

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INGRID BUQUER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Cause No.: 1:11-cv-0708-SEB-MJD
)	
THE CITY OF INDIANAPOLIS, <i>et al.</i> ,)	
)	
Defendants.)	

Defendant City of Indianapolis’s Response in Opposition to Summary Judgment and Brief in Support of its Cross-Motion for Summary Judgment

Defendant City of Indianapolis, by counsel Justin F. Roebel, hereby requests that the Court deny Plaintiffs’ request for summary judgment against the City of Indianapolis. While Defendant City takes no position on the merits of the substantive claims as applied to other Defendants, Plaintiffs’ claims fail as a matter of law with regard to the City. As such, Defendant City cross-moves to request that this Court enter judgment in its favor.

Plaintiffs have improperly sued the City pursuant to 42 U.S.C. section 1983 based on the State of Indiana’s immigration law. Plaintiffs allege the City’s officers would be charged with enforcement of the immigration law. Plaintiff seeks from the City injunctive relief, attorneys’ fees, and “all other proper relief.” However, a valid Section 1983 claim against a municipality requires evidence of a municipal custom, policy, or practice which violates federal law. Mere adherence—or, in this case, potential adherence—with a state policy or law is insufficient to support a claim. Because Plaintiffs have failed to identify an improper municipal custom, policy, or practice, all claims against the City of Indianapolis should be summarily denied.

I. Statements of Facts

A. Statement of Material Facts in Dispute with Regard to Plaintiffs' Motion for Summary Judgment

Defendant City of Indianapolis is not aware of any material facts in dispute which would prevent this Court from adjudicating Plaintiffs' claims against the City as a matter of law.

B. Statement of Material Facts Not in Dispute with Regard to Defendant City of Indianapolis's Cross-Motion for Summary Judgment

Plaintiffs are challenging the constitutionality of two sections of Indiana Senate Enrolled Act 590, which was subsequently codified in Indiana Code sections 34-28-8.2-1 *et seq.* and 35-33-1-1. (Dkt. 1, ¶¶ 95-98.) These challenged statutory provisions—allegedly allowing arrests without probable cause and creating civil sanctions for the use of consular identification—are all matters of state law. *See* I.C. §§ 34-28-8.2-1 *et seq.* and 35-33-1-1. Plaintiffs challenged these laws prior to their July 1, 2011 effective dates. (Dkt. 1, ¶¶ 22, 23; S.E.A. 590.) On June 24, 2011, this Court entered a preliminary injunction, enjoining the two challenged provisions. (Dkt. 79 at 3.)

II. Standard of Review

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment “sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” A party moving for summary judgment must show “an absence of evidence to support the non-moving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Thereafter, a non-moving party responding to a properly made and supported summary judgment motion must set forth facts showing a genuine issue of material fact from

which a reasonable jury could return a verdict in its favor. *See Wolf v. City of Fitchburg*, 870 F.2d 1327, 1329 (7th Cir. 1989); *Posey v. Skyline Corp.*, 702 F.2d 102, 105 (7th Cir. 1983). An issue is genuine only if “the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

III. Argument

A. A municipality cannot be found liable under 42 U.S.C. Sec. 1983 for potentially enforcing a state law.

The City of Indianapolis is entitled to summary judgment because it cannot be held liable under 42 U.S.C. section 1983 for enforcing—or the prospective possibility of enforcing—Indiana’s Immigration Law. In analyzing a civil rights claim against a municipality, the first inquiry “under § 1983 is the question whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation.” *City of Canton v. Harris*, 489 U.S. 378, 385 (1989). A municipality can only be found liable under Section 1983 “where the municipality *itself* causes the constitutional violation at issue.” *Id.* (emphasis in original). Thus, a municipality cannot be liable for mere enforcement of a state law. *Bethesda Lutheran Homes & Servs. v. Leean*, 154 F.3d 716, 718 (7th Cir. 1998) (finding a county “cannot be held liable under section 1983 for acts that it did under the command of state or federal law”); *Surplus Store & Exchange, Inc. v. Delphi*, 928 F.2d 788, 791 (7th Cir. 1991).

In *Surplus Store & Exchange*, the Seventh Circuit explained why a local governmental unit’s mere adherence to a state law cannot support a *Monell* claim:

It is difficult to imagine a municipal policy more innocuous and constitutionally permissible, and whose causal connection to the alleged violation is more attenuated, than the “policy” of enforcing state law. If the language and standards from *Monell* are not to become a dead letter, such a “policy” simply cannot be sufficient to ground liability against a municipality for actions which they were compelled to perform under state law.

928 F.2d at 791-92.

Here, Plaintiffs are challenging the constitutionality of two sections of Indiana's new immigration law, which was passed as Indiana Senate Enrolled Act 590 and has subsequently been codified in Indiana Code sections 34-28-8.2-1 *et seq.* and 35-33-1-1. (Dkt. 1, ¶¶ 95-98.) Thus, the challenged statutory provisions—allegedly allowing arrests without probable cause and creating civil sanctions for the use of consular identification—are matter of state policy. *See Surplus Store & Exchange*, 928 F.2d at 791-92. Plaintiffs do not challenge any City ordinance or other City policy. (Dkt. 1.) As the Court enjoined the law prior to its effective date, the City took no action in furtherance of the state law. (Dkt. 79.) Because there is no allegation of an unconstitutional municipal policy, all Section 1983 claims against the City of Indianapolis—including requests for attorney fees—should be summarily denied.

IV. Conclusion

Because there is no evidence of an unconstitutional municipal policy or practice, Defendant City of Indianapolis respectfully requests that the Court conclude that the City is entitled to judgment on all claims as a matter of law.

Respectfully Submitted,

s/ Justin F. Roebel

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2011, a copy of the foregoing served by electronic filing. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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