NO. 13-4502

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROCÍO ANANI SAUCEDO-CARRILLO; ROSA CARRILLO-VASQUEZ

Plaintiffs – Appellants

v.

UNITED STATES OF AMERICA

Defendant – Appellee

Appeal from the United States District Court
for the Northern District of Ohio
Western Division

BRIEF OF APPELLEE

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JURISDICTIONAL STATEMENT

Plaintiffs-Appellants Rosa Carrillo-Vasquez, and Rocío Anani Saucedo-Carrillo[1] filed a Complaint against Defendant-Appellee United States of America on October 15, 2012, seeking relief under the Federal Tort Claims Act [hereinafter FTCA], 28 U.S.C. § 1346(b), for the common law torts of false arrest/false imprisonment, assault, deprivation of civil rights through intimidation, negligence, and intentional infliction of emotional distress. (R. 1 Compl. PageID # 1-9.) On October 21, 2013, the district court granted the United States' Motion for Summary Judgment. (R. 31 Mem. Op. & Order PageID # 412-23.) Judgment for the United States disposing of all the parties' claims was entered the same day. (R. 32 J. Entry PageID # 424.)

The basis for appellate jurisdiction is 28 U.S.C. § 1291, which confers jurisdiction of appeals from all decisions of the district courts. Plaintiffs filed a timely Notice of Appeal on December 19, 2013. (R. 33 Notice of Appeal PageID # 425-26.)

[1] Plaintiffs are also in a related case that this Court remanded to the district court when reversing the district court's dismissal on sovereign immunity grounds. Muñiz-Muñiz v. U. S. Border Patrol, 741 F.3d 668, 674 (6th Cir. 2013).

STATEMENT OF THE ISSUE

Whether the district court properly granted summary judgment for the United States on the Plaintiffs' claim of false imprisonment by a U.S. Border Patrol officer.[2]

[2] Plaintiffs have abandoned and waived all claims relating to assault, intentional infliction of emotional distress, negligent infliction of emotional distriess, and deprivation of civil rights through ethnic intimidation. (Appellant's Br. 11).

STATEMENT OF THE CASE

I. FACTS RELEVANT TO THE ISSUE

Carrillo-Vasquez and Saucedo-Carrillo are mother and daughter who entered the United States on or about January 13, 2001, through the port of entry in Laredo, Texas, as visitors with authorization to remain in the United States until July 12, 2001. (R. 28 Mot. for Summ. J. Attach. 3 Saucedo-Carrillo Dep. PageID # 302; Attach. 2 Carrillo-Vasquez Dep. PageID # 239-40, 273-74; Attach. 4 Shaver Decl. ¶ 4 PageID # 375.) Plaintiffs never obtained an extension of their visa and are currently in the United States without proper immigration documentation. (Id. Attach. 1 Shaver Dep. PageID # 211.).

On September 13, 2009, U.S. Border Patrol Agent Bradley Shaver while traveling on Route 250 near Norwalk, Ohio, observed an old model blue Chevrolet pickup truck, with an extended cab, parked at a pump at a Marathon gas station. (Id. PageID # 161.) The vehicle had "extra after-market ground effects . . . flares at the bottom . . . [and] very dark tinted windows. . . ." (Id.) The rear windows of the vehicle had large reflective silver scorpion decals facing each other with the words "Durango" on each side. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 314-15; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 246-47.)

The truck had flares on each side, blocking the view of the

undercarriage. (Id. Attach. 1 Shaver Dep. PageID # 161, 163-364; Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 313-15; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 246-47.) Based on his experience as a Border Patrol agent on the southern border, Agent Shaver knew Durango to be a state in Mexico that is known for drug trafficking. (Id. Attach. 1 Shaver Dep. PageID # 161; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 321; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 248.) He also noticed that the license plate of the vehicle was personalized with a unique name on it. (Id. Attach. 1 Shaver Dep. PageID # 161; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 315-16.) The appearance of the vehicle and the fact that it was close to the I-80/90 corridor caused Agent Shaver to believe that the vehicle could be involved in narcotic smuggling from the southern border. (Id. Attach. 1 Shaver Dep. PageID # 162, 182.)

Agent Shaver pulled into the gas station to get a "closer look at the vehicle." (Id. PageID # 162.) Agent Shaver observed a passenger in the front seat of the car, but did not see a driver. (Id.) As he pulled up, Saucedo-Carrillo exited the gas station and walked in front of Agent Shaver's car. (Id. PageID # 164; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 254-55.) As Saucedo-Carrillo walked by, Agent Shaver said hello (through an open car window) asked how she was doing, and

Saucedo-Carrillo responded that she was doing good. (Id. Attach. 1 Shaver Dep. PageID 164, 178; but see id. Attach. 2 Carrillo-Vasquez Dep. PageID # 261.) Saucedo-Carrillo continued to walk to the truck in question and began pumping gas. (Id. Attach. 1 Shaver Dep. PageID # 166, 217; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 330.)

While Saucedo-Carrillo was gassing up her truck, Agent Shaver asked her if she was from the area. (Id. Attach. 1 Shaver Dep. PageID # 166; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 260; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 334-37.) Saucedo-Carrillo responded that she was from Norwalk and had gone to Norwalk High School. (Id. Attach. 1 Shaver Dep. PageID # 166.) Agent Shaver then asked Saucedo-Carrillo if the car was registered to her. (Id.; Attach. 2 Carrillo-Vasquez Dep. PageID # 261-63; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 337-39.) Saucedo-Carrillo responded that she couldn't get the vehicle registered in her name so she had to register it in her brother's name, which aroused Agent Shaver's suspicion. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 316-19, 339; id. Attach. 1 Shaver Dep. PageID # 166, 218.) Based on Agent Shaver's experience it is common for persons present in the country illegally to have someone else register their vehicle. (Id. Attach. 1 Shaver Dep. PageID # 222.) During this

conversation, Saucedo-Carrillo continued putting gas in her truck. (Id. PageID # 176; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 334-46.) Agent Shaver's car was perpendicular to Saucedo-Carrillo's truck, but there was space to pull forward or reverse without striking Agent Shaver's car and for other vehicles to pass between the two cars. (Id. Attach. 1 Shaver Dep. PageID # 165, 179.) Saucedo-Carrillo testified that there was no room to pull forward, but she could have backed out. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 332-33; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 257-58.) Saucedo-Carrillo then leaned into the truck's window and spoke to the passenger, Carrillo-Vasquez, in Spanish. (Id. Attach. 1 Shaver Dep. PageID # 166.) Agent Shaver put his car in park, exited the vehicle, and stood at the front corner of the truck on the passenger side, speaking across the hood of the truck. (Id. PageID # 167-68, 178-80.) Agent Shaver, who is fluent in Spanish, greeted Carrillo-Vasquez in Spanish and asked if she spoke English. (Id. PageID 164, 167.) Carrillo-Vasquez responded no. (Id. PageID # 167.) Agent Shaver asked if she was from the area and Carrillo-Vasquez said no, originally they were from Mexico. (Id.) Agent Shaver asked Carrillo-Vasquez if she was a naturalized citizen, or had a resident or green card, all to which Carrillo-Vasquez answered no. (Id.) Agent Shaver

then asked how Carrillo-Vasquez had entered the country and she responded that she came with a passport and visa. (Id.) Agent Shaver asked for Carrillo-Vasquez' ID and she gave him a dental insurance card. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 345; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 261-62, 264.)

During the conversation, Plaintiffs stated that they entered together with a visa permitting them to stay in the country for ten years. (Id. Attach. 1 Shaver Dep. PageID # 167; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 336, 340, 345-46.) There is no visa that allows a person to visit in the country legally for ten years. (Id. Attach. 4 Shaver Decl. ¶ 5 PageID # 376.) Agent Shaver's suspicion regarding the Plaintiffs' immigration status continued to rise due to Plaintiffs' answers and at that point he obtained their names and dates of birth to contact the Detroit sector via radio for an immigration inquiry in the system. (Id. Attach. 1 Shaver Dep. PageID # 176.) Meanwhile, Saucedo-Carrillo continued gassing up her truck. (Id. PageID # 166, 176; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 345-46; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 264-65.)

Up to that point, Plaintiffs had freely answered Agent Shaver's questions. (Id. Attach. 1 Shaver Dep. PageID # 175-76). Once Agent Shaver obtained the Plaintiffs' dates of birth

and ran the immigration check, he believed the Plaintiffs were not free to leave. (Id. PageID # 174-75.) However, prior to this, Plaintiffs had the right to refuse to answer his questions. (Id.) Agent Shaver never told Plaintiffs they were not free to leave. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 348; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 269.) He never told Plaintiffs they had to answer his questions. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 348; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 270.)

While awaiting the Detroit sector's response on Plaintiffs' immigration status, Agent Shaver continued questioning Plaintiffs. (Id. Attach. 4 Shaver Decl. ¶ 6 PageID # 376.) Before Agent Shaver could obtain a response from the Detroit sector regarding Plaintiffs' immigration status, Saucedo-Carrillo admitted that she and her mother were present in the United States illegally. (Id. Attach. 1 Shaver Dep. PageID # 211; id. Attach. 4 Shaver Decl. ¶ 6 PageID # 376; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 340.) Agent Shaver then asked Saucedo-Carrillo to move her car away from the gas pump and into a parking spot at the side of the gas station. (Id. Attach. 4 Shaver Decl. ¶ 7 PageID # 376; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 341-42; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 265-66.) Agent Shaver moved his car next to the truck and

asked Plaintiffs to retrieve their personal articles from the truck, and placed them in the Border Patrol vehicle. (Id. Attach. 4 Shaver Decl. ¶ 7 PageID # 376.) Although Agent Shaver performed a cursory pat down for officer safety purposes, he did not handcuff Plaintiffs and allowed them to keep their personal articles in the backseat with them. Id.

Soon thereafter, another woman approached Agent Shaver's vehicle and asked Agent Shaver if she could help Plaintiffs. (Id. ¶ 8 PageID 376.) She said that she was Plaintiffs' friend, that Saucedo-Carrillo was seven months pregnant, and the pregnancy was high risk because she had two miscarriages in the past five years. (Id.) Unaware Saucedo-Carrillo was pregnant, Agent Shaver confirmed this fact with her. (Id.) Agent Shaver allowed the woman to approach his vehicle, rolled the window down so she could converse freely with Plaintiffs, and allowed Saucedo-Carrillo to turn over her car keys to her friend. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 343; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 266.) Agent Shaver then told the woman he was going to take Plaintiffs to the station for processing, and if Plaintiffs indeed did not have lawful status, he would contact Immigration and Customs Enforcement [hereinafter ICE] in an effort to ensure Plaintiffs would be released on their own recognizance. (Id. Attach. 4 Shaver Decl.

¶ 8 PageID # 376.)

After leaving the gas station, Saucedo-Carrillo said that her child was with a baby-sitter. (Id. ¶ 9 PageID # 377.) Agent Shaver told her that she could use her cell phone to make travel arrangements for her child. (Id. Attach. 1 Shaver Dep. PageID # 220.) Agent Shaver then contacted his supervisor, Agent Robert Bradley Simon, to inform him Saucedo-Carrillo was pregnant. (Id. Attach. 4 Shaver Decl. ¶ 9 PageID # 377.) Supervisory Agent Simon said he would start the paperwork and would contact ICE for authorization to release Saucedo-Carrillo on her own recognizance. (Id.) Soon thereafter, Saucedo-Carrillo informed Agent Shaver that her mother was a diabetic. (Id.) Although Carrillo-Vasquez admitted that she was not on medication for diabetes (though she stated that she was given medication when visiting her doctor), Agent Shaver contacted his supervisor, Agent Simon, a second time and requested that he also begin paperwork for Carrillo-Vasquez and contact ICE for authorization to release Carrillo-Vasquez on her own recognizance. (Id. Attach. 1 Shaver Dep. PageID # 220-21.)

At the station, Plaintiffs were processed and were found to have entered the United States with B-2 visitor visas that were issued in 2001, with an authorization to remain in the United States for a period not to exceed six months. (Id. PageID #

211; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 273-74.) Plaintiffs were therefore visa overstays, without legal status in the United States. (Id. Attach. 1 Shaver Dep. PageID # 211.) During the processing, Plaintiffs were processed in the lobby of the station, and were not placed in cells or handcuffed. (Id. PageID # 219-21.) Plaintiffs also received notices to appear for administrative proceedings before the Immigration Court and were released the same day on their own recognizance until their immigration hearings. (Id. PageID # 220-21.)

II. PROCEDURAL HISTORY

On August 30, 2011, the Plaintiffs submitted an administrative claim for damages to the Office of the Chief Counsel, U.S. Customs and Border Protection, and to the Office of the General Counsel, U.S. Department of Homeland Security. See 28 U.S.C. § 2675. (R. 1 Compl. PageID # 2.) In letters dated April 16, 2012, and April 19, 2012, U.S. Customs and Border Protection denied the administrative tort claims, respectively, of Saucedo-Carrillo and Carrillo-Vasquez. (Id.)

Plaintiffs filed a Complaint with the district court on October 15, 2012, alleging the common law torts of false arrest/false imprisonment, assault, deprivation of civil rights through intimidation, negligence, and intentional infliction of emotional distress. (R. 1 Compl. PageID # 1-9.) The United

States filed an Answer with affirmative defenses on January 25, 2013. (R. 16 Answer PageID # 53-61.)

On July 15, 2013, the United States filed a Motion for Summary Judgment. (R. 28 Mot. for Sum. J. PageID # 88-115.) Plaintiffs filed a Response in Opposition on August 12, 2013. (R. 29 Opp'n PageID # 378-402.)

On October 21, 2013, the district court granted the United States' Motion for Summary Judgment. (R. 31 Mem. Op. & Order PageID # 412-23; R. 32 J. Entry PageID # 424.)

The Plaintiffs filed a timely Notice of Appeal on December 19, 2013. (R. 33 Notice of Appeal PageID # 425-26.)

III. RULINGS PRESENTED FOR REVIEW.

The ruling presented for review is the district court's Judgment, supported by its Memorandum Opinion and Order, granting summary judgment for the United States in that it held when viewing all the evidence before it in the light most favorable to the nonmoving party, there existed no genuine issue of material fact and the moving party was entitled to judgment as a matter of law. (R. 31 Mem. Op. & Order PageID # 412-23; R. 32 J. Entry PageID # 424.)

SUMMARY OF THE ARGUMENT

The district court properly granted the United States' Motion for Summary Judgment on Plaintiffs' claim of false imprisonment.

First, Agent Shaver's actions were privileged as a federal law enforcement officer. A Border Patrol agent, as an immigration officer under 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.8(b), has authorization to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States. Second, Agent Shaver did not falsely imprison the Plaintiffs because Plaintiffs voluntarily arrived at the gas station to purchase gas and Plaintiffs were not physically restrained or prevented from leaving the gas station. Although Agent Shaver's vehicle blocked their forward route, they were able to reverse and back away from the gas pump. Also, Agent Shaver did not tell Plaintiffs they were not free to leave.

Further, there was no evidence Agent Shaver's questions were accompanied by force or threat; simply because his tone of voice was perceived as "harsh" does not equate to force or threat. False imprisonment may not be predicated on Plaintiffs' unfounded belief that they were restrained. Furthermore, Agent Shaver was permitted to ask questions without cause, including

asking for identification, because he did not condition Plaintiffs' departure on production of identification, or convey that compliance with his requests was required. Agent Shaver's questioning amounted to a consensual encounter with Plaintiffs. Even if the Court would not find the encounter consensual, Agent Shaver was permitted to ask questions based on his reasonable suspicions of first, the vehicle, and second, Plaintiffs' immigration status. This reasonable suspicion changed to probable cause during the conversation when Plaintiffs admitted their visa had expired. Finally, Plaintiffs were not confined in a limited area for an appreciable amount of time because according to Plaintiff Saucedo-Carrillo, she was gassing up the vehicle during the entire conversation before Agent Shaver placed Plaintiffs under administrative arrest and directed her to move her car.

Therefore, the district court properly determined there was no genuine issue of material fact and the United States was entitled to judgment as a matter of law.

ARGUMENT

I. STATEMENT OF THE STANDARD OF REVIEW

A district court's ruling on a motion for summary judgment is subject to de novo review. Milligan v. United States, 670 F.3d 686, 692 (6th Cir. 2012). Summary judgment is appropriate where, viewing all the evidence before the district court in the light most favorable to the nonmoving party, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Only factual disputes that might affect the outcome of the lawsuit under substantive law are "material." Id. To be "genuine," a dispute must involve evidence upon which a jury could find for the nonmoving party. Id. at 248-49.

Initially, the burden is upon the moving party to show "that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The burden then shifts to the nonmoving party to present significant probative evidence to defeat the motion. Anderson, 477 U.S. at 249-50.

To defeat a properly supported summary judgment motion, a

plaintiff "must show that a genuine issue of material fact exists as to each element of his prima facie case." Burns v. City of Columbus, 91 F.3d 836, 843 (6th Cir. 1996). "[A] nonmoving party may not avoid a properly supported motion for summary judgment by simply arguing that it relies solely or in part upon credibility considerations or subjective evidence. Instead, the nonmoving party must present affirmative evidence to defeat a properly supported motion for summary judgment." Cox v. Ky. Dep't of Transp., 53 F.3d 146, 150 (6th Cir. 1995).

Conclusory statements made in an affidavit or at deposition are not sufficient to withstand a motion for summary judgment. See Mitchell v. Toledo Hosp., 964 F.2d 577, 584-85 (6th Cir. 1992); Locke v. Commercial Union Ins. Co., 676 F.2d 205, 206 (6th Cir. 1982). Bald, self-serving allegations are insufficient to withstand a motion for summary judgment. Johnson v. McDonald & Co. Sec., Inc., 982 F. Supp. 483, 488 (N.D. Ohio 1997) (involving employment discrimination). Moreover, a trial court has discretion to determine whether the nonmoving party is pursuing an "implausible" claim. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). A court is neither required to give credence to implausible inferences and conclusions drawn by a plaintiff from the evidence, id. at 596-97, nor of a plaintiff's subjective,

conclusory, and unsupported interpretation of the evidence. Locke, 676 F.2d at 206.

Summary judgment is appropriate in this case in that the pleadings, depositions, declarations, transcripts, and exhibits, show that there is no genuine issue as to any material fact, and that the United States is entitled to judgment as a matter of law. See White v. Columbus Metro. Hous. Auth., 429 F.3d 232, 238 (6th Cir. 2005). On de novo review, an appellate court may affirm on any ground supported by the record, even if not relied upon by the district court. Andrews v. Ohio, 104 F.3d 803, 808 (6th Cir. 1997).

II. APPLICABLE LAW.

This case was brought pursuant to the FTCA, 28 U.S.C. §§ 1346(b), 2671-2680. The FTCA requires that claims in tort against the United States[3] be determined by the laws of the state in which the alleged tort occurred.[4] Sheridan v. United States, 487 U.S. 392, 399 (1988).

The United States is liable in damages to an injured party

[3] The United States is the only proper defendant in a FTCA case. 28 U.S.C. § 2679(b)(1).

[4] However, the Federal Rules of Civil Procedure, see United States v. Yellow Cab Co., 340 U.S. 543, 553 n.9 (1951) and the Federal Rules of Evidence are applicable to claims under the FTCA. In re Agent Orange Prod. Liab. Litig., 611 F. Supp. 1221, 1222-23 (E.D.N.Y. 1985), aff'd, 818 F.2d 204 (2d Cir. 1987).

for injuries arising from a negligent act by its employees if a private person would be liable under the same circumstances in accordance with the law of the state where the act occurred. 28 U.S.C. §§ 1346(b), 2674; United States v. Olson, 546 U.S. 43, 46 (2005). The incident in question having taken place in Norwalk, Ohio (R. 1 Compl. ¶ 9 PageID # 2) must be decided in accordance with Ohio tort law.

III. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE FALSE IMPRISONMENT CLAIM.

A. Agent Shaver's Actions as a Law Enforcement Officer Were Privileged.

In accordance with 8 U.S.C. § 1357(a)(1),(2), Agent Shaver, as a law enforcement officer, was granted the privilege to question and arrest Plaintiffs.

> [F]ederal law grants law enforcement officials special privileges that allow law enforcement officers to do their jobs without violating civil and criminal sanctions that would otherwise apply. These privileges authorize federal law enforcement officers, acting within lawful bounds applicable to such officers, to execute search warrants on private property without committing the tort of trespass, to make valid arrests without committing the tort of false arrest and to use reasonable force in arresting suspects without committing the tort of battery. These same acts if done by private parties would often not be privileged from civil tort liability.

Tekle v. United States, 511 F.3d 839, 857 (9th Cir. 2007), (Fisher, J., concurring).

Federal circuit courts have found that the Government may

invoke law enforcement privileges when defending against an FTCA claim. Villafranca v. United States, 587 F.3d 257 (5th Cir. 2009).

> The distinction turns on the qualitative difference between an immunity and a privilege. Unlike an immunity, which affects liability but does not diminish the tort, a privilege protects the actor from a finding of tortious conduct.
>
> Put another way, an immunity insulates an individual from liability for public policy reasons, even when that individual has engaged in conduct that would otherwise be actionable. By contrast, a privilege recognizes that, because of the nature of their duties, some public officers may perform certain acts that might otherwise be tortious if committed by someone not having those duties.

Id. at 263 (quoting Garza v. United States, 881 F. Supp. 1103, 1106 (S.D. Tex. 1995)(quotation marks and citations omitted)).

The Ohio Revised Code defines "privilege" as: "an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity." Ohio Rev. Code § 2901.01(A)(12) ; State v. Steele, 138 Ohio St. 3d 1, 3, 3 N.E.3d 135 (2013). The Supreme Court of Ohio recently addressed the privilege issue in State v. Steele. In Steele, the Court discussed the right of a law enforcement officer to arrest when "there are facts and circumstances within the police officer's knowledge that are sufficient to warrant a reasonable belief

that the suspect is committing or has committed an offense." Steele, 138 Ohio St. 3d at 7 (citations omitted). The court analyzed:

> Under normal circumstances, the consequence of an illegal arrest is that evidence obtained therefrom is inadmissible at trial. However, a police officer is not automatically stripped of statutory privilege and exposed to criminal liability if a court finds in hindsight that the officer made an arrest on less than probable cause. When looking at a police officer's liability in a civil context, privilege is lost when "a reasonable official would understand that what he is doing violates [a clearly established] right."

Id. (citations omitted) (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)).

In the case at hand, Agent Shaver was acting as a law enforcement officer under the authority of 8 U.S.C. § 1357(a)(1),(2). When Agent Shaver detained Plaintiffs, and placed them under administrative arrest he had probable cause based on their admission that they had over-stayed their visa. See 8 U.S.C. § 1357(a).

The standards for enforcement activities under 8 C.F.R. § 287.8 include the following with regard to immigration officers questioning:

> (b) Interrogation and detention not amounting to arrest.
>
> (1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigra-

> tion officer does not restrain the freedom of an individual, not under arrest, to walk away.
>
> (2) If the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is ... an alien illegally in the United States, the immigration officer may briefly detain the person for questioning.
>
> (3) Information obtained from this questioning may provide the basis for a subsequent arrest, which must be effected only by a designated immigration officer, ...

8 C.F.R. § 287.8(b). An immigration officer acting without a warrant has authorization to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States, and to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest. 8 U.S.C. § 1357(a). Although the Sixth Circuit has not yet made such a specific ruling, the Eighth Circuit has noted, "[b]ecause the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause." United States v. Quintana, 623 F.3d 1237, 1239 (8th Cir. 2010).

The administrative detention of Plaintiffs did not occur until after Plaintiffs told Agent Shaver they entered the United States on a ten-year visa. (R. 28 Mot. for Summ. J. Attach. 1

Shaver Dep. PageID # 167-68.) Agent Shaver's suspicion was first aroused when Plaintiff Saucedo-Carrillo told him that she couldn't get the vehicle registered in her own name, it was registered in her brother's name. (Id. PageID # 166.) Based on his knowledge and experience, Agent Shaver knew that it is common to have a relative who is legally present in the country register a vehicle. (Id. PageID # 222.) Upon futher questioning, Plaintiff Carrillo-Vasquez told Agent Shaver that she did not have a resident or green card and that they both entered the country with a visa "permitting them to stay here for ten years." (Id. PageID # 167.) Based on his knowledge and experience, Agent Shaver knew there is no visa in existence that allows a person to stay in the country for ten years. (Id. Attach. 4 Shaver Decl. ¶ 5 PageID # 376.) This information created a reasonable suspicion that Plaintiffs were in the country illegally. Upon further questioning, Plaintiffs admitted that they were in the country illegally. (Id. Attach. 1 Shaver Dep. PageID # 179-80; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 348-49; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 270.) At this point, Agent Shaver had probable cause to detain Plaintiffs, and thus the detention was privileged. See 8 U.S.C. § 1357(a); Quintana, 623 F.3d at 1241 (finding Border Patrol agent had probable cause to believe defendant was an alien

subject to deportation, as required to make a warrant-less administrative arrest under 8 U.S.C. § 1357(a)). Agent Shaver then instructed Plaintiffs to move the truck and to get in the backseat of his vehicle.

Once Agent Shaver arrived at the station, the Plaintiffs were processed and were found to have entered the United States with B-2 visitor visas that were issued in 2001, with an authorization to remain in the United States for six months only. (R. 28 Mot. for Summ. J. Attach. 1 Shaver Dep. PageID # 211; Attach. 2 Carrillo-Vasquez Dep. PageID # 271-, 273-74.) Plaintiffs were therefore visa overstays, without legal status in the United States. (Id. Attach. 1 Shaver Dep. PageID # 211.) During the processing, Plaintiffs were processed in the lobby of the station, and were not placed in cells or handcuffed. (Id. PageID # 219-21.) Plaintiffs received Notices to Appear for administrative proceedings before the immigration court and were released the same day on their own recognizance. (Id. PageID # 220-21; id. Attach. 2 Carrillo-Vasquez Dep. PageID # 271-72.) This administrative process did not constitute false imprisonment, because it was privileged conduct under 8 U.S.C. § 1357(a).

There is nothing in Plaintiffs' testimony that indicates that Agent Shaver should have understood his actions violated a

clearly established right. Agent Shaver carried out his official duties and performed them in a reasonable manner without any reckless or offensive behavior. Therefore, the United States was entitled to assert the law enforcement privilege for Agent Shaver's actions and Plaintiffs' claims of false imprisonment must fail.

B. Agent Shaver Did Not Falsely Imprison the Plaintiffs.

Plaintiffs maintain that a jury could find that Agent Shaver's conduct constituted false imprisonment. (Appellants' Br. 25.) As this Court has stated, "[t]o prevail on a claim for false arrest/imprisonment [under Ohio law], the plaintiff must demonstrate: '(1) the intentional detention of the person and (2) the unlawfulness of the detention.'" Radvansky v. City of Omsted Falls, 395 F.3d 291, 315 (6th Cir. 2005) (quoting Hodges v. Meijer, Inc., 717 N.E.2d 806, 809 (Ohio Ct. App. 1998). In Ohio, to prevail on a false imprisonment claim there must be a detention that is intentionally unlawful. Logsdon v. Hains, 492 F.3d 334, 347 (6th Cir. 2007) (citing Evans v. Smith, 646 N.E.2d 217, 225 (Ohio Ct. App. 1994). A false imprisonment claim "requires proof that one was intentionally confined within a limited area, for any appreciable time, against his will and without lawful jurisdiction." Evans, 646 N.E.2d at 224 (emphasis added) (citing Feliciano v. Kreiger, 362 N.E.2d 646,

647 (Ohio 1977)); accord Bennett v. Ohio Dep't of Rehab. & Corr., 573 N.E.2d 633, 636 (Ohio 1991); Thyen v. McKee, 584 N.E.2d 23, 25 (Ohio Ct. App. 1990).

The "'essence of the tort consists in depriving the plaintiff of his liberty without lawful justification; and the good intention of the defendant does not excuse, nor does his evil intention create, the tort.'" Radvansky, 395 F.3d at 315 (quoting Rogers v. Barbera, 164 N.E.2d 162, 164 (Ohio 1960)). Therefore, an "arrest based on probable cause is a lawful detention and, thereby, serves to defeat a false arrest/imprisonment claim." Id.

Border Patrol agents have the authority to question persons as to their right to be in the United States and to arrest persons who are in the United States illegally. 8 U.S.C. § 1357(a)(1),(2). This arrest can lawfully take place without a warrant. Id. Further, consensual encounters are appropriate police actions. 8 U.S.C. § 1357(a); United States v. Mendenhall, 446 U.S. 544, 554-55 (1980); see generally, United States v. Smith, 594 F.3d 530, 533 (6th Cir. 2010). Agent Shaver acted on his prior experience when he initially saw the truck and stopped to investigate further. (R. 28 Mot. for Summ. J. Attach. 1 Shaver Dep. PageID # 161-64, 182.) See United States v. Perkins, 177 F. Supp. 2d 570, 572 (W.D. Tex. 2001),

aff'd, 352 F.3d 198 (5th Cir. 2003).[5] Later, when he saw Saucedo-Carrillo approach the truck, she began pumping gas and he asked her questions, including who owned the truck. (R. 28 Mot. for Summ. J. Attach. 1 Shaver Dep. PageID # 166, 217.) When her answers aroused his suspicion regarding her immigration status, Agent Shaver took appropriate lawful steps, under 8 U.S.C. § 1357(a), and questioned both Plaintiffs further. (Id. PageID # 223.) Meanwhile, Saucedo-Carrillo continued about her business, pumping gas into her truck.

Agent Shaver then lawfully detained both Plaintiffs after they admitted they were in the country illegally, because their visas had expired. (Id. PageID # 167-68, 211; id. Attach. 4 Shaver Decl. ¶¶ 5-6 PageID # 376.)

Plaintiffs' false imprisonment claim properly failed to survive the motion for summary judgment because it was asserted against Agent Shaver for privileged actions taken in the course of his law enforcement duties. Burr v. Burns, 439 F. Supp. 2d 779, 790 (S.D. Ohio 2006); Perkins, 177 F. Supp. 2d at 580 n.7 .

Nevertheless, Plaintiffs contend that a jury could have concluded they were not free to leave without being specifically instructed, depending upon several factors. The United States

[5] Border Patrol agents are cross-designated as drug enforcement officers to detect drug and alien smuggling.

addresses each of these factors in turn below.

1. Plaintiffs Were Not Intentionally Confined.

In considering the United States' Motion for Summary Judgment, the district court construed the facts in favor of the Plaintiffs. It found that even if Agent Shaver parked directly in front of Plaintiffs' truck and began questioning in an aggressive manner, the Plaintiffs were not detained at the outset of the encounter. (R. 31 Mem. Op. & Order PageID # 417.) First, it was undisputed that Agent Shaver never told Plaintiffs they were not allowed to leave. Plaintiffs were initially free to continue their business, which Saucedo-Carrillo did as she continued to fill the gas tank. (R. 28 Mot. for Summ. J. Attach. 2 Carrillo-Vasquez Dep. PageID # 264-65; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 345-46.)

Second, even if Agent Shaver's vehicle was parked directly in front of the truck, Plaintiff Saucedo-Carrillo admitted she had sufficient room to back up and leave. (Id.) The district court cited Williams v. Franklin Cnty. Bd. of Comm'rs, 763 N.E.2d 676 (Ohio Ct. App. 2001) (R. 31 Mem. Op. & Order, PageID # 417-18), in which the court held that the plaintiff failed to establish the confinement element of her false imprisonment claim because "there was no evidence ... that she would have been prevented [from leaving] had she tried," noting "there was

at least one additional means of egress. . . .” Williams, 763 N.E.2d at 692-93.

In this case, Plaintiffs had an additional means of egress; reversing their car and leaving. Plaintiff Saucedo-Carrillo continued to gas her vehicle and she was in possession of her keys during the questioning. Plaintiffs arrived at the gas station voluntarily and were free to leave. “‘There is no confinement when a person voluntarily appears at a premises[s] and is free to leave.’” Taylor v. Streicher, 465 F. App’x 414, 424 (6th Cir. 2012),(quoting King v. Aultman Health Found., No. 2009-CA-00116, 2009 WL 4309331, at *5 (Ohio Ct. App. Nov. 30, 2009)). Plaintiffs cannot offer proof of confinement, therefore their claim fails as a matter of law. Ripley v. Montgomery, No. 07AP-6, 2007 WL 4564572, at *9 (Ohio Ct. App. Dec. 31, 2007) (citing Witcher v. Fairlawn, 680 N.E.2d 713, 715 (Ohio Ct. App. 1996)).

Plaintiffs’ belief that they were confined by the placement of Agent Shaver’s vehicle is not determinative. See Sharp v. Cleveland Clinic, 891 N.E.2d 809, 814 (Ohio Ct. App. 2008) (false imprisonment may not be predicated on a person’s unfounded belief that she was restrained). The Court in Sharp defined confinement as “‘total detention or restraint upon [the plaintiffs’] freedom of locomotion, imposed by force or

threats.'" Id. at 813 (quoting Davis v. Peterson, No. 16883, 1995 WL 134796, at *2 (Ohio Ct. App. Mar. 29, 1995) (quoting Toledo v. Lowenberg, 131 N.E.2d 682, 684 (Ohio Ct. App. 1955)). Plaintiffs in this case did not have their "freedom of locomotion" restricted, as demonstrated by the fact that Plaintiff Saucedo-Carrillo continued to gas up her vehicle. (R. 28 Mot. for Summ. J. Attach. 2 Carrillo-Vasquez Dep. PageID # 264-65; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 345-46.) Further, Agent Shaver did not make any threats or show of force which would have constituted confinement. Plaintiffs indicated at deposition that Agent Shaver did not touch them but only used an aggressive tone of voice. (Id. Attach. 2 Carrillo-Vasquez Dep. PageID #269; id. Attach. 3 Saucedo-Carrillo Dep. PageID # 348.) An aggressive tone of voice does not amount to a show of force or threat.

The district court held the fact Agent Shaver asked questions did not require a conclusion that Plaintiffs were restrained. (R. 31 Mem. Op. & Order PageID # 418.) In Ferraro v. Phar-Mor, Inc., No. 98CA48, 2000 WL 459686, at *4 (Ohio Ct. App. 2000), on a false imprisonment claim, the appellant testified there was no threat of physical force when the store manager questioned her. She said, "[i]t's just the way this one manager, the way he treated me, the way he made me feel that I

just--the way he went about it . . .” Id. The court noted its previous holding that “mere submission to verbal direction, unaccompanied by force or threat, cannot constitute confinement or detention.” Id. It then upheld the grant of summary judgment because the appellant did not demonstrate any sort of confinement by law. Id. at *5. Similarly, Plaintiffs’ contention that Agent Shaver used an “aggressive” tone while questioning or otherwise made her feel uncomfortable, does not demonstrate they were confined or falsely imprisoned.

Moreover, “‘false imprisonment may not be predicated on a person’s unfounded belief that he was restrained.’” Kinney v. Ohio Dep’t of Admin. Servs., No. 88AP-27, 1988 WL 92433, at *2 (Ohio Ct. App. Aug. 30, 1988) (quoting Lester v. Albers Super Mkts., Inc., 114 N.E.2d 529, 532 (Ohio Ct. App. 1952)). Here, the record is devoid of evidence that Agent Shaver’s questions were “accompanied by force or threat.” The court held that the Plaintiffs’ testimony alleging that Agent Shaver’s tone was “harsh” does not equate to “force or threat.” (R. 31 Mem. Op. & Order PageID # 418.)

Plaintiffs also argue that their situation is different because Agent Shaver “detained Appellants at the gas station by using his vehicle to block them from moving their vehicle forward.” (Appellants’ Br. 28.) The district court wrote, “[i]n

fact, it is common for cars to park immediately in front of other cars at gas station pumps, requiring a car to reverse to depart." The court held that "such instances do not constitute confinement." (R. 31 Mem. Op. & Order PageID # 417-18).

The Sixth Circuit has discussed the location or proximity of officers in a Fourth Amendment context related to seizures and consensual encounters, in United States v. Smith, 594 F.3d 530 (6th Cir. 2010), a case cited in Plaintiffs' Brief. (Appellants' Br. 31.) In Smith, officers were responding to a 911 call and encountered the defendant leaving the building. Smith, 594 F.3d at 533. The court held that the interaction between defendant and officers began as a consensual encounter but developed into a Terry (see Terry v. Ohio, 392 U.S. 1, 9 (1968)) stop when officers ordered defendant to stop. Id. at 535. In making its decision, the Smith court discussed the U.S. Supreme Court decision in United States v. Drayton, 536 U.S. 194 (2002), stating:

> As Drayton shows, officers can ask questions without reasonable suspicion. Drayton, 536 U.S. at 197-99, 122 S.Ct. 2105. Furthermore, they can position themselves immediately beside and in front of a suspect and even reach across a suspect, provided they leave a way out. Id. at 197-99, 201-02, 122 S.Ct. 2105. Thus, the fact that uniformed police officers here were asking Smith questions while surrounding him on both sides, in close physical proximity, with another officer at some distance in front of him, did not make the encounter non-consensual.

Smith, 594 F.3d at 538. As in Drayton and Smith, Agent Shaver was free to ask questions without reasonable suspicion. Agent Shaver was also free to position himself immediately in front of Plaintiffs' vehicle, because he left a way out for them to leave by backing up. These facts did not make the encounter non-consensual nor did the fact that Agent Shaver's vehicle was parked in front of Plaintiffs' car consitute "confinement" under Ohio law because they admittedly could have backed up their vehicle to leave.

Plaintiffs cite Mendenhall, 446 U.S. at 550, as support for the idea that an officer's tone of voice can cause a person to be "detained." However, in Mendenhall, the Court held "[w]e adhere to the view that a person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained." Id. at 553. In the case at hand, Plaintiffs' freedom of movement was in no way restrained. In fact, Plaintiff Saucedo-Carrillo continued to gas up her vehicle during the entire consensual encounter.

> Q: While the Border Patrol agent was talking to your mother, are you testifying that you went back and continued filling up the truck with gas?
>
> A: I was always loading the gas into the truck.
>
> Q: When he was talking to you, you were always loading gas into the truck?

A: Yes, I was just acting normally.

(R. 28 Mot. for Summ. J. Attach. 3 Saucedo-Carrillo Dep. PageID # 346.) This cannot be characterized as a detention when Plaintiffs' freedom of movement was not restrained. The Court's conclusion of no seizure in Mendenhall was not changed by the fact that the agents there did not expressly tell the respondent "she was free to decline to cooperate with their inquiry, for the voluntariness of her responses does not depend upon her having been so informed." Mendenhall, 446 U.S. at at 555. "[O]therwise inoffensive contact between a member of the public and police cannot, as a matter of law, amount to a seizure of that person." Id.

2. Agent Shaver's Actions Were Privileged and Based on Reasonable Suspicion.

As discussed above in section (A), Agent Shaver acted under the authority of federal law found at 8 U.S.C. § 1357(a)(1), (2). He had the privilege to question Plaintiffs as long as he did not restrain their freedom to walk away. 8 C.F.R. § 287.8(b). Once he had reasonable suspicion that they were in the country illegally, he had the privilege to briefly detain them. Id. Once this suspicion developed into probable cause, he had the privilege to administratively arrest Plaintiffs. Id.

Agent Shaver based his reasonable suspicion on his

experience and articulable facts. Regarding Plaintiff Saucedo-Carrillo, Agent Shaver stated:

> I asked her if the vehicle was registered to her. Her response was that she couldn't get the vehicle registered in her name, so she had to register it in her brother's name. And at that point, that was a bit curious for her not to have the vehicle registered in her own name but to have it personalized . . . .

(R. 28 Mot. for Summ. J. Attach. 1 Shaver Dep. PageID #166.) Regarding Plaintiff Carrillo-Vasquez, Agent Shaver stated:

> She said they were originally from Mexico and they had came in from Mexico. I asked her if she was a naturalized citizen and she said no. I asked if she had a resident card or a green card, and she said no. I asked her how she came in. It was with a passport and visa. At that point she said yes, they both entered together with a visa permitting them to stay here for ten years.

(Id. PageID #167.)

Agent Shaver was authorized to "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." 8 U.S.C. § 1357(a)(1). In Agent Shaver's experience, many persons in the country illegally cannot register a car to their own name so they have a relative register their car. Also in Agent Shaver's experience, there is no visa that allows a person to remain in the country for ten years. These facts provided Agent Shaver with reasonable suspicion that Plaintiffs were in the country illegally. From that point forward, the Plaintiffs were subject to administra-

tive dentention. When Plaintiffs admitted they had overstayed their visa, this gave Agent Shaver probable cause to arrest and he acted under the privilege and authority of federal law when he detained them administratively. Therefore, an "arrest based on probable cause is a lawful detention and, thereby, serves to defeat a false arrest/imprisonment claim." Radvansky, 395 F.3d at 315.

3. Agent Shaver's Questioning Amounted To A Consensual Encounter And Plaintiffs Were Not Intentionally Confined.

Agent Shaver was permitted to ask questions without cause. See Mendenhall, 446 U.S. at 553 ("The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry . . . .") Agent Shaver was also free to ask for the Plaintiffs' identification, provided he did not condition their departure on production of identification or "'convey a message that compliance with [his] requests is required.'" United States v. Hinojosa, 534 F. App'x 468, 470 (6th Cir. 2013) (quoting Florida v. Bostick, 501 U.S. 429, 437 (1991)). A person is "seized" under the Fourth Amendment if an officer "'"by means of physical force or show of authority,"' terminates or restrains his freedom of movement."'" Brendlin v. California, 551 U.S. 249, 254 (2007), (emphasis added) (citing Bostick, 501 U.S. at 434 (quoting Terry, 392 U.S. at 19, n.16.))

Plaintiffs did not allege that Agent Shaver told them they could not leave until they provided identification. In fact, they confirmed Agent Shaver did not tell them they were not free to leave. (R. 28 Mot. for Summ. J. Attach. 3 Saucedo-Carrillo Dep. PageID # 348; id. Attach. 2 Carrillo Vasquez Dep. PageID # 269.) Plaintiff Saucedo-Carrillo stated that she "thought maybe he was going to let me go." (Id.) As stated above, their movement was not restrained because Plaintiff Saucedo-Carrillo felt free to continue to gas up her vehicle and just acted normal. On her own admission, she could have backed up her vehicle and left. (Id. Attach. 3 Saucedo-Carrillo Dep. PageID # 332-33.)

Even if the Court found that Agent Shaver did not approach Plaintiffs in a consensual encounter, Agent Shaver had reasonable suspicion to initially approach Plaintiffs due to the appearance of the vehicle. Agent Shaver articulated several facts that amounted to reasonable suspicion that Plaintiffs' vehicle could have been involved in illegal drug trafficking. (R. 28 Mot. for Summ. J. Attach. 1 Shaver Dep. PageID # 161.) Based on his experience and knowledge, Agent Shaver had encountered similar vehicles near the southern border. This reasonable suspicion was enough to allow Agent Shaver to approach Plaintiffs and begin questioning them. During that

questioning, his suspicion shifted from drug trafficking to illegal immigration, a suspicion which was later confirmed by the admissions of Plaintiffs. Since his suspicion shifted, there was no need for him to confirm or dispel his suspicion surrounding the vehicle as Plaintiffs' Brief suggests. (Appellants' Br. 35-36.)

4. Plaintiffs Were Not Confined to a Limited Area.

Plaintiffs, by distinguishing Michigan v. Chesternut, 486 U.S. 567 (1988), attempt to find support for the idea that using a vehicle aggressively can create confinement in a limited area. Plaintiffs claim Agent Shaver operated his car "in an aggressive manner to block the forward movement" of Plaintiffs' vehicle. (Appellants' Br. 36.) However, the Court in Chesternut held "[w]hile the very presence of a police car driving parallel to a running pedestrian could be somewhat intimidating, this kind of police presence does not, standing alone, constitute a seizure." Chesternut, 486 U.S. at 575. The district court found Plaintiffs admitted they had sufficient room to backup and leave. The district court also found that "it is common for cars to park immediately in front of other cars at gas station pumps, requiring a car to reverse and depart." (R. 31 Mem. Op. & Order PageID # 418.) Certainly, the location of Agent Shaver's vehicle was not "so intimidating that [Plaintiffs] could

reasonably have believed that [they] were not free to disregard the police presence and go about [their] business." Chesternut, 486 U.S. at 576 (internal quotation marks omitted).

This Court has interpreted Ohio law on the issue of confinement and held " '[t]here is no confinement when a person voluntarily appears at a premise[s] and is free to leave.'" Taylor, 465 F. App'x at 424 (quoting King, 2009 WL 4309331, at *5). See also Ripley, 2007 WL 4564572, at *9 (where a plaintiff does not offer proof of confinement the cause of action fails as a matter of law.) Witcher, 680 N.E.2d at 715. There is no confinement when a person voluntarily appears at a premises and is free to leave. Walden v. Gen. Mills Rest. Group, Inc., 508 N.E.2d 168, 172 (Ohio Ct. App. 1986).

Here, Plaintiffs voluntarily drove to the gas station and were in the process of getting gas when Agent Shaver approached them. Plaintiffs were always free to leave. Plaintiff Saucedo-Carrillo remained in possession of her keys, continued to pump gas, and admitted she could have backed up and left. As in Drayton, the close proximity of Agent Shaver's vehicle was not enough to create confinement in a limited area and Plaintiffs' claim of false imprisonment must fail. Drayton, 536 U.S. at 197-99.

5. Plaintiffs Were Not Confined for an Appreciable Time.

According to Plaintiff Saucedo-Carrillo, the entire conversation between herself, Agent Shaver, and her mother happened while "always loading gas into the truck." (R. 28 Mot. for Summ. J. Attach. 3 Saucedo-Carrillo Dep. PageID # 346.)[6] In her Deposition, Plaintiff Saucedo-Carrillo contradicted herself and indicated that the conversation at the pump lasted at least half an hour. (Id. Page ID # 344.) Plaintiff Carrillo-Vasquez stated at Deposition that the conversation lasted twenty minutes, more or less, or thirty, but that she wasn't really sure. (R. 28 Mot. for Summ. J. Attach. 2 Carrillo-Vasquez Dep. PageID # 265-66.) Therefore, Plaintiffs' allegation that the questioning took place for twenty to forty-five minutes was not supported by the evidence.

At some point during that conversation, Plaintiffs admitted that they had overstayed their visa and the consensual encounter changed to an administrative arrest detention supported by

[6] According to Plaintiff Saucedo-Carrillo's Deposition, Agent Shaver's very first question was for her license, then he questioned her about her immigration status, he questioned her about her car, he then questioned her mother about her mother's status, then he went to his car and asked them to move their truck to the side of the building. (R. 28 Mot. for Summ. J. Attach. 3 Saucedo-Carrillo Dep. PageID # 334-41.) Plaintiff Carrillo-Vasquez's Deposition confirmed this, however, she said her daughter finished gassing up the vehicle during the conversation but her memory was not clear. (Id. Attach. 2 Carrillo-Vasquez Dep. PageID # 259-66.)

probable cause. The record does not support a finding that Plaintiffs were confined for an appreciable amount of time, and Plaintiffs' claim must fail.

Based upon the foregoing, the district court properly granted the United States' Motion for Summary Judgment, because there existed no genuine issue of material fact and the United States was entitled to judgment as a matter of law.

CONCLUSION

For the foregoing reasons, the district court's Judgment granting summary judgment should be affirmed.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS

AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,621 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a monospaced typeface using Microsoft Word with twelve characters per inch and Courier New type style.

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Dated: July 1, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2014, a copy of the foregoing Brief of the Appellee was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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ADDENDUM

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

The following documents from the district court's record are designated as relevant district court documents pursuant to 6 Cir. R. 28(b)(1)(A)(i) and 30(g)(1):

DOCKET ENTRY NUMBER	PageID #	DESCRIPTION OF DOCUMENT
1	1-9	Complaint
28	88	United States' Motion for Summary Judgment
28 Attach. 1	161-222	Deposition of Bradley Shaver
28 Attach. 2	231-74	Deposition of Rosa Carrillo-Vasquez
28 Attach. 3	332-48	Deposition of Rocío Anani Saucedo-Carrillo
28 Attach. 4	376	Declaration of Bradley Shaver
31	412-23	Mem. Opinion and Order
32	424	Judgment
33	425-26	Notice of Appeal