. Artiga.

Defendants' request that the Court treat its motion as one for summary judgment fares no better at this early stage in the litigation, before Ms. Artiga has had the opportunity to conduct any discovery. As an initial matter, because Baltimore County previously failed to provide documentation of Ms. Artiga's stop, detention and arrest, in response to a request under the Maryland Public Information Act for records for which it is the custodian, the fact that Defendants have now produced such documentation warrants discovery, particularly because the records attached to Defendants' Motion are not self-explanatory. Ex. 1 (Rule 56(d) Decl.) ¶¶ 5-6, 9 & 13. Nor are they sufficient to show that there is no genuine dispute of material fact and that Defendants are entitled to judgment as a matter of law, even as Defendants characterize them. To the contrary, because the documents themselves create additional disputes of fact, they highlight the need for additional discovery regarding the sequence of events leading up to the stop, and throughout Officer Farrelly's detention of Ms. Artiga. Ex. 1 (Rule 56(d) Decl.) ¶¶ 7-15.

Because Ms. Artiga has properly alleged plausible claims that Defendants violated her constitutional rights and because the documents attached to Defendants' motion fail to demonstrate that there is no dispute of material fact and that they are entitled to judgment as a matter of law, Defendants' motion must be denied in its entirety.

Factual Background[1]

Plaintiff is a 29-year-old citizen of El Salvador residing in Maryland. ECF No. 1 ¶ 2; *id.* ¶ 9. In the early morning hours of August 26, 2014, Officer Farrelly stopped her as she was driving to her home in Baltimore County, Maryland, from her place of employment in Howard County, Maryland. *Id.* ¶¶ 15-18. When she pulled up next to Officer Farrelly's patrol car at a red light, he turned to look at her. *Id.* ¶ 17. Because the intersection was sufficiently well lit, Officer Farrelly could see that Ms. Artiga is Latina. *Id.* When the light turned green, Officer Farrelly pulled his car behind Ms. Artiga's and directed her to pull over. *Id.* ¶ 18.

During the course of their interaction, Officer Farrelly initially informed Ms. Artiga that he had stopped her for an insurance violation but soon turned his attention to her immigration status instead of investigating the alleged insurance issue. Officer Farrelly never issued Ms. Artiga a citation for any violation of the Motor Vehicle Code, or any other violation of Maryland or local law, *id.* ¶ 19, but he did question her about: (a) her interactions with police or immigration authorities, (b) her children, (c) the names of her parents and other family members, and (d) whether she had any tattoos. *Id.* ¶ 24. After asking those questions, Officer Farrelly informed Ms. Artiga that she was under arrest and transported her across the County line to the Howard County Detention Center, where she was taken into custody by ICE. *Id.* ¶¶ 25-27. After her initial processing in Baltimore, Ms. Artiga was detained by ICE for six weeks at a facility in Snow Hill, Maryland. *Id.* ¶¶ 28-29. During those six weeks she was separated from her son, who is a citizen of the United States, and the rest of her family and friends. *Id.* ¶ 30.

[1] The facts described in this section are the facts as alleged in Ms. Artiga's Complaint, which are at the center of a court's consideration of a motion to dismiss. *McKnight v. Stewart*, Case No. JKB-14-2042, 2015 WL 461896, at *2 (D. Md. Feb. 2, 2015). Additional facts offered by Defendants in support of their Motion for Summary Judgment are described, as necessary, in the Argument section, *infra*.

By failing to train Officer Farrelly about the clearly established limits of his authority to detain and arrest individuals for the sole purpose of enforcing civil immigration laws, Baltimore County, which operates the Baltimore County Police Department, contributed to Officer Farrelly's illegal actions. *Id.* ¶¶ 31-35. Baltimore County failed to train its officers appropriately even though it was aware that those limits had been then-recently articulated in *Santos v. Frederick County Board of Commissioners*, 725 F.3d 451 (4th Cir. 2013). *Id.* ¶¶ 31-35.

Legal Standard

I. Motion to Dismiss.

In deciding a motion to dismiss, the only question for the court is whether the plaintiff has stated a claim for relief that is plausible on its face. Fed. R. Civ. P. 12(b)(6); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."). In determining whether a plaintiff has alleged a claim that is plausible on its face, the court must accept as true all of the well-pleaded allegations in the plaintiff's complaint and must construe the facts and the reasonable inferences that can be drawn from them in the light most favorable to the plaintiff. *McKnight v. Stewart*, Case No. JKB-14-2042, 2015 WL 461896, at *2 (D. Md. Feb. 2, 2015); *View Point Med. Sys., LLC v. Athena Health, Inc.*, 9 F. Supp. 3d 588, 597 (D. Md. 2014) (quoting *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011)).

II. Summary Judgment.

Ordinarily, "summary judgment is inappropriate 'where the parties have not had an opportunity for reasonable discovery.'" *Sager v. Hous. Comm'n of Anne Arundel Cty.*, 855 F.

Supp. 2d 524, 542 (D. Md. 2012) (quoting *E.I. du Pont de Nemours & Co.*, 637 F.3d at 448). When a defendant moves for summary judgment in the alternative to a request for dismissal, however, a district court has discretion, pursuant to Fed. R. Civ. P. 12(d), to consider matters outside the pleadings and convert the motion to one for summary judgment under Fed. R. Civ. P. 56. A court's discretion "should be exercised with great caution and attention to the parties' procedural rights . . ." 5C Wright & Miller, Federal Practice & Procedure § 1366, at 149 (3d ed. 2004, 2011 Supp.); *see also Adams Housing, LLC v. The City of Salisbury*, ___ Fed. Appx. ____, 2016 WL 6958439, at *2-3 (4th Cir. Nov. 29, 2016) (per curiam) ("Summary judgment before discovery forces the non-moving party into a fencing match without a sword or mask."). If a court does elect to exercise its discretion, the moving party bears the burden of showing that there is no "genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law.[2] Fed. R. Civ. P. 56(a); *see* Fed. R. Civ. P. 12(d).

Argument

I. Ms. Artiga's immigration status has no impact on her ability to bring her claims against Officer Farrelly and Baltimore County.

Contrary to Defendants' assertion, Ms. Artiga's immigration status in no way vitiates her right to sue under 42 U.S.C. § 1983. *See e.g.*, *Santos*, 725 F.3d 451; *Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

[2] For a thorough discussion of the standard to convert a motion to dismiss into one for summary judgment see Judge Hollander's very recent opinion in *Maryland Restorative Justice Initiative v. Hogan*, Case No. ELH-16-1021, 2017 WL 467731, at *8-10 (D. Md. Feb. 3, 2017) (declining to convert pre-discovery motion to dismiss to one for summary judgment).

Likewise, there is no support for Defendants' remarkable proposition that unlawfully present noncitizens lack standing *because of* their immigration status, *see* ECF No. 13-1 at 11, which is based on Defendants' misreading of a single district court case. In fact, neither of the opinions issued by the court in *Equal Access v. Merten*, in 2004, support Defendants' position. In the first opinion, the court held that an undocumented immigrant *did* have standing to sue universities over admission policies that discriminate against undocumented immigrants. *Merten*, 305 F. Supp. 2d 585, 594-96 (E.D. Va. 2004). In the second opinion, the court held simply that an unlawfully present noncitizen did not have standing to challenge polices that could only harm noncitizens who are *lawfully* present in the United States. *Merten*, 325 F. Supp. 2d 655, 661 (E.D. Va. 2004). In doing so, the court merely applied long-standing precedent that a person can only challenge policies that harm or have the potential to harm her directly. *Id.* at 660-61 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)); *Pedersen v. Geschwind*, 141 F. Supp. 3d 405, 410 (D. Md. 2015) (establishing standing requires proof of "(1) an injury in fact that is (2) fairly traceable to the challenged action of the defendant and that will (3) likely be redressed by a favorable decision."). Though Defendants do not challenge it, her allegations plainly meet this standard.[3]

[3] Ms. Artiga has alleged an injury in fact – namely, a violation of her rights under the Fourth, Fifth, and Fourteenth Amendments. ECF No. 1 ¶¶ 15-30, 52 & 55. She has alleged that that injury is traceable to Defendants' conduct – namely, the wrongful stop, detention, and arrest carried out by Officer Farrelly and Baltimore County's failure to train its officers that conduct like Officer Farrelly's is unconstitutional. ECF No. 1 ¶ 15-35, 52, 53, 55 & 56. Finally, the harm to Ms. Artiga would be redressed by a favorable decision from this court awarding her damages for the injuries she has suffered.

II. Ms. Artiga has properly alleged that Officer Farrelly and Baltimore County caused or participated in the deprivation of her constitutional rights.

Defendants mistakenly equate the causal nexus for establishing liability under § 1983 with a proximate cause analysis under state tort law. ECF No. 13-1 at 11. In fact, liability under § 1983 is broader and extends to persons who "do[] [] affirmative act[s], participate[] in another's affirmative act[s] or omit[] to perform an act which he is legally required to do which causes deprivation about which the Plaintiff complains." *Skundor v. Coleman*, No. CIV.A. 5:02-0205, 2003 WL 22088342, at *9 (S.D.W. Va. July 31, 2003), rpt. and rec. adopted sub nom. *Skundor v. McBride*, 280 F. Supp. 2d 524 (S.D.W. Va. 2003), aff'd sub nom. *Skundor v. Coleman*, 98 F. App'x 257 (4th Cir. 2004); *Salih v. Smith*, Case No. HAR 93-1556, 1994 WL 750529, at *3 (D. Md. Nov. 8, 1994) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976) (language of § 1983 imposes liability on anyone who "subjects, or causes to be subjected" the complainant to a deprivation of rights), aff'd, 73 F.3d 358 (4th Cir. 1995). Thus, there need not be just one cause (or a very narrow set of causes) of a deprivation and, here, Ms. Artiga properly alleges that both Officer Farrelly and Baltimore County are liable based on their respective roles in causing the deprivation of her rights.

Ms. Artiga alleges plausible claims (supported by clearly established case law) that Officer Farrelly's affirmative acts in stopping and detaining her violated her rights under the Fourth, Fifth, and Fourteenth Amendments. Because it is clearly established that the Constitution prohibits racially selective enforcement of the law, Officer Farrelly's decision to stop Ms. Artiga on account of her Latino appearance violated her Equal Protection rights – Defendants' *post hoc* justification for the stop notwithstanding. *Whren v. United States*, 517 U.S. 806, 813 (1996); *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 945-46 (9th Cir.

2004) ("a plaintiff may pursue an equal protection claim by raising a triable issue of fact as to whether the defendants' asserted rational basis was merely a pretext for differential treatment").

It is also clearly established that "because civil immigration violations are not criminal offenses, suspicion or knowledge that an individual has committed a civil immigration violation 'alone does not give rise to an inference that criminal activity is afoot.'" *Santos*, 725 F.3d at 465 (quoting *Melendres*, 695 F.3d at 1001). Therefore, to the extent that Officer Farrelly stopped Ms. Artiga to investigate her immigration status or, even if he prolonged a legitimate detention to investigate her immigration status, he violated her rights under the Fourth and Fourteenth Amendment.[4] *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005) ("A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."); *Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012) ("Detaining individuals solely to verify their immigration status would raise constitutional concerns."); *United States v. Digiovanni*, 650 F.3d 498, 509 (4th Cir. 2011) (holding that stop was unreasonable under Fourth Amendment where it was prolonged to question defendant on topics unrelated to basis for the stop – a traffic violation).

Ms. Artiga's claims against Baltimore County are based on its failure to adequately train its police officers, including Officer Farrelly, regarding the limits of their authority in investigating individuals' immigration status – a situation that those officers were certain to face – even after being put on notice of the need to do so. ECF No. 1 ¶¶ 31-35, 53 & 56. Ms. Artiga's theory of Baltimore County's liability is well-established in the many cases decided since *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), which make clear that a municipality's failure to train under similar circumstances "'is the functional

[4] As should be clear from Ms. Artiga's allegations and the arguments herein, Ms. Artiga, in no way concedes that Officer Farrelly had a legitimate basis to stop her.

equivalent of a decision by the [municipality] itself to violate the Constitution.'" *Connick v. Thompson*, 563 U.S. 51, 61–62 (2011) (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)).

None of the documents that Defendants have attached to their motion (particularly Officer Farrelly's self-serving Declaration) are sufficient to rebut Ms. Artiga's allegations at this early stage before Ms. Artiga has had the benefit of conducting even basic discovery to test their import and Defendants' veracity, and to try to answer the many open questions regarding the sequence of events on the night in question. *See Flynn v. Tiede-Zoeller, Inc.*, 412 F. Supp. 2d 46, 50-51 (D.D.C. 2006) (refusing to convert motion to dismiss to motion for summary judgment based on parties' self-serving declarations); Ex. 1 (Rule 56(d) Decl.) ¶¶ 8-15.

A. Defendants have not overcome Ms. Artiga's plausible allegations that Officer Farrelly stopped her to investigate her immigration status, and additional discovery is necessary to determine whether Officer Farrelly's stop was lawful.

Ms. Artiga alleges that Officer Farrelly deprived her of her rights by stopping her because of her Latino appearance so that he could investigate her immigration status. ECF No. 1 ¶¶ 17-19 & 54-56. She further alleges that Officer Farrelly's justification for the stop – a problem with her insurance – was false and she has produced documentation showing that her insurance was up to date. ECF No. 1 ¶ 23; ECF No. 1-4. Defendants have not adequately identified objective evidence to support that justification, as is their burden. *United States v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008). Thus, rather than establishing that Defendants are entitled to judgment as a matter of law, the documents they have produced simply generate disputes of fact regarding the events leading up to the stop and show that additional discovery is necessary. Ex. 1 (Rule 56(d) Decl.) ¶¶ 8-9 & 14-15.

Defendants offer Officer Farrelly's Declaration that he "did not stop [her] on the basis of her ethnicity, or detain her unlawfully to investigate her immigration status." ECF No. 13-2 ¶ 3. But Officer Farrelly's Declaration is insufficient to rebut Ms. Artiga's allegations to the contrary. Although it corroborates many of Ms. Artiga's allegations about the moments leading up to the stop, it adds further assertions that raise genuine disputes of material fact – such as, for example, that Officer Farrelly "ran the license tag in [his] vehicular computer" (presumably while driving his patrol car), which he claims "is [his] practice." ECF No. 13-2 ¶ 6. According to his Declaration, when the computer showed "an insurance issue," Officer Farrelly stopped Ms. Artiga. ECF No. 13-2 ¶ 6. All of these claims contradict Ms. Artiga's allegations and none of them can be verified without discovery. Ex. 1 (Rule 56(d) Decl.) ¶¶ 8-9, 12 & 14-15.

Defendants have produced records that they claim support Officer Farrelly's assertion, but even these fail to establish that Officer Farrelly's stop was proper. Defendants purport that one of them is a "Computer Screen shot of traffic stop on August 26, 2014 at 00:51:51," ECF No. 13-3 ¶ 2.c., though it does not identify either Officer Farrelly (at least by name), or Ms. Artiga, or contain any of Ms. Artiga's vehicle information, including its license plate number. ECF No. 13-6. The other document is an MVA record that appears to show that the registration on Ms. Artiga's car was suspended for a period of time in 2014 and 2015. ECF No. 13-7 at 3. Because Defendants have not provided any information to suggest that this was a record that Officer Farrelly viewed before, or even during, his stop of Ms. Artiga, it is impossible to know whether (and, if so, how) it informed his understanding that there was a problem with Ms. Artiga's insurance and a lawful basis to stop her.

In total, Defendants' evidence generates more questions than answers regarding the events of August 26, 2014, including, but not limited to:

- How Officer Farrelly was able to enter Ms. Artiga's vehicle information into his computer, while driving his own car, and obtain information about her insurance in the less than half a mile from where they first saw each other (the intersection of Baltimore National Pike and Rolling Road) to the location of the stop.
- Why none of Ms. Artiga's identifying information appears on ECF No. 13-6, when Officer Farrelly admits to having obtained her driver's license (ECF No. 13-2 ¶ 6).
- Whether the information on ECF No. 13-7 at 2 was available to, and reviewed by, Officer Farrelly before he stopped Ms. Artiga on August 26, 2014.
- How often he enters license plate numbers into his computer as part of "[his] practice" and how he chooses whose numbers to enter.

See Ex. 1 (Rule 56(d) Decl.) ¶ 14-15. These questions bear on the veracity of Defendants' assertion that Ms. Artiga was stopped lawfully and not, as she has alleged, based on her race, ethnicity, or suspicions about her immigration status. Because Defendants have not shown that they are entitled to judgment as a matter of law, Defendants' motion should be denied with respect to Ms. Artiga's First Cause of Action and she should be allowed discovery to test Defendants' justification for the stop.

B. Defendants have not overcome Ms. Artiga's plausible allegations that Officer Farrelly violated her Fourth Amendment rights by doing exactly what the court in *Santos* held was unconstitutional, which also defeats Officer Farrelly's claim of qualified immunity, and immunity under 8 U.S.C. § 1357(g).

Even if the materials attached to Defendants' motion demonstrate that Officer Farrelly was justified in stopping her (which Ms. Artiga does not concede), they do not confront, let alone overcome, Ms. Artiga's allegation that Officer Farrelly violated her rights under the Fourth Amendment by prolonging his stop to investigate her immigration status – conduct that the court in *Santos* explicitly forbade. *Santos*, 725 F.3d at 465; *id.* at 462 ("'Some contacts that start out as constitutional may . . . at some unspecified point, cross the line and become an unconstitutional seizure.'" (quoting *United States v. Weaver*, 282 F.3d 302, 309 (4th Cir. 2002)); *see also Digiovanni*, 650 F.3d at 509.

As Ms. Artiga has alleged, after Officer Farrelly viewed Ms. Artiga's driver's license, he suspected that she was present without lawful status. ECF No. 1 ¶ 21; ECF No. 13-2 ¶ 6. Because of that, and after learning that there was an outstanding civil immigration warrant, Officer Farrelly prolonged his detention of Ms. Artiga for the sole purpose of investigating her immigration status rather than any potential motor vehicle violation. Throughout this time, he instructed her to wait in her car, asked her questions irrelevant to her insurance coverage or vehicle registration, ECF No. 1 ¶ 22-24, and did not issue her any citations.[5] ECF No. 1 ¶ 19; ECF No. 13-2 ¶ 7. Thus, even if, *arguendo*, Officer Farrelly's initial stop and detention of Ms. Artiga were permissible, it was unconstitutional for him to prolong his detention of Ms. Artiga to investigate her immigration status without any basis to believe that criminal activity was afoot.

Moreover, the record before the Court provides no basis to conclude that Officer Farrelly is entitled to qualified immunity, which "protects government officials from liability for civil damages, provided that their conduct does not violate clearly established statutory or constitutional rights within the knowledge of a reasonable person." *Danser v. Stansberry*, 772 F.3d 340, 345 (4th Cir. 2014). Here, Officer Farrelly does not dispute that the principles announced in *Santos* were "clearly established" as of August 26, 2014, *see* ECF No. 13-1 at 15, but argues (1) that he complied with *Santos*, and (2) if by complying with *Santos* he, nonetheless, violated Ms. Artiga's rights, he is entitled to qualified immunity because the unlawfulness of that conduct was not clearly established as of August 26, 2014. ECF No. 13-1 at 15-16. Because the

[5] Notably, under Maryland law, driving a vehicle with a suspended registration (Defendants' apparent purported justification for Officer Farrelly's stop) is *not* an offense that it arrestable, per se. *See* Md. Code Trans. § 26-202(a)(1) and (3)-(5). Driving with a suspended registration is only arrestable if a person fails to provide "satisfactory evidence of identity" or a police officer "has reasonable grounds to believe that the person will disregard a traffic citation." Md. Code Trans. § 26-202(a)(2). There is no dispute that Ms. Artiga did provide satisfactory evidence of identity in the form of a state-issued driver's license, and there is no evidence or allegation that Officer Farrelly had reason to believe she would disregard a traffic citation.

record shows that Officer Farrelly *did not* comply with clearly established Fourth Amendment law as set forth, most recently, in *Santos*, but, instead, did exactly what the court in *Santos* and other courts have expressly prohibited – prolonging his detention of Ms. Artiga to investigate her immigration status – his claim for qualified immunity must be denied.

Likewise, the record before the Court provides no basis to conclude that Officer Farrelly is entitled to be treated as acting under color of federal law pursuant to Section 287(g)(8) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1357(g)(8).[6] Defendants argue that Officer Farrelly was authorized to "cooperate with the Attorney General in the identification, apprehension, detention, or removal of" Ms. Artiga, an "alien[] not lawfully present in the United States." ECF No. 13-1 at 13-14 (citing 8 U.S.C. § 1357(g)(10)). However, that statute cannot mean, as Defendants appear to suggest, that even after a local police officer has independently detained an individual to investigate their immigration status, ICE can retroactively untaint that unlawful detention – if that were so, *Santos* would be without meaning. Rather, by its plain terms § 1357(g)(10) makes clear that local police officers have no authority to identify, apprehend, or detain individuals like Ms. Artiga absent *prior* authorization by ICE and, that far from immunizing conduct like Officer Farrelly's, that conduct should be analyzed under well-established Fourth Amendment rules.

In addition, whether ICE's direction to Officer Farrelly was sufficient to justify her arrest under the Fourth Amendment and, if so, the timing of such direction are critical issues that must be the subject of discovery. *See* 8 U.S.C. § 1226 (authorizing arrest of unlawfully present

[6] As is clear from the plain text of 8 U.S.C. § 1357(g)(8), the federal authority conferred by that section extends only to local officers acting pursuant to an agreement between the Attorney General and a local jurisdiction, entered into in accordance with § 1357(g)(1). Defendants have not alleged the existence of such an agreement, because none exists. *See* https://www.ice.gov/factsheets/287g (listing jurisdictions that have agreements authorized by 8 U.S.C. § 1357(g)(1)).

individuals on administrative warrants); *United States v. Pacheco-Alvarez,* ___ F. Supp. 3d ___, ___ 2016 WL 7475652, at *18 (S.D. Ohio 2016) (and cases cited therein) (describing that ICE must have probable cause for immigration violation *and* probable cause to believe that individual is likely to escape before making warrantless arrest); *Santos,* 725 F.3d at 466 ("Although there may be no dispute as to *whether* ICE directed the deputies to detain Santos at some point, the key issue for our purposes is *when* ICE directed the deputies to detain her.") (emphasis in original). Without any evidence regarding the nature of the authority allegedly granted to Officer Farrelly by ICE, or when exactly that authority was granted, there is nothing in the record that refutes Ms. Artiga's allegation that Officer Farrelly detained or prolonged her detention so he could investigate her immigration status *before* he received instructions from ICE to take her into custody. ECF No. 1 ¶¶ 21-25 (alleging period of time when Officer Farrelly told Ms. Artiga to wait in her vehicle and then returned to ask her questions bearing on her immigration status, but unrelated to any possible motor vehicle violation). That detention was unconstitutional no matter what instruction or request from ICE Officer Farrelly may have later received, *Santos*, 725 F.3d at 466, and the direction he did receive may not have been sufficient to justify any seizure at all under the Fourth Amendment. Ms. Artiga is entitled to discovery to try and determine whether any direction was received and, if so, what it was, and when it was received. *See* Ex. 1 (Rule 56(d) Decl.) ¶¶ 10-12 & 14-15.

D. Ms. Artiga has properly alleged that Baltimore County was deliberately indifferent to her rights under a failure-to-train theory of *Monell* liability and Baltimore County has not established that it, in fact, adequately trained its police officers regarding the Fourth Circuit's decision in *Santos*.

Defendants argue vociferously against a theory of liability for Baltimore County that Ms. Artiga does not advance – namely, that there is an unconstitutional custom, policy, or practice of stopping and detaining individuals for the sole purpose of investigating their civil immigration

status. ECF 13-1 at 11-13. Rather, Ms. Artiga has plausibly alleged that Baltimore County was deliberately indifferent to the rights of undocumented immigrants by failing to train its police officers on the limits of their authority in situations like the one Officer Farrelly encountered when he stopped Ms. Artiga – situations that those officers were certainly likely to encounter repeatedly, given the nature of their job and their unfettered access to individuals' immigration information, ECF No. 1 ¶¶ 21 & 40-42.[7]

Ms. Artiga's theory of Baltimore County's indifference is well established in the progeny of *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). *See City of Canton*, 489 U.S. at 390 ("[I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need."); *Spell v. McDaniel*, 824 F.2d 1380, 1390 (4th Cir. 1987) ("[M]unicipal liability may be imposed [for] . . . tacit authorizations, and failures adequately to prohibit or discourage readily foreseeable conduct in light of known exigencies of police duty."); *Brown v. Mitchell*, 308 F. Supp. 2d 682, 704 (E.D. Va. 2004) ("[A] failure to train claim also can be based on a supervisory power's failure to train its employees concerning an obvious constitutional duty that the particular employees are certain to face."). And Defendants' further assertion that the obligation of the pleader is to use magic words like "deliberate indifference," rather than allege the facts supporting "deliberate indifference," turns civil pleading rules on their head. ECF No. 13-1 at 13.

[7] Officer Farrelly's own Declaration, ECF No. 13-2, confirms that police officers are likely to find themselves in the type of situation described in Ms. Artiga's complaint any time they stop an individual whose immigration status may be in question. *Id.* ¶ 6.

Ms. Artiga's Complaint provides an adequate factual basis for an assertion of deliberate indifference, in line with the Supreme Court's decision in *Twombly*. 550 U.S. at 570. Specifically, she alleges that Baltimore County failed to appropriately train to its officers regarding the limits of their authority when dealing with undocumented immigrants. ECF No. 1 ¶¶ 31-35, 53 & 56. That Baltimore County failed to do so even after receiving notice from the ACLU of the Fourth Circuit's then-recent decision in *Santos*, is the most damning allegation of its indifference. ECF No. 1 ¶ 31. As the Supreme Court has held, a "city's 'policy of inaction' in light of notice that its program will cause constitutional violations 'is the functional equivalent of a decision by the city itself to violate the Constitution.'" *Connick*, 563 U.S. at 61–62 (quoting *City of Canton*, 489 U.S. at 388). And, indeed, this Court has denied motions similar to Defendants' where a plaintiff has alleged that a municipality was on notice of its need to provide training to prevent a potentially recurrent violation of individuals' constitutional rights. *See Santos v. Frederick Cty. Bd. of Comm'rs*, Case No. WDQ-09-2978, 2015 WL 5083346, at *7 (D. Md. Aug. 26, 2015); *cf. McDonnell v. Hewitt-Angleberger*, Case No. WMN-11-3284, 2012 WL 1378636, at *4 (D. Md. Apr. 19, 2012) (dismissing *Monell* claim where plaintiff failed to allege that policymakers were on notice of potential for unconstitutional conduct).

When taken as true, as they must be at this stage, *McKnight*, 2015 WL 461896, at *2, Ms. Artiga's allegations that Baltimore County failed to adequately train its officers in a way that would prevent them from violating the rights of undocumented immigrants given (1) the officers' unrestricted access to those individuals' immigration information and (2) Baltimore

County's notice of its need to do so, plausibly allege that Baltimore County was deliberately indifferent under *Monell*.[8]

Baltimore County also argues that it is not liable under either of Ms. Artiga's § 1983 claims because it asserts that it adequately trained Officer Farrelly as a matter of law. The only evidence of any training that Baltimore County has produced is a legal brief on the decision in *Santos*, *see* ECF No. 13-4, that it asserts Officer Farrelly "read," ECF No. 13-1 at 13, because his initials appear on a certain form that it has also produced, ECF No. 13-5. But like Officer Farrelly's claims of immunity, Baltimore County's argument is not supported by the documents attached to its motion that only highlight the need for additional discovery. For one thing, the form initialed by Officer Farrelly contains multiple check boxes at the top (none of which are marked). ECF No. 13-5. One of those boxes indicates "I have been *advised* of the information contained in 2013-06 Legal Brief Santos v. Frederick Co," ECF No. 13-5 (emphasis added), but does not suggest that Officer Farrelly, in fact, "read" (or understood) the brief as Baltimore County claims. Indeed, because none of the boxes on the form are marked, it is even unclear whether this form even had anything to do with the *Santos* brief at all, or whether it is an acknowledgement that Officer Farrelly received some documentation related to his "performance appraisal" or revisions to the "Field" or "Administrative . . . Manual as indicated in General Order #02-11" – as a check mark in the other boxes might suggest. ECF No. 13-5. It is also notable that in his Declaration, Officer Farrelly makes no claim to receiving (never mind reading, or understanding) the *Santos* brief. ECF No. 13-2.

[8] Should this Court find it necessary that she use those precise words, Ms. Artiga should be granted leave to amend her Complaint to meet that requirement since no prejudice would result to Defendants.

Even if Officer Farrelly did read the legal brief as Baltimore County argues, that activity, standing alone, is insufficient to establish that Baltimore County adequately trained its police officers on the limits of their authority in situations like the one Officer Farrelly encountered when he stopped Ms. Artiga. Although the brief states the facts and the holding of the *Santos* decision, and correctly notes that it "is now 'clearly established'" that officers do not have authority to detain or arrest individuals solely on account of an immigration warrant, it does not explain how that translates to day-to-day Baltimore County Police Department policy. ECF No. 13-4. The brief says nothing about what officers may, and may not do when, as will frequently be the case, and as was the case here, an NCIC search turns up a civil immigration warrant. The brief also says nothing about what, if any, federal instruction is sufficient to allow further detention, or, as happened here, an arrest. In combination with Ms. Artiga's unrefuted allegation that Baltimore County has never updated its field manual to accurately reflect the limits described in *Santos*, ECF No. 1 ¶¶ 34-35, the legal brief's failure to specify how Baltimore County officers should relate to suspected or known undocumented immigrants is a shortcoming that prevents it from establishing that Baltimore County adequately trained its officers.

In light of the multiple procedural and substantive defects in Baltimore County's supposed training regimen, there is no basis for granting it summary judgment on Ms. Artiga's § 1983 claims at this early stage. Ms. Artiga should be given the opportunity to discover answers to the questions raised by Defendants' evidence including, *inter alia*, whether Officer Farrelly did, in fact, "read" the brief on *Santos*; the circumstances under which he received it; whether there was any additional training provided to officers; if so, the nature of that training;

and, whether the Baltimore County field manual was ever updated.[9] Ex. 1 (Rule 56(d) Decl.) ¶¶ 13-15.

Conclusion

For the foregoing reasons Plaintiff, Mirna Rubidia Artiga Carrero, respectfully requests that the Court deny Defendants' Motion to Dismiss or for Summary Judgment, ECF No. 13.

Respectfully submitted,

/s/

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[9] That Baltimore County's supposed training was inadequate is made more probable by the very fact that Officer Farrelly stopped and prolonged his detention of Ms. Artiga to investigate her immigration status. This Court has recognized the so-called "singular deprivation" theory of *Monell* liability, *see Santos*, 2015 WL 5083346 at *7, which derives from the Supreme Court's decisions in *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397 (1997), and *City of Canton*. As the Supreme Court has held, "evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations preventing an obvious potential for such a violation, could trigger municipal liability." *Bryan Cty.*, 520 U.S. at 409. Here Ms. Artiga's allegations fit the singular deprivation theory by making plain that her constitutional rights were violated by Officer Farrelly and that the situation Officer Farrelly confronted when he stopped her is one that any Baltimore County police officer could potentially encounter upon stopping any undocumented immigrant.

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REQUEST FOR HEARING

Plaintiff respectfully requests that the Court hold a hearing on Officer Farrelly and Baltimore County's Motion to Dismiss or for Summary Judgment.

/s/
Kevin D. Docherty

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2017, a copy of the foregoing Plaintiff's Opposition to Christopher Farrelly and Baltimore County's Motion to Dismiss or for Summary Judgment was filed with the clerk and delivered to all counsel of record by the Court's CM/ECF system.

/s/
Kevin D. Docherty