

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Carlos Hilario Arias; Vicente Cisneros Abonce, both individually and as “next friend for his minor children, E.C.A., V.C.A., Jr., and J.C.A.; Dulce Maria Hernandez Arias; Rosa De Jesus Barrajas Arrellano; Graciela Barragan, both individually and as “next friend” for her minor child, J.A.P.; Jose Manuel Ramirez Calix; Alejandro Cartagena; William Ramos Castillo; Fabiola Cisneros; Rosa Nely Duarte; Esau Eduardo Estrada-Menendez; L.G., both individually and as “next friend” for her minor child, A.G.; Francis Garcia, both individually and as “next friend” for her minor child, O.B.; Teresa De Jesus Guerrero; Wenscelao Padilla Guzman; Troy Hastings, both individually and as “next friend” for his minor child, B.H.; Joceline Sarai Lopez, both individually and as “next friend” for her minor child, J.M.; Rosa Sorto Lopez; Ana Danira Maldonado-Hernandez; Iris Janet Maldonado, both individually and as “next friend” for her three minor children, P.M., B.M., and E.M.; Jenny Maldonado, both individually and as “next friend” for her minor child, S.D.M.; Ermencia Mendez; Audrey Mithun; Barbara Anahi Moreno; Javier Moreno; Josefa C. Montalvo, both individually and as “next friend” to her minor grandchild, B.M.; Albis Muñoz; Francisco Muñoz, both individually and as “next friend” for one minor child, I.M.; Juan Muñoz; Saomara Muñoz; Manuela De Jesus Pineda; Jaime Reyes, both individually and as “next friend” for his two minor children, D.R.B. and J.R.B.; Marlen Alonso Soriano; Alex Josue Sorto; Andres Mendendez Vega; Raul Veliz, Jr.; Digna Munoz Xiomara; Jorge Zelaya; Samuel Zelaya; and Jose Erasmo Montalvan, the Consul of Honduras, as “next friend” to Honduran Nationals,

Plaintiffs,¹

v.

**MEMORANDUM OPINION
AND ORDER**

¹ Although certain Plaintiffs have been dismissed from the case, the caption still reflects their status as Plaintiffs.

SCANNED

MAY 16 2008

U.S. DISTRICT COURT MPLS

Civ. No. 07-1959 ADM/JSM

United States Immigration and Customs Enforcement
Division of the Department of Homeland Security;
United States Department of Homeland Security;
Michael Chertoff, Secretary of Department of
Homeland Security; Julie L. Myers, Assistant
Secretary of Homeland Security for Immigration and
Customs Enforcement; John P. Torres, Director of
Detention and Removal Operations, Immigration and
Customs Enforcement; Scott Baniecke, St. Paul Field
Office Director for Detention and Removal Operation;
Peter Berg, Supervisory Detention & Deportation
Officer, Detention and Removal; John Doe ICE Agents
##1-30; James A. Kulset, Willmar Police Department
Chief of Police; John Doe Willmar Police Officers
##1-10; Reed Schmidt, Atwater Police Department
Chief of Police; Paul Schmidt, Atwater Police Officer;
Dan Hartog, Kandiyohi County Sheriff; John Doe
Kandiyohi County Sheriff's Deputies ##1-10; Jane Doe
Kandiyohi County Probation Official,

Defendants.

Daniel R. Shulman, Esq., Gray Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, MN, and
Gloria Contreras Edin, Esq., Centro Legal, Inc., St. Paul, MN, argued on behalf of Plaintiffs.

Gjon Juncaj, Esq., and Arthur Rizer, Esq., Trial Attorneys, Office of Immigration Litigation,
Civil Division, United States Department of Justice, Washington, D.C., argued on behalf of the
United States Immigration and Customs Enforcement Division of the Department of Homeland
Security, and on behalf of Michael Chertoff, Julie L. Myers, John P. Torres, Scott Baniecke,
Peter Berg, and Allen Gay, to the extent they are sued in their official capacities.

Lonnie F. Bryan, Esq., Assistant United States Attorney, Minneapolis, MN, argued on behalf of
Michael Chertoff, Julie L. Myers, John P. Torres, Scott Baniecke, Peter Berg, and Allen Gay, to
the extent they are sued in their individual capacities.

Jon K. Iverson, Esq., Iverson Reuvers, LLC, Bloomington, MN, argued on behalf of James A.
Kulset, John Doe Willmar Police Officers ##1-10, Reed Schmidt, and Paul Schmidt.

Scott T. Anderson, Esq., Ratwik, Roszak & Maloney, P.A., Minneapolis, MN, argued on behalf
of Dan Hartog, John Doe Kandiyohi Sheriff's Deputies ##1-10, and Jane Doe Kandiyohi County
Probation Official.

I. DISCUSSION

On April 23, 2008, the undersigned United States District Judge issued an Order [Docket No. 100] addressing: (1) Defendants United States Immigration and Customs Enforcement Division (“ICE”) of the Department of Homeland Security (“DHS”), Michael Chertoff (“Chertoff”), Julie L. Myers (“Myers”), John P. Torres (“Torres”), Scott Banieceke (“Banieceke”), Peter Berg (“Berg”), and Allen Gay’s (“Gay”) (ICE, Chertoff, Myers, Torres, Banieceke, Berg, and Gay in their official capacities are the “United States Defendants”) Motion to Dismiss [Docket No. 77] Counts I-IV, VI, and VII of Plaintiffs’ Amended Complaint [Docket No. 43]; (2) Defendants Myers, Torres, Banieceke, Berg, and Gay’s (Myers, Torres, Banieceke, Berg, and Gay in their individual capacities are the “Bivens Defendants”) Motion to Dismiss or For Summary Judgment [Docket No. 68] on Count V of the Amended Complaint; (3) Defendants James A. Kulset (“Kulset”), John Doe Willmar Police Officers ##1-10 (collectively, the “Willmar” Defendants), Reed Schmidt, and Paul Schmidt’s (collectively, the “Atwater Defendants”) (the Willmar Defendants and the Atwater Defendants collectively are the “City Defendants”) Motion for Dismissal or for Summary Judgment [Docket No. 55]; and (4) Defendants Dan Hartog (“Hartog”), John Doe Kandiyohi County Sheriff’s Deputies ##1-10, and Jane Doe Kandiyohi County Probation Officer’s (collectively, the “Kandiyohi County Defendants”) Motion to Dismiss or For Summary Judgment and their alternative Motion for Severance [Docket No. 60]. The April 23, 2008, Order, which is incorporated herein by reference, granted the United States Defendants’ Motion to Dismiss; granted in part and denied in part the Bivens Defendants, the City Defendants, and the Kandiyohi County Defendants’ Motions to Dismiss; and denied the Bivens Defendants, the City Defendants, and the Kandiyohi

County Defendants' Motions for Severance.

The Court postponed consideration of the alternative Motions for Summary Judgment so that Plaintiffs could file an affidavit under Federal Rule of Civil Procedure 56(f) explaining why they "cannot present facts essential to justify [their] opposition" to the alternative motions for summary judgment. On April 25, 2008, Plaintiffs' counsel filed an affidavit explaining that Plaintiffs need discovery to determine the circumstances of the alleged unconstitutional conduct that occurred when immigration and local law enforcement agents executed Operation Cross Check in Willmar and Atwater, Minnesota.

The Bivens Defendants, the City Defendants, and the County Defendants argue that affidavits in the record demonstrate the absence of any constitutional violations. They also argue they are entitled to qualified immunity. However, after reviewing Plaintiffs' Rule 56(f) affidavit, the Court finds that Plaintiffs have demonstrated a sufficient need for discovery to enable them to further specify and support their claims. Much of the relevant evidence is in the exclusive possession of Defendants. Additionally, the Court notes that "[q]ualified immunity is usually raised by a motion for summary judgment after a limited amount of discovery has been conducted to determine whether defendants acted objectively in a reasonable manner and whether a plaintiff's rights were clearly established at the time of the alleged deprivation." Whisman v. Rinehart, 119 F.3d 1303, 1309 (8th Cir. 1997). At this stage of the litigation, the Court denies the Bivens Defendants, the City Defendants, and the Kandiyohi County Defendants' alternative Motions for Summary Judgment.

II. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED that:

1. Defendants Myers, Torres, Baniecke, Berg, and Gay's alternative Motion for Summary Judgment [Docket No. 68] is **DENIED**;
2. Defendants Kulset, John Doe Willmar Police Officers ##1-10, Reed Schmidt, and Paul Schmidt's alternative Motion for Summary Judgment [Docket No. 55] is **DENIED**; and
3. Defendants Hartog, John Doe Kandiyohi County Sheriff's Deputies ##1-10, and Jane Doe Kandiyohi County Probation Officer's alternative Motion for Summary Judgment [Docket No. 60] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery

ANN D. MONTGOMERY

U.S. DISTRICT JUDGE

Dated: May 16, 2008