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14 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

15 ANDRES SOSA SEGURA,
16
Plaintiff,
17
v.
18 UNITED STATES OF AMERICA,
19
Defendant.
20

No. 2:19-cv-00219-SAB

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

11/12/20
With Oral Argument: 9:30 A.M.
Video Hearing

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I. INTRODUCTION

1
2 On July 24, 2017, Plaintiff Andres Sosa Segura was returning home from
3 Montana to Washington to be with his family. While he was transferring buses at
4 the Spokane Intermodal Center (the “Center”), two Customs and Border Protection
5 (“CBP”) agents singled out Mr. Sosa for questioning, then took him to a parking lot
6 for further detention after Mr. Sosa produced a “Know Your Rights” (“KYR”) card.
7 During the detention, the agents observed that Mr. Sosa was wearing an ankle
8 monitor and ran a records check that revealed Mr. Sosa had been previously arrested
9 and charged by Immigration and Customs Enforcement (“ICE”). Mr. Sosa was not
10 a flight risk. Nevertheless, the agents proceeded to arrest Mr. Sosa for the same
11 offense for which ICE had already arrested him. The agents placed Mr. Sosa in a
12 patrol vehicle and transported him to the Colville Border Patrol Station where they
13 fingerprinted Mr. Sosa and investigated him further before finally releasing him.

14 These undisputed facts demonstrate Mr. Sosa is entitled to summary judgment
15 as to the USA’s liability for false arrest and false imprisonment.¹ As a matter of law,
16 and as the agents admit, the CBP agents arrested Mr. Sosa when they transported
17 him to a Border Patrol facility for further investigation.

18 Moreover, at the time of the arrest, there is no dispute that the agents lacked a
19 warrant and did not consider Mr. Sosa a flight risk. Under the statute governing the
20 agents’ warrantless arrest authority, not only did the CBP agents need probable cause
21 to suspect that Mr. Sosa was in the United States in violation of federal immigration

22 _____
23 ¹ Due to factual disputes, Mr. Sosa reserves his WLAD claim for trial.

1 law or had committed an offense against the United States, but they also needed
2 probable cause to believe Mr. Sosa was likely to escape before a warrant could be
3 issued. 8 U.S.C § 1357(a)(2), (5). Here, however, the agents both testified they did
4 not think Mr. Sosa was a flight risk. Indeed, Mr. Sosa also wore an ankle monitor,
5 which the agents understood had been issued in connection with Mr. Sosa’s release
6 on bond in a pending immigration proceeding.

7 Further, the CBP agents’ arrest violated the rule that an individual out on bond
8 cannot be arrested again based on probable cause for the same offense. The Supreme
9 Court has applied this rule to immigration cases. Rearrests are unconstitutional
10 because seizures must have a purpose. Once that purpose is exhausted, further
11 seizure for the same basis is unreasonable; otherwise, an individual on bond could
12 be harassed by continual rearrests based on the continuing existence of probable
13 cause for the same offense. There is no dispute that ICE had already arrested and
14 charged Mr. Sosa for being unlawfully present in the USA, that Mr. Sosa was out on
15 bond for that violation, and that the agents knew these facts. The agents’ arrest was
16 unlawful because the only basis for that arrest—to ensure he answered charges for
17 the same violation for which he was out on bond—was already exhausted.

18 II. STATEMENT OF FACTS

19 A. CBP’s Transportation Checks at the Spokane Intermodal Center

20 The Spokane Intermodal Center is a bus and train station located in Spokane,
21 Washington, over 100 miles by road from the U.S.-Canadian border. Statement of
22 Material Facts (“SOMF”) ¶¶ 1-2. Border Patrol agents conduct “transportation
23 checks” at the Center by asking individuals present at the station or on buses about

1 their legal status or for immigration paperwork. *Id.* ¶¶ 3-5. For many years prior,
2 CBP policy required agents to conduct these checks only after receiving “actionable
3 intelligence” that an immigration violator might use public forms of transportation
4 through the Spokane area to escape detection by Border Patrol Agents. *Id.* ¶¶ 6-8.
5 That requirement was removed in November 2016. *Id.* ¶ 9.

6 **B. Mr. Sosa’s October 2016 Arrest by ICE**

7 In October 2016, nine months before the incident which is the subject of this
8 dispute, ICE agents arrested Mr. Sosa as he and his wife exited a courthouse in
9 Skamania County, Washington. *Id.* ¶ 16. ICE charged Mr. Sosa with being a
10 noncitizen² who is present in the USA without admission. *Id.* ¶ 17; *see* 8 U.S.C.
11 § 1182(a)(6)(A)(i). ICE then placed Mr. Sosa into custody at the Northwest
12 Detention Center. *Id.* ¶ 18-19. After five weeks in detention, Mr. Sosa received a
13 bond hearing, where an immigration judge ordered his release on payment of a bond.
14 *Id.* ¶ 19. Mr. Sosa paid the bond with the assistance of a bond agency, who required
15 him to wear an ankle monitor in connection with his release. *Id.* ¶ 20. Ankle monitors
16 are used to track the wearer’s location. *Id.* ¶ 21. As of July 24, 2017, those charges
17 remained pending and Mr. Sosa continued to wear the ankle monitor. *Id.* ¶ 22. As of
18 July 24, 2017, Mr. Sosa had not violated any of the terms of his immigration bond.
19 *Id.* ¶ 22.

20 _____
21 ² Given the derogatory nature of the term “alien,” Plaintiff follows the lead of the
22 Supreme Court’s recent decision in *Barton v. Barr*, 140 S. Ct. 1442 (2020), and “uses
23 the term ‘noncitizen’ as equivalent to the statutory term ‘alien.’ ” *Id.* at 1446, n.2.

1 **C. Mr. Sosa’s Initial Encounter with the CBP Agents**

2 On July 24, 2017, Mr. Sosa arrived at the Center after riding a Greyhound bus
3 from Montana. *Id.* ¶¶ 24-26. He was scheduled to transfer to a bus bound for Hood
4 River, Oregon, near his home and family in Underwood, Washington. *Id.* That day,
5 Border Patrol Agents Randall Roberts and Brian Flynn were conducting
6 transportation checks and were standing outside the passenger waiting area when
7 Mr. Sosa’s bus arrived. *Id.* ¶¶ 27-28. Mr. Sosa was one of the last individuals to
8 leave the bus, but he was not the last person. *Id.* ¶ 29. Like many of the other
9 individuals exiting the bus, Mr. Sosa entered the bus station. *Id.* ¶ 30. The agents
10 approached Mr. Sosa without speaking to any other bus passengers. *Id.* ¶ 31-32.

11 The parties disagree about what occurred next. *Id.* ¶ 33. Mr. Sosa explained
12 that after approaching him, the agents immediately demanded to know where he was
13 from. *Id.* ¶ 34. Mr. Sosa did not respond to these questions, asked if the agents were
14 going to arrest him, and handed the agents a “Know Your Rights” card. *Id.* The KYR
15 card stated that Mr. Sosa did not wish to talk and wanted to speak with an attorney.
16 *Id.* Rather than respecting these rights, the agents continued to question Mr. Sosa
17 and then led him outside the building to their patrol vehicles in the parking lot. *Id.*

18 Agents Roberts and Flynn, and the I-44 report that Agent Roberts prepared
19 regarding the incident, each provide different versions of these initial moments.
20 According to Agent Roberts’ testimony, he saw Mr. Sosa on the Greyhound bus
21 looking at him, although he later admitted he could not see Mr. Sosa’s eyes through
22 the tinted windows. *Id.* ¶ 36. After Mr. Sosa exited, Agent Roberts approached Mr.
23 Sosa and asked Mr. Sosa where he was from. *Id.* According to Agent Roberts, Mr.

1 Sosa did not respond and handed Agent Roberts his driver’s license. *Id.* Roberts then
2 asked Mr. Sosa where he was born, and Mr. Sosa allegedly responded “Mexico.” *Id.*
3 In deposition, Agent Roberts claimed Mr. Sosa admitted to not having any
4 immigration documents, and that after making that admission, Mr. Sosa produced
5 his KYR Card. *Id.* However, Agent Roberts’ report of Mr. Sosa’s arrest—which
6 required Roberts to list “all the circumstances surrounding the . . . seizure”—does
7 not say that Mr. Sosa admitted to not having any immigration documents prior to
8 producing his KYR Card. *Id.* ¶ 35.

9 Agent Flynn asserted that after walking up to Mr. Sosa, Agent Roberts asked
10 Mr. Sosa, “Of what country are you a citizen?” *Id.* ¶ 37. Agent Flynn testified that
11 Mr. Sosa replied “Mexico,” and that Agent Roberts then asked if Mr. Sosa had any
12 documentation. *Id.* According to Agent Flynn, Mr. Sosa did *not* respond and instead
13 produced his KYR Card. *Id.* Agent Flynn stated that Mr. Sosa produced his
14 Washington state driver’s license at some point after this while being escorted to the
15 patrol vehicles. *Id.*

16 **D. The CBP Agents’ Detention of Mr. Sosa in the Parking Lot**

17 While the initial moments of the encounter are disputed, the record establishes
18 key undisputed facts about what happened after Mr. Sosa and the agents went outside
19 to the patrol vehicle. After arriving at the patrol vehicle(s), Flynn conducted a pat-
20 down search of Mr. Sosa and became aware of Mr. Sosa’s ankle monitor. *Id.* ¶ 41.
21 The parties dispute whether Mr. Sosa explained the reason for the monitor. *Id.* ¶ 42.

22 Flynn then proceeded to use Mr. Sosa’s driver’s license to run a records check
23 on Mr. Sosa that revealed Mr. Sosa’s earlier immigration arrest for unlawful

1 presence by ICE. *Id.* ¶ 43, 46. This records check was not documented on the I-44.
2 *Id.* ¶ 53. Agent Flynn called Dispatcher Robert Peterson (“Pete”), who ran Mr.
3 Sosa’s name through a large number of law enforcement and immigration-related
4 databases. *Id.* ¶ 45. Based on those results, Pete informed Flynn that (1) Mr. Sosa
5 had previously been arrested by ICE, and that (2) due to that arrest, he had been
6 charged as a noncitizen present without admission in the United States. *Id.* ¶¶ 46-47.
7 Pete also explained to Flynn that Mr. Sosa’s ankle monitor was likely connected to
8 this prior ICE arrest. *Id.* ¶ 48. The database query also revealed Mr. Sosa’s “A
9 number,” a unique identifier for individuals who have had prior contact with the
10 immigration system. *Id.* ¶ 49-50. Following the call, Pete emailed Flynn a copy of
11 the query results, which also showed Mr. Sosa’s arrest on October 6, 2016 by
12 ICE/ERO Portland on the charge of “[noncitizen] present without admission or
13 parole.” *Id.* ¶ 51.

14 Despite learning about Mr. Sosa’s prior arrest and charges, Roberts and Flynn
15 decided to arrest Mr. Sosa. *Id.* ¶ 53. As both agents explained in their depositions,
16 they arrested Mr. Sosa because they believed they had probable cause to believe Mr.
17 Sosa was a noncitizen present in the United States without admission—the exact
18 same offense for which Mr. Sosa had already been arrested and charged by ICE, and
19 which was the basis for the immigration charges pending against him. *Id.* ¶ 55. The
20 agents did not have a warrant for Mr. Sosa’s arrest. *Id.* ¶ 56. Mr. Sosa’s demeanor
21 was compliant and nice, and both agents testified that neither considered Mr. Sosa a
22 flight risk. *Id.* ¶ 56, 57.

1 3d 1207, 1218 (W.D. Wash. 2015) (quoting *Bender v. City of Seattle*, 99 Wn.2d 582,
2 591 (1983)). “[A] lawful seizure . . . is a complete defense to a claim for false arrest.”
3 *Id.* (citing *Hanson v. City of Snohomish*, 121 Wn.2d 552, 563-64 (1993)). The
4 standard for false imprisonment is the same. *Bender*, 99 Wn.2d at 591. “The
5 authority of federal immigration officers to detain and arrest suspected [noncitizens]
6 is limited by the strictures of the Fourth Amendment.” *Vargas Ramirez*, 93 F. Supp.
7 3d at 1218 (citing *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 725 (9th Cir.1983)). “[T]he
8 lawfulness of a Border Patrol agent’s seizure turns on the familiar principles of
9 reasonable suspicion and probable cause.” *Id.* “Whether an arrest is supported by
10 probable cause is typically a mixed question of law and fact.” *Id.* at 1222.

11 IV. ARGUMENT

12 A. General Fourth Amendment Principles

13 There are two types of police seizures under the Fourth Amendment—brief,
14 investigative stops and full-scale arrests. *Reynaga Hernandez v. Skinner*, 969 F.3d
15 930, 937 (9th Cir. 2020). The type of seizure determines which constitutional
16 standard applies. An investigative stop “must be supported by reasonable suspicion
17 that the person is unlawfully present in the United States.” *Vargas Ramirez*, 93 F.
18 Supp. 3d at 1218. An arrest must either be supported by a warrant or, when Border
19 Patrol agents conduct a warrantless arrest, probable cause of an immigration
20 violation or offense and a flight risk determination. *See id.*; 8 U.S.C § 1357(a)(2),
21 (5). When analyzing reasonable suspicion, courts “examine the totality of the
22 circumstances to determine whether a detaining officer has a particularized and
23 objective basis for suspecting criminal wrongdoing.” *Reynaga Hernandez*, 969 F.3d

1 at 937 (internal quotation marks omitted). “An officer cannot rely only upon
2 generalizations that ‘would cast suspicion on large segments of the [law-abiding]
3 population.’” *Id.* (quoting *U.S. v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir. 2006)).

4 “Probable cause is more difficult to establish than reasonable suspicion, and
5 is determined at the time the arrest is made.” *Reynaga Hernandez*, 969 F.3d. at 938.
6 Probable cause must be based on “reasonably trustworthy information sufficient to
7 warrant a prudent person in believing that the accused had committed or was
8 committing an offense.” *Id.* (internal quotation marks and citation omitted).

9 Here, factual disputes prevent summary judgment as to whether the USA is
10 liable for false arrest based on the CBP agents’ reasonable suspicion or probable
11 cause to believe Mr. Sosa was unlawfully present in the USA when the agents
12 encountered Mr. Sosa inside the bus terminal, then took him to the parking lot for
13 further questioning. *See generally* SOMF ¶¶ 34-38. However, the USA is liable for
14 false arrest as a matter of law for the CBP agents’ actions after this point. The
15 undisputed facts show that the agents then arrested Mr. Sosa by placing him in a
16 patrol vehicle and transporting him to Colville Station even though (1) Mr. Sosa was
17 not a flight risk, and (2) an immigration judge had released Mr. Sosa on bond after
18 ICE had already arrested on the same charges as the CBP agents about nine months
19 before the July 24 incident.

20 **B. The CBP Agents Arrested Mr. Sosa When They Put Mr. Sosa in**
21 **the Car and Took Him to Colville Station.**

22 Mr. Sosa was under arrest at the time the agents placed him in their patrol
23 vehicle to transport him 1.5 hours to the Colville Border Station. By this point, the

1 stop had gone on much more “than a minute” and “a brief question or two.” *Reynaga*
2 *Hernandez*, 969 F.3d at 938 (citation omitted). Indeed, the CBP agents testified that
3 Mr. Sosa was under arrest, believing they had probable cause to arrest Mr. Sosa for
4 being unlawfully present without admission. SOMF ¶ 54. Moreover, the Supreme
5 Court has made clear that transport to a police station signifies an arrest has occurred.
6 *Kaupp v. Tex.*, 538 U.S. 626, 630 (2003); *Hayes v. Fla.*, 470 U.S. 811, 816 (1985).
7 “Such involuntary transport to a police station for questioning is ‘sufficiently like
8 arrest to invoke the traditional rule that arrests may constitutionally be made only on
9 probable cause.’” *Kaupp* 538 U.S. at 630 (quoting *Hayes*, 470 U.S. at 816); *see also*
10 *Pierce v. Multnomah Cty.*, 76 F.3d 1032, 1040 (9th Cir. 1996) (similar).

11 **C. The CBP Agents’ Warrantless Arrest of Mr. Sosa Was Unlawful**
12 **Because Mr. Sosa Was Not Likely to Escape.**

13 It is undisputed, and the USA admits, that Agents Flynn and Roberts did not
14 have a warrant for Mr. Sosa’s arrest. SOMF ¶ 56. Accordingly, the CBP agents were
15 authorized to arrest Mr. Sosa only under the circumstances set forth in 8 U.S.C.
16 § 1357(a)(2) and (a)(5), which govern CBP agents’ warrantless arrests authority.

17 The Immigration and Nationality Act specifies when CBP agents may make
18 a warrantless arrest. To make a warrantless arrest, a Border Patrol agent must have
19 “reason to believe” both that (1) the individual “so arrested is in the United States in
20 violation of any [a] law or regulation [governing admission, exclusion, expulsion, or
21 removal of noncitizens]” *and* (2) the individual “is likely to escape before a warrant
22 can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2). Similarly, 8 U.S.C.
23 §1357(a)(5) conditions immigration officers’ warrantless arrest authority for any

1 offense committed in the presence of an officer on “the likelihood of the person
2 escaping before a warrant can be obtained.” Controlling case law confirms an
3 immigration officer must have *both* probable cause of an offense and probable cause
4 of flight risk at the time of the arrest. *See Arizona v. U.S.*, 567 U.S. 387, 408 (2012)
5 (holding that an Arizona statute allowing state and local officers to make warrantless
6 arrests without meeting “likely to escape” requirement was preempted by 8 U.S.C.
7 § 1357(a)(2) because the authority of federal officers to arrest an individual without
8 a warrant is limited to situations where there is an individual is “likely to escape”
9 before a warrant can be obtained); *U.S. v. Cantu*, 519 F.2d 494, 496-97 (7th Cir.
10 1975) (observing that the “likelihood of . . . escaping” is a “statutory limitation” that
11 “is always seriously applied”).

12 This flight-risk determination is not “mere verbiage.” *U.S. v. Pacheco-*
13 *Alvarez*, 227 F. Supp. 3d 863, 889 (S.D. Ohio 2016). As noted above, Courts of
14 Appeals have made clear that this statutory requirement is one that must be
15 “seriously applied.” *Cantu*, 519 F.2d at 496-97; *see also De La Paz v. Coy*, 786 F.3d
16 367, 376 (5th Cir. 2015) (citation omitted) (“[E]ven if an agent has reasonable belief,
17 before making an arrest, there must also be a ‘likelihood of the person escaping
18 before a warrant can be obtained for his arrest.’”); *Westover v. Reno*, 202 F.3d 475,
19 479-80 (1st Cir. 2000) (finding arrest was “in direct violation” of § 1357(a)(2)
20 because “[w]hile INS agents may have had probable cause to arrest Westover . . .
21 there is no evidence that Westover was likely to escape”)

22 The statute’s “likely to escape” language means “likely to evade detention by
23 immigration officers.” *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1006 (N.D. Ill.

1 2016). The phrase “reason to believe,” moreover, “requires a particularized
2 inquiry.” *Id.* at 1007. Thus, an immigration official can only make a warrantless
3 arrest where the official has a particularized basis to believe the individual is likely
4 to evade detention by immigration officials before a warrant can be obtained. *See*
5 *Meza v. Campos*, 500 F.2d 33, 34 (9th Cir. 1974) (applying an individualized
6 likelihood-of-escape analysis).

7 Courts look to the objective facts available to the immigration official at the
8 time of arrest in evaluating whether sufficient probable cause existed to believe an
9 individual was likely to escape. *See, e.g., U.S. v. Ravelo-Rodriguez*, 2012 WL
10 1597390, at *16-17 (E.D. Tenn. Mar. 12, 2012), *report and recommendation*
11 *adopted by* 212 WL 11598074 (E.D. Tenn. May 7, 2012) (noting “a court examines
12 the objective facts within the knowledge of the agents in making a determination”
13 as to whether an individual was likely to escape at the time of arrest) (internal
14 citations and quotations omitted). Probable cause to believe an individual is likely
15 to flee does not exist where the arresting agent knows the individual’s name and
16 address, the individual is nowhere near the border at the time of arrest, the individual
17 shows no signs of running or attempting to escape, and the individual is compliant
18 with the agent’s instructions throughout the encounter. *See, e.g., U.S. v. Bautista-*
19 *Ramos*, 2018 WL 5726236, at *7 (N.D. Iowa 2018), *report and recommendation*
20 *adopted by* 2018 WL 57239848 (N.D. Iowa Nov. 1, 2018) (holding ICE officers did
21 not have reason to believe defendant posed a risk of flight at the time of his
22 warrantless arrest because ICE officers had previously “determined [defendant] was
23 not a flight risk,” defendant was not anywhere near the border, the agents knew

1 defendant's true name and other identifying information, and the officers had
2 "information suggesting [defendant] had been present in northwest Iowa since at
3 least 2006"); *Davila v. U.S.*, 247 F. Supp. 3d 650, 669-70 (W.D. Penn. 2017)
4 (declining to hold as a matter of law that agents possessed probable cause to believe
5 plaintiff was likely to escape despite plaintiff being in vehicle and telling agents she
6 was born in Mexico because she was nowhere near the border or headed in that
7 direction, presented her driver's license showing her Pennsylvania address, and did
8 not show "signs of running"); *Pacheco-Alvarez*, 227 F. Supp. 3d at 872, 889-90
9 (citation omitted) (holding that the defendant did not pose an escape risk, even
10 though fingerprint evidence and his admissions confirmed he was in the country
11 unlawfully, because defendant was arrested "just a few miles from his home" and
12 there was no evidence that he "attempted to evade custody" or was "looking for an
13 opportunity to run"); *Araujo v. U.S.*, 301 F. Supp. 2d 1095, 1102 (N.D. Cal. 2004)
14 (holding defendant was not likely to escape when he was arrested at the home he
15 shared with his wife, a United States citizen, and had filed an application to adjust
16 his immigration status).

17 Here, it is undisputed that the CBP agents failed to comply with the flight risk
18 requirement under 8 U.S.C. § 1357(a)(2) and (a)(5) when they arrested Mr. Sosa.
19 Critically, both Agents Roberts and Flynn testified that neither considered Mr. Sosa
20 a flight risk when they arrested him in the Intermodal Center's parking lot. SOMF
21 ¶ 57. That alone should end this Court's inquiry. The agents' concessions that Mr.
22 Sosa did not present a flight risk renders Mr. Sosa's warrantless arrest patently
23 unlawful. *See Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir.

1 1995) (holding that “Section 1357(a)(2) requires that the arresting officer reasonably
2 believe that the [noncitizen] is in the country illegally *and* that [he] is ‘likely to
3 escape before a warrant can be obtained for [his] arrest.’”).

4 Even if Agents Roberts and Flynn had not acknowledged that Mr. Sosa posed
5 no flight risk at the time of his arrest, the undisputed facts show they still would have
6 lacked the requisite probable cause to believe Mr. Sosa was likely to flee. The agents
7 knew Mr. Sosa’s name, date of birth, and address because Mr. Sosa had provided
8 the agents with his valid Washington State Driver’s License. SOMF ¶ 39. They had
9 also successfully located him in the CBP database and had his A number, which is a
10 unique identifier for noncitizens. *Id.* ¶¶ 50-51. They also learned that Mr. Sosa had
11 recently been arrested by ICE and had pending immigration charges, and were
12 informed that Mr. Sosa’s ankle monitor was likely tied to that arrest. *Id.* ¶¶ 47-49.
13 In fact, the ankle monitor provided yet another mechanism to ensure Mr. Sosa’s
14 appearance at any future proceedings; both agents testified that the purpose of an
15 ankle monitor was to track the individual wearing the monitor. *Id.* ¶ 21. Mr. Sosa
16 was also not anywhere near the border at the time of his arrest. *Id.* ¶ 2. Finally, there
17 is also no evidence that Mr. Sosa attempted to run or evade custody during his
18 encounter with Agents Roberts and Flynn. To the contrary, the undisputed facts
19 show that Mr. Sosa was compliant and behaved nicely. *Id.* ¶ 56.

20 As a result, there is no indication that the agents would have had trouble
21 finding Mr. Sosa again if they had released him while they obtained a warrant.
22 Taken together, these objective factors make clear Agents Roberts and Flynn lacked
23 probable cause to believe Mr. Sosa was likely to escape before they could obtain a

1 warrant for his arrest. *See, e.g., Bautista-Ramos*, 2018 WL 5726236, at *7; *Davila*,
2 247 F. Supp. 3d at 669-70; *Pacheco-Alvarez*, 227 F. Supp. 3d at 872, 889-90; *Araujo*,
3 301 F. Supp. 2d at 1102.

4 There is also no question that Agents Roberts and Flynn arrested Mr. Sosa
5 solely because they believed they had probable cause Mr. Sosa was present in the
6 United States without admission, as they testified during their depositions. SOMF ¶
7 54. Courts have made clear that, under these circumstances, a flight risk
8 determination is necessary. “[A] holding that in every case in which an [noncitizen]
9 is deportable an arrest can be made without a warrant . . . would be contrary to the
10 statute itself, which requires a reasonable belief that the [noncitizen] is likely to
11 escape,’ *in addition to* a reasonable belief that the [noncitizen] is deportable.”
12 *Bautista-Ramos*, 2018 WL 5726236, at *6 (emphasis added) (internal quotation
13 marks omitted) (quoting *Ravelo-Rodriguez*, 2012 WL 1597390, at *16). Indeed, the
14 USA’s training materials for transportation checks reflect this rule in their
15 incorporation of the “likely to escape” requirement; when a deportable individual *is*
16 *not* likely to escape, the agent should document the encounter without arresting the
17 individual. SOMF ¶ 11.

18 Because Agents Roberts and Flynn lacked “reason to believe” Mr. Sosa posed
19 a risk of escape before they could obtain an arrest warrant, his warrantless arrest
20 violated 8 U.S.C. § 1357(a)(2).

21 **D. The CBP Agents’ Arrest of Mr. Sosa Was Unlawful Because a**
22 **Person Who Has Been Released on Bond Cannot Be Re-Arrested**
23 **Based on Probable Cause for the Same Offense.**

In addition, the CBP agents’ arrest of Mr. Sosa was unlawful for another

1 reason—it violated the fundamental rule that an individual who is out on bail cannot
2 be arrested again based on probable cause for the same offense. As courts have
3 explained in the immigration context, “Once a noncitizen has been released, the law
4 prohibits federal agents from rearresting him merely because he is subject to removal
5 proceedings.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal.
6 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018);
7 *see also, e.g., Lopez v. Sessions*, 2018 WL 2932726, at *13 (S.D.N.Y. June 12,
8 2018).

9 The Seventh Circuit recently addressed this issue in a non-immigration case.
10 *See Williams v. Dart*, 967 F.3d 625, 634-35 (7th Cir. 2020), *reh’g denied* (Aug. 21,
11 2020). In *Dart*, the Cook County Circuit Court implemented a new pretrial release
12 policy that reduced the use of cash bail. *Id.* at 630. The Sheriff disagreed with the
13 new bail policy and refused to release the plaintiffs despite the court’s bail orders.
14 *See id.* at 630-31. The Seventh Circuit concluded the Sheriff’s unilateral seizures
15 could not be supported by the probable cause supporting the original arrest:

16 It is axiomatic that seizures have purposes. When those purposes are
17 spent, further seizure is unreasonable. ... [T]he primary purpose of an
18 arrest is to ensure the arrestee appears to answer charges. This purpose
19 is accomplished by bringing the arrestee promptly before the court so
20 that it may issue one of three orders: discharge, commitment, or bail....

21 Once the arrestee appears before the court, the purpose of the initial
22 seizure has been accomplished. Further seizure requires a court order
23 or new cause; the original probable cause determination is no
justification....

[N]o one disputes “the continuing existence of ‘probable cause’” to
believe plaintiffs committed the offenses charged. Once plaintiffs

1 appeared before the court, however, such probable cause ceased to be a
2 justification for the Sheriff's unilateral seizure. Put differently, the
original probable cause was "exhausted" by the courts' bail orders.

3 *Id.* at 634-35 (internal citations omitted).

4 Similarly, in an earlier Seventh Circuit case, then-Judge Stevens addressed a
5 defendant who was rearrested for the same offense while out on bond, concluding
6 the rearrest was unconstitutional. *U.S. v. Holmes*, 452 F.2d 249, 260-61 (7th Cir.
7 1971). Despite no new warrant being issued for his arrest, agents arrested the
8 defendant after being advised of a superseding indictment, even though the judge
9 ordered that the defendant's previous bond should stand. *Id.* at 260. Because the
10 defendant was under indictment, probable cause for a crime technically existed. *Id.*
11 at 260-61. "But since he had been admitted to bail, no purpose could have been
12 served by continually rearresting him." *Id.* at 261. As the court explained,

13 We recognize that a variety of valid causes for a rearrest of a person
14 admitted to bail may exist, but certainly the continuing knowledge of
15 his possible guilt of the offense charged in the indictment is not itself
16 sufficient; *otherwise, harassment by continual rearrests could be*
17 *justified by the continuing existence of 'probable cause.'* The Fourth
18 Amendment requires both a reasonable foundation for a charge of crime
and also the avoidance of 'rash and unreasonable interferences with
19 privacy.' Since there was no valid justification for [the defendant's]
20 arrest, we conclude that the search of his person on October 18, 1967,
21 was prohibited by the Fourth Amendment.

22 *Id.* (emphasis added) (internal citation omitted). The court further clarified that its
23 holding did not require a determination of whether the agents acted in good or bad
faith. *Id.*

The Supreme Court has held that the prohibition against rearrest of an
individual out on bail applies in the context of federal immigration detentions. In

1 *Carlson v. Landon*, an immigrant was arrested under a warrant charging that he was
2 subject to deportation based on his membership the Communist party; he was then
3 released on bail. 342 U.S. 524, 531 (1952). After the enactment of a new federal act
4 addressing deportability of Communists, the immigrant was taken into custody on
5 the same warrant, but this time held without bail. *Id.* The immigrant challenged his
6 detention, arguing that “his rearrest on the outstanding warrant, after he had once
7 been released on bai[l], was improper.” *Id.* at 546. The Supreme Court agreed:

8 [T]he rule in criminal cases is that a warrant once executed is
9 exhausted. This guards against precipitate rearrest. . . . Although in a
10 civil proceeding for deportation the same branch of government issues
11 and executes the warrant, we think the better practice is to require in
12 those cases also a new warrant.

13 *Id.* at 546-47 (internal citations omitted). The court ordered his release absent a new
14 warrant. *Id.* at 547.

15 Courts have continued to apply these rules in the immigration context. As one
16 district court has explained,

17 The federal government sometimes releases noncitizens on bond or parole
18 while their removal proceedings are pending. Release reflects a determination
19 by the government that the noncitizen is not a danger to the community or a
20 flight risk. Once a noncitizen has been released, the law prohibits federal
21 agents from rearresting him merely because he is subject to removal
22 proceedings.

23 *Saravia*, 280 F. Supp. 3d at 1176. “Absent some compelling justification, the
repeated seizure of a person on the same probable cause cannot, by any standard, be
regarded as reasonable under the Fourth Amendment.” *Id.* at 1196 (quoting
U.S. v. Kordosky, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988)). And

1 another district court has explained that rearresting an unaccompanied noncitizen
2 minor “solely on the ground that they are removable—the same basis on which they
3 were detained in the first place” would be a result “in direct conflict with
4 Congressional intent, constitutional due process, and common sense.” *Lopez*, 2018
5 WL 2932726, at *13.

6 Here, there is no dispute that prior to the July 24 incident, ICE had previously
7 charged Mr. Sosa with being unlawfully present in the USA, Mr. Sosa had pending
8 immigration charges against him, and the immigration court had released Mr. Sosa
9 on bond. SOMF ¶¶ 16-22. There is also no dispute that Agents Roberts and Flynn
10 rearrested Mr. Sosa for the same offense for which he was out on bond—being
11 unlawfully present in the USA. *Compare id.* ¶ 55, with *id.* ¶ 17, 52. Finally, there is
12 no dispute that Mr. Sosa had not violated any of the terms of his immigration bond.
13 SOMF ¶ 23. Thus, the undisputed facts demonstrate the CBP agents’ arrest of Mr.
14 Sosa was unconstitutional because the only basis for the arrest—probable cause that
15 Mr. Sosa was unlawfully present in the USA—was exhausted.

16 In addition, it is undisputed that at least one of the agents had learned about
17 Mr. Sosa’s ankle monitor and had discussed it with the dispatcher before the agents
18 transported Mr. Sosa to Colville Station. SOMF ¶¶ 41-49. As noted above, Agent
19 Flynn called a dispatcher and learned that Mr. Sosa had been arrested by ICE and
20 charged with being unlawfully present less than a year before the July 24 incident.
21 *Id.* ¶¶ 44-52. The dispatcher on that call correctly concluded and advised Agent
22 Flynn that Mr. Sosa’s ankle monitor was related to his ICE arrest. *Id.* ¶ 48. As such,
23 the undisputed facts demonstrate that the CBP agents knew Mr. Sosa had already

1 been arrested and charged for being unlawfully present and released with the
2 pending charge. Nevertheless, they chose to rearrest him to investigate the very same
3 offense. Thus, the USA is liable for false arrest for Agent Roberts and Flynn's
4 unlawful arrest of Mr. Sosa.

5 **V. CONCLUSION**

6 For the reasons stated above, the Court should grant Mr. Sosa's motion.

7
8 DATED this 22nd day of September, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for all parties of record.

/s/Jennifer K. Chung
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