

County that related to the County's policy of honoring all ICE detainer requests, set forth in paragraphs 54-60 of Plaintiff's First Amended Complaint. Docket no. 36 at 18. The Court reasoned that a municipal policy of honoring all ICE detainer requests violated the Fourth Amendment because of the inevitability under such a policy that municipalities "would engage in warrantless detention of individuals who were not suspected of any criminal offense, but who became the subjects of ICE detainer requests" for reasons unrelated to probable cause to believe they had committed any criminal offense. Docket no. 36 at 14-16. The Court also specifically noted that "the 'collective knowledge doctrine' would not apply in this case because the record does not indicate any communication or cooperation between the ICE personnel who made the probable cause determination and the County officials who processed the detainer request." Docket no. 34 at 12-13 (citing *United States v. Powell*, 732 F.3d 361, 369 (5th Cir. 2013)).

Defendant Bexar County moved pursuant to Fed. R. Civ. P. 59(e) for reconsideration of the Court's Order granting summary judgment in Plaintiff's favor on his Section 1983 ICE detainer request claim, and the Court deferred a ruling on that motion pending further rulings from the United States Court of Appeals for the Fifth Circuit in a case presenting a similar issues regarding the constitutionality of a municipal policy of blanket compliance with ICE detainer requests, *City of El Cenizo v. Texas*, SA-17-CV404-OLG. Docket no. 53 at 1-2.

On March 13, 2018, the Fifth Circuit issued an opinion in the *El Cenizo* case that reversed this Court's issuance of a preliminary injunction prohibiting enforcement of a state law requiring that municipalities honor all ICE detainer requests. *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 173 (5th Cir. 2018).¹ The Fifth Circuit reversed this Court's holding that such a

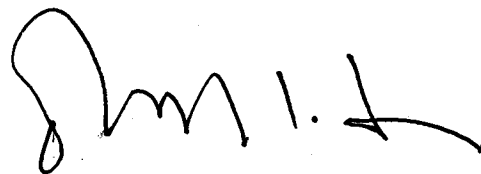
¹ The Fifth Circuit's initial opinion was withdrawn and a superseded opinion was issued with changes not pertinent to the issues in this case. *City of El Cenizo, Texas v. Texas*, 885 F.3d 332 (5th Cir. 2018), withdrawn from bound volume, opinion withdrawn and superseded, 890 F.3d 164 (5th Cir. 2018)

requirement would likely violate the Fourth Amendment, and specifically held that “[u]nder the collective-knowledge doctrine . . . the ICE officer’s knowledge [of the basis of removability for the purpose of issuing a detainer request] may be imputed to local officials even when those officials are unaware of the specific facts that establish probable cause of removability” and that “[c]ompliance with an ICE detainer thus constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself provides the required ‘communication between the arresting officer and an officer who has knowledge of all the necessary facts.’” *El Cenizo*, 890 F.3d at 187-88 (quoting *United States v. Ibarra*, 493 F.3d 526, 530 (5th Cir. 2007)). The Fifth Circuit has denied a petition for a rehearing *en banc*, no petition for certiorari has been filed, and the deadline for any request for further appellate review of the Fifth Circuit’s opinion has passed.

The Court finds that the parties should submit further briefing regarding the impact of the Fifth Circuit’s opinion in *El Cenizo* on the Court’s grant of summary judgment for Plaintiff.

It is therefore ORDERED that, no later than 14 days from the date of this Order, Defendant Bexar County shall submit an advisory regarding the impact on its Motion for Reconsideration (docket no. 41, 43) of the Fifth Circuit’s holdings in *El Cenizo*. Plaintiff shall file an advisory in response no later than 14 days from the date that Defendant’s advisory is filed. Defendant Bexar County shall file its advisory in reply, if any, no later than 7 days from the date that Plaintiff’s advisory is filed. The parties’ filings in response to this Order shall not exceed 10 pages in length.*

SIGNED this 23 day of August, 2018.



ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE