IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

JILMAR RAMOS-GOMEZ, Plaintiff, v. REBECCA ADDUCCI, DEREK KLIFMAN, MATTHEW LOPEZ, RICHARD C. GROLL, and JOHN DOE SUPERVISORY DETENTION AND DEPORTATION OFFICER Defendants.	))))))))))))	 2:19-cv-13475-LJM-MJH Judge Laurie J. Michelson Mag. Judge Michael J. Hluchaniuk **JURY TRIAL DEMANDED**

PLAINTIFF'S CONSOLIDATED RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS

Plaintiff responds to Defendants' motions to dismiss this case (ECF Nos. 20, 21, 22), and respectfully requests that the Court deny Defendants' motions because the intra-corporate conspiracy doctrine does not apply to conspiracies between federal and local officials from different entities, and because Plaintiff has plausibly alleged that Defendants, in concert with local authorities, acted to target and unlawfully detain individuals, including Plaintiff, based solely on the fact that those individuals are racial minorities.

Dated: May 27, 2020

Respectfully submitted,

BY: /s/ Megan Pierce
One of Plaintiff's Attorneys

PLAINTIFF'S BRIEF IN SUPPORT OF HIS RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS

ISSUES PRESENTED

1. Whether the intra-corporate conspiracy doctrine is inapplicable to a conspiracy between individuals from the federal government and two distinct local law enforcement agencies.
2. Whether the law was clearly established that acting to unlawfully detain an individual based on race or without probable cause both violate that individual's constitutional rights.
3. Whether Plaintiff has plausibly alleged a conspiracy claim under 42 U.S.C. § 1985(3) where he alleges that the conspirators acted together to cause Plaintiff's unlawful detention based on his race and despite knowing that he was a United States citizen through unequivocal evidence in their possession, and as part of a larger scheme to target individuals of color for immigration investigation and enforcement.
4. Whether 42 U.S.C. § 1986, like § 1985, applies to federal officials.

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INTRODUCTION

Defendants conspired with local law enforcement to target Plaintiff for immigration investigation and enforcement based on his Latino heritage. They placed him in immigration detention knowing that he was a United States citizen and military veteran, and as part of a larger, enduring agreement to target individuals of color. As a result of Defendants' actions, Plaintiff was wrongfully detained by ICE—an experience which had serious effects on Plaintiff's mental health and well-being. Defendants dispute these allegations, denying that they engaged in any agreement to racially profile Plaintiff. But such a dispute is not properly resolved at the motion to dismiss stage. Accepting Plaintiff's well-pleaded allegations as true, the law is clear that Defendants are liable for conspiring to violate his fundamental Constitutional rights. Plaintiff should be permitted to conduct discovery on his claims of egregious misconduct—at core, that federal agents trampled on the Constitutional rights of a United States citizen based on racial animus—and the parties' factual disputes are properly resolved at a later stage.

FACTUAL BACKGROUND

Plaintiff Jilmar Ramos-Gomez was born and raised in Grand Rapids, Michigan. ECF No. 14 PageID 141 ¶8. He is a United States citizen, with a United States passport, REAL ID compliant Michigan driver's license, and Social Security

Number. *Id.* PageID 143-144 ¶¶15, 21. He is also a veteran of the United States Marine Corps. *Id.* PageID 141 ¶8. Because of his combat experience in Afghanistan, Plaintiff suffers from post-traumatic stress disorder. *Id.*

On November 21, 2018, Plaintiff suffered a mental health episode related to his post-combat PTSD, and found himself on the roof of the Spectrum Hospital in Grand Rapids. *Id.* He was arrested by Grand Rapids Police Department ("GRPD") officers, in possession of his United States passport, his Marine Corps identification tags, and a REAL ID compliant Michigan driver's license that identified him as a veteran. *Id.* PageID 142-143 ¶¶14-15. He was held in the Kent County Jail while his criminal case was pending. *Id.* PageID 142 ¶14.

At the time of Plaintiff's arrest, GRPD had a Captain acting as an ICE liaison, named Curt VanderKooi. *Id.* PageID 151 ¶56. During the evening of November 21, a local news program aired a story about Plaintiff's arrest. *Id.* PageID 143 ¶16. The story included Plaintiff's name, which is recognizably Latino, and included his booking photo, in which Plaintiff is recognizably Latino. *Id.* VanderKooi saw the news while off duty and sent an email to Defendant Derek Klifman, asking: "Could you please check his status?" *Id.* PageID 143 ¶17. VanderKooi did not consult with anyone at GRPD regarding the status of the investigation before contacting ICE; he did so solely based on Plaintiff's race and ethnicity. *Id.*

This email exchange between VanderKooi and Defendant Klifman regarding Plaintiff's immigration status was not an isolated occurrence. *Id.* PageID 150-153 ¶¶53-70. Between 2017 and 2019, Defendants Klifman and Lopez, as well as other ICE agents from both the Detroit Field Office and the Grand Rapids sub-office, engaged in at least 87 email exchanges with VanderKooi. *Id.* PageID 150 ¶53. These emails inquired about the immigration status of various individuals, as well as efforts to investigate, arrest, or deport individuals. *Id.* PageID 151 ¶58. Notably, the subject of all or virtually all of these emails were Latinos or members of other ethnic minorities. *Id.* ¶54.

When corresponding with Defendant Klifman and other ICE agents, VanderKooi referred numerous individuals for immigration investigation and enforcement, some of whom were lawfully present, and all of whom were members of racial minorities. *Id.* ¶¶ 54, 58-59. There was no reason to suspect that these individuals were unlawfully present in the United States—they were targeted for immigration enforcement based on their race. *Id.* And as an expression of his contempt, VanderKooi used terms like "loco" or a "menace to our community" when referring to these individuals. *Id.* PageID 146-147, 152, ¶¶ 34, 61. Defendants Klifman and Lopez, along with other ICE agents, worked together with VanderKooi to share information about these individuals in order to target them for immigration investigation, detention, and deportation based on their race. *Id.*

PageID 152-153 ¶¶61-69. As part of this agreement, Defendants and VanderKooi racially profiled Plaintiff and targeted him for immigration enforcement. *Id.* PageID 143-145 ¶¶17-25.

Defendants and VanderKooi targeted Plaintiff despite knowledge of his status as a United States citizen and veteran. During the 48 hours following VanderKooi's email to Defendant Klifman, Defendants received repeated, unequivocal proof of Plaintiff's citizenship. For example, on November 22 a Kent County Jail arrest log was sent to ICE, including the Detroit Field Office and the Grand Rapids sub-office, stating that Plaintiff's place of birth was "USA." *Id.* PageID 143-144 ¶19. But just one day later Defendant Klifman forwarded Captain VanderKooi's message asking for a check of Plaintiff's status to Defendant Lopez. *Id.* PageID 144 ¶20.

Less than an hour after that, an ICE agent believed to be Defendant Klifman, Lopez or both, ran a query about Plaintiff in the CBP/DHS NNSV database. *Id.* ¶21. The query generated a report that clearly identified Plaintiff's place of birth as Michigan, listed his Social Security Number, and showed that he had a REAL ID compliant driver's license (which one cannot obtain unless one is a citizen or lawfully present). *Id.* That same day, a search was run by ICE on the eCISCOR database, maintained by U.S. Citizenship and Immigration Services (USCIS). *Id.* ¶22. The resulting report listed Plaintiff's social security number—but no alien

number—and a military address. *Id.* The report also indicated that Plaintiff had filed a Form I-130 petition for a relative and that the petition was approved. *Id.* Such petitions cannot be approved unless the filer is a citizen or has lawful status. *Id.*

Defendants ignored all of this unequivocal evidence of Plaintiff's United States citizenship and military service. *Id.* ¶23. Instead, Defendant Lopez went to the Kent County Jail and conducted an interview lasting less than two minutes with Plaintiff, whose mental competence had already been flagged for review by a magistrate judge. *Id.* After that interview, and less than two hours after searches in ICE databases confirmed that Plaintiff was a United States citizen, Defendants placed an immigration detainer on Plaintiff based on the false grounds that Plaintiff was a foreign national unlawfully present in the United States. *Id.* PageID 145 ¶24. Following issuance of the detainer, Defendant Lopez emailed Captain VanderKooi, stating that Plaintiff was a foreign national illegally in the United States and that he would be coming into ICE custody following his release from Kent. *Id.* ¶31. Defendant Lopez's email further thanked VanderKooi for the lead, and requested that VanderKooi let Defendants Lopez or Klifman know if he "ever ha[s] any other good leads." *Id.*

On December 14, 2018, Plaintiff was supposed to be released after spending three weeks in the Kent County Jail. *Id.* PageID 148 ¶37. During those three

weeks, Defendants and their coconspirators in the GRPD and Calhoun County Correctional Facility ("CCCF") received additional unequivocal evidence that Plaintiff was a United States citizen and military veteran, including Plaintiff's arrest report stating that he was arrested in possession of his passport and a pistol purchase permit, and an email from a prosecutor identifying Plaintiff as a veteran. *Id.* PageID 146-147 ¶34. Defendants ignored all of it, and chose to instead maintain the false detainer and place Plaintiff into removal proceedings. *Id.* PageID 147-148 ¶¶35-36. On the day of his release from Kent County, Plaintiff was taken into ICE custody and placed in ICE detention in the CCCF. *Id.* PageID 148 ¶¶37-39. At Calhoun County Correctional Facility, CCCF employees and officers, operating under contract with ICE, ridiculed and mistreated Plaintiff and other Latinos who were in their custody. *Id.* PageID 149 ¶45.

Upon learning that Plaintiff was in immigration detention, Plaintiff's attorney intervened to demand his release and provide additional documentation of his United States citizenship. *Id.* PageID 150 ¶48. The documentation only confirmed the information already in Defendants' possession that Plaintiff was a United States citizen. *Id.* ¶49. The documentation was reviewed by the Detroit Field Office's Acting Assistant Field Office Director, who subsequently ordered, from Detroit, that Plaintiff be released. *Id.* ¶50. Hours later, Plaintiff was released in a state of severe mental and emotional deterioration and shock. *Id.* ¶¶51-52.

ARGUMENT

I. Legal Standard: Defendants Must Accept the Facts Alleged and Take Inferences in Plaintiff's Favor

When considering a motion to dismiss, courts must "accept the facts in the light most favorable to the [plaintiff], taking all well-pleaded factual allegations as true." *Linkletter v. W. & S. Fin. Group, Inc.*, 851 F.3d 632, 637 (6th Cir. 2017)This includes "draw[ing] all reasonable inferences in favor of the plaintiff." *Courtright v. City of Battle Creek*, 839 F.3d 513, 518 (6th Cir. 2016). The court then determines whether the complaint alleges sufficient facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). 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." *Ohio Pub. Employees Ret. Sys. v. Fed. Home Loan Mortgage Corp.*, 830 F.3d 376, 383 (6th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 678).

"This standard 'does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct.]'" *Id.* (quoting *Twombly*, 550 U.S. at 556). The Sixth Circuit has held that "'[n]o heightened pleading requirement applies' to [the court's] review of a motion to dismiss based on qualified immunity." *Courtright,* 839 F.3d at 518 (6th Cir. 2016) (quoting *Heyne v.*

Metro. Nashville Pub. Sch., 655 F.3d 556, 562 (6th Cir. 2011)). In fact, "it is generally inappropriate for a district court to grant a 12(b)(6) motion to dismiss on the basis of qualified immunity." *Id.* (quoting *Wesley v. Campbell*, 779 F.3d 421, 433 (6th Cir. 2015)). The earliest point at which a case should be resolved on this basis is at summary judgment. *Id.*; *Hoskins v. Knox City*, No. CV 17-84-DLB-HAI, 2018 WL 1352163, at *19 (E.D. Ky. March 15, 2018) ("The Sixth Circuit . . . has clarified that only truly 'insubstantial claims against government officials should be resolved prior to broad discovery,' and has cautioned that 'it is generally inappropriate for a district court to grant a 12(b)(6) motion to dismiss on the basis of qualified immunity.'" (citations omitted)). And on appellate review, "[d]ismissals of complaints under the civil rights statutes are scrutinized with special care." *Scott v. Ambani*, 577 F.3d 642, 646 (6th Cir. 2009).

Defendants repeatedly violated the legal standards above, instead presenting the facts in the light most favorable to themselves, and omitting key allegations from the Amended Complaint. For example, according to Defendants, "Plaintiff alleges only that Officer Klifman forwarded an email from a local police officer and possibly performed one database search." ECF No. 21 PageID 336. In fact, the Complaint spells out in detail that Defendant Klifman engaged in continuous communication with VanderKooi and other co-conspirators over a period of years to racially profile individuals for immigration investigation and enforcement,

including Plaintiff, and that Defendant Klifman participated in the unlawful detention of Plaintiff based on Plaintiff's Latino heritage and with knowledge of Plaintiff's United States citizenship. On this basis alone, Defendants' motions to dismiss should be rejected.

II. Defendants Improperly Rely on Documents and Purported Facts Outside the Four Corners of Plaintiff's Complaint

Defendants additionally flout the legal standards applicable to a motion to dismiss by relying on extraneous documents purporting to refute Plaintiff's well-pleaded allegations.

When resolving a motion to dismiss, courts generally cannot look outside the four corners of the complaint. *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 706 (6th Cir. 2015). There are limited exceptions to this rule. *See Berry v. U.S. Dep't of Labor*, 832 F.3d 627, 637 (6th Cir. 2016). The Sixth Circuit has held that courts may consider documents in the record, but only if those documents are attached to the complaint or "referred to in the complaint and . . . central to the claims contained therein." *Rondigo, L.L.C. v. Township of Richmond*, 641 F.3d 673, 681 (6th Cir. 2011) (quoting *Bassett v. Nat'l Collegiate Athletic Assoc.*, 528 F.3d 426, 430 (6th Cir. 2008)). And "[w]hile 'documents "integral" to the complaint' may be relied upon, . . . '[i]t must also be clear that there exist no material disputed issues of fact regarding the relevance of the document.'" *Mediacom S. LLC v. BellSouth Telecomm.*, 672 F.3d 396, 400 (6th Cir. 2012)

(quoting *Weiss v. Inc. Vill. of Sag Harbor*, 762 F. Supp. 2d 560, 567 (E.D.N.Y. 2011) and *Faulkner v. Beer*, 463 F.3d 130, 134 (2d Cir. 2006)). Courts have also repeatedly held that they cannot consider affidavits submitted by defendants when deciding a Rule 12(b)(6) motion to dismiss. *See, e.g., Luis v. Zang*, 833 F.3d 619, 632 (6th Cir. 2016); *Smith v. Discover Bank*, No. 6:14-151-KKC, 2015 WL 1021423, at *3 (E.D. Ky. March 9, 2015); *Boomerang Recoveries, LLC v. Guy Carpenter & Co, LLC*, 182 F. Supp. 3d 212, 219 (E.D. Pa. 2016); *Friedl v. City of New York,* 210 F.3d 79, 83 (2d Cir. 2000); *Perks v. Town of Huntington*, 96 F. Supp. 2d 222, 226 (E.D.N.Y. 2000).

Here, Defendant Adducci attaches two declarations to her motion to dismiss—one authored by herself and one by Defendant Groll—and relies on the statements made therein to support her motion to dismiss. ECF Nos. 20-2 & 20-3. She also refers to information contained in an exhibit attached to Plaintiff's response to Defendants' motion to transfer venue. ECF No. 20 PageID 288 n.1. Defendant Adducci offers no explanation of why the Court is permitted to consider these documents and the information contained therein when resolving Defendants' motions to dismiss. The two affidavits are not referenced in the First Amended Complaint, and none of the three documents are central to Plaintiff's claims. *See* ECF No. 14. They also contain information which is disputed by Plaintiff, including the level of involvement Defendant Adducci and the Detroit

Field Office had in Plaintiff's detention, and whether there was probable cause for that detention. The three exhibits are therefore not properly before the Court at the motion to dismiss stage. *See Mediacom S. LLC*, 672 F.3d at 400.

III. The Intra-Corporate Conspiracy Doctrine Does Not Apply to a Conspiracy between Federal and Local Government Employees

The Defendants argue that Plaintiff's § 1985(3) claim should be dismissed based on the "intracorporate conspiracy" doctrine. The argument is a non-starter, and another example of Defendants refuting well-pleaded allegations and flouting the legal standards.

The intracorporate conspiracy doctrine stands for the principle that "an agreement between or among agents *of the same legal entity*, when the agents act in their official capacities, is not an unlawful conspiracy." *Ziglar v. Abbassi*, 137 S. Ct. 1843, 1867 (2017) (emphasis added). Because the conspiracy alleged in Plaintiff's complaint involves individuals from distinct legal entities, the intracorporate conspiracy doctrine simply does not apply. ECF No. 14 PageID 139 ¶2. Plaintiff's Amended Complaint is clear as day that the conspiracy was between Defendants *and employees of at least two different local agencies*. *See, e.g.*, ECF No. 14 PageID 139 ("Plaintiff's unlawful detention was the result of an agreement between members of the Grand Rapids Police Department (GRPD), Calhoun County Correctional Facility (CCCF), and United States Immigration and Customs Enforcement (ICE), including Defendants, to target individuals for immigration

enforcement action and detention based on their race, and specifically to target, detain, mistreat, and deport Plaintiff based on the fact that he is Latino—a racial minority."); *id.* ¶¶17-18, 31, 34-35, 38-40, 45, 47, 53, 55, 70. That this is the leading argument in each of Defendants' briefs betrays the lack of merit to their motions.

Defendant Lopez—and no other Defendant—notes that Plaintiff "may argue" that the conspiracy "extended beyond ICE." ECF No. 22 PageID 353.[1] If so, he argues, the intracorporate conspiracy doctrine should apply to a conspiracy

[1] Defendant Lopez asserts that if Plaintiff alleges the conspiracy extended beyond Defendants, then Plaintiff's Complaint should be dismissed for failure to join an indispensable party. *Id.* at 12 n.1 But Defendant Lopez provides no explanation of why his alleged GRPD and CCCF co-conspirators should be considered indispensable parties, an argument he makes in a single sentence in a footnote. His suggestion that the Complaint should be dismissed on this basis is conclusory and undeveloped, and therefore has been waived. *See McPherson v. Kelsey*, 125 F.3d 989, 995 (6th Cir. 1997); *Roche Diagnostics Corp. v. Shaya*, 427 F. Supp. 3d 905, 919-20 (E.D. Mich. 2019); *Stuckey v. Online Resources Corp.*, No. 2-08-cv-1188, 2009 WL 5030794, *10 (S.D. Ohio Dec. 11, 2009) (defendant waived argument by not developing it in his opening brief, and cannot develop the argument for first time in reply brief). Regardless, Defendant Lopez's assertion is unsupported by the law. *See Bergman v. United States*, 551 F. Supp. 407, 415 (W.D. Mich. 1982) (plaintiff alleges that federal officers conspired with local law enforcement officers and vigilantes in violation of § 1985(3), but brought suit only against the federal officers); *Jacobs v. Pa. Dep't of Corr*, No. 04-1366, 2011 WL 2295095, at * (W.D. Pa. June 7, 2011) ("In order for one member of a civil conspiracy to be liable, not all members of the conspiracy need be named defendants or joined as defendants."). The GRPD co-conspirators cannot, in any event, be joined because the Plaintiff has reached a settlement with the City of Grand Rapids that would bar such litigation. The willingness of some parties to accept responsibility cannot be used to preclude litigation against those who do not.

between ICE, GRPD, and CCCF officers because, even though the co-conspirators are from different organizations, they "worked closely on the subject matter of the alleged conspiracy." ECF No. 22 PageID 354. There is no authority to support such an expansion of the intracorporate conspiracy doctrine.

Lopez cites to *Ziglar*, but that case is of no help to him. In *Ziglar*, the Supreme Court discussed the reasons why the intracorporate conspiracy doctrine *might* apply to an agreement *solely between federal officials from the same department*. The Court noted that "as a practical and legal matter their acts are attributed to their principal," so it follows "that there has not been an agreement between two or more separate people"—an essential element of a civil conspiracy. *Ziglar*, 137 S. Ct. at 1867. These concerns simply do not apply here, where the conspiracy involves federal employees and employees of two local agencies, and the actions of the GRPD officers, the CCCF officers, and the Defendants are attributable to distinct and separate entities.[2]

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[2] Defendant Lopez's reliance on *Amadasu v. the Christ Hospital* is similarly misplaced. In *Amadasu*, the intracorporate conspiracy doctrine applied to defeat the plaintiff's conspiracy claim because the defendants were "all members of the same corporate structure under the umbrella of the Health Alliance," employees within that corporate structure, and an attorney acting as the agent for the collective entity. *Amadasu v. Christ Hosp.*, 2006 WL 2850524, at *3 (S.D. Ohio July 26, 2006); *Amadasu v. The Christ Hosp.*, 514 F.3d 504, 507 (6th Cir. 2008).

IV. Plaintiff's Right Not to Be Unlawfully Arrested and Detained Based on His Race Was Clearly Established Long Before 2018

Defendants argue that they are entitled to qualified immunity because, at the time of their alleged unlawful conduct, there was no clearly established law that § 1985(3) applies to federal officials. ECF No. 20 PageID 302; ECF No. 21 PageID 337; ECF No. 22 PageID 356. In other words, Defendants argue that they should not be held liable because it was not clear that they could be held liable, regardless of whether they knew that their conduct violated the Constitution. Such a perversion of qualified immunity is out of line with the purpose of the doctrine and contrary to law. In *Jackson v. City of Cleveland*, the Sixth Circuit made this clear: "Whether a defendant is protected by qualified immunity turns not on whether the defendant was on notice that his actions satisfied the elements of a particular cause of action, but instead on whether the defendant was on notice that his actions violated the laws of the United States." 925 F.3d 793, 826 (6th Cir. 2019). Other circuits have held the same. *See, e.g.*, *Owens v. Baltimore City State's Attorneys Office*, 767 F.3d 379, 400 (4th Cir. 2014) ("Ever since it first articulated the contours of modern qualified-immunity doctrine, the Supreme Court has emphasized that qualified immunity assesses the apparent unlawfulness of *conduct*." (emphasis in original)); *Fields v. Wharrie*, 740 F.3d 1107, 1114 (7th Cir.

2014) ("But when the question is whether to grant immunity to a public employee, the focus is on his conduct, not on whether that conduct gave rise to a tort in a particular case."); *Russo v. City of Bridgeport*, 479 F.3d 196, 212 (2d. Cir. 2007) ("the proper inquiry is whether the *right* itself—rather than its *source*—is clearly established." (emphasis in original)); *cf. Ziglar*, 137 S. Ct. at 1866 ("[T]he dispositive question is whether the violative nature of *particular* conduct is clearly established." (quoting *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015)) (emphasis in original)).

So the question is not whether the Defendants were on notice that they could be held liable for their conduct by way of § 1985(3), but rather whether they were on notice that unlawfully detaining Plaintiff based on race, or in the face of direct evidence refuting probable cause and based on material misrepresentations in the authorizing document, was unlawful. *See Jackson*, 925 F.3d at 826-27. There can be no doubt that it was. *See Farm Labor Org. Comm. v. Ohio State Highway Patrol*, 308 F.3d 523, 542 (6th Cir. 2020) (holding that "a reasonable officer at the time of the events in question would have known that the Constitution forbade embarking on an investigation of someone for a particular offense on the basis of that person's race" and therefore denying summary judgment based on qualified immunity for allegedly targeting plaintiffs for immigration-related questioning); *Whren v. United States*, 517 U.S. 806, 813 (1996) ("[T]he Constitution prohibits

selective enforcement of the law based on considerations such as race."); *Hebshi v. United States*, 12 F. Supp. 3d 1036, 1051-52 (E.D. Mich. 2014) (same); *Courtright*, 839 F.3d at 520 (6th Cir. 2016) ("The constitutional right to 'freedom from arrest in the absence of probable cause' is clearly established within our circuit." (quoting *Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2016))); *Parsons v. City of Pontiac*, 533 F.3d 492, 504 (6th Cir. 2008) (same); *cf. Sykes v. Anderson*, 625 F.3d 294, 306 (6th Cir. 2010) (an officer cannot establish probable cause by making material misrepresentations and omitting material information known to him); *Gardenhire v. Schubert*, 205 F.3d 303, 318 (6th Cir. 2000) (when determining if there is probable cause, an officer must consider the totality of the circumstances and cannot ignore exculpatory evidence). Thus, Defendants' qualified immunity argument is easily rejected.

Regardless, Defendants' argument that it was not clearly established that §1985(3) applies to federal officials is simply wrong. The Supreme Court in *Ziglar* found that the defendants were entitled to qualified immunity with regard to the plaintiffs' § 1985(3) claim because they were not on notice that conversations with colleagues within the same department to develop general and far-reaching policy could violate the law. 137 S. Ct. at 1867. There was no doubt that federal officials can be held liable under § 1985(3). *Id.* at 1867-69; *see also Cantu v. Moody*, 933

F.3d 414, 419 (5th Cir. 2019) ("And the Supreme Court recently assumed § 1985(3) applies to federal officers.").[3]

The vast majority of courts have similarly found that § 1985(3) applies to federal officials. *See Ogden v. United States*, 758 F.2d 1168, 1175 n.3. (7th Cir. 1985) (dismissing defendants' contention that federal officials cannot be held liable under § 1985(3) as "difficult to reconcile" with the Supreme Court's holding in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), and collecting cases holding that federal officials can be held liable under § 1985(3)); *Bergman v. United States*, 551 F. Supp. 407, 415 (W.D. Mich. 1982) (denying defendants' motion to dismiss and holding that § 1985(3) claim against federal officials should go to trial); *Iqbal v. Hasty*, 490 F.3d 143, 176-77 (2d Cir. 2007), abrogated on other grounds by *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) ("[T]he development of the case law since *Gregoire* has eroded any basis for interpreting that decision to render § 1985(3) inapplicable to federal officials."); *Hobson v. Wilson*, 737 F.2d 1, 19 (D.C. Cir. 1984) (holding that § 1985(3) applies to federal officials); *Gillespie v. Civiletti*,

[3] In *Ziglar*, the Supreme Court declined to decide whether the intracorporate conspiracy doctrine applies to conspiracies to violate civil rights. *Id.* at 1868 (noting courts are split on the issue). Instead, the Court held that whether or not the intracorporate conspiracy doctrine applies to § 1985(3), the law was not clearly established to put defendants on notice that officers from the *same department* within the federal government could be engaging in an unlawful conspiracy by conversing and agreeing with one another in an effort to make a general policy decision. *Id*. 1867-68.

629 F.2d 637, 641 (9th Cir. 1980) (same). The two cases relied on by Defendants do nothing to undermine the weight of authority. *cf. Cantu*, 933 F.3d at 419 (expressing skepticism that the Circuit's 1978 holding that § 1985(3) does not apply to federal officials is still good law, but noting that the court need not revisit the issue because the plaintiff did not allege that defendants acted with class-based animus); *Hill v. McMartin*, 432 F. Supp. 99 (E.D. Mich. 1977) (concluding that §§ 1985 and 1986 "do not extend to the Federal Government itself," but not considering whether §§ 1985 and 1986 apply to federal officials sued in their individual capacities).

Defendant Klifman also argues that it was "certainly not clearly established that forwarding a local law enforcement request to another ICE officer could potentially be the basis for liability under § 1985(3)." ECF No. 21 PageID 337. But again, this is not what Plaintiff has alleged. As discussed above, Plaintiff alleges that Defendant Klifman entered into an agreement with his fellow Defendants, Captain VanderKooi and other GRPD and CCCF officers to racially profile individuals, including Plaintiff, for immigration investigation and detention. ECF No. 14 PageID 150-153. And in furtherance of this agreement, Defendant Klifman caused Plaintiff to be unlawfully held in immigration detention, despite knowledge of his U.S. citizenship. *Id.* 144-147. Defendant Klifman was on notice that this behavior would violate Plaintiff's constitutional rights. *See Courtright*, 839 F.3d at

518 ("The test is whether, reading the complaint in the light most favorable to the plaintiff, it is plausible that an official's acts violated the plaintiff's clearly established constitutional right." (quoting *Heyne*, 655 F.3d at 563-63)).

V. Plaintiff Has Plausibly Pleaded that Defendants Participated in a Conspiracy to Target Plaintiff and Others Based on Race

Defendants Klifman and Defendant Adducci argue that Plaintiff has failed to assert sufficient factual allegations to state a plausible claim of liability under § 1985(3). These arguments fail to take the facts in Plaintiff's favor and are without merit.[4]

A. Plaintiff Has Plausibly Pleaded Defendant Klifman's Participation in the Unlawful Conspiracy

Defendant Klifman argues that Plaintiff has not plausibly alleged that he entered into a conspiracy. Specifically, Defendant Klifman argues that Plaintiff has failed to allege that Defendant Klifman ever communicated with Defendants Adducci and Groll, and that his only correspondence with Defendant Lopez was forwarding an email from VanderKooi. ECF No. 21 PageID 332. He further adds that if he is held liable here, "every ICE officer would be liable for conspiracy every day for simply performing the duties require of them by law." *Id.* PageID 338. This argument both misrepresents Plaintiff's allegations and misstates the relevant law.

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[4] Defendant Lopez does not argue that the factual allegations are insufficient to show that he was involved in an unlawful conspiracy.

"Rarely in a conspiracy case will there be direct evidence of an express agreement among all the conspirators to conspire, . . . circumstantial evidence may provide adequate proof of conspiracy." *Weberg v. Franks*, 229 F.3d 514, 528 (6th Cir. 2000) (quoting *Bell v. City of Milwaukee*, 746 F.2d 1205, 1255 (7th Cir. 1984)); *accord. Kanitz v. Cooke*, No. 03-CV-10180, 2008 WL 2218259, at *12 (E.D. Mich. March 5, 2008) (whether there was a meeting of the minds should not be taken from the jury "so long as there is a possibility that the jury can infer from the circumstances [that the alleged co-conspirators] had a meeting of the minds and thus reached an understanding to achieve the conspiracy's objectives" (quoting *Robinson v. Township of Waterford*, 883 F.2d 75, 79 (6th Cir. 1989))); *Tully v. Del Re*, No. 00 C 2829, 2002 WL 31175983, at *7 (N. D. Ill. Oct. 1, 2002) ("Conspiracies are by their nature carried out in secret, and thus direct proof of agreement is rare."). "Plaintiffs are not required to prove an express agreement among all the conspirators, and '[e]ach conspirator need not have known all of the details of the illegal plan or all of the participants involved." *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014) (quoting *Hooks v. Hooks*, 771 F.2d 935, 944 (6th Cir. 1985)).

In other words, Plaintiff is not required to plead a specific communication in which the co-conspirators agreed to the unlawful plan. He is required only to allege facts from which an unlawful agreement can plausibly be inferred. *See*

Williams v. City of Chicago, No. 08 C 6409, 2011 WL 133011, at *1 (N.D. Ill. Jan. 14, 2011) ("The existence of a mutual understanding can be inferred from evidence of joint conduct that is unlikely to have occurred absent the existence of a conspiratorial agreement." (quoting *Butler v. Corral*, No. 98 C 802, 1999 WL 1069246, at *5 (N.D. Ill. Nov. 22, 1999))).

And he has done so. Here, Plaintiff alleges that Defendant Klifman engaged in numerous email communications with VanderKooi in which individuals were targeted for investigation and immigration enforcement because of their race. ECF No. 14 PageID 150-153 ¶¶53-70. VanderKooi emailed Defendant Klifman about Plaintiff specifically, asking Defendant Klifman to investigate his status based on the Plaintiff's Latino heritage. *Id.* PageID 143 ¶17. Despite the fact that both ICE and GRPD were in possession of clear evidence of Plaintiff's United States citizenship, Defendant Klifman forwarded VanderKooi's email to Defendant Lopez, wrongfully identifying Plaintiff as a proper target for immigration enforcement. *Id.* PageID 143-144 ¶¶19-21. Defendant Klifman, Defendant Lopez, or both, ran searches on government databases that resulted in additional unequivocal evidence of Plaintiff's United States citizenship. *Id.* ¶¶21-22.

Despite this, Defendant Groll—a colleague of Defendants Lopez and Klifman—prepared and signed an immigration detainer for Plaintiff following their investigation. *Id.* PageID 145 ¶¶25-26. The detainer falsely stated that Plaintiff

was a citizen of Guatemala, even though Plaintiff has never set foot in the country. *Id.* ¶¶29-30. The Defendants also completed a report falsely stating that a review of the database search results showed that Plaintiff was unlawfully present. *Id.* PageID 146 ¶32. Defendant Lopez then emailed VanderKooi to say that Plaintiff was unlawfully present, and asking him to contact Defendants Lopez or Klifman with "any other good leads." *Id.* PageID 145 ¶31.[5]

Such evidence is sufficient to state a plausible claim that Defendant Klifman conspired with VanderKooi, Defendant Lopez, and others to target individuals—including Plaintiff—for immigration investigation and enforcement based on their race. *See Montano-Perez v. Durrett Cheese Sales, Inc.*, 666 F. Supp. 2d 894, 904 (6th Cir. 2009) (defendants cannot "cherry pick" certain language from plaintiff's complaint to contend that conspiracy allegations are conclusory, and ignore factual allegations that, taken as true, demonstrate a clear factual basis for the conspiracy claims); 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1233 (3d ed. 2004) ("The federal courts have recognized that the nature of conspiracies often makes it impossible for the plaintiff to provide details

[5] Despite Defendant Klifman's argument to the contrary, his alleged actions are not "routine functions of an ICE officer's job." ECF No. 21 PageID 336. An ICE officer's responsibilities do not include knowingly targeting a United States citizen and veteran for immigration enforcement.

at the pleading stage and that the pleader should be allowed to resort to the discovery process and not be subjected to a dismissal of his complaint.”).

Defendant Klifman’s reliance on *Mendoza v. U.S. Immigration and Customs Enforcement* is misplaced. In *Mendoza*, the Eight Circuit upheld summary judgment in favor of Defendants regarding the plaintiff’s § 1985(3) claim that local jail officials and ICE officers conspired to deprive the plaintiff of equal protection of the laws. 849 F.3d 408 at 421-22 (8th Cir. 2017). The court found that there was no evidence to show a meeting of the minds because there was no evidence that the defendant ICE officer knew any of his alleged co-conspirators at the jail and in fact had never spoken to anyone at the jail prior to being contacted regarding the plaintiff. *Id.* The defendant ICE officer had no access to the jail records and was given Mendoza’s date of birth and other information over the phone. *Id.* Moreover, the record showed that the defendant ICE officer reasonably confused the plaintiff with another individual who had a similar name, birth date, and social security number, and withdrew the detainer as soon as fingerprint records revealed his mistake. *Id.* at 414-15. Ultimately, the only evidence of a meeting of the minds between the defendant ICE officer and jail staff was that the jail participated in the State Criminal Alien Assistance Program (SCAAP), which provides partial reimbursement to local jails for the detention of immigration prisoners for the

federal government. *Id.* at 416, 422. The Court found this insufficient to establish a meeting of the minds to unlawfully detain the plaintiff. *Id.*

Mendoza, was of course decided on summary judgment ***after*** discovery, whereas here defendants seek to short-circuit that truth-finding process and require plaintiffs to provide evidence that they have not yet had the opportunity to obtain. *See Ramirez v. United States*, 998 F. Supp. 425, 430 (D. N.J 1998) (concluding that discovery is necessary to determine whether the plaintiff was arrested without probable cause because "the information upon which the agents based their decision to detain and ultimately arrest and imprison the plaintiff is obviously in their exclusive possession"). In any event, in contrast to *Mendoza*, Plaintiff here has alleged that Defendants and other ICE officials engaged in numerous email exchanges with VanderKooi and other GRPD officers over a period of years in which they targeted individuals belonging to racial minorities for immigration investigation and enforcement. ECF No. 14 PageID 150-153 ¶¶53-70. Additionally, Defendants acted to cause Plaintiff's detention despite having the results of their own database searches, as well records from GRPD and Kent County Jail, unequivocally showing Plaintiff's United States citizenship. *Id.* PageID 143-144 ¶¶19-23. Defendants did not take steps to release Plaintiff from immigration detention until the intervention of his attorney and after he suffered additional discrimination from staff while detained. *Id.* PageID 149-150 ¶¶47-52.

This is more than sufficient to plausibly allege a meeting of the minds and survive Defendant Klifman's motion to dismiss. *See Kanitz v. Cooke*, No. 03-cv-10180, 2008 WL 2218259, at *12 (concluding that a conspiracy could be inferred from the alleged co-conspirators actions, including the simple action of forwarding a video to hearing officers).

Defendant Klifman further argues that Plaintiff has not alleged that he acted with any class-based animus toward Plaintiff. He contends that the only fact suggesting that class-based animus motivated Plaintiff's unlawful arrest was the email from VanderKooi to Defendant Lopez and Officer Baylis, referring to Plaintiff as "Spectrum Helicopter Pad Loco." ECF No. 21 PageID 334. Defendant Klifman again ignores a substantial part of Plaintiff's allegations.

Plaintiff contends that Defendant Klifman engaged in numerous emails with VanderKooi in which the pair targeted individuals for investigation and immigration enforcement based on race, and shared information about those individuals. ECF No. 14 PageID 150-153 ¶¶53-70.[6] Defendant Klifman knew that

[6] Defendant Klifman argues that the fact that the majority of individuals investigated by ICE are individuals of color is simply a reflection of statistics because the majority of undocumented immigrants in the United States are from Central and South America. ECF No. 21 PageID 336. Among other failings, this argument ignores that Plaintiff has alleged that Defendant Klifman and his co-conspirators targeted individuals for immigration investigation and enforcement *because* of their race, and that individuals who were lawfully present, like Plaintiff were investigated and/or detained. *See, e.g.*, ECF No. 14 ¶¶ 17-18, 53-55, 58-59.

VanderKooi was referring individuals to him based on their race, and in the absence of any reasonable belief that those individuals were unlawfully present in the United States. *Id.* PageID 151-152 ¶¶58-61. When VanderKooi asked Defendant Klifman to look into Plaintiff's "status," Defendant Klifman participated in the investigation of Plaintiff and caused his unlawful detention, despite knowing that Plaintiff was a United States citizen. *Id.* PageID 143-144 ¶¶19-23. Once detained, Plaintiff and other Latinos were subjected to ridicule by CCCF officers, members of the alleged conspiracy. *Id.* PageID 149 ¶45. These facts are more than sufficient to create a plausible allegation that the actions of Defendant Klifman and his co-conspirators were based on animus. Defendant Klifman's arguments to the contrary are based on a misrepresentation of Plaintiff's allegations and an inapposite out-of-circuit case in the summary judgment, not motion to dismiss, context. *See Fracaro v. Priddy*, 514 F. Supp. 191 (M.D.N.C. 1981) (granting summary judgment for defendant's with regard to plaintiff's § 1985(3) claim because there was no evidence to show an agreement to fire plaintiff for an illegal reason, and where plaintiff could muster only one statement from one individual suggesting any animus).

B. Plaintiff Has Plausibly Pleaded Defendant Adducci's Participation in the Unlawful Conspiracy

Defendant Adducci argues that Plaintiff has not alleged that she entered into an agreement or took any actions in furtherance of the alleged conspiracy. ECF No.

21 PageID 330-332. Defendant Adducci also contends that Plaintiff has not alleged facts to show that she acted with class-based animus. These arguments fail to take Plaintiff's allegations as a whole and therefore lacks merit.

Plaintiff alleges that Defendant Adducci runs the Enforcement and Removal Operations (ERO) of the Detroit Field Office. ECF No. 14 PageID 145 ¶27. Part of her job responsibilities include overseeing the issuing of immigration detainers from the Office. *Id.* ¶28. For years, ICE agents from her office were engaging in repeated communications with GRPD officers, in which the participants identified individuals for investigation and immigration enforcement based on race, exchanging information about those individuals and otherwise working together to target them for immigration action. *Id.* PageID 150-153 ¶¶53-70. In 2017, before Plaintiff's unlawful arrest, at least one other person of color who was either a United States citizen or lawfully present in the United States was wrongfully arrested by ICE. *Id.* PageID 152 ¶64. When Plaintiff was first targeted for immigration action by VanderKooi and Defendant Klifman, information was sent to Defendant Adducci's Office unequivocally stating that Plaintiff was a United States citizen. *Id.* PageID 143, 147 ¶¶19, 35. Despite this evidence, an immigration detainer was issued from that Office. *Id.* PageID 145 ¶27. Considering these allegations together, Plaintiff has stated a plausible claim that Defendant Adducci joined the agreement to racially profile individuals, including Plaintiff, for

immigration enforcement, and took steps in furtherance of that action. *See Ohio Pub. Employees Ret. Sys.*, 830 F.3d at 383.[7]

Even if the Court determines that Plaintiff's § 1985(3) claim against Defendant Adducci should be dismissed, the § 1986 claim will survive. Defendant Adducci was in charge of all ERO operations out of the Detroit Field Office, including the issuing of detainers. Defendants and other ICE officers from her Field Office were engaging in continued racial profiling with GRPD officers for several years, and her office received explicit information identifying Plaintiff as a United States citizen weeks before he was actually taken into immigration custody. ECF No. 14 PageID 143, 147, 150-153 ¶¶19, 35, 53-70. Plaintiff has plausibly pleaded that Defendant Adducci was aware of the conspiracy and had the opportunity and ability to prevent it, but failed to do so. Plaintiff is therefore

[7] Defendant Adducci's reliance on *McFeester v. Jones*, is unpersuasive. In *McFeester*, the plaintiff alleged that police and corrections officers assaulted him and conspired to cover up the assault. 104 F. App'x 552, 553 (6th Cir. 2004). The court granted *summary judgment* against one of the corrections officers because there was no evidence that she knew of the assault or the plaintiff's injuries. There was no evidence that the corrections officer had any responsibility or involvement in the use-of-force report that was conducted relating to the incident, or in the care and supervision of Plaintiff. In contrast, Defendant Adducci is responsible for all detainers issued from her Office, which was sent direct evidence of Plaintiff's lawful status. Moreover, *McFeester* involved an isolated incident, while Plaintiff alleges that Defendants were engaged in communications with their co-conspirators for years in an effort to racially target numerous individuals for immigration investigation and enforcement.

entitled to discovery to obtain proof that is exclusively in her hands. *See Ramirez*, 998 F. Supp. at 430.

VI. Plaintiff's Section 1986 Claim Survives against Defendants

Defendants argue that § 1986 does not apply to federal officials. But for the reasons discussed above with regard to section § 1985, this contention is incorrect. *See Peck v. United States*, 470 F. Supp. 1003, 1011 (S.D.N.Y 1979) ("[A]ll the courts that have considered the problem in light of *Griffin* have held that [§§] 1985(3) and 1986 apply to federal officers acting under color of federal law."); *Bergman*, 565 F. Supp. at 1395 (applying § 1986 to federal officials).[8]

Defendants also appear to argue that if there is no viable § 1985 claim against a particular defendant, there can be no § 1986 claim against that defendant. Although § 1986 claims are derivative of § 1985 claims, a finding of liability against *a particular defendant* under § 1985 is not a prerequisite to establishing liability against that same individual under § 1986. A defendant can be held liable

[8] The cases cited by Defendants in support of their argument are unavailing. The district court's conclusion in *Stockheimer v. Underwood*, 428 F. Supp. 192 (1977), that § 1985(3) does not apply to federal officials was overruled by the Seventh Circuit. *See Jafree v. Barber*, 689 F.2d 640, 643 (7th Cir. 1982); *Ogden*, 758 F.2d at 1175 n.3. *Vincent v. Department of Health and Human Services* relies only on *Stockheimer* and also appears to address a claim against a federal official in his official, rather than individual capacity. 600 F. Supp. 110, 112 (D. Nev. 1984) ("Vincent sued HHS. HHS is an agency of the United States."). *Community Brotherhood of Lynn, Inc. v. Lynn Redevelopment Authority* involves a § 1985 claim against the Department of Housing and Urban Development, not a federal official in his individual capacity. 523 F. Supp. 779 (D. Mass. 1981).

under § 1986 as long as he or she failed to take action to prevent the actions of others to carry out a conspiracy under § 1985(3), while having the power to do so. *See Park v. City of Atlanta*, 120 F.3d 1157, 1160 (11th Cir. 1997) ("While it is true that § 1986 only provides a cause of action in the existence of a § 1985(3) conspiracy, the statue does not require that the Appellees' themselves participated in the conspiracy or shared in the discriminatory animus with members of the conspiracy."); *Tillman v. Burge*, 813 F. Supp. 3d 946, 987 (N.D. Ill. 2011) (same). To hold otherwise would both render § 1986 superfluous and depart from the plain text of the statute. *See* 42 U.S.C. § 1986 ("Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured").

CONCLUSION

For all of these reasons, Defendants' motions to dismiss should be denied.

Dated: May 27, 2020

Respectfully submitted,

BY: /s/ Megan Pierce
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*Eastern District of Michigan admission forthcoming.

CERTIFICATE OF SERVICE

I, Megan Pierce, an attorney, hereby certify that on May 27, 2020 I filed the foregoing document using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Megan Pierce
One of Plaintiff's Attorneys